IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INCOME TAX APPEAL NO.2058 of 2013

Director of Income Tax (IT)-II… ..Appellant
Vs.
M/s Llyods Register ..Respondent
....
Mr.Arvind Pinto Advocate for Appellant.
Mr. Sanjiv Shah Advocate for Respondent.

CORAM : M.S. SANKLECHA &
G.S. KULKARNI, JJ.
DATED : 7th DECEMBER, 2015

P.C.

This Appeal under Section 260A of the Income Tax Act, 1961 (the 'Act') challenges the order dated 20th March 2013 passed by the Income Tax Appellate Tribunal (the 'Tribunal'). The appeal relates to the Assessment Year 2002-03.

2. The revenue has raised the following question of law :

> *"Whether on the facts and circumstances of the case and in law the Tribunal was correct in setting aside the issue of the applicability of the Double Taxation Avoidance Agreement and allowing the main issue of the taxability of "fees for technical services @ 15 % as income of the head office relying on the decisions of Sumitomo Mitsui Banking Corporation vs DDIT (2012) 136 ITD 66 without appreciating the fact that the Department has not accepted this decision and a further appeal has been filed."*

3. We find that the impugned order of the Tribunal after upholding the order of Commissioner of Income Tax (Appeals) (CIT) (A) holding Section 40 (a) (i) of the Act is inapplicable on application of domestic law as there is no income in the hands of the recipient on the principles of Mutuality. However, it had restored the issue to the Assessing Officer to compute the business profits as per Double Taxation Avoidance Agreement (DTAA). It directed the Assessing Officer to thereafter compute the final tax liability by applying the provisions of Section 90 (2) of the Act.

4. Mr.Rajendra S.Apte Finance and Administration Manager of the respondent-assessee has filed an affidavit dated 30th November, 2015 to which has been annexed copy of the order dated 30th March, 2015 passed by the Assessing Officer consequent to the impugned order of the Tribunal dated 20th March 2013. The aforesaid assessment order dated 30th March 2015 is adverse to the respondent-assessee and an appeal against the same is pending with the CIT (A).

5. In view of the fact that the impugned order of the Tribunal has restored to the Assessing Officer for a fresh decision the very issue formulated in the proposed question i.e. application of DTAA the questions as formulated need not be entertained at this stage. This is particularly so as the issue is still to be decided by the Tribunal. However, the questions raised by the respondent-revenue in the present appeal in respect of application of DTAA is left open to be urged as and when the Tribunal decides the issue consequent to the orders passed on remand by the Assessing Officer and consequent Appeals therefrom. Thus, at this stage unless the issue on DTAA is first decided by the Tribunal the question as formulated does not give rise to a substantial question of law.

6. In the above view, question of law as framed is not being entertained. Accordingly, Appeal dismissed. No order as to costs.

{G.S. KULKARNI, J] **[M.S. SANKLECHA, J.]**

CERTIFICATE

Certified to be true and correct copy of the original signed Judgment/order.