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

INCOME TAX APPEAL NO.307 OF 2003

The Commissioner of Income Tax (TDS), Mumbai, Aayakar Bhavan, M.K. Road, Mumbai – 400 020) ….Appellant

V/s.

M/s. B. Arunkumar Trading Ltd., 407, Masjid Bunder, 413, Narsi Natha Street, Mumbai – 400 009) ….Respondent

WITH

INCOME TAX APPEAL NO.302 OF 2003

The Commissioner of Income Tax (TDS), Mumbai, Aayakar Bhavan, M.K. Road, Mumbai – 400 020) ….Appellant

V/s.

M/s. B. Arunkumar Trading Ltd., 407, Masjid Bunder, 413, Narsi Natha Street, Mumbai – 400 009) ….Respondent

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Mr. P.C. Chhotaray for appellant in both appeals.
Mr. Ashok J. Patil for respondent in both appeals.

CORAM : K. R. SHRIRAM &
SHARMILA U. DESHMUKH, JJ.
DATED : 23rd FEBRUARY 2024

ORAL JUDGMENT : (PER K.R. SHRIRAM, J.) :

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1 Since the impugned order in both the appeals is common, we decided to hear both the appeals together.

2 The only issue that arises in these appeals is whether respondent (assessee) ought to have deducted tax under Section 194I or

Section 194C of the Income Tax Act, 1961 (the Act) from the storage charges paid by assessee. According to the Assessing Officer the payment of storage charges is covered under Section 194I of the Act and hence, tax had to be deducted at source at the rate of 20%, whereas assessee says it would be under Section 194C of the Act and hence, deducted tax at source only at 2%.

3 Assessee had entered into an agreement with various parties for facilities and services for handling import of RBD palmolein oil or vegetable oils edible grade. Assessee used to pay storage charges. Therefore, assessee had hired tanks of various parties and paid them storage charges. The Assessing Officer, during the course of survey action, noted that assessee had made certain payments under different heads of expenses to which provisions of TDS applies and assessee had not deducted TDS from such payments such as storage charges which were in the nature of rent paid by assessee for storage of imported goods. The Assessing Officer found that the provisions of Section 194I of the Act were attracted and assessee was in default for not complying with the same. The Assessing Officer held that assessee was deemed to be an assessee in default under Section 201(1) of the Act and the short deduction of tax quantified at Rs.1,05,99,465/- on which interest under Section 201(1A) of the Act worked out to Rs.51,76,587/- was recoverable from assessee.

4 Against this order of Assessing Officer, assessee preferred an appeal before the Commissioner of Income Tax (Appeals) [CIT(A)]. The CIT(A) vide an order dated 24th October 2000 partly allowed the appeal of assessee by holding that assessee was to deduct TDS for various payments made by it with further directions to the Assessing Officer to verify the facts that the payee or the deductees have declared in their respective returns of income the payments made by assessee. Assessee was also directed to furnish the said details or else it will be presumed that the payee has not declared this income at their hand.

5 Aggrieved by the said order, assessee preferred an appeal before the Income Tax Appellate Tribunal (ITAT). It was contended by assessee that CIT(A) had erred in confirming the applicability of Section 194I of the Act for deductions of tax at source on storage charges and hence, could not have confirmed the demand of Rs.1,05,04,786/-. The ITAT, by the impugned order dated 28th November 2002, allowed the appeal of assessee and set aside the assessment order. It is this order that is impugned in these appeals. The appeals were admitted on 14th October 2004 and the following substantial questions of law were framed :

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(a) Whether on the facts and in the circumstances of the case and in law, the Tribunal erred in allowing the appeal of the assessee and holding that the storage charges paid by the assessee does not amount of rent paid and therefore the provisions of section 194 I were not applicable?

(b) Whether on the facts and in the circumstances of the case and in law, the Tribunal erred in holding that the payments of storage charges are not liable for deduction of tax at source under section 194 I of the Act (rent paid) but instead section 194C is applicable?

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Whether on the facts and in the circumstances of the case and in law, the Tribunal erred in allowing the appeal of the assessee and holding that the storage charges paid by the assessee does not amount of rent paid and therefore the provisions of section 194 I were not applicable?

6 Section 194I of the Act, as then in force, reads as under :

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194-I. Any person, not being an individual or a Hindu undivided family, who is responsible for paying to any person any income by way of rent, shall, at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by the issue of cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rate of -

(a) fifteen per cent if the payee is an individual or a Hindu undivided family; and

(b) twenty per cent in other cases :

Provided that no deduction shall be made under this section where the amount of such income or, as the case may be, the aggregate of the amount of such income credited or paid or likely to be credited or paid during the financial year by the aforesaid person to the account of, or to, the payee, does not exceed one hundred and twenty thousand rupees.

Explanation - For the purposes of this section, -

(i) 'rent' means any payment, by whatever name called, under any lease, sub-lease, tenancy or any other agreement or arrangement for the use of any land or any building (including factory building), together with furniture, fittings and the land appurtenant thereto, whether or not such building is owned by the payee;

(ii) where any income is credited to any account, whether called 'suspense account' or by any other name, in the books of account of the person liable to pay such income, such

crediting shall be deemed to be credit of such income to the account of the payee and the provisions of this section shall apply accordingly.

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Admittedly, building is not defined in the Act.

