आयकर अपीलीय अधिकरण पुणे न्यायपीठ "ए" पुणे में
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", PUNE

सुश्री सुषमा चावला, न्यायिक सदस्य एवं, श्री डी. करुणाकरा राव, लेखा सदस्य के समक्ष
BEFORE MS. SUSHMA CHOWLA, JM AND SHRI D. KARUNAKARA RAO, AM

आयकर अपील सं. / ITA No.2148/PUN/2013
निर्धारण वर्ष / Assessment Year : 2009-10

M/s. Angre Port (P) Ltd.,
Formerly Jaigad Ports Infrastructure (P) Ltd.,
Plot No.221, MIDC, Mirjole,
Ratnagiri – 415612 .... अपीलार्थी/Appellant

PAN: AABCJ5401A

Vs.

The Income Tax Officer,
Ward-3, Ratnagiri .... प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA No.1046/PUN/2014
निर्धारण वर्ष / Assessment Year : 2010-11

M/s. Angre Port (P) Ltd.,
Formerly Jaigad Ports Infrastructure (P) Ltd.,
Plot No.221, MIDC, Mirjole,
Ratnagiri – 415612 .... अपीलार्थी/Appellant

PAN: AABCJ5401A

Vs.

The Income Tax Officer,
Ward-3, Ratnagiri .... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : Shri Mihir Naniwadekar
प्रत्यर्थी की ओर से / Respondent by : Shri Sanjeev Ghei

सुनवाई की तारीख / **Date of Hearing : 23.01.2019**		घोषणा की तारीख / **Date of Pronouncement: 22.04.2019**

आदेश / ORDER

PER SUSHMA CHOWLA, JM:

Both the appeals filed by assessee are against respective orders of CIT(A), Kolhapur, dated 06.09.2013 and 25.02.2014 relating to assessment years 2009-10 and 2010-11 against respective orders passed under section 143(3) of the Income-tax Act, 1961 (in short 'the Act').

2. Both the appeals relating to same assessee were heard together and are being disposed of by this consolidated order for the sake of convenience.

3. The assessee in ITA No.2148/PUN/2013, relating to assessment year 2009-10 has raised the following grounds of appeal:-

1. The order of the Commissioner (Appeals) is against law and facts and circumstances of the case.

2.1 The Commissioner (Appeals) erred in summarily dismissing the appeal by merely repeating what the Assessing Officer had said and ignoring all the grounds raised in the appeal before him and deciding the issue on erroneous assumptions.

2.2 The Commissioner (Appeals) having noted that there is no tenancy by the Maharashtra Maritime Board nor it is meant to lease out any asset to the appellant and it is only a payment in the nature of 'toll' or 'fee' for providing the infrastructure facility and the measure for levy is merely based on loading and unloading weight and is collected for functioning, maintaining and running the Board and therefore to categorise it as a 'Rent' within the meaning of Section 194-I is totally misconceived.

2.3 The Commissioner (Appeals) also failed to appreciate that there are conflicting decisions on the attraction of tax withholding provisions based on 'payable and 'paid' and therefore in fiscal matters the interpretation which favours the assessee ought to have been followed [CIT v Vegetable Products Ltd 88 ITR 192 (SC)].

2.4. The Commissioner (Appeals) also erred in not considering the fact that the nomenclature 'Wharfage' given by an assessee cannot determine the nature of payment and tax provisions cannot be applied on that basis without examining the true nature of the payment and there can be no afterthought in such matters.

3.1 The Commissioner (Appeal) having noted that the foreign travel was actually undertaken erred in not taking note of the fact the development in the global sphere in providing services to the clients is an imperative necessity and therefore wholly and exclusively for the purpose of business and the Assessing Officer sitting in his arm chair cannot decide such commercial expediency. This view finds favour in the judgment reported in 208 Taxman 250 (P&H) which follows the decision of jurisdictional High Court referred to in Para 9 thereof as under:

"where the expenditure is incurred for keeping oneself abreast the latest technique of his business or for foreign collaboration has to be held as revenue expenditure".

3.2 The Commissioner (Appeals) ought to have noted that the services of the four employees have been lent to the Appellant-company and this is a normal practice in the commercial world and no contrary evidence has been gathered by the Assessing Officer and therefore the conclusions are biased.

