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

INCOME TAX APPEAL NO. 647 OF 2017

Pr. Commissioner of Income Tax – 8 **...Appellant**

Versus

M/s. Rediff. Com India Ltd. **...Respondents**

Mr. Suresh Kumar for the Appellant.

Mr. Madhur Agrawal with Mr. Fenil Bhatt i/b. Kanga & Co. for the Respondent.

CORAM : K.R. SHRIRAM &
R.I. CHAGLA, JJ.

DATE : 29 SEPTEMBER, 2021.

(THROUGH VIDEO CONFERENCING)

ORDER :

1. This appeal has been filed impugning an order dated 13th April 2016 passed by the Income Tax Appellate Tribunal, Mumbai ("ITAT") on the ground that the ITAT erred in confirming the order passed by the Commissioner of Income Tax (Appeals) ("CIT (A"), wherein CIT (A) had deleted the disallowance made under Section 40a(ia) of the Income Tax Act, 1961 ("the said Act"), despite

the fact that assessee failed to deduct tax at source.

2. Respondent was engaged in business of providing internet access services to corporate clients and viewers of its website "Rediff.com". It was one of the leading internet destinations / portal. The Assessing Officer had added sum of Rs.6,32,79,350/- to the respondent's income by disallowing the deductions claimed holding, interalia, (a) the provision of expenses was on estimate basis, (b) for unascertained liabilities, (c) had nothing to do with actual expenditure, (d) expenses were not debited to account of a particular party and (e) no TDS had been deducted.

3. Against this order respondent preferred an appeal before CIT(A) and the CIT(A) after considering the facts of the case held that the respondent had satisfactorily explained that the provisions were made in respect of expenses actually incurred during the year but the bills / invoices of which remained to be received from the parties during the year. The CIT(A) held that in view of that position the Assessing Officer's findings does not appear to be correct that the provisions were made on estimate basis and the said provisions were not pertaining to expenditure actually incurred during the year itself.

CIT (A) opined that though the bills for all expenses were not received during the year but the purchases were made or the services were received during the year itself in respect of such expenses, these provisions represent the expenses pertaining the year under consideration. The CIT(A) held that the liability for such expense crystallized during the year itself though the quantam was not ascertained at the end of the year. The CIT (A) relying upon the decision of ***Bharat Earth Movers Vs. Commissioner of Income Tax***[1] and other decisions held that the expenses pertaining to such crystallized liability were required to be allowed as deduction. In the absence of actual invoices the provision was required to be made on estimate basis only. The CIT(A) also observed that the respondent had received bills for such provisions for expenses in subsequent year and deduction has not been claimed in the subsequent year. The CIT(A) has also held that since only a provision was made in respect of expenses pertaining to the year under consideration, the bills of which were not received during the year, there was no requirement of deduction of tax at source on such provision since neither the amount was credited in party account nor could be related to any party. The CIT(A) concluded that the respondent's claim for provision

1 2000 (245) ITR 428

of expenses was allowable as deduction since provision was pertaining to the liability crystallized during the year.

4. Appellant approached the ITAT being aggrieved by the order of the CIT(A). The ITAT has noted the factual position that as and when payments were made by respondent to third parties, TDS has been deducted has not been disputed by the revenue and it is nobody's case that any payment has been made subsequently without deduction of tax source. It is also observed that the admitted facts on record are, in the subsequent years, even excess amount of provisions has been written back and hence there is no loss to revenue. The ITAT refused to interfere.

5. We have considered the facts and circumstances of the case and the orders passed by CIT(A) as well as ITAT which is impugned in this appeal. In our view the CIT(A) was correct in deleting the disallowance made under Section 40a(ia) of the Act and the view of CIT (A) that respondent could not have deducted TDS on provisions made in respect of expenses pertaining to the year under consideration is correct. Moreover, it is not disputed that in subsequent years when actual payments were made TDS has been

deducted.

6. In our view, the Tribunal has not committed any perversity or applied incorrect principles to the given facts and when the facts and circumstances are properly analyzed and correct test is applied to decide the issue at hand, then, we do not think that question as pressed raises any substantial question of law.

7. The appeal is devoid of merits and it is dismissed with no order as to costs.

[R.I. CHAGLA J.] **[K.R. SHRIRAM, J.]**