7 The ITAT, relying upon a judgment of the co-ordinate Bench in the case of ***Gulf Oil India Ltd. V/s. Income Tax Officer (Mum.)***[1], came to a finding that the hire charges paid for the tanks used for storage of imported goods would not be covered under Section 194I of the Act. The appeals challenging the findings of the ITAT in *Gulf Oil India Ltd.* (Supra) were filed in this Court and all those appeals have been dismissed. One of the appeal was dismissed on 8th June 2016 for non payment of cost as directed by the Court. The other appeals, from the records and proceedings of those appeals, appear to have been dismissed for default sometime in August 2008. No application has been made for restoring those appeals.

8 In the impugned order the ITAT has come to the factual finding that "*It is an admitted position that the facts of the assessee's case are identical with those of Gulf Oil India Ltd. referred to by the learned Commissioner (Appeals) in his appellate order.*" Therefore, the ITAT following *Gulf Oil India Ltd.* (Supra) came to a finding that the storage tanks in question did not qualify either as land or as building within the meaning of Section 194I of the Act. We have also considered the *Gulf Oil*

1 (2000) 75 ITD 172 (MUM.)

India Ltd. (Supra).

9 Mr. Chhotaray relying on a judgment of the Hon'ble Apex Court in ***Municipal Corporation of Greater Bombay and Ors. V/s. Indian Oil Corporation Ltd.***[2] submitted that almost identical situation had come up in *Municipal Corporation of Greater Bombay and Ors.* (Supra) where the issue to be decided was whether petroleum storage tanks are structures or things attached to land within the inclusive definition under Sections 3(s) and 3(r) respectively of the BMC Act and consequently exigible to property tax. Their Lordships, after indepth analysis of various issues, held that the property tax was exigible as petroleum storage tanks are structures or things attached to the land. Mr. Chhotaray submitted that the Hon'ble Apex Court analysed the meanings of the words land, building and structures on the basis of the dictionary meanings and various judgments. The Court analysed the mechanical and engineering aspects of the tank construction and ultimately it had no hesitation to hold that the petroleum storage tanks are structures or things attached to the land within the definition of land or building of BMC Act and consequently exigible to property tax. Therefore, the ratio of *Municipal Corporation of Greater Bombay and Ors.* (Supra) applies in all fours to the facts of the present case. Mr. Chhotaray submitted that that is what the Assessing Officer and the CIT(A) have followed and hence, the appeals should be allowed.

2 (1991) 91 CTR 0135

10 Mr. Patil submitted that reliance by the Revenue in the case of *Municipal Corporation of Greater Bombay and Ors.* (Supra) is misplaced inasmuch as the provisions of Section 194I of the Act are not *pari materia* with Sections 3(r) and 3(s) of the BMC Act considered by the Hon'ble Apex Court in that case. It was submitted that under the definition of "land" in Section 3(r) of the BMC Act, land included "things attached to the earth" and so even a structure could be regarded as land, whether it is building or not, under the provisions of Section 3(r) of the Act. Mr. Patil also submitted that in the present case, assessee deducted tax at 2% under the impression that provisions of Section 194C of the Act are attracted and, therefore, assessee cannot be regarded either as assessee in default or made liable to pay interest under Section 201(1A) of the Act.

11 Mr. Patil also submitted that this Court in the case of ***Bharat Petroleum Corporation Ltd. and Anr. V/s. Municipal Corporation of Greater Bombay and Anr.***[3] has held that the metal containers or receptacles meant for storing petrol are tanks and nothing else.

12 Since it is admitted that the facts of assessee's case are identical with those of *Gulf Oil India Ltd.* (Supra), we are not going into the details of rental terms and conditions. At the same time, considering the rental agreement, two of which have been made available, the tank owners had not only stored the vegetable oils imported by assessee in their tanks but

3 AIR 1985 Bom 242

also have rendered other ancillary services. In these appeals we are only deciding whether the payments made by assessee are liable for deduction of tax at source under Section 194I of the Act. We find merit in the contention of assessee that reliance placed by the Revenue on the decision of the Hon'ble Apex Court in the case of *Municipal Corporation of Greater Bombay and Ors.* (Supra) is incorrect as provisions of Sections 3(r) and 3(s) of the BMC Act are not *pari materia* with the provisions of Section 194I of the Act. In *Municipal Corporation of Greater Bombay and Ors.* (Supra) the Hon'ble Apex Court, after observing that storage tank is not a building, went further and considered the issue whether it can be regarded as land within the meaning of Section 3(r) of the BMC Act or as a structure within the meaning of Section 3(s) of the BMC Act. The definition of "building" in terms of Section 3(s) of the BMC Act includes a structure. The definition of "land" included, *inter alia*, things attached to the earth. We find that there is no such extended definition of land or of building in Section 194I of the Act.

13 In our view, the storage tanks in question do not qualify either as land or as building within the meaning of Section 194I of the Act. In terms of Section 194I of the Act, there has to be a lease, sub-lease or tenancy or any other agreement involving land or any building excluding factory building. It is not the case of the Revenue that the storage tank was taken on lease or sub-lease or tenancy. Assessee's case would fall under the

part "*or any other agreement involving land or any building …. together with furniture, fittings and the land appurtenant thereto* …..". It is nobody's case that assessee has taken any land or building together with furniture, fittings and the land appurtenant thereto.

14 In the circumstances, we hold that the payments in question are liable for deduction of tax at source under the provisions of Section 194I of the Act. We find no reason to interfere with the impugned order of the ITAT. The substantial questions framed are answered accordingly and in favour of assessee.

15 Appeals disposed.

(SHARMILA U. DESHMUKH, J.) **(K. R. SHRIRAM, J.)**

Gauri Gaekwad