3.3 The Commissioner (Appeals) also failed to note that assuming without admitting the expenditure having been incurred on deputed employees it is in any case welfare expenses and even on that account no disallowance can be made.

3.4 The Commissioner (Appeals) erred in confirming the disallowance which is based on mere surmise and suspicion and contrary to facts.

4.1 The Commissioner (Appeals) failed to appreciate the facts that the four persons are deputed to the Appellant-Company which has not been disproved by the Assessing Officer.

4.2 The Commissioner (Appeals) failed to take note of the fact that there were written correspondence between the deputing Company and the Appellant and therefore issue of Appointment orders etc. are not warranted by any rule or law and so the conclusions are misplaced and ignores factual service by these employees.

4.3 The observations and conclusions of the Commissioner (Appeals) are not warranted and does not exhibit judicious approach to the issue.

5.1 The Commissioner (Appeals) erred in confirming the disallowance under 40A(3) without appreciating facts.

5.2 The Commissioner (Appeals) did not find these purchases to be sham or bogus and they have been used in the business due to absence of power supply by Electricity Board and having regard to the location of the sellers and business needs the payment cannot be disallowed on technicalities.

5.3 The Commissioner (Appeals) ought to have noted that in so far as these purchases are concerned the employees are implied agents of the Appellant and therefore it falls under Sub rule (k) of Rule 6DD of the Income-tax Rules, 1962.

5.4 The observations of the Commissioner (Appeals) in para 15 of his order ignores realities and is only based on artificial reasons and therefore lacks judicious approach and practical wisdom and hence the conclusions.

4. At the outset, the learned Authorized Representative for the assessee pointed out that grounds of appeal No.1 and 2.1 are general in nature and do not require any adjudication. The ground of appeal No.2.2 is against non allowance of Wharfage charges. The grounds of appeal No.2.3 and 2.4 are not pressed.

5. Briefly, in the facts of the case, the assessee for the year under consideration had furnished return of income declaring total income of ₹ 64,740/-. The assessee was engaged in the business of providing port facilities for shipment of cargo, from its site near Jaigad in Ratnagiri District. The assessee had shown total job receipts of ₹ 3,73,50,397/- on which gross profit of ₹ 1,50,58,494/- was shown. The assessee was asked to furnish details of Wharfage charges and also asked whether any tax was deducted at source on the said expenses. The assessee in reply, pointed out that the said charges were paid to Maharashtra Maritime Board (in short 'MMB') and no tax was deducted from the said expenses. The Assessing Officer referred to provisions of section 196 of the Act and pointed out that the said section stipulates that no deduction of tax would be made from any sums payable to the Government, Reserve Bank of India or Corporation established by or under a Central Act or a Mutual Fund specified under clause (23D) of section 10 of the Act. The assessee was thus, asked as to under what category out of the four categories of persons does MMB may fall. The assessee in reply, pointed out that it had paid shipping fees of ₹ 56,57,221/- to MMB and the same were booked as Wharfage in its books of account. The said shipping fees was paid for carrying on the loading/unloading activity along with river front. The fees were levied by the State Board on per tonne basis for loading bauxite using the river front. The assessee stressed that no work was performed by the Board for the

assessee nor any contract for work as envisaged under section 194C of the Act. It was further pointed out that even the provisions of section 194-I of the Act were not attracted as the fees were not in the nature of rent. Hence, no tax was required to be deducted from these payments. The contention of assessee was found to be not correct by the Assessing Officer. He was of the view that Wharfage charges paid to the Board were actually in the nature of rent. For the definition of 'land', reference was made to the 'Concise Law Dictionary' by P. Ramanatha Aiyyar & Justice Y.V. Chandrachud, wherein the 'land' was defined to include bed of the sea or river below high water mark, and also things attached to the earth or permanently fastened to anything attached to the earth. This was the definition under Major Port Trust Act in section 2(k). Under section 2(17) of the Wildlife (Protection) Act (53 & 1972), 'land' includes canals, creeks & other water channels, reservoirs, rivers, streams, marshes & wet lands & also include boulders & rocks. Further, definition of 'Wharf' as per the Oxford Dictionary was referred to i.e. a landing place or pier where ships may tie up and load or unload; a shore or riverbank; a platform of timber, stone, concrete, etc. built parallel to the waterfront at a harbor or navigable river for the docking, loading and unloading of ships. The word 'Wharfage' was defined as use of Wharf and its facilities. The Assessing Officer noted that the word 'land' and 'Wharf' were not defined under the Act and he referred to general meaning of two expression and also relied on the ratio laid down by the Hon'ble Supreme Court in Anant Mills Co. Ltd. Vs. State of Gujrath & Others [AIR 1975 SC 1234, 1250 and held that land includes 'water'. He further held that Wharfage expenses paid to the Board were actually in the form of rent paid for using water front. Therefore, tax was to be deducted at source from the said payment under the provisions of section 194-I of the Act.

