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

INCOME TAX APPEAL NO.1382 OF 2016
WITH
INCOME TAX APPEAL NO.1392 OF 2016

Commissioner of Income Tax-TDS-2 … Appellant

V/s.

Nimbus Communications Ltd. … Respondent

Mr.Suresh Kumar for the Appellant.
Mr.Rahul Hakani for the Respondent.

CORAM : AKIL KURESHI AND
M.S.SANKLECHA, JJ.
DATE : JANUARY 18, 2019.

P.C.:-

1. Issues being identical, we may notice facts from Income Tax Appeal No.1382 of 2016.

2. Revenue has filed this appeal against the judgment of the Income Tax Appellate Tribunal dated 6th November, 2015 raising following questions for our consideration:

> "I. Whether on the facts and in the circumstances of the case and in law, the ITAT is correct in holding that the payment of Guarantee Commission paid by the Assessee to the Banks is not covered under

"Commission or brokerage' as defined u/s 194H of th Act and the Assessee was not liable to deduct Tax at source u/s 194H of the Act in respect of the amount?

II. Whether on the facts and in the circumstances of the case and in law, the ITAT is correct in not confirming the order of the AO treating the Assessee in default u/s 201(1) in respect of amount of tax which has not been deducted u/s 194H of the Act and levying interest u/s 201(1A) of the Act?"

III. Whether on the facts and in the circumstances of the case and in law, the ITAT is correct in holding that there does not exist Principal Agent relationship between the Assessee and the Banks and thereby clearly ignoring the fact that in the entire process of facilitation of Guarantee Banks are nothing but a constructive agent for the Assessee?"

IV. Whether on the facts and in the circumstances of the case and in law, the ITAT is correct in ignoring that the Section 194H of the Act gives an inclusive definition of "Commission or Brokerage" and has wide coverage to clearly include the payment of Guarantee Commission paid by the Assessee to the Banks?"

3. Learned counsel for the revenue fairly pointed out that the similar questions were considered by this Court in case of **Commissioner of Income Tax (TDS)-1 Vs. Larsen & Toubro Ltd.**[1] before dismissal of the revenue's appeal making following observations:

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1 (2019)101 taxmann.com 83(Bombay)

> “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 detailed 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.
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> 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.”

4. In the result, the tax appeals are dismissed.

(M.S.SANKLECHA,J.) **(AKIL KURESHI,J.)**