IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 893 OF 2014

Director of Income Tax (International Taxation) II, Mumbai ..Appellant

Vs.

M/s. Marks & Spencer Reliance India Pvt. Ltd. ..Respondent

Mr. Arvind Pinto for Appellant.
Mr. J. D. Mistri – Senior Counsel with Mr. P. C. Tripathi i/b. Mr. Raj B. Darak for Respondent.

CORAM : S. C. DHARMADHIKARI AND PRAKASH D. NAIK, JJ.
DATE : 3RD MAY, 2017

P.C. :

1] We have heard Mr. Pinto appearing on behalf of Revenue in support of this appeal.

2] In paragraphs 4.1 and 4.2 of this memo of appeal, the Revenue says that the facts are as under:-

> "4.1 The Assessing Officer, from the records noted that the Respondent Company had made payment of a sum of Rs.4.83 crore, to Marks & Spencer's PLC London, on which no tax was deducted at Source. The application made by the Respondent company was withdraw without assigning any reasons for the

said withdrawal.

4.2 While the Company argued that these payments were merely reimbursement of expenditure, it was held by the AO to be fee for technical services as per the provisions of the DTAA. Accordingly the AO passed orders u/s 201 holding the Company to be liable for the tax and simultaneously charged interest."

3] The Tribunal after having noted all these facts found that the first appellate authority by its order dated 28th November 2011 for the assessment year 2010-2011 rightly interfered with the order of the Assessing Officer. The finding of fact of the Tribunal is that the Commissioner was right that the assessee paid sum of Rs.4866187/- to M/s. Marks & Spencer PLC towards salary expenditure of four employees deputed to the assessee for providing assistance in the area of management, to setting up of business, property selection and retail operations etc. There was a service agreement drawn up and for providing such assistance between these two companies. It was essentially a joint venture. Having noted all the clauses in the agreement, the Tribunal rendered a finding of fact that there is no rendering of service within the meaning of the double tax avoidance treaty. This was a clear case of deputing the officials / employees for the promotion of the business of the assessee which is Indian arm of

M/s. Marks & Spencer PLC, UK. Since the said payment to the employees is already subjected to tax in India, therefore there is no question of treating the assessee in default for non deduction of tax at source. Once the facts were clear, as these, there was no illegality in the order of the Commissioner of Income Tax (Appeals) which was maintained by the Tribunal. The appeal of the Revenue was rightly dismissed by the Tribunal.

4] We do not find that the order of the Tribunal is perverse or vitiated by any error of law apparent on the face of the record. Hence, we do not entertain this appeal. It is dismissed but without any order as to costs.

(PRAKASH D. NAIK, J.) **(S. C. DHARMADHIKARI, J.)**

Chandka