6. The explanation of assessee further was that Wharfage charges were shipping fees levied by MMB for the privilege of carrying out loading activities at the waterfront. It was levy imposed by the Board under Maharashtra Maritime Board Act, under the Notification issued by the Ministry of Shipping. The same was in the nature of cess or tax and could not be equated with rent. The Assessing Officer stressed that the assessee had failed to furnish any evidence in support of its claim that the payment made to the Board was covered under section 196 of the Act and hence, no tax was to be deducted at source. He further stated that the Board was not Corporation established by or under the Central Act as envisaged under section 196(iii) of the Act. He acknowledged that the Board came into existence by an Act by Maharashtra State and not by a Central Act as referred in section 196(iii) of the Act. Further, he said as per various legal definitions of 'land', 'land' includes water. The next point raised by Assessing Officer was that the assessee was using the waterfront adjacent to its port facilities near Jaigad, in Ratnagiri District and for this facility, Wharfage charges were paid to the Board. The contention of assessee that even the ships parked at the waterfront did not belong to it and hence, the assessee was not using water was held to be not correct. The Assessing Officer was of the view that ships were parked at the waterfront for the purpose of loading and unloading activities relating to assessee's business only; otherwise, why should the assessee pay Wharfage charges for parking ships at the waterfront. He was of the view that Wharfage charges were actually fees paid for parking ships at waterfront and hence, the contention of assessee that it was not using waterfront was not acceptable. The plea of assessee that it was under the Statutory obligation to pay Wharfage charges to the Board and the payment was made in regular course of business was not accepted. Hence, Wharfage

charges paid were treated as rent paid by the assessee for utilizing water space adjacent to its port near Jaigad in Ratnagiri district. As the assessee had failed to deduct tax at source under the provisions of section 194-I of the Act, payments totaling ₹ 56,57,221/- were disallowed, in view of provisions of section 40(a)(ia) of the Act and added to the income of assessee.

7. The CIT(A) noted that the plea of assessee first was that payment was fees and not rent and second, it was that the said payment was in the nature of cess or tax. The CIT(A) noted that as per Wikipedia, fees was defined as price paid as remuneration for services. He further observed that where the assessee himself had accepted that the Board does not provide any services to the assessee, then it was not fees. Further, as per dictionary meaning 'land' included water and since the assessee was charged for use of waterfront by the ships on which goods were loaded, then in fact payment was made for privilege to use waterfront and mooring of ships on which goods were loaded by the assessee. The said payment was held to be in the nature of rent. The CIT(A) observed that whether or not the ships belong to the assessee did not matter, ships were in the use of assessee. Further, the CIT(A) held that even if the assessee was under the Statutory obligation to pay Wharfage charges, the fact did not exclude the assessee from making TDS from the said payment. It also held that the Board was not covered under section 196 of the Act nor it was Government but a Board constituted by the Act of State Government. He stressed that the Boards and Corporations were not Government and had distinct status than the Government and hence, the disallowance made by Assessing Officer was upheld.

