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

INCOME TAX APPEAL NO. 968 OF 2014

Commissioner of Income Tax-1,
Mumbai .. Appellant

v/s.

IDFC Investment Advisors Ltd. .. Respondent

Mr. Suresh Kumar a/w Ms. Samiksha Kanani for the appellant
Mr. Nitesh Joshi a/w Mr. Atul Jasani for the respondent

CORAM : M.S. SANKLECHA &
S.C. GUPTE, J.J.

DATED : 25th OCTOBER, 2016.

P.C.

1. This Appeal under Section 260-A of the Income Tax Act, 1961 (the Act) challenges the order dated 6th September, 2013 passed by the Income Tax Appellate Tribunal (the Tribunal). The impugned order is in respect of Assessment Year 2008-09.

2. The Revenue urges only the following question of law for our consideration :-

(i) Whether on the facts and in the circumstances of the case and in law, the Tribunal erred in deleting the disallowance made u/s 40(a)(ia) of the Act for non deduction of TDS on so

claimed reimbursement of expenses when in fact the payments were routed through associate company with the object of circumventing the provisions relating to tax deduction at source?

3. The respondent assessee, during the subject assessment year paid a sum of Rs.4.59 crores to its holding company M/s. IDFC Ltd. on account of reimbursement of expenses. During the assessment proceedings, the Assessing Officer disallowed the entire amount of Rs.4.59 crores paid to its holding company as reimbursement of various expenses on account of its failure to deduct tax at source. This disallowance was made by the Assessing Officer in terms of Section 40(a)(ia) of the Act.

4. On appeal, the Commissioner of Income Tax (Appeals) [CIT(A)] partly allowed the respondent assessee's appeal, restricting the disallowance to Rs.3.40 crores under Section 40(a)(ia) of the Act. This after holding that the amount of Rs.1.19 cores has already been disallowed by the Assessing Officer as prior period expenses. Therefore, it could not again be subject of disallowance.

5. Being aggrieved, the respondent assessee carried the issue in

appeal to the Tribunal. The impugned order of the Tribunal records the fact that it is not disputed by the Assessing Officer or by the CIT (A) or by the learned DR appearing for the Revenue before it that the amount paid by the respondent assessee to its holding company was towards reimbursement of expenses incurred by the holding company. In the above view, the Tribunal allowed the appeal of the respondent assessee holding that there is no requirement of deducting TDS in case of reimbursement of expenses. This was by following the decision of this Court in ***Commissioner of Income Tax Vs. Siemens AG, 310 ITR 320*** as well as the decision of its co-ordinate bench in ***Stratcap Securities (I) Pvt. Ltd. Vs. ACIT, ITR 7048/Mum/2008***.

6. The grievance of the Revenue before us is that the amount paid to the holding company is not reimbursement of expenses. However, the submission is bald. It is not supported by any evidence.

7. We find that the impugned order of the Tribunal records the fact that the Assessing Officer as well as the CIT(A) have not disputed the position that the amount paid to the holding company by the respondent assessee was towards reimbursement of expenses. At the hearing before us also the Revenue has not shown any submission to

the contrary being made before the Tribunal or any observation in the orders of the Assessing Officer and / or the CIT(A) to the contrary.

8. In the above view, on facts, it is an undisputed position that the amount paid to the holding company was towards the reimbursement of expenses. It is also not disputed by Mr. Suresh Kumar that it is settled position in law in view of the decision of this Court in Siemens AG (supra) that a party is not obliged to deduct tax at source on reimbursement of expenses.

9. Therefore, question as raised does not give rise to any substantial question of law. Thus, not entertained.

10. The appeal is dismissed. No order as to costs.

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