

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

INCOME TAX APPEAL NO.1798 OF 2016

Pr. Commissioner of Income Tax-2 Appellant
versus
M/s RST India Ltd. ... Respondent

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- Mr.Suresh Kumar, Advocate for Appellant.
- Mr.Jehangir Mistri, Senior Counsel, a/w Mr.Harsh Kapadia i/b. Mr.Atul Jasani, Advocate for Respondent.

**CORAM : AKIL KURESHI &
SARANG V. KOTWAL, JJ.
DATE : 12th MARCH, 2019.**

P.C. :

1. The revenue has filed this Income Tax Appeal challenging the judgment of Income Tax Appellate Tribunal. Following question is presented for our consideration

“Whether on the facts and circumstances of the case and in law the Hon'ble ITAT was justified in deleting the addition made on account of compensation received on termination of contract to the tune of Rs.2.25 cr, treating the same as capital receipt?”

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2. The issue arises out of Respondent/Assessee's return of income tax for the assessment year 2005-2006. Brief facts are that;

The assessee had entered into an agreement with US based company Sealand Service Inc. by name. Under such agreement the assessee was to solicit business on behalf of the said Sealand Service Inc. After some disputes between the parties, this contract was terminated pursuant to which, the assessee received a compensation of Rs.2.25 crores during the period relevant to the assessment year in question. The assessee claimed that the receipt was capital in nature and therefore not assessable to tax. The Assessment Officer however rejected such contention and held that it would be chargeable to tax in terms of section 28(ii) (c) of the Income Tax Act, 1961 (for short 'the Act').

3. CIT (A) allowed the Assessee's Appeal holding that there was no principal agent relationship between the parties

and the contract was on principal to principal basis and therefore section 28(ii)(c) would not apply. In further Appeal by the revenue, the tribunal confirmed the view of the CIT Appeals, interalia holding that the entire source of the income was terminated by virtue of the said agreement and that in view of the fact that there was no principal to agent relationship, section 28(ii)(c) will not apply.

4. It is not disputed that upon termination of the contract, the assessee's entire business of soliciting freight on behalf of the US based company came to be terminated. It may be that assessee had, other business. Insofar as the question of taxing the receipts arising out of the contract terminating the very source of the business, the same would not be relevant. The real question is, was the relationship between the assessee and the US based company one in the nature of the agency? Section 28(ii)(c) of the Act makes any compensation or other payment due, the receipt of a person holding an agency in connection with the termination of the agency or the modification of the

terms and conditions relating thereto, chargeable as profits and gains of business and profession. The essential requirement for application of section would therefore be that there was a co-relation of agency-principal between the assessee and the US based company. In the present case the CIT (A) and the tribunal have concurrently held that the relationship was one of principal to principal and not one of agency. The CIT Appellate noted clause (1)(c) of the Service Agreement, which reads thus;

“1(c) Status of Parties – In performing the work, Contractor shall act as an Independent Contractor, maintaining its own distinct and separate legal existence and neither Contractor nor its principals or employees shall be or be deemed to be, an agent or employee of Carrier for any purpose whatsoever.”

5. Learned Counsel Mr.Suresh Kumar for the Appellant however submitted that the agreement itself described the relationship between the parties as one of the agency. In our opinion, any such reference or the expression in the agreement, by itself would not be conclusive or determinative of

relationship between the parties. The true character of the relationship from the agreement would have to be gathered from reading the document as a whole. This Court in case of *Daruvala Bros. (P). Ltd. Vs. Commissioner of Income-Tax (Central), Bombay, reported in (1971) 80 ITR 213* had found that the agreement made between the parties, was of sole distribution and the agent was acting on his behalf and not on behalf of the principal. In that background, it was held that the agreement in question was not one of agency, though the document may have used such term to describe the relationship between the two sides.

6. In such circumstances we do not find any error in view of the tribunal. No question of law arises. The Appeal is dismissed.

(SARANG V. KOTWAL, J.)

(AKIL KURESHI, J.)