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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 125 OF 2018

Principal Commissioner of Income
Tax -6 ….Appellant

V/s.
Imperial Procurement Services Ltd. …Respondent

Mr. Suresh Kumar for Appellant.
Mr. Niraj Sheth i/b Mr. Sameer G. Dalal for Respondent.

CORAM : K.R. SHRIRAM &
FIRDOSH P. POONIWALLA, JJ.
DATED : 12th JULY 2023

P.C. :

1. Revenue is impugning an order pronounced on 10th February 2017 by the Income Tax Appellate Tribunal (ITAT) whereby the appeal that was filed by respondent was allowed.

2. Respondent had procured a contract from one Essar Projects (India) Ltd. (EPIL) and received a sum of Rs.54,08,75,555/- as mobilization advance. In turn Respondent sub contracted the work to Essar Engineering Services Limited (EESL) for an amount of Rs.58,68,33,788/-. Respondent handed over a sum of Rs.54,04,47,510/- to EESL as mobilization advance in respect of the same contract to be executed by them. EPIL had deducted TDS of Rs.5,68,84,546/- on the mobilization advance of Rs.54,08,75,555/- that it had given to respondent which respondent claimed as refund in its return of income filed for Assessment Year 2010-2011. It was respondent's

case that income from the contract shall be recognized on percentage completion method as per the Accounting Standard 7 issued by Institute of Chartered Accountants of India (ICAI). The whole contract got cancelled. The Assessing Officer (A.O.) denied credit for TDS to respondent for primary reason that respondent has not offered income for Assessment Year 2010-11 and therefore credit cannot be granted in view of the provisions of Section 199 of the Income Tax Act, 1961 (the Act). Since respondent had not executed any part of the contract during the said Assessment Year 2010-11 respondent contended that no income is accrued to respondent and therefore no income is offered from the said contract.

3. It is respondent's case that the receipt on which the TDS was made in the case of respondent was advance in nature which would be deducted in the bills to be raised in future on execution of contract and thus cannot be treated as taxable income. Since the contract itself has been cancelled without performing any work and the advance is to be refunded in full as clearly mentioned in the Assessment Order itself, the question of taxability of this advance does not arise at all and hence, the question of any tax payable against the said contract for the relevant Assessment Year also would not arise.

4. This view of the A.O. was upheld by the Commissioner of Income Tax (Appeals) (CIT[A]) and respondent challenged the findings of CIT[A] before the ITAT.

5. The ITAT in our view has correctly come to the conclusion that if a particular amount on which tax was deducted at source is not chargeable to tax, assessee is entitled for credit of the TDS paid. Respondent had received mobilization advance and in turn this was passed on to EESL for execution as sub contractor. The whole contract, however, got cancelled by virtue of which EESL refunded to respondent the entire sub-contract amount of Rs.54,04,47,510/- and respondent in turn has refunded/to refund the entire contract amount which was agreed between assessee and EPIL. Therefore, in our view, the ITAT correctly came to the conclusion that no part of the income has been accrued to respondent. In such a situation, there is nothing taxable in the hands of respondent. Therefore, there was no justification in denying the credit for TDS on the ground that respondent has not offered income to tax.

6. In our view, no substantial question of law arise. Appeal dismissed.

(FIRDOSH P. POONIWALLA, J.) **(K.R. SHRIRAM, J.)**