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MEERA MAHESH JADHAV
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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INCOME TAX APPEAL NO.39 OF 2018

Pr. Commissioner of Income Tax-17 ….Appellant
V/s.
M/s Orient Transport Co. …Respondent

Mr. Suresh Kumar for Appellant

CORAM : K.R. SHRIRAM &
N.J. JAMADAR, JJ
DATED : 2nd FEBRUARY 2022

P.C. :

1 Heard Mr. Suresh Kumar.

2 The substantial question of law proposed is, whether the Tribunal was correct in holding that the provisions of Section 40(a)(ia) of the Income Tax Act 1961 are applicable only to the amounts of expenditure which are payable as on date 31st March of every year and it cannot be invoked to disallow which had been actually paid during the previous year, without deduction of TDS.?

3 Mr. Suresh Kumar states that ITAT came to the conclusion that is impugned, relying upon a decision of Special Bench of ITAT in the case of ***Merilyn Shipping & Transport, 136 ITD 23***. Mr. Suresh Kumar sates that Calcutta High Court disagreed with this view of the Special Bench of ITAT, whereas Allahabad High Court concurred. All these were considered by the Apex Court in ***Palam Gas Service Vs. Commissioner of Income Tax***[1] and the Apex Court concurred with the views expressed by Calcutta High Court. We, therefore, set aside the order of ITAT pronounced on 5th July 2016

1. (2017) 81 taxmann.com 43 (SC)

impugned in this appeal and remand the matter to ITAT to consider respondent's appeal afresh by taking into account the law as laid down by the Apex Court in *Palam Gas Service (Supra)*.

4 Appeal disposed.

(N. J. JAMADAR, J.) **(K.R. SHRIRAM, J.)**