IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.08.2020

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE MR.JUSTICE KRISHNAN RAMASAMY

T.C.A.No.377 of 2011

The Commissioner of Income Tax,
Chennai ... Appellant

vs.

M/s.Mainetti (India) P Ltd.
138/20, Florida Towers, 3rd Floor
Nelson Manickam Road
Chennai-600 029 ... Respondent

Prayer ::- Appeal filed against the order of the Income Tax Appellate Tribunal, Madras B Bench, Chennai, dated 25.03.2011 in I.T.A.No.2201/Mds/2010.

For appellant : Mr.Karthik Ranganathan,
Sr.Standing Counsel

ORDER

(Made by DR.VINEET KOTHARI, J.)

The Court was held by Video Conference, as per the Resolution of the Full Court dated 3 July 2020, by Judges at their respective residence and the counsel, staff of the Court appearing from their respective residences.

2. This Tax Case Appeal has been filed by the Revenue, calling in question the correctness of the order passed by the Income Tax Appellate Tribunal, “B” Bench, Chennai, in I.T.A.No.2201/Mds/2010 by raising the following substantial questions of law:

> *"1. Whether on the facts and in the circumstances of the case, the Income Tax Tribunal was right in deleting the disallowance of Rs.1,46,16,995/- debited by the assessee as commission paid to its group concern abroad ?*
>
> *2. Whether on the facts and in the circumstances of the case, the Income Tax Tribunal was right in not considering explanation below sub-section (2) of Section 9 introduced by Finance Act, 2010 with effect from 01.06.1976?*
>
> *3. Whether on the facts and in the circumstances of the case, the Income Tax Tribunal was right in not considering the fact that the overseas sales commission received by the assessee would come under the category of 'any other sum chargeable under the Income Tax Act, 1961' bringing it within the ambit of deduction of tax at source under Chapter - XIVII B of the Income Tax Act, 1961?*
>
> *4. Whether the non-compliance of the provisions relating to deduction of tax at source on overseas sales commission would be hit by the allowability of expenditure as per Section 40(a)(i) of the Act?*
>
> *5. Whether on the facts and in the circumstances of the case, the Income Tax Tribunal was correct in its conclusion based on the evidence available on record in holding that the overseas commission paid to its group concerns were not to be disallowed especially when there*

was no written agreement and there was no involvement nor any debit invoices raised warranting payment of such commission?"

3. When the matter is taken up for hearing, learned Standing Counsel brought to our notice the Circular issued by the Central Board of Direct Taxes vide Circular No.17/2019 dated 8th August 2019, wherein, it is stipulated that appeals shall not be filed/pursued by the Department before the High Court in cases where the tax effect does not exceed Rs.1,00,00,000/- (Rupees One Crore).

4. In the instant case, the tax effect is said to be less than the monetary limit imposed and therefore, the Appeal filed by the Revenue is dismissed as withdrawn, keeping open the substantial questions of law for determination in appropriate cases. No costs.

5. Registry is directed to send copy of the judgment to the respondent/ Assessee.

(V.K.,J.) (K.R.,J.)
05.08.2020

kpl/tar

To
M/s.Mainetti (India) P Ltd.
138/20, Florida Towers, 3rd Floor
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DR.VINEET KOTHARI, J.
and

KRISHNAN RAMASAMY, J.

(tar)

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