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

ITA/264/2009
IA NO. GA/1/2009 (OLD NO. GA/2566/2009)

COMMISSIONER OF INCOME TAX, KOLKATA – III
Vs.
M/S. ERNST AND YOUNG PRIVATE LTD.

BEFORE:
The Hon'ble JUSTICE T. S. SIVAGNANAM
AND
The Hon'ble JUSTICE HIRANMAY BHATTACHARYYA
Date : 9th February 2023.

Appearance:
Mr. Tilak Mitra, Adv.
…for the appellant.

Mr. J.P. Khaitan, Sr. Adv.
Mr. Akhilesh Kr. Gupta, Adv.
Mr. Asim Chowdhury, Adv.
Mr. Sohom Sen, Adv.
…for the respondent

The Court : Heard learned Counsel for the either side.

This appeal filed by the revenue under Section 260A of the Income Tax Act, 1961 (the Act) is directed against the order dated 13.2.2009 passed by the Income Tax Appellate Tribunal "B" Bench, Kolkata (the Tribunal) in ITA No. 1787/Kol/2008 for the assessment year 2005-06. The revenue has raised the following substantial questions of law for consideration:-

I. *Whether on the facts and in the circumstances of the case the Income Tax Appellate Tribunal was justified in deleting the disallowance under section 40(a)(i) of the Income Tax Act of Rs.5,31,56,332/- and erred in accepting the claim of the assessee that the amount only represented reimbursement of costs and there was no element of income which is prerequisite for application of Section 195 ?*

II. *Whether on the facts and in the circumstances of the case the Income Tax Appellate Tribunal was justified in holding that although the supply of date pertained to technical services, the actual factual aspect of the matter was that it was a result of an agreement between the parties for sharing the data amongst the member firms in the globalization process ?*

III. *Whether on the facts and in the circumstances of the case the Income Tax Appellate Tribunal was justified in rejecting the ground of the Revenue by following its own decision in the assessee's own case for the Assessment Years 2003-04 and 2004-05 and erred in not considering the reference under Section 260A is filed before the Hon'ble High Court at Calcutta ?*

IV. *Whether on the facts and in the circumstances of the case the Income Tax Appellate Tribunal was justified in upholding the Commissioner of Income Tax (Appeals)'s deletion of the addition made by the Assessing Officer under Section 40(a)(i) ?*

V. *Whether on the facts and in the circumstances of the case the Income Tax Appellate Tribunal was justified in holding that the payment of Rs.5,31,56,332/- is to be treated as reimbursement of costs and not fees for technical services liable to TDS under Section 195 of the Income Tax Act, 1961?*

The learned Tribunal had dismissed the appeal filed by the revenue by relying upon its decision in assessee's case for the assessment year 2003-04 in ITA No. 1750/Kol/2006. The revenue had filed an appeal before this Court against the said order in ITA No. 471 of 2008 which was dismissed by this

Court by judgement dated 5.01.2023. The operative portion of the order reads as follows :-

> *"The first substantial question of law is with regard to the deletion of the disallowance under Section 40(a)(i) of the Act. On perusal of the order passed by the learned Tribunal, we find that the Tribunal has recorded that there is no rebuttal from the side of the Income Tax Department that the expenses are not relating to reimbursement of expenses for supply of data as per the agreement made amongst the global firms to which the assessee is treated as one of the members. The Tribunal also took note of the decision if the case of CIT vs. Dunlop India Ltd. reported in 142 ITR 493 and decided the factual issue in favour of the assessee. Thus, we find that there is no error in the said decision for us to interfere. Accordingly, the substantial question of no.(a) is rejected."*

Thus in the light of the above decision, the order passed by the learned Tribunal requires to be affirmed.

In the result, the appeal is dismissed and the substantial questions of law are answered against the revenue.

Consequently, GA/1/2009 (Old No. GA/2566/2009) stands closed.

(T. S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

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