

**IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH, MUMBAI
BEFORE SRI MAHAVIR SINGH, JM AND SRI G. MANJUNATHA, AM**

**ITA No. 5914/Mum/2016
(A.Y. 2012-13)**

The Asst. Commissioner of Income Tax,-4(2)(1), Room No. 642, 6 th Floor, Aayakar Bhavan, M.K. Road, Mumbai-400 020	Vs.	M/s Prime Broking Company (India) Ltd. 7 th Floor, Ashford Centre, Shankarrao Naram Marg, lower Parel, Mumbai-400 013
Appellant	..	Respondent
PAN No. AAACP3113C		

Revenue by : Saurabh Kumar Rai, DR

Assessee by : None

Date of hearing: 14-03-2018 **Date of pronouncement :** 16-03-2018

ORDER

PER MAHAVIR SINGH, JM:

This appeal by the Revenue is arising out of the order of Commissioner of Income Tax-9, Mumbai [in short CIT(A)], in appeal No. CIT(A)-9/Cir.4/821/2015-16 dated 27-07-2016. The Assessment was framed by the Deputy Commissioner of Income Tax, Circle-4(2)(1), Mumbai (in short 'DCIT) for the A.Y. 2012-13 vide order dated 26.03.2015 under section 143(3) of the Income Tax Act, 1961(hereinafter 'the Act').

2. The only issue in this appeal of Revenue is against the order of CIT(A) deleting the disallowance of expenses reimbursed by the AO for non-deduction of TDS by invoking the provisions of section 40(a)(ia) of the Act. For this Revenue has raised the following ground No.1: -



"On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the disallowance of Rs. 1,30,00,000/- on account of reimbursement of expenses made by the Assessing Officer without appreciating the fact that as per the provisions of section 40(a)(ia) of the I.T. Act, if the assessee fails to deduct TDS at prescribed rate, the assessee company is not allowed deduction of such expenditure."

3. At the outset, it is noticed from the order of CIT(A) that the identical disallowances on account of reimbursement of expense to prime securities limited for non-deduction of TDS by invoking the provisions of section 40(a)(ia) of the Act was made by revenue in AYs 2008-09 and 2009-10. The CIT(A) following the tribunal decision which was confirmed by Hon'ble Bombay High Court deleted the disallowance by observing in Para 6.3 as under: -.

"6.3 I have considered the facts of the case, assessment order passed by the AO and the submissions of the Appellant. From the above referred assessment order it is seen that the issue has already come up for adjudication before CIT(A) as well as ITAT in earlier years AY 2008-09 and 2009-10 which was decided in the favour of Appellant. My predecessor has also passed favorable order for similar disallowance confirmed for AY 2011-12. Further department had Filed an appeal before the Hon'ble Bombay High Court against the favorable order of ITAT on this issue for AY 2008-09.



Before me the appellant has placed the order of Bombay High Court dated 09.06.2015 (2015-TIOL-1472-HC-Mum-ITAT) wherein the issue has been decided in favour of the appellant. The relevant finding of the High Court is as under:

we find that the Commissioner of income tax Appeals as well as the Tribunal 11:15 reached a concurrent finding of fact that the payment made by the respondent assessee to its holding company of Rs. 51.91 lakhs is not rent but is merely a reimbursement of expenses. Consequently, the occasion to apply section 295 of the Act does not arise. This concurrent finding of fact is not shown to be perverse. Thus, no substantial question of law arises for our consideration and the appeal seeks to challenge concurrent findings of fact. Accordingly, the appeal stands dismissed.

In view of above, the issue is covered in favour of assessee. I therefore direct the AO to delete disallowance of reimbursement of expenses to M/s Prime Securities Limited amounting to Rs. 1,30,00,000/-.

In the result, this ground of appeal is Allowed."

4. When this was pointed out to the learned Sr. Departmental Representative, he fairly conceded the position. After hearing the learned Sr. Departmental Representative and going through the facts of the case, we find that this issue is squarely covered in favour of assessee by the decision of



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Hon'ble Bombay High Court in assessee's own case. Respectfully following the same, we confirm the order of CIT(A), deleting the disallowance. The appeal of Revenue is dismissed.

5. In the Result, the appeal of the Revenue is dismissed.

Order pronounced in the open court on 16-03-2018.

Sd/-
(G. MANJUNATHA)
ACCOUNTANT MEMBER

Sd/-
(MAHAVIR SINGH)
JUDICIAL MEMBER

Mumbai, Dated: 16-03-2018
Sudip Sarkar /Sr.PS



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Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. The CIT (A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.
//True Copy//

BY ORDER,

Assistant Registrar
ITAT, MUMBAI