

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

IA NO.GA/2/2018
(Old No.GA/3402/2018)
ITAT/308/2018

PRINCIPAL COMMISSIONER OF INCOME
TAX-4, KOLKATA
-Versus-
M/S. RELIANCE CHEMOTEX INDUSTRIES
LTD.

*Appearance :
Mr. P.K. Bhowmik,
for the appellant.*

*Mr. J.P. Khaitan, Sr. Adv.,
Mr. Akhilesh Kumar Gupta, Adv.,
Mr. Asim Chatterjee, Adv.,
Mr. Soham Sen, Adv.
for the respondent.*

BEFORE:

The Hon'ble JUSTICE T.S. SIVAGNANAM

-And-

The Hon'ble JUSTICE HIRANMAY BHATTACHARYYA

Date : 17th February, 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 16th August, 2017 passed by the Income Tax Appellate Tribunal, "A" Bench, Kolkata (the 'Tribunal' in short) in ITA No.2041/Kol/2014 for the assessment year 2010-11.

The revenue has raised the following substantial questions of law:

- (i) *Whether on the facts and the circumstances of the case, the Learned Tribunal has erred in law as well as on fact and the impugned order is perverse in holding that the assessing officer had made the disallowance of Rs.42,65,989/- on account of Foreign Trade expenses by ignoring the assessing officer had clearly analysed the foreign travel expenses and allowed the foreign travel expenses which were spent for the business purpose?*
- (ii) *Whether on the facts and the circumstances of the case, the Learned Tribunal has erred in law as well as on fact and the impugned order is perverse in confirming the order of the CIT(Appeals) thereby deleting the disallowances of Rs.12,45,778/- on account of additional depreciation made by the assessing officer without citing any cogent reason merely by stating that the findings of the CIT (Appeals) was not rebutted by the department before it whereas the fact was that the department relied on the finding made by the assessing officer in the assessment order?*
- (iii) *Whether on the facts and the circumstances of the case, the Learned Tribunal has erred in law as well as in fact by restricting the disallowance under Section 14A of the Income Tax Act, 1961 read with Rule 8D of the Income Tax Rules, 1962 contrary to the provisions of the section?*
- (iv) *Whether on the facts and the circumstances of the case, the Learned Tribunal has erred in law as well as in fact and the impugned order is perverse in confirming the order of the CIT (Appeals) thereby deleting the addition of Rs.3,73,78,133/-*

on account of commission to foreign and Indian agent by holding that the assessee had paid commission and brokerage for procurement of sale without appreciating the fact that the assessee had failed to provide documents/evidence in support of such services actually provided/discharged by the agents?

We have heard Mr. P.K. Bhowmik, learned standing counsel for the appellant/revenue and Mr. J.P. Khaitan, learned senior standing counsel for the respondent/assessee.

On carefully going through the order passed by the Tribunal, we find that the tribunal has affirmed the order passed by the Commissioner of Income Tax (Appeals) - XX [CIT(A)] which has deleted the addition made by the assessing officer on three issues, namely, foreign travel expenses, claim for additional depreciation and commission to foreign and Indian agents. The other issue was with regard to the restricting the disallowance under Section 14A of the Act read with Rule 8D of the Income Tax Rules, 1962.

On the first three issues we find that the tribunal has made a thorough factual exercise and took note of the documents and details noted by the CIT(A) and granted relief. With regard to the commission paid to four entities abroad, the discussion on the said issue is in paragraph 5.3 of the impugned order. After noting the details of the overseas commission paid to four parties, the

tribunal has referred to the documents and certificates in the form of paper book and came to the conclusion that the documents conclusively proved that the commission agent has rendered services to the assessee outside India. In paragraphs 5.3.2, 5.3.3 and 5.3.4 the commission paid to the other agents abroad were considered and after taking note of the facts the tribunal was satisfied that the commissioner was right in granting relief to the assessee. With regard to the commission paid to the Indian agents for export sales, the discussion is in paragraphs 5.3.6 and 5.3.7. After noting the facts, the tribunal held that the commission is not paid to any related party of the assessee. Thus, we find that no substantial question of law arises for consideration on the three issues. With regard to the restriction of disallowance under Section 14A of the Act, the tribunal has discussed the said issue from paragraph 4.1 and after noting the facts, directed the assessing officer to disallow only a sum of Rs. 1,486/- under Section 14A on the ground that the disallowance under the said provision cannot exceed the exempt income.

We find no error in approach of the tribunal. Thus, we are satisfied that no question of law much less substantial question of law arises for consideration in this appeal.

In the result, the appeal filed by the revenue stands dismissed.

With the dismissal of the appeal, the connected application stands closed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

S.Das/pa.