

R.M. AMBERKAR
(Private Secretary)

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

INCOME TAX APPEAL NO. 652 OF 2017

Pr. Commissioner of Income Tax - 1 .. Appellant

Versus

Goldman Sachs (India) Finance Pvt Ltd.. Respondent
(GSIFPL)

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• Mr. Suresh Kumar for the Appellant
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**CORAM : AKIL KURESHI &
S.J. KATHAWALLA, JJ.**

DATE : JUNE 6, 2019.

P.C.:

1. The Revenue is in the appeal against the judgment of the Income Tax Appellate Tribunal, Mumbai (“the Tribunal” for short) dated 11.5.2015.

2. The following questions are presented for our consideration:-

- (i) Whether the ITAT was justified in holding that the Assessing Officer formed a possible correct view and thereby cancelling the order u/S. 263 dated 18.2.2015 especially when the assessee had not furnished any facts as to how the time spent by employees was determined and whether the amount was actually spent by the recipient of reimbursement of expenses

amounting to Rs. 3,17,36,719/-?

- (ii) Whether the Tribunal was justified in holding on merits that there is no requirement to deduct tax at source on reimbursement of cost in the absence of documentary evidence that income element is not involved in the reimbursement of expenses?"

3. The appeal arises out of the judgment of the Tribunal holding that the Commissioner was not justified in enhancing revisional powers under Section 263 of the Income Tax Act, 1961 ("the Act" for short") and further holding that even otherwise disallowance under Section 40A of the Act was not justified since the assessee had made payments for reimbursement of the cost and therefore, requirement of deducting tax at source did not arise.

4. Learned counsel for the Revenue fairly brought to our notice that for earlier assessment years, this Court had by an order dated 26.2.2019, dismissed the Revenue's Income Tax Appeal No. 1742 of 2016 on the ground that the payment made for reimbursement of costs, deduction at source is not necessary. The Court observed as under:-

"3. The Tribunal, however, held that, the amount in question was by way of reimbursement of costs. The Tribunal held

that Assessee had paid such sums towards administrative costs such as the employee cost, rent, finance and legal corporate recharge etc. The Tribunal noted that, GSIPL had provided services to the assessee by deploying its employees for such work and the cost was for reimbursement for such expenses besides other related expenditure. Revenue was unable to dislodge these findings of fact recorded by the Tribunal. That being the position, we must proceed on the basis that the payment in question was in the nature of reimbursement of costs. As held by the Supreme Court in the case of ***Director of Income Tax v/s. A. P. Moller Maersk A. S.*** reported in ***78 taxmann.com 287*** and consistently followed by this Court in the number of decisions, liability to deduct tax at source in such a case, would not arise. No question of law arises."

5. In that view of the matter, it is not necessary to examine the correctness of the Tribunal in relation to the first question.

6. In the result, the Income Tax Appeal is dismissed.

[S.J. KATHAWALLA, J.]

[AKIL KURESHI, J]