

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/TAX APPEAL NO. 830 of 2019**

=====

THE PRINCIPAL COMMISSIONER OF INCOME TAX-4

Versus

SUMMIT INDIA WATER TREATMENT AND SERVICES LTD.

=====

Appearance:

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

for the Opponent(s) No. 1

=====

CORAM: **HONOURABLE MR.JUSTICE J.B.PARDIWALA**

and

HONOURABLE MR. JUSTICE BHARGAV D. KARIA**Date : 03/02/2020****ORAL ORDER****(PER : HONOURABLE MR. JUSTICE BHARGAV D. KARIA)**

1 This Tax Appeal is filed at the instance of the Revenue under Section 260-A of the Income Tax Act, 1961 [for short, 'the Act, 1961'] and is directed against the order dated 27th May 2019 passed by the Income Tax Appellate Tribunal, Ahmedabad 'C' Bench, Ahmedabad in ITA No.1338/Ahd/2018 for the assessment year 2013-14.

2 The Revenue has proposed the following questions as substantial questions of law:

“[A] Whether on facts of the case the Hon'ble ITAT is justified in partly holding that the impugned order is neither erroneous nor prejudicial to the interest of revenue?

[B] Whether on the facts of the case the Hon'ble CIT is incorrect to hold

that the AO failed to conduct proper and necessary enquiry before completing the assessment?

[C] Whether on facts of the case and in law, the assessment completed without initiating penalty u/s. 271B of the Act is neither erroneous nor prejudicial to the interests of revenue?

[D] Whether on facts of the case and in law, it is appropriate for Hon'ble ITAT to reject the order of CIT on ground of non-TDS on freight payments and upholding the same on some other grounds raised therein?"

3 The respondent assessee has filed its return of income for the assessment year 2013-14 declaring total loss of Rs.1,35,18,193/-. The Assessing Officer, by order dated 22nd March 2018, finalised the assessment under Section 143(3) of the Act, 1961.

4 Thereafter, the Principal Commissioner of Income Tax [for short, 'the PCIT'] invoked power of revision under Section 263 of the Act, 1961 on the ground that without deducting TDS on the export freight, the assessee company had paid export freight amounting to Rs.2,03,66,683/- to Inter Ocean Shipping and Logistic Services. According to the PCIT, as no TDS return showing the details of deduction of any tax in respect of the aforesaid export freight had been filed and as the Assessing Officer had not verified the same, the scope of provisions of TDS on export freight at the rates specified of the Act, 1961, the entire amount was required to be disallowed under Section 40(a)(ia) of the Act, 1961. The PCIT also raised other issue with regard to non-filing of Form 3CEB report by the respondent assessee. Accordingly, a show cause notice was issued and ultimately, after considering the submissions made by the respondent assessee, the PCIT

vide order dated 21st March 2018 under Section 263 of the Act, 1961 directed the Assessing Officer to pass fresh assessment order after providing an opportunity of being heard to the respondent assessee in view of the observations made in the order under Section 263 of the Act, 1961.

5 Being aggrieved by the order passed by the PCIT under Section 263 of the Act, 1961, the assessee went before the Tribunal. The Tribunal, after considering the submissions as well as the reasoning given by the PCIT came to the conclusion that the Assessing Officer has accepted the total loss declared by the assessee in return of income and passed order under Section 143(3) of the Act, 1961 dated 22nd March 2016. The Tribunal considered the materials placed before it and found that the respondent assessee had made payment for export freight to the Indian Ocean Shipping and Logistics Services, which was an Indian Agent acting on behalf of the non-resident shipping company for collecting freight demurrage and other charges and reimburse the same to the shipping company. Therefore, relying upon the CBDT circular No.723 dated 19th September 1995, the Tribunal held that where payment is made to the shipping agents of the non-resident, ship owner or charter, the agent steps into the shoe of the Principal i.e. shipping company and according to the provisions under Section 172 of the Act, 1961 which provides for shipping business in respect of the non-residents would be applicable and the provisions of Section 194C or 195 which provides for deduction of tax at source shall not be applicable. The Tribunal, therefore, held in the facts and circumstances of the case that the PCIT failed to consider during the course of assessment proceedings that the assessee had furnished the relevant materials in respect of export freight payment and it is also not controverted by the PCIT, and therefore, on the basis of undisputable finding brought on

record by the respondent assessee during the course of assessment proceedings under Section 263 of the Act, 1961, it cannot be said that the assessment order is erroneous or prejudicial to the interest of the Revenue in any manner.

6 In view of the facts emerging from the record and the finding of facts arrived by the Tribunal, none of the questions can be termed as substantial questions of law from the impugned order passed by the Tribunal.

The appeal, therefore, fails and is accordingly dismissed.

(J. B. PARDIWALA, J)

(BHARGAV D. KARIA, J)

CHANDRESH

