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

INCOME TAX APPEAL NO. 1312 OF 2014
WITH
INCOME TAX APPEAL NO. 1313 OF 2014

The Commissioner of Income Tax(TDS),
Pune .. Appellant
v/s.

M/s. UB Engineering Ltd. .. Respondent

Mr. Tejveer Singh for the appellant
Mr. Madhur Agarwal i/b Atul Jasani for the respondent

CORAM : M.S. SANKLECHA &
A.K. MENON, J.J.

DATED : 23rd JANUARY, 2017.

P.C.

1. These two appeals relate to Assessment Years 2008-09 and 2009-10. In both the appeals, the appellant Revenue has indicated that the tax effect involved in each of them is less than Rs.20 lakhs. In the above view, on the last date, we asked Mr. Tejveer Singh whether both the appeals would stand covered by the CBDT Circular No.21 of 2015 dated 10th December, 2015 which require the Revenue to withdraw the appeals. Time was sought.

2. Today, Mr. Tejveer Singh, learned Counsel appearing for the

Revenue files an affidavit dated 13th January, 2017 of Mr. Rajesh Gawali, Deputy Commissioner of Income Tax (TDS) stating that the tax effect involved in the appeal for A.Y. 2008-09 is Rs.16.85 lakhs and for A.Y. 2009-10 it is Rs.55.55 lakhs. Thus, we find both the appeals stand covered by para 5 of the above Circular No.21 of 2015 of CBDT and the appeals would be maintainable. In view of the above, both the appeals are taken up for consideration.

3. Both these appeals under Section 260A of the Income Tax Act, 1961 (Act) challenge a common order dated 30th September, 2013 of the Income Tax Appellate Tribunal (Tribunal) relating to A.Y. 2008-09 and 2009-10.

4. The Revenue has urged the following question of law for our consideration :-

> *"Whether on the facts and in the circumstances of the case and in law, the Tribunal was correct in holding that the provisions of section 194-I are not applicable in respect of crane hire charges ?*

5. The impugned order of the Tribunal dismissed the Revenue's appeal before it holding that the payments made for hire of crane were contractual payments and, therefore, would be covered by Section

194C of the Act for the purposes of Tax Deduction at Source (TDS). The impugned order negatived the Revenue's contention that the TDS in respect of the hire charges of crane is to be done under Section 194I of the Act and not under Section 194C of the Act as done by the respondent assessee. The impugned order dismissed the Revenue's appeal before it by *inter alia* placing reliance upon the decision of the co-ordinate bench in the case of ***M/s. Wings Travels*** (ITA No.1136/PN/2009, dated 30th August, 2011).

6. In the affidavit dated 13th January, 2017, Mr. Rajesh Gawali, Deputy Commissioner of Income Tax (TDS) categorically states that the decision of the co-ordinate bench of the Tribunal in *M/s. Wings Travels* (supra) has been accepted by the Income Tax Department in view of an earlier view taken in the case of *M/s. Accenture Services (P) Ltd.* (ITAT No.5920, 5921 and 5922/Mum/2009). Neither does the affidavit nor Mr. Tejveer Singh, learned Counsel for the Revenue indicate any difference in the facts and / or in law in this case from the earlier cases which would warrant the Revenue filing these appeals.

7. In the above view, as the impugned order merely follows its view in *M/s. Wings Travels* (supra) which has been accepted by the Revenue,

no substantial question of law arises. Thus, not entertained.

8. Both the appeals are dismissed. No order as to costs.

(A.K. MENON, J.) **(M.S. SANKLECHA, J.)**