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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ ITA 85/2022

VOSSLOH BEEKAY CASTINGS LIMITED ..... Appellant

Through: Mr.Himanshu Sinha with Mr.Bhuwan Dhoopar, Advocates.

versus

ASSISTANT COMMISSIONER OF INCOME-TAX CIRCLE- 26 (2) NEW DELHI ..... Respondent

Through: Mr.Puneet Rai, senior standing counsel for the Revenue with Ms.Adeeba Mujahid and Mr.Karan Pandey, Advocates.

% Date of Decision: 13th April, 2022

CORAM:
HON'BLE MR. JUSTICE MANMOHAN
HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

<u>J U D G M E N T</u>

<u>MANMOHAN, J (Oral)</u>:

<u>C.M.No.18115/2022</u>

Exemption allowed, subject to all just exceptions.

Accordingly, the application stands disposed of.

<u>ITA No.85/2022</u>

1. Present appeal has been filed challenging the Order dated 18th February, 2020 passed by Income Tax Appellate Tribunal ('the Tribunal') in ITA No. 5618/Del./2017 for the Assessment Year 2013-14.

2. Learned counsel for the Appellant states that the impugned order passed by the Tribunal to the extent that it sustains the disallowance of the commission expenditure incurred by the Appellant, is based on suspicion, conjectures and surmises, hence bad in law and is liable to be set aside.

3. He states that the Tribunal has arrived at perverse findings without taking cognizance of the documents in the form of emails filed by the Appellant in support of the transaction of commission expenditure incurred in connection with Railway contracts. In support of his submissions, he relies upon the judgments of this Court in ***Commissioner of Income Tax vs. Conimeters Electricals (P) Ltd., (2010) taxmann.com 302 (Delhi)*** as well as ***Principal Commissioner of Income Tax-1 vs. Asian Mills Pvt. Ltd.*** decided by Gujarat High Court in R/Tax Appeal No.244/2021.

4. Learned counsel for the Appellant further states that the Tribunal has failed to follow the principle of consistency laid down by the Supreme Court in ***Radha Soami Satsang v. CIT [1992]193 ITR 321(SC)***.

5. Having perused the paper book, this Court is of the opinion that whether any agent has rendered any service or not to the appellant is a question of fact. In fact, even in ***Conimeters Electricals (P) Ltd.*** (supra) and ***Asian Mills Pvt. Ltd*** (supra), the Courts dismissed the appeals filed by the Revenue on the ground that no substantial question of law arose in the said matters as the issue as to whether any agent had rendered any service or not was a question of fact.

6. In the present case, the authorities below have given a concurrent finding of fact that the Appellant had failed to produce any evidence to prove that service had been rendered by Mr. D.N. Pandey to the appellant. The Tribunal in its order has also concluded that merely producing some

emails exchanged between Mr. D.N. Pandey and the Appellant/assessee is not sufficient to prove that Mr. Pandey had provided any kind of service. The Profit and Loss Account of Mr. D.N. Pandey for the previous assessment year shows that out of gross receipt of Rs.1,64,40,356/-, he had incurred expense of Rs.1,38,05,010/- towards labour, loading & unloading charges! Last but not the least, the agreement between Mr. D.N. Pandey and the Appellant/assessee does not mention any specific scope of service.

7. Consequently, this Court does not find any perversity in the order passed by the Tribunal. Accordingly, this Court is of the view that no substantial question of law arises for consideration in the present case and the present appeal is dismissed.

MANMOHAN, J

DINESH KUMAR SHARMA, J

APRIL 13, 2022
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