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

INCOME TAX APPEAL NO. 2466 OF 2013

Commissioner of Income Tax
(Large Tax Payer Unit) ..Appellant

Vs.

M/s Sonata Information Technology Ltd. ..Respondent

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Mr. A.R. Malhotra a/w Mr. N.A. Kazi, Advocates for Appellant.
Mr. Percy Pardiwalla, Sr. Advocate i/b A.K. Jasani for Respondent.

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CORAM : M.S. SANKLECHA &
G.S. KULKARNI, JJ.
DATED : 27th JANUARY 2015

P.C.:

1. This appeal by the Revenue under Section 260A of the Income Tax Act, 1961 (the 'Act') challenges the order dated 7th February 2012 passed by the Income Tax Appeal Tribunal ('Tribunal') on a Miscellaneous Application for rectification of the order dated 7th September 2012. The application for rectification filed by the respondent-assessee was partly allowed by the impugned order rectifying the order dated 7th September 2010.

2. This appeal relates to the Assessment Year 2008-09.

3. Following question of law has been formulated by Revenue for our consideration:

> *"Whether on the facts and circumstances of the case and in law, the Tribunal is right in directing the AO to examine whether the principles laid down by the Hon'ble Bombay High Court in the case of CIT Vs. Kotak Securities Ltd., 340 ITR 333, wherein the Hon'ble High Court took the view that due to the bonafide belief if a person does not deduct the tax while making payment, then there can be no disallowance under Section 40(a)(ia) of the Act and this aspect should be considered by the AO?"*

4. The respondent-assessee had purchased software from the person who are resident of India. However, as the respondent asseessee failed to deduct the tax at source, the entire consideration of Rs.199.71 crores paid for purchase of software was disallowed under Section 40(a)(ia) of the Act.

5. In appeal, the Commissioner of Income Tax (Appeals) upheld disallowance under Section 40(a)(ia) of the Act made by the Assessing Officer.

6. On further appeal by the respondent-assessee, the Tribunal by orders dated 7th September 2012 read with the impugned order dated 7th

February 2014 after recording the respondent assessee's submission that tax has not been deducted at source in respect of purchase of software in view of its bonafide behalf that the same is not deductible. This non deduction of tax was on the basis of the decision of the tribunal and High Courts. It was submitted by the respondent-assessee that the decision of this Court in CIT Vs. Kotak Securities Ltd. 340 ITR 333 would apply to the present facts and the amount of expenditure should not be disallowed. The Tribunal by the impugned order has merely restored the issue to the Assessing Officer to examine whether the principles laid down by this Court in Kotak Securities Ltd. (supra) would apply to the present facts.

7. The Revenue's grievance is that in the present facts, the decision of this Court in Kotak Securities Ltd. (supra) would not be applicable. This on the basis that in Kotak Securities Ltd. (supra) both the revenue and the assessee were under a bonafide belief that no tax was not required to be deducted at source on payment of consideration for purchase of software. The distinction which is sought to be made by the Revenue would be an issue to be examined by Assessing Officer and if it so exists deny the benefit. The impugned order has merely restored the issue to the Assessing Officer to consider afresh whether in the fact of the

present case, the decision of this Court in Kotak Securities Ltd. (supra) is at all applicable. In view of the above, we find that no substantial question of law arises for consideration by this Court.

8. Accordingly **appeal** is **dismissed** with no order as to costs.

[G.S. KULKARNI, J] **[M.S. SANKLECHA, J.]**

S.S.DESHPANDE