ORDER SHEET

ITAT No. 31 of 2013
G.A. No.320 of 2013
IN THE HIGH COURT AT CALCUTTA
Special Jurisdiction (Income Tax)
ORIGINAL SIDE

COMMISSIONER OF INCOME TAX, KOLKATA-XVIII,KOLKATA

Versus

MD. JAKIR HOSSAIN MONDAL

BEFORE:

The Hon'ble JUSTICE GIRISH CHANDRA GUPTA

The Hon'ble JUSTICE TARUN KUMAR DAS

Date : 4th April, 2013.

Mr.Arya Das, Adv. for the appellant
Mr.Ananda Sen, Adv. with Mr.Anuran Samanta, Adv. for the Respondent

The Court : The Assessing Officer added the sum of Rs.31,59,870/- to the returned income of the assessee because the aforesaid sum was shown to have been incurred on account of freight charge, but no TDS was deducted. Therefore, the addition was made invoking section 40(a)(ia) of the I.T. Act, 1961. Aggrieved by the order of the Assessing Officer,the assessee preferred an appeal. The Appellate Authority, though, recorded the contention of the assessee that freight charge was part of the price of the goods supplied by the supplier but came to the conclusion that there was no evidence or even any hint to show that there was any contract between the appellant and the

transporter. It is on this basis that the Appellate Authority recorded that payment debited to the freight account was not subject to TDS under section 194C of the I.T. Act and therefore the addition of a sum of Rs. 31,59,870/- was deleted. Aggrieved by the order of the CIT (Appeal), the Revenue went up before the Tribunal. The Tribunal without considering the views expressed by the CIT (Appeal) that there was no contract between the appellant and the transporter or there was no evidence or even any hint of any contract between the appellant and the transporter, disposed of the appeal on the ground that addition could not have been made under section 40(a)(ia) of the I.T. Act following the decsion of the Special Bench of the Tribunal in the case of Merilyn Shipping and Transports Vs. Addl. CIT.

We already have delivered a judgment on 3rd April, 2013 in ITAT No. 20 of 2013, G.A. No. 190 of 2013 (CIT, Kolkata-XI Vs. Crescent Export Syndicates) holding that the views expressed in the case of Merilyn Shipping & Transports (ITA.477/Viz./2008 dated 20.3.2012) were not acceptable. That is one reason why the matter should be remanded to the Tribunal. Another reason for remanding the matter to the Tribunal is that the finding of facts recorded by the CIT (Appeal) was not tested by the Tribunal.

For the aforesaid reasons, the order under challenge is set aside and the matter is remanded to the Tribunal for a decision de novo.

The appeal is thus disposed of.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(GIRISH CHANDRA GUPTA, J.)

(TARUN KUMAR DAS, J.)

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