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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.2287 OF 2013

The Commissioner of Income Tax-8 ..Appellant
Versus
M/s. TCL India Holdings Pvt. Ltd. ..Respondent

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Mr. Arvind Pinto for the Appellant.
Dr. K. Shivram with Mr. Rahul Hakani for the Respondent.

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CORAM: M. S. SANKLECHA &
A. K. MENON, JJ.

DATE : 6TH MAY, 2016

P.C.:

1. This appeal filed by the Revenue raises questions with regard to whether transfer pricing adjustment consequent to arriving at Arms Length Price(ALP) is required to be done only in respect of the international transactions or this adjustment is to be done in respect of all the business transactions of the assessee i.e. at the entity level.

2. On 12th April, 2016 and 18th April, 2016 this Appeal was on board and detailed orders were passed indicating that the Revenue has not been bringing to the notice of the Court orders of admission in its favour in the subsequent Appeals filed by it an identical questions. This has resulted in

the subsequent appeals filed by the Revenue raising identical questions being dismissed at the stage of admission after having heard the parties at some length.

3. In the above view, it was felt that the Income Tax Department must have in place a system of keeping a record of questions of law which have been admitted or dismissed by this Court. This alone would enable a consistent stand being taken by the Revenue when a similar question arises before the same or different Bench of this Court.

4. In the above view, the Principal Chief Commissioner of Income Tax who is the head of all the Commissionerates at Mumbai was directed to file affidavit indicating the steps being taken to ensure that a consistent view is taken by the Department. The two Commissioner's of Income Tax who had briefed counsel in the two appeals wherein identical questions were raised as in an earlier appeal and were dismissed as the Revenue had not pointed out to the Court that in an earlier appeal an identical question of law had been admitted were also directed to file affidavits. The two Commissioner of Income Tax have both filed affidavits dated 26th April, 2016 and 5th May, 2016. The Principal Chief Commissioner of Income Tax has now filed affidavit dated 5th May, 2016.

5. We find that the affidavit of the Principal Chief Commissioner of Income Tax merely indicates that the Department has decided to add a legal corner on its website where all questions of law which are admitted or dismissed by this Court will be entered section-wise. However, no indication is there in the affidavit as to when the proposed system of entering those questions on the website which have been admitted/dismissed would come into force.

6. Mr. Pinto, the learned counsel for the Revenue, on instructions, states that it would possibly become functional by 15th June, 2016. We would want some certainty with regard to the date when the system would come into force. Further till such time as the website is updated to become functional, the method proposed to be adopted by the Income Tax Department to ensure that a inconsistent stand is not taken by the Revenue in different matters. In that view the Principal Chief Commissioner of Income Tax is directed to file a further affidavit.

7. During the hearing, Dr. Shivram who appears for the respondent-assessee suggested that the legal corner on the website should also indicate whether the question of law framed by the Revenue is rejected as the same been accepted by the Income Tax Department.

8. Further we find that the fields presently provided on entry into the

website under the head "legal corner" only mentions the question which have been admitted or rejected. It is suggested that the Income Tax Department may add one more field viz. to cover cases where the question has been answered in the affirmative or in the negative.

9. These are suggestions for the Income Tax Department to consider and if thought appropriate the manner in which it could be implemented. To us it appears that if these suggestions are implemented, we could have transparency and consistency in the stand taken by the Revenue.

10. We direct the Principal Chief Commissioner of Income Tax to file an affidavit on or before 13th June, 2016 and a copy of the affidavit may also be served upon Dr. Shivram, the learned counsel appearing for the Respondent.

11. This Appeal to be listed on board on 20th June, 2016 along with Income Tax Appeal Nos.2301 of 2013 and 1873 of 2013.

(A. K. MENON, J.) **(M. S. SANKLECHA, J.)**

Wadhwa