

OD – 3

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

ITAT/185/2022
IA NO. GA/1/2022, GA/2/2022
PRINCIPAL COMMISSIONER OF INCOME TAX - 1 KOLKATA
Versus
NISSIN ABC LOGISTICS (P) LIMITED

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Dated : NOVEMBER 15, 2022.

Appearance:
Mr. Tilak Mitra, Adv.
...for appellant
Mr. J. P. Khaitan, Sr. Adv.
Mr. A. Gupta, Adv.
Mr. I. Banerjee, Adv.
...for respondent

GA/1/2022

The Court :- We have heard Mr. Tilak Mitra, learned standing Counsel for the appellant and Mr. J. P. Khaitan, learned Senior Counsel for the respondent. There is a delay of 210 days in filing this appeal. We have perused the affidavit filed in support of the petition and found sufficient cause has been shown for condonation of delay.

Accordingly, the application is allowed and the delay in filing the appeal is condoned.

ITAT/185/2022

This appeal filed by the revenue under Section 260A of the Income Tax Act, 1961 (the Act) is directed against the order passed by the Income Tax Appellate Tribunal "B" Bench Kolkata dated 10th August, 2021 in ITA No. 473Kol/2020 for the assessment year

2014-15. The revenue has raised the following substantial questions of law for consideration:-

- i. WHETHER the Learned Tribunal has erred in allowing the disallowance of Rs.7,85,93,661/- made under section 40(a)(i) of the Income Tax Act, 1961 by the AO on account of payment made to International Freight Forwarding Agents (i.e. it related companies) ?
- ii. WHETHER the Learned Tribunal has erred in deciding the present case relying on the facts and circumstances of the assessee's own case for the assessment year 2010-2011, ignoring the facts that each and every assessment is distinct and is made on different facts and circumstances ?

We have heard Mr. Tilak Mitra, learned standing Counsel for the appellant and Mr. J. P. Khaitan, learned Senior Counsel for the respondent.

The learned Tribunal had dismissed the revenue's appeal by following the assessee's own case for the assessment year 2010-11 wherein a similar disallowance under Section 40(a)(i) was upheld by the Tribunal vide order dated 5th April, 2019 in ITA No. 649/Kol/2017 holding that the amount paid by the assessee company to International Freight Forwarding Agent was neither covered under Section 9(1)(i) nor under Section 9(1)(vii) of the Act and the same, therefore, did not construe the income as deemed to occur or arise in India in the Memorandum of Grounds of Appeal. The department has indirectly accepted that no appeal as against the order passed for the assessment year 2010-2011 was filed before this Court. That same plea raised in second substantial question of law is that each and every assessment is distinct and different and, therefore, the learned Tribunal ought not to have followed the decision in assessee's own case for the assessment year 2010-2011. Though it may be true that each assessment year is an independent unit yet the theory of maintaining a consistent

breach is well settled. This theory should be breached only if the department has distinguishing features both on facts as well as on law. From the impugned order passed by the learned Tribunal we find that the learned Tribunal has taken note of the decision of the *Commissioner of Income Tax (Appeals) (CITA)* for the assessment year 2010-2011 which was in favour of the assessee. There is nothing on record to indicate that the fact situation for the assessment year 2010-11 is materially different or in any manner different from the assessment year under consideration, i.e. A.Y. 2014. That apart we find that the learned Tribunal had examined the entire factual position and gone through the agreement and thereafter tested the correctness of the argument of the revenue on the ground that the foreign companies are related parties. The learned Tribunal did not agree with the said condition since on facts it noted that those foreign companies are independent legal entities in foreign countries and they have no business activity nor any permanent establishment in India and, therefore, cannot automatically have business connection in India just because they are related parties. The revenue has not been able to dislodge the factual finding recorded by the Tribunal in its order. Thus we find that there is no question of law much less substantial question of law arises for consideration in this appeal.

Accordingly, the appeal fails and dismissed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)