8. The assessee is in appeal against the order of CIT(A).

9. The learned Authorized Representative for the assessee pointed out that Wharfage was charge / rate. It was Statutory levy and not contractual levy, which was payment under the Act of State. He admitted that Wharfage was not defined under the Act but Wharf was defined. Referring to section 2(zb) of Maharashtra Maritime Board Act, 1997, he pointed out that it talks of loading or unloading goods for the embarkation or disembarkation of passengers… The learned Authorized Representative for the assessee stressed that what was the charge being made, it was simply charge/rate prescribed under section 37 of that Act. The rates were fixed by the Board, which was State entity and the Board prescribes the rates under Regulations. Our attention was drawn to copy of receipt placed at page 48 of Paper Book, which clearly mentions that charge was in respect of merchant vessel for weight in MT and it does not indicate that it was for the use of land. The learned Authorized Representative for the assessee here fairly pointed out that Rajkot Bench of Tribunal in Gujarat Pipavav Port Ltd. Vs. DCIT in ITA Nos.614, 615, 641 & 642 (Rajkot) of 2012, relating to assessment years 2006-07 and 2007-08, order dated 23.08.2013 has decided the issue against assessee. However, Mumbai Bench of Tribunal in ITO Vs. M Dharamdas and Company in ITA Nos.1505 to 1507/Mum/2013, relating to assessment years 2008-09 to 2010-11, order dated 10.07.2015 and the Kolkata Bench of Tribunal in M/s. MCC PTA India Corp. Pvt. Ltd. Vs. ACIT in ITA Nos.151 & 152/Kol/2016, relating to assessment years 2011-12 and 2012-13, order dated 18.07.2018 relying on the judgment of the Hon'ble Supreme Court in the case of Japan Airlines Co. Ltd. reported in 377 ITR 372 (SC), was in favour of assessee. He further referred to provisions of section 194-I of the Act and pointed out that obligation to deduct TDS was when the income was by way of rent; Explanation under the said section defines ‘rent’.

Referring to the facts of the case, the learned Authorized Representative for the assessee stated that there was no lease, sub-lease, tenancy or any other agreement or arrangement between the assessee and the Board, for the use of land/water. He further pointed out that the Department's case was vis-à-vis water under the land. In this regard, he referred to the decision of the Hon'ble Bombay High Court in CIT Vs. Maharashtra State Electricity Distribution Co. Ltd. (2015) 375 ITR 23 (Bom), wherein the dispute was in the case of assessee distributing electricity to consumer. The Hon'ble Bombay High Court while deciding the wheeling and transmission charges levied for supply of electricity had held that these were not equated to rent or fees for technical services. Our attention was drawn to paras 37 to 39 of the said judgment and it was pointed out that reliance was placed on the ratio laid down by the Hon'ble High Court of Madras in CIT Vs. Singapore Airlines Ltd. (2013) 358 ITR 257 (Mad), wherein the meaning of rent was explained and it was held that the same must be understood in the context of which it is used. The issue was also case of toll rate and use of land. The learned Authorized Representative for the assessee stressed that when there was no possessory control over the water, which belong to the State, then there is no question of holding the said charge to be rent for use of water. He again pointed out that Wharfage charges were paid to the Board but water belongs to the State. He further stated that waterfront was used by the ships for docking and the assessee was not owner of ships. He stressed that in common parlance, the assessee could not be said to be using water as the assessee had no possessory control over the water.

10. The learned Departmental Representative for the Revenue relying on the orders of authorities below, further placed reliance on the ratio laid down by the Hon'ble Delhi High Court in United Airlines Vs. CIT (2006) 152 TAXMAN

516 (Del). The learned Departmental Representative for the Revenue pointed out that the fact was that MMB was not authorized owner of land. He further pointed out that the CIT(A) in para 6 at page 4 of its order has clearly held that the payment was not fees but rent.

11. We have heard the rival contentions and perused the record. The issue which arises in the present appeal is the claim of deduction of Wharfage charges. The case of Revenue authorities is that Wharfage charges paid by the assessee were 'rent' as per provisions of section 194-I of the Act and the assessee was obliged to deduct tax at source out of such payments made to the Maharashtra Maritime Board and for such non deduction of tax at source, the assessee was held to be in default, in view of provisions of section 194-I r.w.s. 196 of the Act and hence, disallowance was made in the hands of assessee under section 40(a)(ia) of the Act for non deduction of tax out of such payments. The case of assessee on the other hand, is that it is in the nature of cess or levy and in no way, it can be attributed to rent. The Wharfage charges were being paid to MMB in accordance with Government Notification for the privilege of carrying on loading and unloading activities at the waterfront. The assessee was of the view that the same were in the nature of shipping fees levied by the Board. It was levy under the Statutory Notification, which the assessee was obliged to pay and the payment was made in the normal course of business, the same could not be held to be rent. The term 'Wharf' as per the Oxford Dictionary means a landing place or pier where ships may tie up and load or unload; a shore or riverbank; a platform of timber, stone, concrete, etc. built parallel to the waterfront at a harbor or navigable river for the docking, loading and unloading of ships. There is no separate definition of land or Wharfage charges under the Income Tax Act. The Assessing Officer has relied

