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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.2249 OF 2013
WITH
INCOME TAX APPEAL(L) NO.334 OF 2016
WITH
INCOME TAX APPEAL(L) NO.335 OF 2016
WITH
INCOME TAX APPEAL (L) NO.336 OF 2016
WITH
INCOME TAX APPEAL(L) NO.337 OF 2016

Commissioner of Income Tax (IT)-2 ..Appellant
Versus
M/s. Clifford Chance ..Respondent

....
Mr. Tejveer Singh for the Appellant.
Mr. Pawan Kumar a/w Sarabjot Walia a/w Ms. Manorama Mohanty a/w Ambika Singh i/b.S. K. Srivastav & Co. for the Respondent.
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CORAM: M. S. SANKLECHA &
A. K. MENON, JJ.

DATE : 5TH APRIL, 2016

P.C.:

1. All these five Appeals seek to challenge the order dated 13th May, 2013 passed by the Income Tax Appellate Tribunal (the 'Tribunal') relating to Assessment Years 1998-99, 1999-2000, 2000-01, 2001-02 and 2003-04.

2. We find that the impugned order of the Tribunal was passed by the Special Bench constituted by the President of the Tribunal under Section 255(3) of the Act. The impugned order of the Special Bench answering

the questions posed for its opinion has been restored to the regular bench of the Tribunal. This is for disposing of the Appeals keeping in view the opinion rendered by the order dated 13th May, 2013.

3. Mr. Pawan Kumar, the learned counsel appearing for the Respondent-Assessee informs us that the regular bench of the Tribunal has on 27th January,2016 already disposed of the Appeals relating to Assessment Years 1998-99, 1999-2000, 2000-01, 2001-02 and 2003-04 under Section 254(1) of the Act. Thus the Appeal, if any, would be against the order dated 27th January, 2016 of the Tribunal.

4. The Appeal filed by the Revenue is not maintainable. This is so as the Special Bench of the Tribunal has passed an order under Section 255(3) of the Act and has only opined on the question referred to it for its opinion. The genesis of the Reference made by the President of the Tribunal to the Special Bench was the Division Bench of the Tribunal being of the view that there is conflict of views between two co-ordinate Benches of the Tribunal. The resolution of the conflict by a larger Bench opining the correct view on the difference was the object of the reference. The opinion of the Special Bench is not an order which decides the lis between the parties. The order which decides the dispute would be passed in the Appeal by the regular Division Bench on application of the opinion of the Special Bench to the facts as arising before it. Even if the widest

meaning is given to the word 'any order' in Section 260A of the Act as contended by the Revenue, it could only mean any order of the Tribunal that decides a dispute. This order of the Special Bench of the Tribunal does not decide any dispute and is not an order under Section 254 of the Act.

5. The dispute between the parties would be decided by the regular bench under Section 254(1) of the Act disposing of various issues including the issue which has been referred by the President of the Tribunal to the Special Bench for its opinion in the context of the facts herein. It is only when an order is passed in the present facts under Section 254(1) of the Act that the Appeal under Section 260A of the Act would lie to this Court. In the above view, the Appeals as filed are dismissed on account of being not maintainable. It would be open to the Revenue to file Appeals from the order dated 27th January, 2016 passed under Section 254(1) of the Act.

6. Accordingly, all the above Appeals are dismissed. No order as to costs.

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