IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INCOME TAX APPEAL NO. 344 OF 2014

The Commissioner of Income Tax-8, Mumbai	}	**Appellant**
versus		
Royal Country Club India Pvt. Ltd.	}	**Respondent**

Mr. Arvind Pinto for the appellant.

Mr. Niraj Sheth with Mr. Atul K. Jasani for the respondent.

CORAM :- S. C. DHARMADHIKARI &
B. P. COLABAWALLA, JJ.
DATED :- MARCH 20, 2017

P.C. :-

1. The Revenue has challenged an order passed on 10th May, 2013 by the Mumbai Bench of the Income Tax Appellate Tribunal. The respondent assessee is a company and registered under the Indian Companies Act, 1956. It is Royal Country Club India Private Limited. The assessment year in question is 2007-08. In the return of income filed on 26th October, 2007, the assessee declared income as 'nil'. In the assessment order passed under section 143(3) of the Income Tax Act, 1961 on 30th December, 2009, two dis-allowances were made. The word dis-allowances caused a confusion. The assessing officer deleted the deduction to the tune of Rs.1,06,62,798/- claimed to be reimbursement of

expenses. One M/s. Prestige Holiday Resorts Pvt. Ltd. was reimbursed certain expenses as per agreement/contract with the respondent-assessee. That was disallowed on the understanding of the assessing officer of the provisions of section 40(a)(ia) of the Income Tax Act, 1961. There is certain other addition made. The matter was carried by the assessee in appeal before the Commissioner of Income Tax (Appeals).

2. The argument is that the assessee was carrying on business of buying and selling points based holiday timeshare. These points allow the buyers to enjoy flexible rights to occupy specific resort accommodation. Since the assessee company did not have marketing infrastructure in place, it had appointed M/s. Prestige Holiday Resorts Pvt. Ltd. as its marketing agent. The assesse had entered into an agreement with M/s. Prestige Holidays Resorts Pvt. Ltd., in terms of which, it was paying 25% commission on sale to M/s. Prestige Holidays Resorts Pvt. Ltd. The assessee also claimed to have reimbursed expenses to the above extent. That was incurred by M/s. Prestige Holidays Resorts Pvt. Ltd. on behalf of the assessee. This was in tune with the marketing arrangement/agreement between the two parties. The details of these expenses are set out at page 4 of the paper book. During the course of assessment, it was observed that the assessee had

deducted tax at source from the payments of commission made to M/s. Prestige Holidays Resorts Pvt. Ltd. It failed to deduct tax from the above mentioned expenses reimbursed to M/s. Prestige Holidays Resorts Pvt. Ltd. That is how addition was made by the assessing officer.

3. It is submitted by Mr. Pinto learned counsel appearing for the appellant that this addition made by the assessing officer was wrongfully deducted by the Commissioner (Appeals) and that order of the Commissioner is erroneously upheld by the tribunal. The tribunal has merely relied upon its earlier order and it is not clear whether it followed a ruling of this court in holding in favour of the assessee.

4. We are unable to agree with Mr. Pinto. The tribunal found that on all these admitted facts, the Commissioner/first appellate authority reversed the finding of the assessing officer and his consequential order by relying upon a judgment of this court in the case of *Siemens Aktiongesellschaft vs. Commissioner of Income Tax*[1] and a judgment of the tribunal in the case of *Linklaters LLP vs. Income Tax Officer*[2]. Before that, in the detailed order, the Commissioner noted the rival contentions and stand of the parties.

1 **(2009) 310 ITR 320**
2 **(2010) 134 TTJ 20**

5. Once such an approach has been taken by the first appellate authority, naturally, the tribunal found that the view taken by the first appellate authority accords with even the tribunal's view. The tribunal referred to its order in a case of a Holiday Club.

6. We do not think that merely because the tribunal did not make any reference and specifically to the two rulings/judgments of this court or the detailed finding in the Commissioner's order that it has committed any perversity or its order is vitiated by an error of law apparent on the face of the record. We do not think that the tribunal acted in any manner contrary to law.

7. The first question, therefore, is not a substantial question of law.

8. The sum involved in the second question of Rs.2,55,654/- constitutes an addition, which was made by the assessing officer in relation to retention money forfeited. This sum is too meager. We do not think that the quantum of this addition should, therefore, detain us. We will decide that question in more appropriate case when it would arise. The appeal is devoid of merits. It is dismissed. There would be no order as to costs.

(B.P.COLABAWALLA, J.) **(S.C.DHARMADHIKARI, J.)**