on the definition of 'land' in legal parlance. In this regard, he has relied on the definition in 'Concise Law Dictionary' by P. Ramanatha Aiyyar & Justice Y.V. Chandrachud, wherein the 'land' was defined to include bed of the sea or river below high water mark, and also things attached to the earth or permanently fastened to anything attached to the earth. This was the definition under Major Port Trust Act in section 2(k). He then, referred to the definition of 'Wharf' as per the Oxford Dictionary i.e. a landing place or pier where ships may tie up and load or unload; a shore or riverbank; a platform of timber, stone, concrete, etc. built parallel to the waterfront at a harbor or navigable river for the docking, loading and unloading of ships. The word Wharfage was defined as payment made for use of Wharf and it facilities.

12. In order to understanding the nature of levy, we may refer to the relevant provisions of Maharashtra Maritime Board Act, 1997. This is an Act to make provision for constitution of Maritime Board for minor ports in the State of Maharashtra and to vest the administrative control and management of such ports, in that Board and to provide for matters connected therewith and incidental thereto. The Government of Maharashtra thought it fit to make law for the purpose of aforesaid and the said Ordinance promulgated on 04.10.1996 was replaced by an Act of State Legislature. In the definition section 2, 'land' is defined under clause (l) to include bed of sea or river below high water mark and things attached to the earth or permanently fastened to anything attached to earth. The word 'Wharfage' was defined under clause 2b of section 2 of Maharashtra Maritime Board Act, which reads as under:-

"A payment made for the use of a Wharf and its facilities".

13. The Board was established by the State Government to be known as Maharashtra Maritime Board as per section 3(1). Section 20 of the said Act provides that as from the appointed day in relation to any port, all property, assets and funds and all rights to levy rates vested in the State Government for the purposes of the port, immediately before such day, shall vest in the Board. Further, under section 25, the power of Board is to execute works and also to provide appliances. As per section 35(1), no person shall make, erect or fix within the limits of a port or port approaches any wharf, dock, quay, stage, jetty, pier, erection or mooring or undertakes any reclamation of foreshore within the said limits except with the previous permission in writing of the Board and subject to such terms and conditions, if any, as the Board may specify. Further, section 35(2) provides that if any such structure is made, erected or fixed, in contravention of sub-section (1), then the Board may ask the person to remove it, after notice.

14. Under Chapter VI of Maharashtra Maritime Board Act, Imposition and Recovery of Rates at Ports are prescribed. Under section 37 of the said Act, scales of rates for services performed by Board or other authorized persons in relation to port or port approaches is provided and clause (d) deals with wharfage, storage or demurrage of goods on any such place. There are other sections, under which the Board can prescribe scale of rates. However, as per section 41 of the said Act, prior sanction of State Government to prescribe rates and conditions is necessitated. The said section reads as under:-

> *"41. Every scale of rates and every statement of conditions framed by the Board under the foregoing provisions of this Chapter shall be submitted to the Government for sanction and shall have effect when so sanctioned and published by the Board in the Official Gazette."*

15. Under section 42 of the said Act, State Government is empowered that whenever it considers necessary in the public interest so to do, it may, by order in writing, direct the Board to cancel any of the scales in force or modify the same within such period as it may specify. Sub-section (3) to section 43 provides that when in pursuance of this section any of the scales has been cancelled or modified, such cancellation or modification shall be published by the Government in the Official Gazette and shall thereupon have effect accordingly.

16. Reading the provisions of the said Act, it becomes clear that the Maharashtra Maritime Board which is no doubt a creation of the Stature, but levies are as prescribed by the State Government, wherein the Board may prescribe charges, taxes, fees but the same have to be approved by the State Government. Section 41 of the said Act very clearly provides that every scale of rates and every statement of conditions framed by the Board under the provisions of Chapter shall be submitted to the Government for sanction and shall have effect when so sanctioned and published by the Board in the Official Gazette. The Government further has power in public interest by an order in writing to direct the Board to cancel any of the scales in force or modify them. In such scenario, the question which arises is whether Wharfage fees is akin to rent as described in section 194-I of the Act or is akin to duty or cess. The case of Revenue authorities is that it is rent and also it was held that where the assessee is State Authority it is not exempt under the provisions of section 196 of the Act and hence, assessee, payee was obliged to deduct tax at source. Undoubtedly the assessee is not exempt under section 196 of the Act. But the

question is whether Wharfage charges paid is rent as defined under section 194-I of the Act.

