IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDITION

INCOME TAX APPEAL NO.422 OF 2015

Shree Vinayak Trading Company ... **Appellant**
V/s.
The Joint Commissioner of Income-Tax,
OSD 15(1), Mumbai ... **Respondent**

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Mr.Mandar M. Vaidya, Advocate for the Appellant.
Mr.Sham Walve, Advocate for the Respondent.

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CORAM : S.V.GANGAPURWALA & A.M.BADAR JJ.

DATED : 18th July 2017.

P.C.

1 Shri.Vaidya, the learned counsel for the appellant strenuously contends that the Tribunal and the Authorities have wrongly interpreted Section 40A(2) of the Income Tax Act. How the employees are to be paid is a prerogative of the Assessee/Employer. The payment of salary to the related employee has been accepted, which shows that these persons to whom commission is paid were the employees of the Assessee. Having arrived at a conclusion that these related persons were employees of the Assessee, the payment of commission ought to have been accepted. The Authorities below and the Tribunal were

not justified in disallowing the entire commission paid to the employees without any finding of unreasonable and/or excessive nature of expenditure. The Tribunal and the Authorities ought to have considered that the appellant has deducted TDS over the amount paid as commission to these persons that would substantiate that the said payment is a genuine payment.

2 Mr.Walve, the learned counsel for respondent supports the Order.

3 It has been observed by the Authorities that the commission is only paid to these three related employees and has not been paid to any other employees. No explanation in that regard could be offered by the Assessee. The Assessee has admitted about non payment of any commission by way of incentive to any unrelated employees. It also appears that commission was never paid in the earlier assessment year or subsequent year as has been observed by the Commissioner. The appreciation of evidence on the part of the Commissioner and the Tribunal is reasonable. The finding of fact is a plausible finding.

4 In light of that no substantial question of law arises. Appeal is dismissed. No costs.

(A.M.BADAR J.) **(S.V.GANGAPURWALA J.)**