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

ITAT/146/2023
IA NO: GA/1/2023
ULTIMO LOGISTICS PRIVATE LIMITED
VS
PRINCIPAL COMMISSIONER OF INCOME TAX-1, KOLKATA

BEFORE:-
THE HON'BLE THE CHIEF JUSTICE T. S. SIVAGNANAM
-A N D-
HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
DATE : 9TH AUGUST, 2023.

Appearance :
Mr. J.P. Khaitan, Sr. Adv.
Mr. Pratysh Jhunjhunwala, Adv.
Mr. Mrigank Kejriwal, Adv.
Ms. Sretapa Sinha, Adv.
…for appellant
Mr. Vipul Kundalia, Adv.
Mr. Soumen Bhattacharjee, Adv.
…..for respondent

The Court :- This appeal by the assessee filed under Section 260A of the Income Tax Act, 1861 (the Act) is directed against the order dated September 23, 2022 passed by the Income Tax Appellate Tribunal "B" Bench Kolkata (the Tribunal) in I.T.A. No. 345/Kol/2019 for the Assessment Year 2012-13.

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

i) Whether there is any liability to deduct tax at source on payments made to foreign shipping companies and/or their agents who are liable to be assessed under section 172 of the Income Tax Act, 1961 ?

ii) Whether the Circular No. 723 dated September 19,1995 is binding of the income tax authorities and as such in case of foreign shipping companies and/or their agents, no tax is required to be deducted at source ?

iii) Whether the Income Tax Appellate Tribunal can hold that there is lack of examination by the Commissioner of Income Tax (Appeals) without considering the documents and submissions filed before the Commissioner of Income Tax (Appeals) ?

iv) Whether the findings of the Income Tax Appellate Tribunal that the Commissioner of Income Tax (Appeals) has allowed the appeal by simply relying on the list provided by the appellant with respect foreign shipping companies and their agents and not made any discussions or given any basis for its conclusions is wholly arbitrary and perverse ?

We have heard Mr. J.P. Khaitan, learned Senior Advocate appearing for the appellant and Mr. Vipul Kundalia, learned standing Counsel appearing for the respondent.

The short question involved in this appeal is whether the learned Tribunal was justified in remanding the matter back to the file of the Assessing Officer to consider the correctness of the order passed by the Commissioner of Income Tax (Appeals) [CIT(A)] by which the Commissioner granted partial relief in favour of the assessee in respect of certain disallowances concerning the non resident shipping lines. The relevant paragraphs which concern the subject issue are paragraphs 11 and 12 of the order of the learned Tribunal, from which we find that the learned Tribunal was of the view that the CIT(A) has not given any detailed or factual finding as to which of the payees were foreign shipping companies or their agents and simply relied upon a list given by the assessee without discussing as to which of the payees were resident companies and which of the payees were non resident companies and no basis has been given for his conclusion. With this finding the learned Tribunal had remanded the matter to the Assessing Officer on the limited issues which have been indicated in paragraph 12 of the impugned order. To examine the correctness of the findings rendered by the learned Tribunal, we have carefully perused the order passed by the CIT(A) dated 6.9.2018. The subject issues have been discussed in ground no. 4. The assessee company paid shipping company charges to the following companies :-

Name of the Company	Payment made	TDS Deduction
Transport System Pvt. Ltd.	49313/-	Nil
MSC Agencies Pvt. Ltd.	53979/-	Nil.
Hanjin Shipping Co. Ltd.	274854/-	Nil
Confreight Shipping	4412/-	Nil
APL India Pvt. Ltd.	16438/-	Nil
AL Logistics	96790/-	Nil
Samudera Shipping Line Pvt. Ltd.	175149/-	Nil
Overseas Container Line Ltd.	55271/-	Nil
VN Logistics	346036/-	Nil

Maersk Line India Pvt. Ltd.	45081673/-	Nil
Total	46153915/-	

Out of the ten companies, the Assessing Officer granted relief to the assessee in respect of shipping company charges paid to Confreight Shipping and APL India Pvt. Ltd. The CIT(A) rejected the assessee's appeal in respect of the shipping company charges paid to three phases in the Transpose System Pvt. Ltd., AL Logistics and VN Logistics. The assessee was not on appeal against these findings of the CIT(A). This leaves us with five companies namely MSC Agencies Pvt. Ltd., Hanjin Shipping Co. Ltd., Samudera Shipping Line Pvt. Ltd., Overseas Container Line Ltd. and Maersk Line India Pvt. Ltd.

On a perusal of the order passed by the CIT(A), we find that there is sufficient discussion as to why the CIT(A) was convinced that relief should be granted to the assessee in respect of the Hanjin Shipping Co. Ltd. and Maersk Line India Pvt. Ltd. It is noted by the CIT(A) that on perusal of the materials available on record, payment of shipping charges was admittedly paid to Hanjin Shipping Co. Ltd., which is an agent of non resident shipping company and the copy of the order under Section 197 dated 29.03.2017 in case of Hanjin Shipping Co. Ltd. by the DDIT (International Taxation) 3(1), Mumbai, certifying that provisions of 195 and 194C of the Act are not applicable in respect of the payments made to Hanjin Shipping Co. Ltd. or their agent Hanjin Shipping India Pvt. Ltd. Thus, the finding in our view, takes note of the relevant order passed by the DDIT

(International Taxation). This finding is duly supported by a note mentioned in the invoice dated 31.05.2012 raised by Hanjin Shipping Co. Ltd. wherein it has been clearly stated that there is an order under Section 197 of the Act and a request was made not to deduct any tax on the said invoice. Therefore, we find that so far as the payment of shipping charges to Hanjin Shipping India Pvt. Ltd. was rightly construed by the CIT(A) and also that no tax need to be deducted at source.

With regard to Maersk Line India Pvt. Ltd., the CIT(A) noted that similar payment for shipping charges found to have been made to the shipping company during the previous year ending 31.03.2012. That apart, the CIT(A) after placing reliance on the decision of the co-ordinate Bench of the Tribunal in the case of D.C.I.T. Circle 10, Kolkata Vs. Associated Pigment Ltd. , the CIT(A) concluded that assessing officer was not justified in making disallowance of the amount of Rs.4,56,40,926/- paid to the agents and non resident shipping companies where on the provision of Section 195 and 194C of the Act were not applicable. Further, we note that in the invoice dated 30.04.2012, it is seen that there is a specific mention that TDS is not applicable as per Circular No. 723, dated 19.09.1995.

Thus we are of the view that CIT(A) rightly granted relief to the assessee in respect of the payment of shipping charges to those two companies namely Hanjin Shipping Co. Ltd. and Maersk Line India Pvt. Ltd.. The learned Tribunal was right in so far as the payments made by the assessee to MSC Agencies Pvt. Ltd., Samudera Shipping

Line Pvt. Ltd. and Overseas Container Line Ltd. There is no specific discussion by the CIT(A) while granting relief to the assessee. Therefore, to that extent we agree that the findings rendered by the learned Tribunal that the issue has to be reconsidered by the assessing officer afresh only in respect of those three companies as mentioned above.

In the result, the appeal is partly allowed and the finding of the learned Tribunal in so far as it relates to the payment of shipping charges paid to Hanjin Shipping Co. Ltd. and Maersk Line India Pvt. Ltd. stands set aside and the order passed by the CIT(A) is confirmed.

The order of remand passed by the learned Tribunal is confined to the payment for the shipping companies charges for MSC Agencies Pvt. Ltd., Samudera Shipping Line Pvt. Ltd. and Overseas Container Line Ltd. stand remanded to the Assessing Officer for fresh decision in terms of the directions issued by the learned Tribunal.

The appeal is accordingly partly allowed.

Consequently, the substantial questions of law are left open.

Accordingly, the application for stay is closed.

(T. S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA,J.)

SN/GH.