

OD-24

ITAT/77/2018
IA No.GA/2/2018 Old No.GA/721/2018)
IN THE HIGH COURT AT CALCUTTA
Special Jurisdiction (Income Tax)
ORIGINAL SIDE

THE COMMISSIONER OF INCOME
TAX(TDS), KOLKATA

-Versus-

M/S. ITD CEMENTATION INDIA LTD.

Appearance:
Mr. P. K. Bhowmick, Adv.
...for the appellant.

Mr. Soham Sen, Adv.
...for the respondent.

BEFORE:

The Hon'ble JUSTICE T.S. SIVAGNANAM

-And-

The Hon'ble JUSTICE HIRANMAY BHATTACHARYYA

Date : 4th January, 2022.

The Court : This appeal filed by the revenue under Section 260A of the Income Tax Act, 1961 (the 'Act' in brevity) is directed against the order dated 5th May, 2017 passed by the Income Tax Appellate Tribunal, "A" Bench, Kolkata (the 'Tribunal' in short) in ITA No.812/Kol/2014 for the assessment year 2011-12.

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

(i) *Whether on the facts and circumstances of the case the Learned Income Tax Appellate Tribunal has erred in*

law that there is no principal agent relationship between a bank issuing the Bank Guarantee and the Assessee and consequently the payment though termed as commission is not covered by section 194H of the of the Income Tax Act, 1961?

(ii) Whether on the facts and circumstances of the case the Learned Income Tax Appellate Tribunal has erred in law in holding that no tax was deductible at source under section 194H of the Income Tax Act, 1961 of the Assessee Company on payment of Bank Guarantee charges thereby ignoring the fact that for this service the bank is a constructive agent for the assessee company ?

(iii) Whether on the facts and circumstances of the case the Learned Income Tax Appellate Tribunal has erred in law in holding that there was lack of principal and agent relationship between the assessee and the bank/credit and regulation?

We have heard Mr. P. K. Bhowmick, learned standing counsel appearing for the appellant/revenue and Mr. Soham Sen, learned standing counsel appearing for the respondent/assessee.

The short question which is involved in this appeal is whether the bank guarantee commission is not in the nature of commission paid to an agent but it is in the nature of bank charges for providing one of the banking services and, if it so, whether the requirement for deduction at source under Section 194H would stand attracted. This issue is no longer *res integra* and has been decided in the case of Commissioner of Income Tax-II Vs. JDS

Apparels (P.) Ltd. reported in (2015) 53 taxmann.com 139(Delhi). The Court after taking into consideration various decisions on the point held that the amount retained by the bank is a fee charged by them for having rendered the banking services and cannot be treated as a commission or brokerage paid in course of use of any services by a person acting on behalf of another for buying or selling of goods. Similar view has been taken in the case of Commissioner of Income tax (TDS)-1 Vs. Larsen & Toubro Ltd. reported in (2019) 101 taxmann.com 83(Bombay).

We are in respectful agreement with the aforementioned decisions and, consequently, held that the Tribunal rightly dismissed the appeal.

Accordingly, the appeal (ITAT/77/2018) is dismissed and the substantial questions of law are answered against the revenue.

The connected application for stay (IA No.GA/2/2018) also stands dismissed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)