OD-1

ORDER SHEET

IN THE HIGH COURT AT CALCUTTA
Special Jurisdiction (Income Tax)
ORIGINAL SIDE

ITA/39/2015

COMMISIONER OF INCOME TAX, BURDWAN
Vs.
M/S. CEMCO-MARKETING

BEFORE:
The Hon'ble JUSTICE T. S. SIVAGNANAM
AND
The Hon’ble JUSTICE HIRANMAY BHATTACHARYYA
Date : December 10, 2021.

[Via Video Conference]

<u>Appearance:</u>
Mr. Soumen Bhattacharya, Adv.
… for the appellant/Revenue

Mr. J. P. Khaitan, Sr. Adv.
… for the respondent/assessee

The Court : This appeal has been filed by the Revenue under Section 260A of the Income Tax Act, 1961 challenging the order dated 11th December, 2014 passed by the Income Tax Appellate Tribunal “C” Bench, Kolkata in ITA No.448/Kol/2012 for the assessment year 2008-09. The appeal was admitted on 27th November, 2015 on the following substantial questions of law:

> “a) Whether on the facts and circumstances of the case the Learned Tribunal is correct in confirming the appellate order in deleting the addition of Rs.2,09,56,211/- made under Section 40(a)(ia) of the Income Tax Act, 1961 for non-deduction of TDS on the transportation charges under Section 194C of the Income Tax Act, 1961?

b) Whether on the facts and circumstances of the case the Learned Tribunal is correct in observing and holding that all the details regarding the impugned payments of transportation charges were furnished by the assessee in the course of assessment and thus the incorrect observation of fact renders the order perverse?

c) Whether on the facts and circumstances of the case the Learned Tribunal is correct in not considering the real position of the fact that even if the payments of transportation charges were paid as reimbursement to the dealers of the principal companies for making ultimate payments to the transporters, then also it does not exonerate the assessee / respondent from its liability to deduct TDS thereon, as the payments were made for transportation of cement in performance of its contractual obligation to the principal companies?

d) Whether on the facts and circumstances of the case the Learned Tribunal is correct in ignoring that if the transportation charges paid by the assessee is mere reimbursement of expenses and not liable for deduction of TDS since it is not directly paid to any transporter, then in the hands of the principal companies also the same expenditure paid to the assessee would be treated as reimbursement of expenses and in that case the said amount does not attract TDS, although the Learned Tribunal itself observed that the principal companies deducted TDS on the payments made to assessee and therefore, the assessee is bound to show the amounts received on account of transportation charges from the principal companies as its income?

e) Whether on the facts and circumstances of the case the Learned Tribunal has erred in law in upholding the deletion of disallowances made under Section 40(a)(ia) of the Income Tax Act, 1961 where the assessee incurred the expenditure of transportation charges and charged the same under the Profit & Loss Account as business expenditure against the income earned on the same head under the Profit & Loss Account as business income and the entire work is being done by the assessee under contractual obligations?

f) Whether on the facts and circumstances of the case the Learned Tribunal is correct in upholding the violation the provisions of Section 194C and the legislative intent behind introduction of 40(a)(ia) of the Income Tax Act, 1961 wherein no exclusion of any third party intermediary has been provided for?"

Mr. Soumen Bhattacharya, learned standing counsel appearing for appellant submitted that the tax effect in this appeal is below the threshold limit, fixed by the CBDT. Accordingly, the appeal is dismissed on the ground of low tax effect. The substantial questions of law are left open.

(T. S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

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