17. In order to adjudicate the issue, let us look at the levy in the present case. The levy of Wharfage to be paid by assessee is prescribed under the State Act. As mentioned earlier, even the scale of rates are approved by the State Government though the fees / charges are collected by the Board constituted for the purpose. Such a levy is due to the State Government to be paid by the assessee and obligation was on the assessee to pay such charges. Such a charge by the State Government through Board is State levy, which is compulsorily to be borne by the assessee and in such circumstances, it is at best cess levied by the State Government through Board.

18. The case of Revenue on the other hand, is, that it is 'rent' as described in section 194-I of the Act. It may be pointed out at the outset that in order to establish its case of rent, the first and foremost step which needs to be covered is whether there is a contract between the parties for the payment of rent. In order to understanding the meaning of 'rent', we need to look at the Explanation (i) under section 194-I of the Act. The term 'rent' is defined as payment under any lease, sub-lease, tenancy or any other agreement or arrangement, for the use of land or building, land appurtenant to building, etc. If we look at the said section and Explanation thereunder defining term 'rent' under the said section, then it talks of a contract between two parties, under which the amount is payable to the account of payee. The understanding has to be first between the parties i.e. in the form of some kind of contract or agreement or arrangement in lieu of which charges are paid or credited to the account of

payee and it is the obligation of payer to deduct tax at source out of such payments. However, if we look at the nature of charges paid, it is levy imposed by State Government through Board.

19. Further, the case of Revenue is that 'land' includes water and since Wharfage charges are paid for utilizing water space, the assessee was obliged to deduct tax out of such payments. The CIT(A) has held that where the assessee was paying charges for use of waterfront, then again there was obligation on the assessee to deduct tax at source. But the main issue which has escaped the attention of both the lower authorities is that the Board do not own water or the waterfront. The waterfront belongs to the State. The Board has levied certain charges which have to be statutorily paid by the assessee as is clear from the terms of the Act and any discharge of this obligation which is payment under the Act of State, such a levy cannot be said to be a contractual levy. The charge which the assessee was obliged to pay was the rate fixed by Board which in turn, was State entity and the Board prescribes the rates as per regulations and the approvals of the State. Even the receipt of Wharfage charges paid mentions the charge in respect of merchant vehicle for certain M.T. (weight) and not for occupation of space for particular period or time. The copy of receipt is placed at page 48 of Paper Book and the narration is 'charges in respect of MV Neelam' on account of shipping for 67250 MT Bauxite @ ₹ 22.50 per M.T. Similar is the narration on other receipts filed by assessee in respect of Wharfage charges. In such scenario, it cannot be said that levy is for use of water and land includes water. Water is State subject and the Board does not own water and hence, is in no position to lease, sub-lease or create any tenancy or any other arrangement for use of said water.

20. The Hon'ble Bombay High Court in CIT Vs. Maharashtra State Electricity Distribution Co. Ltd. (supra) while deciding the issue of deduction of tax at source on account of rent in respect of wheeling and transmission charges paid i.e. charge for permitting use of State transmission utility held that the same could not be equated to 'rent' or 'fees for technical services'. The Hon'ble High Court while interpreting expression 'rent' and the applicability of section 194-I of the Act observed that the meaning of 'rent' must be understood in the context in which it is used and it was not possible to equate wheeling and transmission charges payable with rent. It was explained that expression 'transmission charges and / or wheeling charges' entail the distribution of electricity in the area of Corporation and such charges could not be subjected to provisions of section 194-I of the Act. While deciding the issue, reference was made to the decision of the Hon'ble Delhi High Court in United Airlines Vs. CIT (supra), which has been relied upon by the learned Departmental Representative for the Revenue before us. Then it went on to rely on the decision of the Hon'ble High Court of Madras in CIT Vs. Singapore Airlines Ltd. (supra) and differing from the view of the Hon'ble Delhi High Court in United Airlines Vs. CIT (supra), accepted the view taken by the Hon'ble High Court of Madras in CIT Vs. Singapore Airlines Ltd. (supra). It was observed that right from the moment a flight is permitted to land at a particular airport, a process is set into motion, to guide the aircraft to the runaway, for successful landing and after the aircraft had come to a halt it is led to a parking space allotted to it once again with the navigational help. It is only thereafter that the aircraft is said to be parked till it resumes it flight. The Hon'ble High Court referred to arguments of senior Counsel and an example was drawn to use of a toll road (instead of highway) and it was mentioned that if use of a toll road could be characterized as use of

