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

INCOME TAX APPEAL NO.281 OF 2016

The Principal Commissioner of Income
Tax-4, Mumbai .... Appellant
Vs.
M/s. S.G. Asia Holdings (India) P. Ltd. .... Respondent

Mr. Ashok Kotangle with Mr. Bhushan Wankhede i/by
Ms Padma Divakar for the Appellant.
Mr. Arijit Chakravarty with Ms Shraddha Swarup &
Mr. Abhishek Tilak i/by Rajan Mishra for the Respondent.

CORAM: S.C. DHARMADHIKARI &
B.P. COLABAWALLA, JJ.

DATE : AUGUST 27, 2018

P.C:

1. By this appeal, the Revenue has challenged the order passed on 22-4-2015. That order was passed by the Income Tax Appellate Tribunal, Bench at Mumbai.

2. The Assessment Year is 2005-06.

3. The respondent/assessee received brokerage from its

parent company S.G. Paris. The assessee was directed to furnish certain details of this parent company and the rate of brokerage charged. The assessee intimated the activities of the parent company and was asked to establish that the parent company is involved in arbitrage activity and the rate charged is higher, which the assessee failed to do. Thereafter, if the figures of transaction charges, investor protection fund, stamp duty, etc., were to be excluded, then, pure brokerage that the assessee is charging is only 0.06%.

4. As the brokerage was charged at the lower rate, it was recalculated in view of Section 92 of the Income Tax Act, 1961 (for short, "the IT Act") and the parent company was held to be involved in directional trade and the brokerage is calculated at the rate that is prevalent in the market, that is 0.25 for cash market and 0.05 for futures. On account of this, addition of Rs.2,89,82,746/- was made.

5. Aggrieved by this assessment order of 27-12-2007, the assessee preferred an appeal to the First Appellate Authority

and he confirmed the addition.

6. Further aggrieved, the assessee approached the Tribunal and the order under appeal was delivered in favour of the assessee.

7. We have heard Mr. Kotangle, appearing on behalf of the appellant/Revenue and Mr. Chakravarty, appearing on behalf of the assessee.

8. With their assistance, we have perused the order under appeal. We have also perused the other annexures in the paper-book.

9. The two questions proposed as substantial questions of law are at pages 4 & 5.

10. However, in our opinion, no controversy as wide as is projected before us would arise simply because it is undisputed that there is a circular. It is undisputed that it gave certain instructions and in the event the transaction is an international transaction, then, all the relevant provisions of the

IT Act would be applicable. The instructions were issued by the Central Board of Direct Taxes (CBDT). The factual finding in this case is that, given the nature of the transaction, these instructions were applicable. If they were applicable, then, there ought to be some solid ground for ignoring a mandate flowing therefrom. The mandate is that the Assessing Officer should make a reference to the Transfer Pricing Officer. That is to make the transfer pricing adjustment. In this case, no such reference was made despite the facts warranting so. There is no acceptable or justifiable reason on record for refusing to abide by this condition in the CBDT circular. Once the circular goes unchallenged and binds the Revenue, then, in the absence of all this, the Tribunal held that the Assessing Officer's order cannot be sustained. He could not have proceeded to make the transfer pricing adjustment.

11. We do not see either any finding on ground 11, bearing the peculiar factual backdrop, to be vitiated in law or perverse. Further this is not a case of non-application of mind to relevant and germane tests or error of law apparent on the face of the record. In the circumstances, the two questions proposed

are not substantial questions of law. The Tribunal's possible view in the backdrop of these facts and circumstances cannot be interfered with. There is no merit in the appeal. It is dismissed but without any order as to costs.

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

Suresh Jagdish Sajnawat

Digitally signed by Suresh Jagdish Sajnawat
Date: 2018.08.30 12:32:06 +0530