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

INCOME TAX APPEAL NO. 1576 OF 2013

Commissioner of Income Tax-4 … Appellant
v/s
M/s.Prime Broking Co. (I) Ltd. … Respondent

Mr.A.R. Malhotra along with N.A. Kazi i/by Padma Divakar for the appellant.

Mr.Atul Jasani i/by S.G. Dalal for the respondent.

CORAM: M.S. SANKLECHA &
N. M. JAMDAR, JJ.

DATED : 9TH JUNE, 2015

P.C.:

This appeal filed by the Revenue under Section 260-A of the Income Tax Act, 1961 (the Act) challenges the order dated 14 November 2012 passed by the Income Tax Appellate Tribunal (the Tribunal). The impugned order pertains to Assessment Year 2008-09.

2 The appellant has formulated the following questions of law for our consideration:

"Whether on the facts and in the circumstances of the case and in law the Income Tax Appellate Tribunal was justified in deleting the disallowance of Rs.51,91,209/- made under Section 40(a)(ia) of the Act, despite the fact that alleged rent payment was made without deduction of TDS, and hence was clearly disallowable as per Section 40(a)(ia) of Income Tax Act, 1961 ?

3 During the course of assessment proceedings for the subject assessment year, the Assessing Officer found that the assessee had paid Rs.51.91 lacs towards the use of infrastructure to its holding company M/s.Prime Securities Ltd. However, no tax at source has been deducted on the above mentioned payment. The respondent assessee was called upon to explain why the amount of Rs.51.91 lacs should not be disallowed under Section 40(a)(ia) of the Act. The respondent assessee pointed out that the premises occupied by them has been taken on rent by its holding company M/s. Prime Securities Ltd. It was its holding company which paid rent to the landlord of the premises and the respondent assessee merely reimbursed the rent to its holding company. The assessee contended that such reimbursement of expenses does not result in any income, thus not liable to any deduction of tax at source. However, the Assessing Officer did not accept the respondent assessee's contention and by an assessment order dated 2 November 2011 disallowed the entire payment of Rs.51.91 lacs under Section 40 (a)(ia) of the Act.

4 On appeal, the Commissioner of Income Tax (Appeals) allowed the respondent assessee's appeal. It rendered a finding of fact that the payment made by the respondent assessee to its holding company was only in the nature of reimbursement of its

expenditure and not payment of rent. In support, the Commissioner of Income Tax (Appeals) placed reliance upon the decision of this Court in ***C.I.T. v/s Siemens Aktiongesellschaft***, reported in ***310 ITR 320,*** to hold that, in case of reimbursement of expenditure no income arises in the hands of the recipient.

5 Being aggrieved, the revenue carried the issue in appeal in Tribunal. The Tribunal, by the impugned order also held that the payment made by the respondent assessee to its holding company is only reimbursement of expenditure. Further reliance was placed upon the decision of this Court in the case of ***Siemens*** (supra) to conclude that no tax at source is deductible while making reimbursement of expenses as the same does not have any income element.

6 The grievance of the revenue is that the amount of Rs.51.91 lacs is in the nature of rent and therefore in the absence of tax being deducted at source would be hit by Section 40(a)(ia) of the Act.

7 We find that the Commissioner of Income Tax (Appeals) as well as the Tribunal has reached a concurrent finding of fact that the payment made by the respondent assessee to its holding company of Rs.51.91 lacs is not rent but is merely a reimbursement of expenses. Consequently, the occasion to apply Section 195 of the Act does not arise. This concurrent finding of fact is not shown to be perverse. Thus, no substantial question of law arises for our

consideration and the appeal seeks to challenge concurrent findings of fact.

8 Accordingly, the appeal stands dismissed. No order as to costs.

(N. M. JAMDAR, J.) ***(M.S. SANKLECHA, J.)***