land, it would be an extreme view if it was held that toll to be paid for use of a toll road would be subject to deduction of tax at source only, because it could also be characterized as rent for use of land. The Hon'ble High Court then referred to the decision of Hon'ble Supreme Court in the case of Japan Airlines Co. Ltd. Vs. CIT and CIT Vs. Singapore Airlines Ltd. (2015) 377 ITR 372 (SC), wherein the meaning of 'rent' was explained to be understood in the context of which they are used. It was then observed by the Hon'ble High Court that the methodology for determining transmission tariff could not be determined in a mechanical manner as if the charge was only for the use of State transmission utility. It was thus, held that there was no merit in the case of Revenue that wheeling and transmission charges assume the character of 'rent'.

21. Drawing strength from the said decision of the Hon'ble Bombay High Court, where the movement of ships in water also involves navigation and, in order to facilitate movement of goods and for which purpose, ships are brought near the waterfront, then such movement of ships cannot be said to be use of water and charges paid for use of water which includes land underneath, in the nature of rent. We hold that Wharfage charges paid by the assessee which are charged on the basis of weight of the ship and not in a mechanical manner, cannot be equated to be a charge for 'rent' for use of water.

22. The Hon'ble Supreme Court in the case of Japan Airlines Co. Ltd. Vs. CIT and CIT Vs. Singapore Airlines Ltd. (supra) had also referred to the definition of 'rent' and whether the assessee airlines which was landing and paying parking charges to the Airport Authority of India for facility at an airport can be held to be to have paid the amount for simple use of land and hence,

liable for deduction of tax at source. It was held that payment was for services and facilities in connection with aircraft operations at the airport in accordance with international protocols and the Airport Authority was providing these facilities for landing and takeoff of aircrafts and in the whole process, use of land was incidental. On the contrary, where the protocol prescribe detailed methodology for fixing these charges, the charges were not for use of land perse and therefore, could not be treated as 'rent' within meaning of section 194-I of the Act.

23. Applying the said ratio to the facts of present case, in view of the dictate of the Apex Court, we hold that Wharfage charges paid by assessee are charges which facilitate the loading / unloading of goods at waterfront and for providing facilities, Wharfage charges are charged from the assessee and in such case, we hold that there is no use of land but even if it was held that there is any use of land, then the same was incidental but such payments could not be treated as 'rent' and the assessee be liable to deduct tax at source under section 194-I of the Act. The Wharfage charges paid by assessee are to be allowed as deduction under section 37(1) of the Act. The ground of appeal No.2.2 raised by assessee is thus, allowed.

24. The grounds of appeal No.1 and 2.1 are general in nature and do not require any adjudication. The ground of appeal No.2.2 is allowed. The grounds of appeal No.2.3 and 2.4 are not pressed. The ground of appeal No.3.1 is argumentative in nature and ground of appeal No.3.2 and 3.3 are general and does not need any deliberation.

25. The ground of appeal No.3.4 and ground of appeal No.4.1 to 4.3 are issues raised against the non allowance of foreign travel and salary expenses of employees of sister concern deputed to assessee. The assessee claimed that it was reimbursement of expenses of employees of flagship company deputed to it. The Assessing Officer asked the assessee to furnish various details of their employment and appointment, etc. and in the absence of the same, disallowed salary of ₹ 60,47,844/- and traveling expenses of ₹ 9,88,234/- of said persons. The CIT(A) upheld the order of Assessing Officer.

