Andreza

IN THE HIGH COURT OF BOMBAY AT GOA

TAX APPEAL NO. 26 OF 2024

The Joint Commissioner of Income Tax, Margao Range, Goa (Merged with Joint Commissioner of Income Tax, Range-1, Panaji Having office at 2nd Floor, Aaykar Bhavan, Panaji, Goa – 403001. ... Appellant

Versus

M/s. Tumkur Minerals Pvt. Ltd., Salgaocar House, Vasco da Gama, Goa. PAN: AACCT 2057P ... Respondents

Ms. Susan Linhares, Senior Standing Counsel *with Ms. Swati Kamat Wagh, Advocate for the Appellant.*

Mr. Ryan Menezes, Advocate *with Ms. Neha Shirodkar and Ms. Alvares, Advocates for the Respondents.*

CORAM: BHARATI DANGRE & NIVEDITA P. MEHTA, JJ.

DATE: 25th June, 2025

ORAL JUDGMENT *(Per Bharati Dangre, J)*

1. The appeal came to be admitted on18.10.2024, on the following substantial questions of law :

(A) Whether in the facts and circumstances, the ITAT has erred in deleting the dis-allowance u./40(a)(i) of the Income Tax Act, 1961 on foreign remittance made to non-residents towards destination sampling charges/ore analysis charges of Rs.10,21,904 for services rendered outside India for non-deduction of tax at source u/s 195 of the Income Tax Act, 1961?

(B) Whether in the facts and circumstances, the ITAT is correct in holding that the criterion of the second limb of the exception clause in sec. 9(1)(vii)(b) of the Income Tax Act, 1961 was satisfied in the case of the assessee ?

2. During the pendency of the appeal, the Division Bench of this Court to which one of us, (Nivedita Mehta, J), is a party in Tax Appeal No. 47 of 2014 and 49 of 2014, had an opportunity to deal with an exception as contained in clause 3.1(l)(i) and (ii) of the Circular No. 5 of 2024 issued by the CBDT fixing the threshold limits for filing of appeals by the Government before the Department of ITAT, High Court and before the Apex Court with a view to reduce the litigation.

3. Though, undisputably, the tax limit involved in the appeal is Rs.3,06,571/-, however, it is the submission advanced on behalf of Ms. Linhares appearing on behalf of the Revenue, that the present case falls within the exception as set out in 3.1(l)(i)-“in respect of litigation arising out of the disputes relating to TDS/TCS matters in both domestic and International Taxation charges; (i) where dispute relates to determination of nature of transaction such that the liability to deduct TDS/TCS thereon or otherwise is under question.”

4. In the appeals decided by the Division Bench on 09.12.2024, when a similar objection was raised and the case of the Revenue was sought to be brought within clause 3.1(l) of Circular No. 5/2024, even though the monetary threshold was not crossed, in the background facts clearly noted in paragraph 12 and 14, the counter arguments came to be considered. Apart from the issue whether these Circulars would have a retrospective impact, in paragraph 31, the argument of the Revenue that the case would fall within the explanation of 3.1(l) was specifically considered and a specific conclusion was reached by interpreting clause 3.1(l) to the effect that it excludes appeals arising out of proceedings taken against a deductor for failure to deduct tax at source and recovery of the tax from the payer that was omitted to be deducted. Construing that if there was an obligation to deduct tax at source on a payer in terms of the provisions contained in Chapter XVII-B of the Act and the payer fails to discharge such obligation, it is liable for several consequences.

A clear demarcation was noted by the Division Bench in a case whether it would be treated as a Respondent in default for failing to deduct taxes or whether it would be fair who had failed to pay the taxes. This distinction is succinctly made out in the following words :

> "14. Countering the submissions of the assessee that after notification of Circular No.5/2024 and raising of monetary limit to Rs.2 Crores, the present appeals ought to be withdrawn

without reference to the exceptions in Circular No.5/2024 and that only the exceptions as existing on the date of the institution of the appeals (i.e. Instruction 3/2011 and 5/2014) ought to be considered, Ms Razaq urged that the submission is misconceived for the following reasons:-

i) The Board's Instructions no 3/2011 admittedly stand superseded by the subsequent Circulars. he Circulars no. 5/2024 and 9/2024 presently hold the field and govern the subject matter of filing appeals by the Departmental authorities.

ii) Without prejudice to the above, apart from the exceptions contained at para 8 of the said Instruction 3/2011 (which are referred to by the assessee in its written submissions), the said Instruction 3/2011 at para 5 had introduced another exception to the monetary limits as follows:

> "...However, in case of a composite order of any High Court or appellate authority, which involves more than one assessment year and common issues in more than one assessment year, appeal shall be filed in respect of all such assessment years even if the 'tax effect' is less than the prescribed monetary limits in any of the year(s), if it is decided to file appeal in respect of the year(s) in which 'tax effect' exceeds the monetary limit prescribed."

iii) The present appeals arise out of a composite order of the ITAT for the Assessment Years 2006-07 and 2007-08 and involve the question of taxability of the transaction relating to payments made to Marriott International USA by the Assessee, which was an issue of a recurring nature every year and as such has a cascading effect; thus coming within the exception laid down in the said Instruction no. 3/2011.

iv) The Boards' Instruction no. 3/2011 was Superseded by the Board's Instruction no. 5/2014 dated 10th July 2014. However, the appeals filed before 10th July 2014 were saved (vide para 11). The present appeals were filed - TXA no. 47/2014 on 7th May, 2014 and TXA no. 49/2014 also on 7th May, 2014.”

5. With the above specific observation, the Division Bench therefore arrived at a conclusion that what is covered by para 3.1(l) are cases springing out of a litigation from order passed under Section 201, 201(1A). However, in the appeals before the Court, the original order arises out of an assessment under Section 143(3) and a conclusion was drawn that the exclusion contemplated in para 3.1(l) would not apply and, therefore, the appeals came to be dismissed.

6. Ms. Linhares did not dispute before us that the present appeal arises out of assessment under Section 143(3) and not under Section 201. Hence, the conclusion derived by the Court that 3.1(l) as an exception to Circular no. 5/2024 is not attracted in case of the assessment under Section 143 since one Division Bench of this Court to which one of us is a party has taken a view as expressed in the order dated 09.12.2024, it equally binds this bench.

7. In the wake of the above, since admittedly the tax effect in the present appeal by the Revenue is less than Rs. 2 Crores, the appeal is dismissed in the wake of Circular no. 9/2024 read with Circular no.

5/2024, which contain the exception in para 3 to the applicability of the circular.

No order as to costs.

NIVEDITA P. MEHTA, J. BHARATI DANGRE, J.