DDR

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INCOME TAX APPEAL NO.1272 OF 2017

Pr. Commissioner of Income Tax-4 ..Appellant
vs.
M/s. SHCIL Services Ltd. ..Respondent

…........

Mr. Suresh Kumar for appellant.
Mr. Atul K. Jasani for respondent.

…........

CORAM : NITIN JAMDAR &
M.S.KARNIK, JJ.

DATE : 6 JANUARY 2020

P.C.:-

Heard learned counsel for the parties.

2. This Appeal pertains to Assessment Year 2010-2011.

3. The Appellant has challenged the order passed by the Income Tax Appellate Tribunal in Income Tax Appeal No. 5743/ Mum/2014 & 6019/Mum/2014 (Assessment Year 2010-2011) dated 27/7/2016.

4. The Appellant-Revenue has framed questions as substantial questions of law :

> *"A. Whether on the facts and circumstances of the case and in law, the Hon'ble 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 ?

B. Whether on the facts and in the circumstances of the case and in law, the Hon'ble 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 & selling of securities ?

C. Whether on the facts and circumstances of the case and in law, the Hon'ble ITAT erred in allowing the total sub-brokerage amount of Rs.26,20,00,780/- u/s. 194H of the Income Tax Act, 1961 incurred by the assessee ?

D. Whether on the facts and circumstances of the case and in law, the Hon'ble ITAT erred in allowing the AO to rebut or examine the additional evidence in respect of 3 Sundry Creditors submitted under Rule 46A in order to meet the ends of natural justice and law ?"

5. So far as question Nos. 1, 2 and 3 are concerned, we note that the Tribunal in the impugned order has followed the decision in the assessee's appeals for the Assessment Year 2011-2012. Learned counsel for the parties have placed on record decision of this Court in Income Tax Appeal No. 1486 of 2016 in case of assessee's Appeals the Assessment Year 2011-2012. It is pointed

out that the Court has held that these questions, namely question Nos. 1, 2 and 3, do not give rise to any substantial question of law.

6. On the question No.4, it is the contention of the Appellant that the additional evidence of the three creditors produced by the Respondent – Assessee was taken into consideration by the Commissioner of Income Tax (Appeals) without giving an opportunity to the Assessing Officer to rebut the same. The Tribunal has dealt with this contention. The Tribunal has noted that the additional evidence was forwarded by Commissioner of Income Tax (Appeals) to the Assessing Officer for his comments and the Assessing Officer in his remand report did not comment on the additional evidence. The Tribunal, therefore, rightly held that there was no violation of Rule 46A of the Income Tax Rules and opportunity was given to the Assessing Officer.

7. Therefore, no question of law arises in this Appeal. The Appeal is accordingly dismissed.

(M.S.KARNIK, J.) **(NITIN JAMDAR, J.)**

Diksha Rane Digitally signed by Diksha Rane Date: 2020.01.09 16:21:12 +0530