26. The assessee is in appeal against the order of CIT(A).

27. On hearing both the parties and on perusal of record, we find that the assessee had claimed expenditure on account of salary expenditure of employees of sister concern, who were deputed to the assessee in order to facilitate it in carrying on its business and also on account of travel expenses of such employees. The flagship company of the group was M/s. Chowgule Ports & Infrastructure Pvt. Ltd. and Chowgule Steamships Ltd. The assessee claimed that it was not having full-fledged enhanced administration and marketing set up, for which staff of group companies were deputed as and when there was requirement. Since the staff so deputed actually works on the task relating to assessee's business, remuneration payable to such employees was reimbursed by the assessee and expenditure so incurred was booked and was for the purpose of carrying on the business of assessee company. In this regard, the assessee had also furnished Resolution passed by Chowgule group for deputation of two main persons, who were also taking care of the bank operations of assessee company. The said Resolution is placed on record. The expenditure thus, being incurred for legitimate and genuine business

needs of assessee company and for smooth flow of carrying on the business is to be allowed as expenditure in the hands of assessee under section 37(1) of the Act. Accordingly, we hold so and direct the Assessing Officer to allow the said expenditure in the hands of assessee on account of reimbursement of salary of such employees, who were deputed to the assessee company during the year. Further, certain foreign travel expenses were incurred by the said employees to explore the new business opportunities and also to see port facilities made available for efficient operations. Necessary confirmation in this regard was filed before the authorities below, which has been brushed aside. We find no merit in the disallowance made by authorities below and direct the Assessing Officer to allow foreign travel expenses of Mr. M.P. Patwardhan and Mr. Atul Kulkarni. Thus, ground of appeal No.3.4 and grounds of appeal No.4.1 to 4.3 are thus, allowed.

28. Now, coming to the next issue i.e. vide ground of appeal No.5.1 against disallowance made under section 40A(3) of the Act; certain expenses were incurred in cash totaling ₹ 1,80,361/-. The Assessing Officer was of the view that the said expenditure is not to be allowed in the hands of assessee, in view of provisions of section 40A(3) of the Act. The plea of assessee that expenditure was incurred at remote areas and because of business exigencies was not accepted. We find no merit in the orders of authorities below in this regard. In view of provisions of Rule 6DD(k) r.w.s. 40A(3) of the Act, in case of expenditure being incurred at remote areas, the same merits to be allowed in the hands of assessee. We are deciding this issue in favour of assessee because of smallness of the quantum involved. The ground of appeal No.5.1 raised by assessee is thus, allowed. The grounds of appeal raised by assessee are thus, partly allowed.

29. Now, let us take up the appeal for assessment year 2010-11. The issue in ground of appeal No.1 is against disallowance made of ₹ 29,01,450/- on account of non deduction of tax at source out of Wharfage charges paid to Maharashtra Maritime Board. We have already decided this issue in assessment year 2009-10 vide ground of appeal No.2.2 and following the same parity of reasoning, we allow the claim of assessee.

30. The ground of appeal No.2 raised by assessee is not pressed and hence the same is dismissed.

31. The issue in ground of appeal No.3 raised by assessee needs no adjudication as it was an alternate plea which was allowed by the CIT(A) as per para 7 of the appellate order. Similarly, the issue in ground of appeal No.4 is against repair of road which has been adjudicated by the CIT(A) vide para 9 and alternate plea was allowed and this ground of appeal does not need any adjudication.

32. Now, coming to the issue raised vide ground of appeal No.5, which is against disallowance made under section 40A(3) of the Act. Similar issue has been decided by us in assessment year 2009-10 and following the same parity of reasoning, we allow this claim of assessee.

33. The last issue vide grounds of appeal No.6 and 7 is against salary expenses and travel expenses of employees deputed to the assessee by flagship company, which claim has also been allowed by us in the paras hereinabove. Following the same parity of reasoning as in assessment year 2009-10, we allow this claim of assessee also. The grounds of appeal No.6

and 7 are thus, allowed. The grounds of appeal raised by assessee are thus, partly allowed.

34. In the result, both the appeals of assessee are partly allowed.

Order pronounced on this 22nd day of April, 2019.

Sd/-	**Sd/-**
(D.KARUNAKARA RAO)	**(SUSHMA CHOWLA)**
लेखा सदस्य / ACCOUNTANT MEMBER	**न्यायिक सदस्य / JUDICIAL MEMBER**

पुणे / Pune; दिनांक Dated : 22nd April, 2019.
GCVSR

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to :

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. आयकर आयुक्त(अपील) / The CIT(A), Kolhapur;
4. The CIT-I/II, Kolhapur / CIT (Central), Pune;
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "ए" / DR 'A', ITAT, Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune