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

INCOME TAX APPEAL NO. 743 OF 2017

The Commissioner of Income Tax,
TDS-1, Mumbai .. Appellant

v/s.

M/s. Laqshya Media Pvt. Ltd. .. Respondent

Mr. P.C. Chhotaray for the appellant
Mr. S. Sriram i/b Sriram Sridharan for the respondent

CORAM : M.S. SANKLECHA &
NITIN JAMDAR, J.J.

DATED : 23rd SEPTEMBER, 2019

P.C.

1. This appeal under Section 260A of the Income Tax Act, 1961 (Act) challenges the order dated 27th May, 2016 passed by the Income Tax Appellate Tribunal (Tribunal). The appeal relates to Assessment Year 2010-11.

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

(a) Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in holding that no

TDS was deductible u/s 194H by the assessee company on payment of bank guarantee charges and thereby clearly ignoring the fact that for this service the bank is nothing but a constructive agent of the assessee company?

(b) Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in holding that the amounts paid by the respondent for acquisition of hoarding / display rights would not require TDS under Section 194I of the Act.

3. ***Regarding question (a)*** :- It is an agreed position between the parties that this issue stands concluded against the Revenue and in favour of the respondent Assessee by the decision of this Court in CIT Vs. L&T 2019, 260 Taxmann 271. In the above view, this question does not give rise to any substantial question of law. Thus, not entertained.

4. ***Regarding question (b)*** :- The appeal is admitted on the substantial question of law at (b) above. The appeal is taken up for final disposal. Both the parties are agreed that the impugned order of the Tribunal needs to be set aside and the appeal be restored to the Tribunal for fresh consideration. This for the reason that it has

not considered the submission of both sides, in reaching its conclusion.

5. We are in agreement with the reasons made for the joint request by the parties. We note that there is no clarity in the impugned order with regard to which of the consideration paid would be subject to TDS under Section 194I of the Act. The Assessing Officer's order seems to hold that Section 194I of the Act applies to the premium paid for the site of the hoarding while the Tribunal proceeds on the basis that the TDS is being sought on purchases made for putting up the hoardings.

6. In the above view, the impugned order is set aside to the above extent and the appeal is restored to the Tribunal for fresh consideration.

7. Appeal disposed of in above terms.

(NITIN JAMDAR, J.) **(M.S. SANKLECHA, J.)**