

ORDER SHEET
IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION (INCOME TAX)
ORIGINAL SIDE

IA NO: GA/2/2020
(OLD NO: GA/374/2020)
IN
ITAT/4/2020
PRINCIPAL COMMISSIONER OF INCOME TAX-1, KOLKATA
VS.
M/S HEIGHT INSURANCE SERVICES LTD.

BEFORE:

The Hon'ble JUSTICE T. S. SIVAGNANAM

AND

The Hon'ble JUSTICE HIRANMAY BHATTACHARYYA

Date : December 16, 2021.

[Via Video Conference]

Appearance:

Mr. D. Chowdhury, Advocate
... for the appellant/Revenue

Mr. J.P. Khaitan, Sr. Advocate
Mr. Ananda Sen, Advocate
Mr. Arnab Chakraborty, Advocate
..for respondent

The Court : This appeal by the revenue filed under Section 260A of the Income Tax Act (the Act in brevity) is directed against order dated 8th June, 2018 passed by the Income Tax Appellate Tribunal, "B" Bench, Kolkata in ITA 2266/Kol/2016 for the assessment year 2011-12.

The Revenue has raised the following substantial questions of law for consideration:

- a) Whether the Learned Income Tax Appellate Tribunal, “B” Bench, Kolkata failed to appreciate that M/s. Golden Trust Financial Services is not a group concern of the assessee. Moreover, the assessee had its own sufficient infrastructure and staff strength for running all branches and passing 90% of the receipts to M/s. Golden Trust Financial Services is not at all acceptable in terms of business ?
- b) Whether section 40(a)(ia) ought to have been applied by the Learned Commissioner of Income Tax (Appeal) and the Learned Tribunal since the assessee had not deducted TDS at the prescribed rate as per tabulation chart extracted forming part of Commissioner of Income Tax (Appeal) detailed discussion ?

We have heard Mr. Debashis Chowdhury, learned Standing Counsel for the appellant and Mr. J. P. Khaitan, learned Senior Counsel for the respondent.

We have carefully gone through the order passed by the Commissioner of Income Tax (Appeal) as well as that of the Tribunal.

The two issues which have been now been pointed out before us as being substantial questions of law were in fact considered by the CIT(A) as

well as the Tribunal in a very inaugurate fashion. The question would be whether the question of law much less than substantial question of law arises for consideration. The CIT(A) in its order has noted the submission of the assessee and approved the same wherein it was contended that the assessing officer has been inconsistent in a treatment of same kind of expenses and identical business arrangement with relevance ensured, the appellant/company and GTFS over the years. Further the CIT(A) approved the contention of the appellant that the assessee's case was scrutinised under Section 143(3) for the assessment years 2010-11 and during the year under consideration namely 2011-12 in the same facts and circumstances and business arrangement, the assessing officer has taken a different stand. It was further noted by the CIT(A) that for the assessment year 2010-11 the assessing officer has accepted the same business arrangement and approved the payment of service charges by the assessee to GTFS and it was held to be *bona fide*. Further the assessing officer had made certain disallowances based on the fact that assessee was paying large amounts of money as service charge to GTFS. Thus, the CIT(A) pointed out that though what is decided in one year may not apply in the following year in an income tax proceedings but where the fundamental aspect permeating through the different assessment year has been found as a fact one way or the other and parties were allowed that position to be sustained, it would not be appropriate to allow the position to be changed in the subsequent years.

With regard to the said principle, the CIT(A) relied upon the decision of the Hon'ble Supreme Court in RADHASOAMI SATSANG VS. CIT reported in (1992) 193 ITR 321 (SC). Further, the CIT(A) took note of the decision in the case of CIT VS. L.J. RAMAMURTHY reported in (1977) 110 ITR 453 (Madras) where the Court held what is relevant is not the personality of the officers presiding over the Tribunal but the Tribunal as an institution and merely because of the change in the personnel, who manned the Tribunal does not open to them to take the contrary conclusion which do not reach earlier on the same set of facts and if that is done it will not only shake the confidence of the public in judicial procedure but it will totally discard such confidence and that will be destructive of the institutional integrity itself. Though the said decision pertain to a decision of a Tribunal, the legal principle was rightly noted by the assessing officer. The Tribunal while testing the correctness of the said finding once again reappreciated the facts and pointed out that the Tribunal had made a specific query to the department as to whether the operating expenditure included any commission agency service or infrastructure usage service and the reply was that there is no material on record to the said effect. Furthermore, the Tribunal had on facts noted that the assessee has been following its consistent practice wherein agency and infrastructural services are being availed by the payee GTFS as accepted by the assessing officer himself in the preceding and succeeding assessment years.

Therefore, we find that the entire issue so far as the question No. 1 is factual. With regard to the second question, the CIT(A) took note of the fact that the case of the payee GTFS was scrutinised under Section 143(3) for the assessment year 2011-12 which was the assessment year and which was the subject matter in the assessee's case also. The copy of this scrutiny order of GTFS was produced before CIT(A) from which it was seen that some additions were made by the assessing officer but the receipts or transactions with respect to its business that the assessee before us were accepted as such. Therefore, taking note of this fact CIT(A) accepted the stand taken by the appellant. The Tribunal on its part re-examined the facts and concurred with the CIT(A) and also took note of the legal position as laid down by this Court in COMMISSIONER OF INCOME TAX VS. S.K. TEKRIWAL reported in [2014] 361 ITR 432 (CAL). In the said case the assessee deducted tax under Section 194(C)(2) of the Act from payment made to sub contractors. The revenue pointed out that the payments were in the nature of machinery hire charges following under the head "rent" and the provision of Section 194-I were applicable. On the ground that the assessee had deducted tax at one percent under Section 194(c)(2) as against the actual deduction to be made at 10% under Section 194-I the payments were disallowed proportionately invoking the provision of Section 40(a)(ia). The Tribunal held that where tax was deducted by the assessee though under a bona fide wrong impression under wrong provisions of 40(a)(ia) could not be invoked and that if there was any

shortfall due to any difference of opinion as to the taxability of any item or the nature of payment falling under various tax deduction at source provisions, the assessee could not be declared as an assessee in default under Section 201 and no disallowance could be made invoking the provision of Section 40(a)(ia). The Tribunal rightly took note of the said decision and dismissed the appeal filed by the revenue. Thus, we find the second question is fully factual and there is no question of law involved in the same.

In the result, the appeal filed by the revenue is dismissed on the ground that no substantial question arises for consideration as the entire aspect is factual, elaborately dealt with by the CIT (A) and confirmed by the Tribunal.

(T. S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)