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

INCOME TAX APPEAL NO. 520 OF 2014

Commissioner of Income Tax-17 .. Appellant
Mumbai
v/s.

Altaf I. Motorwala .. Respondent

Mr. Ashok Kotangle a/w Ms. Padma Divakar for the appellant
None for the respondent

CORAM : M.S. SANKLECHA &
S.C. GUPTE, J.J.
DATED : 20th SEPTEMBER, 2016.

P.C.

1. This Appeal under Section 260-A of the Income Tax Act, 1961 (the Act) challenges the order dated 26th August, 2013 passed by the Income Tax Appellate Tribunal (the Tribunal). The impugned order is in respect of Assessment Year 2009-10.

2. Mr. Kotangle, learned Counsel for the Revenue urges the following re-framed questions of law for our consideration :-

Whether on the facts and circumstances of the case and in law, the Tribunal was justified in holding that the reimbursement expenditure is not liable to the TDS u/s 194C of the Income Tax Act, 1961?

3. The respondent assessee is engaged in the business of export of garments. During the course of the assessment, the Assessing Officer noticed that respondent assessee had debited an amount of Rs.63.48 lakhs being comprised of Rs.61.72 lakhs on account of freight and Rs.1.75 lakhs on account of clearing and forwarding charges on which tax was not deducted. Thus, called upon the respondent assessee to show cause why the expenditure should not be disallowed. The respondent assessee reported that no tax on the amount of Rs.61.72 lakhs being freight charges was deducted as it was only a reimbursement to its agent of the amount paid on freight. This, was evidenced by two separate bills being raised by the agent, one for reimbursement and other for services rendered. This was not accepted by the Assessing Officer and he disallowed the entire expenditure of Rs.63.48 lakhs and added it to the respondent assessee's income.

4. Being aggrieved, the respondent assessee carried the issue in appeal to the Commissioner of Income Tax (Appeals) [CIT(A)]. The CIT(A), on facts found that the sample bills of the airlines in respect of which the reimbursement was made indicated the name of the respondent assessee as the person responsible for payment. The aforesaid amount billed to the respondent assessee was paid by its

agent to the Airlines as freight and now reimbursed by the respondent assessee to its agent. The service charges of the agent for clearing and forwarding were separately billed and paid for by the respondent assessee. The CIT(A) also held that the amount of Rs.61.72 lakhs was paid on account of reimbursement and would not be hit by CBDT Circular No. 715 dated 8th August, 1995 as the payment is supported by separate invoice from the Airlines in its name. This was so as the Circular contemplated cases where there was one gross amount charged by the person rendering services and part thereof could be attributable to the reimbursement of expenses. Thus, the CIT(A) allowed the respondent assessee's appeal by order dated 10th April, 2012 to the extent of Rs.61.72 lakhs being reimbursement of freight expenses.

5. Being aggrieved, the Revenue carried the issue in appeal to the Tribunal. The Tribunal by the impugned order placed reliance upon the decisions of its co-ordinate benches where it has been held that where the bill for reimbursement is separately raised and not a part of the composite bill for services rendered, no disallowance for failure to deduct tax can arise. Thus, the impugned order upheld the order of the CIT(A) and dismissed the Revenue's appeal.

6. The grievance of the Revenue before us is that the reimbursement expenditure would also be covered by payments made under Section 194C of the Act. A bare reading of Section 194C of the Act would indicate that it does not cover reimbursement of expenditure incurred separately not as a part of the consideration for the work done by the agent / contractor. Further the view taken by the CIT(A) as well as by the impugned order of the Tribunal on facts that the payments made to the agent for the freight paid by it on the respondent assessee's behalf was in fact, reimbursement of expenses. This is so evidenced by Airlines bills which show the respondent assessee as the person responsible to make the payment. This finding of fact by two Authorities is not shown to be perverse.

7. In the above view, the question as proposed does not give rise to any substantial question of law. Hence, not entertained.

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

(S.C. GUPTE, J.) **(M.S. SANKLECHA, J.)**