IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

TAX APPEAL No. 404 of 2011

For Approval and Signature:

HONOURABLE MR.JUSTICE V. M. SAHAI
HONOURABLE MR.JUSTICE N.V. ANJARIA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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COMMISSIONER OF INCOME TAX-III - Appellant(s)
Versus
M/S VINAYAK EXPORTS, - Opponent(s)

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Appearance :
MRS MAUNA M BHATT for Appellant(s) : 1,
None for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE V. M. SAHAI

and

HONOURABLE MR.JUSTICE N.V. ANJARIA

Date : 12/06/2012

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE V. M. SAHAI)

We have heard Mrs. Mauna M. Bhatt, learned counsel for the Revenue in this Tax Appeal.

2. This appeal has been filed by proposing the following substantial question of law:

> *"Whether the Appellate Tribunal was right in upholding the CIT(A)'s order deleting the disallowance of commission payments to non-resident foreign agents/parties on which no TDS had been made, when the assessee was not able to prove that the foreign parties/agents to whom commission was paid did not have any business connection in India or had no permanent establishment in India?"*

3. The assessing officer disallowed the deduction of commission payment to non-resident foreign agents/parties. In appeal the CIT(A) set aside the order of the assessing officer and disallowed the additions made by the assessing officer as well as further held that no TDS was required to be deducted on the commission payment to non-resident agents/parties. The order of the CIT(A) has been affirmed by the Tribunal by recording the following reasons:-

> *"We have carefully considered the rival submissions and perused the material available on record. We have also gone through the orders of the AO and the CIT(A). We find that the learned CIT(A) has followed CBDT Circular N.23, dated 23-07-1996, wherein it has been clarified that where the non resident agent operates outside the country, no part of his income arises in India. Further since, the payment is usually remitted directly abroad it cannot be held to have been received by or on behalf of the agent in India. Such payments were therefore held to be not taxable in India. Further, CBDT, vide Circular No. 786 dated 07-02-2000 has also directed that no tax is required to be deducted in respect of payment of commission to Non-residents. In this view of the matter, we do not find any illegality or infirmity in the order of the CIT(A) in deleting the addition. We, therefore, uphold the order of the CIT(A)."*

4. We are in agreement with the view taken by the Tribunal as it is not the case of the Department that the assessee has filed no evidence with regard to payment made tot he non-resident agents/parties and in view of the CBDT's Circulars of the year 1996 and 2000, no tax was required to be paid nor any TDS was required to be deducted. For the aforesaid reasons, we do not find that any substantial question of law arises for consideration. This Tax Appeal is accordingly dismissed.

(V.M. SAHAI, J.)

(N.V. ANJARIA, J.)

[SN DEVU PPS]