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

INCOME TAX APPEAL NO.702 OF 2017

Pr. Commissioner of Income Tax - 8 … Appellant

Vs

M/s.Reliance Communications Infrastructure Ltd. … Respondent

Mr.Suresh Kumar for the Appellant

Mr.R.Murlidharan with Mr.B.G. Yewale I/b M/s.Rajesh Shah & Co. for the Respondent

CORAM: AKIL KURESHI &
S.J. KATHAWALLA, JJ.
DATED: JULY 22, 2019

P.C.:

1. This appeal is filed challenging the judgment of the Income Tax Appellate Tribunal dated 23.3.2016. The following questions are presented for our consideration :

i) Whether on the facts and circumstances of the case and in law the ITAT was justified in deleting the disallowance made by the AO of Rs.1,96,91,62,889/- under section. 40a(ia) of the Act, without appreciating the fact that the discount allowed by the assessee to the distributors in respect of starter packs and recharge coupons for its prepaid services amounted to payment by the assessee of commission or brokerage within the meaning of Section 194H of the Act as the distributors are acting as agents of the assessee?

ii) Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in confirming the CIT(A)'s decision wherein deleting the disallowance of Rs.8,65,06,770/- u/s. 14A read with Rule 8D relying on the decision of Bombay High Court in the case of Godrej and Boyce Manufacturing Co. Ltd. Vs. DCIT (328 ITR 81) which has been challenged by the revenue before the Hon'ble Supreme Court?

iii) Whether on the facts and in the circumstances of the case and in law, the Tribunal erred in deleting the disallowance of Rs.8,65,06,770/- u/s. 14A for the purpose of computing book profit u/s 115JB of the Act, ignoring the fact that the decision of disallowance has not been accepted by the department?

2. The respondent assessee is a company registered under the Companies Act. The issues arise in relation to the Assessment

Year 2007-2008. The first question pertains to disallowance under section 40a(i) of the Income Tax Act, 1961 (for short, 'the act') on the ground that according to the Assessing Officer, the assessee had deducted tax at source in terms of section 194H of the Act while making certain payments. The Tribunal in the impugned judgment allowed the assessee's appeal on two grounds. Firstly, that the order under section 201 of the Act was passed holding the assessment to be in default of deduction of tax at source. In appeal, the Commissioner had allowed the assessee's appeal against which the Revenue had not carried the issue further. Even on merits, the Tribunal was of the view that the payment was made on principal to principal basis and was not a payment of a principal to the agent.

3. 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 Tribunal, as noted, besides holding that the Commissioner's order setting aside the order passed u/s 201 was not carried in appeal, had also independently examined the nature of the transaction and come to the conclusion that when the transaction was between two persons on principal to principal basis, deduction of tax at source as per section 194H of the Act, would not be made since the payment was not for commission or brokerage.

4. Coming to second and third questions, the same emanates from the disallowance sought to be made by Revenue under section 14A of the Act. The Tribunal in the impugned judgement, came to the conclusion that the assessee had not earned any exempt income and there is, therefore, no question of disallowance under section 14A that would arise. The Tribunal had relied on the decision of the Delhi High Court in the case of **Cheminvest Ltd. vs. CIT, reported in 378 ITR 33 (Delhi).**

5. In view of such facts, we find no error in the view of the Tribunal. The decision of the Delhi High Court in the case of **Cheminvest (supra)** has been followed by this Court on numerous occasions.

6. In the result, no question of law arises. Income Tax Appeal is dismissed.

(S.J. KATHAWALLA, J.) **(AKIL KURESHI, J.)**