IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/TAX APPEAL NO. 49 of 2020

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THE PRINCIPAL COMMISSIONER OF INCOME TAX-3

Versus

DILIPKUMAR BAPUSAHEB PATOLE

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Appearance:
MRS MAUNA M BHATT(174) for the Appellant(s) No. 1
for the Opponent(s) No. 1

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CORAM: **HONOURABLE MR.JUSTICE J.B.PARDIWALA**
and
HONOURABLE MR. JUSTICE BHARGAV D. KARIA

Date : 03/02/2020

ORAL ORDER

(PER : HONOURABLE MR.JUSTICE J.B.PARDIWALA)

1. This Tax Appeal under Section 260A of the Income Tax Act, 1961 (for short 'the Act, 1961') is at the instance of the Revenue and is directed against the order passed by the Income Tax Appellate Tribunal, Ahmedabad Bench "B", Ahmedabad in ITA No.1398/Ahd/2016 A.Y.2007-08.

2. The Revenue has proposed the following questions of law, for consideration of this Court:

> *"a) Whether Appellate Tribunal has erred in law and on facts in deleting the addition of Rs.3,49,02,235/- made under Section 40(a)(ia) of the Act on account of non-deduction of tax under Section 194C of the Act by holding the assessee as a mere commission agent?*

b) Whether on the facts and in the circumstances of the case and in law, the Hon'ble Tribunal is correct in holding that assessee was a mere commission agent ignoring the ratio laid down in ITO Vs. Gopal S. Rajput, (2015) 156 ITD 827 (Mum tribunal) and ITO Vs. Rajesh Boricha [2013] 38 taxmann.com 435 (Rajkot-Trib.) wherein it is clearly laid out that assessee was required to deduct TDS u/s. 194C read with section 40(a)(ia) of the Act as he was using the services of various truck owners on hire basis and thus was in quasi contract with truck owners."

3. It appears from the materials on record that the assessment order, under Section 143(3) of the Act, was passed on 24th December, 2009 determining the total income at Rs.3,58,86,350/- against the returned income of Rs.9,84,110/-, after making addition of Rs.3,49,02,235/-, under Section 40(a)(ia) of the Act as the assessee had failed to deduct TDS under Section 194C, on payment made to transporters, though the payment made exceeded Rs.20,000/-

4. The assessee, being dis-satisfied with the assessment order, preferred an appeal before the CIT (A). The CIT (A) dismissed the appeal vide order dated 28.10.2010, thereby, confirming the addition made by Assessing Officer of Rs.3.49 Crore.

5. Being dis-satisfied with the order passed by the CIT(A), the assessee went in appeal, before the Tribunal. The Tribunal vide order dated 05.07.2013 set aside the issue to CIT(A) for fresh adjudication. The CIT (A) vide order dated 21.03.2016 deleted addition of Rs.3.49 Crore. Being aggrieved, the

Revenue filed appeal before the Tribunal. The Tribunal dismissed appeal of the Revenue.

6. Being dis-satisfied with the order passed by the Tribunal, the Revenue is here before this Court with the present Appeal.

7. The Tribunal addressed itself on the question that whether the assessee had made payment of the freight charges to the truck owners as against the provisions of Section 194C without deducting the TDS?

8. We take notice of the following finding of the fact, recorded by the Tribunal:

> *"6.4. The learned AR for the assessee has also submitted the details of the commission income earned by him on sample basis which is placed on pages 8 to 9 of the paper book which was also not controverted by the AO during the remand proceedings. Indeed, the assessee has not furnished the details of the commission income for the entire year. But to our mind if the AO was not satisfied with the details furnished by the assessee then he should have required the assessee to furnish the details for the entire year. Moreover, we note that the AO in the remand proceeding has not pointed out any defect in the submission filed by the assessee. Accordingly, we note that the assessee was merely acting as an agent. Accordingly, the assessee is not liable to deduct the TDS on the payment made to the truck owners.*
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> *6.5. Regarding the 2nd controversy whether the assessee has received form 15 I duly filled from the truck owners, we note that the assessee has furnished a list of 340 parties along with their*

addresses, truck numbers with the date of registration and the date form 15 I which is placed on pages 83 to 90 of the paper book. On perusal of the same, we note that all the details of the truck owners were furnished before the AO. However, the AO has not carried out any verification of such details to prove them erroneous by issuing notice to any of the party under section 133(6)/131 of the Act.

6.6. *We, further note that the assessee is absolved the form the provisions of the TDS once he has collected from 15 I before making the payment to them or crediting their account. There is no ambiguity to the fact that the necessary froms 15 I were collected by the assessee within time. This fact has not been controverted by the learned DR for the Revenue. Indeed, the assessee is under the obligation to file a report to the commission of income tax in form 15 J after compiling all the details collected in the form 15I but this requirement is procedural."*

9. It appears that the Tribunal also took support of one of its judgment in the case of ***ITO Vs. Andhra Roadways reported in 61 taxmann.com 203.*** Ultimately, the Tribunal reached to the conclusion that the assessee has duly complied with the provisions of Section 194C of the Act by collecting the requisite 15-I Form and therefore, the assessee was not liable to deduct the TDS, on payment made to the transporters.

10. In over all view of the matter, we are convinced to the line of reasoning, assigned by the Tribunal. None of the two questions, as proposed by the Revenue, could be termed as the substantial questions of law.

11. In the result, this appeal fails and is hereby, dismissed.

(J. B. PARDIWALA, J)

(BHARGAV D. KARIA, J)

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