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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INCOME TAX APPEAL NO.1362 OF 2017

Commissioner of Income Tax (IT)-2 ..Appellant
vs.
Hapag Lloyd AG,
C/o Hapag Lloyd India Pvt. Ltd. ..Respondent

…........

Mr. Tejveer Singh for appellant.
Mr. Nishant Thakkar a/w. Ms. Jasmine Amalsadvala i/b. PDS Legal for respondent.

…........

CORAM : NITIN JAMDAR &
M.S.KARNIK, JJ.

DATE : 6 JANUARY 2020

P.C.:-

Heard learned counsel for the Appellant.

2. The present Appeal relates to Assessment Year 2009-10.

3. Learned counsel for the Appellant has drawn our attention to the order passed by this Court in the Appeal in the case of Respondent – Assessee for the earlier Assessment Year.

4. The Tribunal in the impugned order has referred to the Appeal filed by the Revenue in respect of the Respondent –

Assessee Assessment Year 2007-08. The observations are reproduced as under :-

> *"4. Ostensibly, the direction of the DRP, which has been sought to be challenged by the Revenue before us, are based on the order of the Tribunal dated 14/8/2013 (supra) in the assessee's own case for assessment year 2007-08, which continues to subsist. As a consequence, we find no reason to interfere in the directions made by the DRP. The only plea of the Revenue, as manifested in the above stated Ground of appeal, is that an appeal has been preferred in the High Court against the order of the Tribunal for assessment year 2007-08. So however, mere filing of an appeal does not distract from the fact that the order of the Tribunal dated 14/08/2013 (supra) continues to hold the field inasmuch as the same has not been altered by any higher authority. As a consequence, we find no merit in the appeal of the Revenue which is hereby dismissed."*

5. The Division Bench of this Court while considering the Appeal for the Assessment Year 2007-08 in Income Tax Appeal No. 602 of 2014 has observed as under :-

> ***" P.C :-***
>
> *This Appeal under Section 260-A of the Income Tax Act, 1961(the Act), challenges the order dated 14th August, 2013 passed by the Income Tax Appellate Tribunal (the Tribunal) for the Assessment Year 2007-08.*
>
> *2 The Revenue has urges only the following question of law for our consideration:*
>
> > *" Whether on the facts and in the circumstance of the case and in law, the income of the assessee by way of slot chartering would from a part of income from*

operations of ships exempt under Article 8 of the DTAA?”

3 We find that the impugned order of the Tribunal has allowed the Respondent's appeal by following the decision of this Court in **Director of Income Tax (International Taxation) v/s. Balaji Shipping UK Ltd., (2012) 211 Taxmann page 535***. In the above case, this Court was concerned with Article 9(1) of the Indo-UK DTAA. In the present case, Article 8 of Indo-German DTAA which is similar to Article 9(1) of the Indo-UK DTAA, arises for consideration. Therefore, the impugned order allowed the Respondent-Assessee's appeal before it by following the decision of this Court in Balaji Shipping UK Ltd., (supra).*

4 Mr. Tejveer Singh, learned Counsel appearing for the Revenue very fairly states that the issue stands concluded in favour of the Respondent-Assessee by the decision of this Court in Balaji Shipping UK (supra).

5 In view of the above, the question as framed does not give rise to any substantial question of law. Thus, not entertained.

6 Accordingly, **Appeal dismissed.** *No order as to costs.”*

6. In view of the submission made by the learned counsel for the Respondent that the issue stands covered as above, the Appeal is not entertained and accordingly dismissed.

(M.S.KARNIK, J.) **(NITIN JAMDAR, J.)**

Diksha Rane
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