

**IN THE INCOME TAX APPELLATE TRIBUNAL
RAJKOT BENCH, RAJKOT
(Conducted through E-Court at Ahmedabad)**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER AND
Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER**

**ITA No.330/RJT/2008
Assessment Year: 2005-06**

The Income Tax Officer,
Ward-2, Gandhidham – Kutch.

(Appellant)

vs. M/s. Terapanth Foods Limited,
Maitri Bhavan,
Plot No.18, Sector No.8,
Gandhidham - Kutch.
Gujarat.
[PAN – AAAC 7787 N]
(Respondent)

Appellant by : Shri S.S. Rathi, Sr. D.R.
Respondent by : Shri K.C. Thacker, A.R.

Date of hearing : 05.01.2022
Date of pronouncement : 04.02.2022

ORDER

PER SUCHITRA KAMBLE, JUDICIAL MEMBER :

This appeal is filed by the Revenue against the order dated 27.03.2008 passed by the CIT(A)-II, Rajkot for the Assessment Year 2005-06.

2. The grounds of appeal raised by the Revenue are as under :-

- “(1) The Ld. CIT(A) has erred in law & on facts in deleting the disallowance made u/s.40(a)(i) of the Act for ship hiring charges of Rs.2,16,09,181/- and weather report expenses of Rs.15,583/- paid to the non residents.*
- “(2) On the facts of the case, the Ld. CIT(A) ought to have upheld the order of the Assessing Officer.*
- “(3) It is, therefore, prayed that the order of the Ld. CIT(A) may be set-aside and that of the Assessing Officer be restored.”*

3. The assessee is engaged in the business of manufacturing refined free flow iodized salt and in trading of salt and iron ore. The assessee filed its return of income on 29.10.2005 declaring 'nil' total income. As per the return of income the gross total income was Rs 56,73,943/- which reduced to nil after claim of set off of brought forward losses of A.Ys. 1999-2000 and 2000-2001. The return of income was processed under Section 143(1) of the Income Tax Act, 1961 on 24.08.2006. Subsequently, the case was selected for scrutiny assessment and statutory notice under Section 143(2) of the Act was issued. In response to the statutory notice, the Ld. A.R. of the assessee attended the proceeding and furnished the details. The Assessing Officer observed that the assessee has shown turnover of Rs.38,26,34,257/- and Net Profit of Rs.83,89,524/- as per Companies Act. The assessee got its books of accounts audited as required under Section 44AB of the Act. The Assessing Officer further observed that the assessee had paid ship hiring charges to non resident and no TDS was paid by it out of such payments. Since the assessee has not deducted tax, a show cause notice was issued to the assessee. In response to the show cause notice, the assessee furnished reply. The Assessing Officer made disallowance of ship hiring expenses towards on time chartered basis to non resident under Section 40(a)(i) of the Act amounting to Rs. Rs.2,16,09,181/- . The Assessing Officer further made disallowance of Rs.15,583/- in respect of weather report expenses which was provided by a British Company to the assessee.

4. Being aggrieved by the Assessment Order, the assessee filed appeal before the CIT(A). The CIT(A) allowed the appeal of the assessee.

5. The Id. D.R. submitted that the Assessing Officer has categorically made the observation that the amount paid for hiring of ship on time charter basis is chargeable to tax as the assessee had paid rent for sailing the ship in Indian water, which is not an international traffic. The income to non-resident ship owner was accrued in India and therefore, the assessee was liable to make TDS and pay the same to Government account as per the provisions of Section 195 of the Act. The Id. D.R. further submitted that Section 172(1) will not apply to payment for time charter of ships and the provisions of Section 195 are attracting to the payment as the income to the ship owner was accrued to the assessee in India. Thus, the Id. D.R. submitted that the CIT(A) erred in deleting the disallowance made under Section 40(a)(i) of the Act. The Id. D.R. further submitted that as regards weather report to a British Company,

the same is in respect of voyage of ship taken on hire in Indian water and the payment properly made was liable to deduct tax at source. As regards to the second issue raised in ground no.1 of Revenue's appeal relating to weather report expenses of Rs.15,583/- paid to non-residents, the Id. D.R. relied upon the order of Assessing officer.

6. The Ld. A.R. submitted that the assessee has no liability to make deduction of tax under Section 195 of the Act as the assessee made payment for time charter of ships to non residents, and when payment is made for time charter and not for carriage of goods, passengers, live stocks etc. As per provisions of Section 172 of the Act there is no liability to pay tax on such receipts by the non resident recipients. Since, as per the charging Section 172, no liability arises for payment of tax by the non- resident receiving payment for time charter. Section 195 of the Act as well as Section 40 (a)(i), which speak of sums chargeable under the Income Tax Act, for creating liability for deduction of tax and for making disallowance in case of non-deduction would not come into play at all. The Id. A.R. further submitted that the record available with the Department includes all the documents like time charter agreements submitted for obtaining the NOCs under Section 172 of the Act. Thus, the Id. A.R. submitted that the 1st issue raised in ground no.1 of the Revenue's appeal be dismissed. As regards 2nd issue raised in ground no. 1, the Ld. AR relied upon the order of the CIT(A).

7. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that the CIT(A) has categorically mentioned that Section 195 of the Act would apply only if payment is made which is chargeable under Income Tax Act 1961. The Assessing Officer has not given any reason as to why the chargeability of tax under Section 172 of the Act does not cover time charter of ships for which payment is made to non-resident. The Assessing Officer totally ignored the NOCs issued by Department allowing the ship for sailing in Indian Port as the payment is for time charter. The provisions of Section 172 of the Act has not at all indicated that there is any liability to pay tax on such receipts by the non-resident recipients. In this case, the charter ship for which payment was made to non-resident. As per the charging Section 172, no liability arises for payment of tax by the non- resident receiving payment for time charter. The Id. D.R. could not point out any discrepancy in

the order of CIT(A). Therefore, the 1st issue raised in Revenue's ground no.1 is dismissed.

8. As regards the second issue being disallowance of Rs.15,583/- related to weather routing report from the non residents and payment made to them, the CIT(A) has given a categorical finding that income received by the non-resident for giving weather routing report in the form of analysis of data in tabular form/graphical representation is not chargeable to tax under any Section of the Income Tax Act including various sub-sections of Section 9(1) of the Act. There is no need to interfere with the findings of the CIT(A). Hence this issue is also dismissed.

9. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open Court on this 4th day of February, 2022.

Sd/-
(WASEEM AHMED)
Accountant Member

Sd/-
(SUCHITRA KAMBLE)
Judicial Member

Ahmedabad, the 4th day of February, 2022

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Copies to: (1) *The appellant*
(2) *The respondent*
(3) *CIT*
(4) *CIT(A)*
(5) *Departmental Representative*
(6) *Guard File*

By order

Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad