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

INCOME TAX APPEAL NO.1486 OF 2016

Pr.Commissioner of Income Tax-4 … Appellant

V/s.

M/s SHCIL Services Ltd. … Respondent

Mr.Suresh Kumar for the Appellant.
Mr.F.V.Irani with Mr.Atul Jasani for the Respondent.

CORAM : AKIL KURESHI AND
M.S.SANKLECHA, JJ.
DATE : FEBRUARY 05, 2019.

P.C.:-

1. Revenue has filed this appeal against the judgment of the Income Tax Appellate Tribunal. Following questions were pressed before us:-

> "1. Whether on the facts and in the circumstances of the case and in law, the ITAT erred in not accepting the fact that the payment made to M/s SHCIL Ltd., being a holding company of the assessee falls within the purview of section 194J of the Income Tax Act, 1961?
> 2. Whether on the facts and in the circumstances of the case and in law, the ITAT erred in holding that the sub-brokerage paid would fall under the provisions of section 194H and not under the provisions of section 194J, despite the holding

> company providing various "Professional or Technical Services" and the assessee not specifically availing any services exclusively pertaining to buying and selling of securities?"

2. The respondent-assessee is a 100% subsidiary of Stock Holding Corporation of India Limited and is engaged in the business of share broking and providing port-folio management services. For the assessment year 2011-12, the Assessing Officer noticed that the assessee had paid sub-brokerage of Rs.21.80 crores (rounded off) to Stock Holding Corporation of India Limited. He was of the opinion that on such payments the assessee ought to have deducted tax at source in terms of Section 194J of the Income Tax Act, 1961 ("the Act" for short). The assessee contended that such payment is covered under Section 194H of the Act, which contains a specific provision to this effect and that by virtue of the explanation to Section 194H, on payment of brokerage towards securities, no requirement of deducting tax at source would arise. The Assessing Officer did not accept such a contention.

3. The assessee carried the matter in appeal. Commissioner

(Appeals) accepted the assessee's contention, but invoked the provisions of Section 40A(2)(b) of the Act. He restricted sub-brokerage to 50% of the expenditure.

4. The revenue as well as the assessee filed appeals before the Tribunal. The Tribunal rejected the revenue's appeal and allowed the appeal of the assessee. In this appeal the revenue has confined its dispute to the question of deducting tax at source. In other words, the question of disallowance under Section 40A(2)(b) is not carried in appeal.

5. Section 194J pertains to deduction of tax at source on payment of fees for provisional and technical services. In comparison, Section 194H pertains to requirement of deduction of tax at source on payment of commission of brokerage. Relevant portion of Section 194H reads as under :-

> "Any person, not being an individual or a Hindu undivided family, who is responsible for paying, on or after the 1st day of June, 2001, to a resident, any income by way of commission (not being insurance commission referred to in section 194D) or brokerage, shall, at the time of credit of such income to the account of the payee or at the time of

payment of such income in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rate of [five] per cent:

....

Explanation.—For the purposes of this section,—

(*i*) "commission or brokerage" includes any payment received or receivable, directly or indirectly, by a person acting on behalf of another person for services rendered (not being professional services) or for any services in the course of buying or selling of goods or in relation to any transaction relating to any asset, valuable article or thing, not being securities;

6. In terms of this provision, therefore, any person responsible for paying to a resident any income by way of commission or brokerage would at the time of crediting such income to the account of the payee or at the time of payment of such income whichever is earlier, deduct income tax at the rate of five percent. Explanation (i) below the said provision defines the term "commission or brokerage", for the purpose of the said Section, as to include any payment received or receivable by a person acting on behalf of another person for services rendered or for any services in the course of buying and selling of goods or in relation to any transaction relating to any asset, valuable article or thing, **not being securities.** The Tribunal on the basis of these statutory

provisions correctly came to the conclusion that in view of specific provisions contained in Section 194H, the transaction would not come within the ambit of Section 194J and further that the above noted explanation makes a specific exclusion from the requirement of deducting tax at source in respect to payment of sub-brokerage. The CIT(A) and the Tribunal, therefore, correctly applied the statutory provisions and deleted the disallowance made by the Assessing Officer. No question of law arises. Income Tax Appeal is dismissed.

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

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