

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.451 OF 2009

The Commissioner of Income tax ..Appellant.

V/s.

M/s.IAL Shipping Agencies (Mum) Ltd. ..Respondent.

Mr.Suchitra Kamble for appellant.

Mr.Pankaj Toprani for respondent.

CORAM : V.C.DAGA AND
J.P.DEVADHAR, JJ.

DATED : 8TH APRIL, 2009.

P.C. :-

1. Perused appeal papers. Heard learned counsel for the appellant. The following substantial questions of law are raised in this appeal:-

- a) Whether on the facts and circumstances of the case and in law, the ITAT is right in dismissing the issue of whether the assessee are to be treated as agents of IAL Container Lines (UK) Ltd. or as a principal themselves ?
- b) Whether on the facts and circumstances of the case and in law, the ITAT is right in upholding the order of the Ld. CIT(A) in giving relief relating to additions of import agency commission at Rs.22,88,559/- ?
- c) Whether on the facts and circumstances of the case and in law, the ITAT is right in upholding the order of Ld. CIT (A) by deleting the addition made on account of prior period expenses of Rs.9,89,017/- ignoring the detailed reasons given in A.O.'s report ?

2. The above questions have already been considered and appreciated by the Tribunal. The

findings recorded are purely findings of fact based on appreciation of evidence which can be found in paragraph 27 (i) to (x) which read as under:-

- (i) Both IAL Container Lines (UK) Ltd as well as the assessee companies are independent legal entities which are registered under the respective enactments in their respective countries.
- (ii) As per agency agreement dated 15-05-1992 and 01-04-2001, the Indian companies acted as an agent of the foreign principals, viz. IAL Container Lines (UK) Ltd. For the previous years relevant to the assessment years 2001-02 and 2002-03 Certificate of Residency was issued by the Inland Revenue Department, UK which had also specified that the UK / India DTAA would be applicable in the case of IAL Container Lines (UK) Ltd.
- (iii) The Income-tax Department at Mumbai had also recognized the principals as a separate entity and had issued a DIT relief certificate for the assessment years 2001-02 and 2002-03 by treating the assessee as an agent of IAL Container Lines (UK) Ltd.
- (iv) All the freight incomes i.e. import freight income, export freight income, terminal handling charges, inland charges have been taxed in the hands of the principals in UK.
- (v) It cannot be said that the assessee company and the UK company, which were under the same management, are the same entity. Both of them are separate companies incorporated under the respective statutes of their countries and merely because the shareholding is held by the same group, the companies do not lose their separate entities and the conclusion of the assessing officer that they cannot act as principals and agents is bad in law especially when it is not in dispute that the assessee companies were incorporated in India whereas the said IAL Container Lines (UK) Ltd. was incorporated under the provisions of the Companies Act prevailing in UK. The UK company was already carrying out its activities of shipping business in India prior to the incorporation of the assessee

companies. The UK company was the owner or lesser of ships, for which the assessee companies were picking the cargo. The principal activity of shipping was only with IAL Container Lines (UK) Ltd.

- (vi) Just because the assessee was billing the clients in its own name it cannot be construed that it has acted on its behalf as the principal and not as an agent. It is a well known practice in many a trade that the agents do not disclose the name of the principal and provide the goods and services in its own name though it acts only as an agent of the principal.
- (vii) From the documents produced before the first appellate authority it is recorded that the assessee company was crediting its entire turnover relating to the principal to the credit of the principal's account and that in its accounts it never claimed the amounts received as its own income. Only Commission was being recorded as the income of the assessee company.
- (viii) Coming to the taxability of the income, it is an undisputed fact that the same is covered by the DTAA between India and UK and this is no ground for the assessing officer to treat the assessee as principals who have done the business on their own and not as agents.
- (ix) The assessee in this case has received permission from the RBI and according to the requirements of the principal has remitted money to Dubai instead of UK. As the RBI has permitted such remittance, no adverse inference can be drawn in this regard.
- (x) The Mumbai Port Trust accepted the fact that IAL Containers (UK) Ltd. is the principal and similarly the Commissioner of Customs had accepted the bonds of the assessee as agents of IAL Container Lines (UK) Ltd. the principal.

3. In the above view of the matter, looking to the findings of fact based on appreciation of evidence, no substantial question of law is involved in this appeal. Appeal is thus dismissed in limini

with no order as to costs.

(J.P.DEVADHAR, J.)

(V.C.DAGA, J.)