IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL No.789 of 2016

Principal Commissioner of Income-tax-27 ..Appellant.
Vs
Vijay S. Poojari ..Respondent.

Mr. N.C. Mohanty, Advocate for the Appellant.

Mr. S. Sriram a/with Mr. Mayank Thosar I/by B.V.Jhaveri for the Respondent.

CORAM : AKIL KURESHI &
B. P. COLABAWALLA, JJ.

DATED :- 8TH JANUARY, 2019.

P.C. :

1 Leave to amend. Re-verification dispensed with. Amendment to be carried out forthwith.

2 This appeal is filed by the Revenue against the judgment of the Income Tax Appellate Tribunal (“**the Tribunal”** for short) dated 24th July, 2015 raising following question for our consideration:-

> “Whether on the facts and in the circumstances of the case and in law the ITAT was justified in not upholding the disallowance of Rs.4,60,21,743/- under Section 40 (a) (ia) of the Income Tax Act,

> 1961 by holding that the assessee was not liable to deduct tax under Section 194C from the said expenses, as the assessee's turnover in the proceding year was less than the monetary limit prescribed under Section 44AB of the Act, without appreciating the finding of the Assessing Officer in the assessment order passed by him under section 143 (3) read with section 147 for such preceding year i.e. A.Y. 2006-07 wherein he has established that the assessee's turnover exceeds the prescribed limit under section 44AB of the Income Tax Act, 1961?"

3 Brief facts are as under :

The respondent is an individual. For Return of Income filed by the assessee for the Assessment Year 2007-08, the Assessing Officer objected to the assessee not having deducted tax at source on certain payments made during the period relevant to the said Assessment Year. The assessee raised two-fold contentions. Firstly, according to the assessee, the payments were in the nature of reimbursement of expenditure and, therefore, did not invite the requirement of deducting tax at source. Second contention of the assessee was that in any case the assessee's turn over did not exceed the threshold limit so as to subject the assessee to compulsory statutory audit under Section 44AB of the Income Tax Act, 1961 (**"the Act"** for short).

4 The Assessing Officer disregarded both the objections

and disallowed the expenditure by invoking Section 40 (a) (ia) of the Act.

5 The issue eventually raised by the Tribunal, therefore the Assessee had once again pressed both the grounds. The Tribunal however focused only on one of them namely that no requirement of statutory audit in case of the assessee. The Tribunal noted that the statutory provisions contained sub-Section 1 and 2 of Section 194 (c) of the Act prevailing at the relevant time excluded the individuals and Hindu Undivided Families from the requirement of deducting tax at source as long as their turnover did not exceed the limit for statutory audit. On facts, it has been held that assessee would have been qualified for exclusion clause and therefore the requirement of deducting tax at source could not be applied.

6 Having heard the learned Counsel for the parties and having perused the documents on record, we do not find any error in the view of the Tribunal. The finding of the Tribunal that the Assessee's turn over for the previous year did not exceed the statutory threshold is a finding of fact, not shown to be erroneous. The statutory provisions contained in Section 194 (c) of the Act applicable at the relevant time specifically excluded the requirement of deducting tax at source by the individual or HUF payees if during

the previous year their turnover did not exceed the limit requiring them to be subjected to compulsory audit. No question of law arises. The appeal is dismissed.

(B.P. COLABAWALLA, J.) **(AKIL KURESHI, J)**