R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

INCOME TAX APPEAL (IT) NO. 769 OF 2016

Commissioner of Income Tax (TDS)-1 .. Appellant

Versus

M/s. Larsen & Toubro Ltd .. Respondent

....

- Mr. Suresh Kumar for the Appellant
- Mr. Jehangir Mistri, Senior Counsel a/w Mr. Atul Jasani for the Respondent

....

CORAM : AKIL KURESHI &
M.S. SANKLECHA, JJ.

DATE : DECEMBER 4, 2018.

P.C.:

1. This appeal is filed by the Revenue to challenge the Judgment of the Income Tax Appellate Tribunal, Mumbai (“**the Tribunal”** for short) dated 4.6.2015. Following question is presented for our consideration:-

> “(i) Whether on the facts and in the circumstances of the case, the Tribunal was justified in allowing the appeal of the assessee on the basis of reasoning that no TDS was required to be deducted u/S. 194H of the I.T. Act from the payments of bank guarantee made to the bank? “

2. For the Assessment Year 2010-11, the return filed by the respondent – assessee was taken in scrutiny. The Assessing Officer noticed that the assessee had made payment of "bank guarantee commission" on which no tax was deducted at source. The Assessing Officer was of the opinion that this payment attracted the requirement of deducting tax at source in terms of Section 194H of the Income Tax Act, 1961 ("**the Act**" for short). He passed the order of assessment accordingly. The issue eventually reached the Tribunal. the Tribunal, by a brief impugned order, dismissed the Revenue's appeal following its own judgment in case of Kotak Securities Limited.

3. Learned counsel for the Revenue stated that the Revenue had filed an appeal against the judgment of the Tribunal in case of Kotak Securities Ltd but that the appeal was withdrawn on the ground of low tax effect. He has, however, made available a copy of the judgment of the Tribunal in the said case which contains a detail discussion on the issue at hand. In the said judgment, the Tribunal referred to Section 194H of the Act which requires an assessee responsible for paying any income by way of commission or brokerage to deduct tax at source. The Tribunal was of the opinion that the words "commission or brokerage" must take colour from each other. The Tribunal was of the opinion that the payment in question, though categorized as "bank guarantee commission" is not strictly speaking payment of commission since there is no principal to agent relationship between the payer and the payee. The Tribunal, therefore, held that the requirement of deducting tax at source emanating from Section 194H of the Act in the present case does not arise.

4. We are broadly in agreement with the view of the Tribunal. The so called bank guarantee commission is not in the nature of commission paid to an agent but it is in the nature of bank charges for providing one of the banking service. The requirement of Section 194H of the Act, therefore, would not arise. No question of law arises. The Income Tax Appeal is dismissed.

[M.S. SANKLECHA, J.] **[AKIL KURESHI, J]**