IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDITION

INCOME TAX APPEAL NO.1499 OF 2014

The Commissioner of Income-Tax 10 ... **Appellant**
V/s.
ING Investment Management (India) Pvt. Ltd. ... **Respondent**

WITH
NOTICE OF MOTION NO.1099 OF 2017
IN
INCOME TAX APPEAL NO.1499 OF 2014

ING Investment Management (India) Pvt. Ltd.... **Applicant**

<u>In the Matter Between</u> :

The Commissioner of Income-Tax 10 ... **Appellant**
V/s.
ING Investment Management (India) Pvt. Ltd. ... **Respondent**

.....

Mr.Arvind Pinto , Advocate for the Appellant in ITXANo.1499/2014

Mr.Atul K. Jasani, Advocate for the Respondent in ITXA/1499/2014 and for the Applicant in NMA/1099/2017.

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CORAM : S.V.GANGAPURWALA &
A.M.BADAR JJ.

DATED : 12th July 2017.

P.C.

1 The Revenue has filed the present Appeal. The Appeal pertains to assessment year 2006-07. The learned counsel for the Appellant submits that the Appellant is not pressing question No.6.1 as framed. The substantial question 6.2 and 6.3, as framed by the Appellant, reads as under :

> "6.2 Whether on the facts and in the circumstances of the case and in law, the Hon'ble Tribunal was correct in allowing expenditure in excess of 6% of the liability of the Mutual Fund companies ignoring the fact that this liability was that of the individual companies and not of the holding company ?
>
> 6.3 Whether on the facts and in the circumstances of the case and in law, the Hon'ble Tribunal was right in allowing expenditure relatable to IT Infrastructure expenses when evidence was provided and the said expenditure is of a capital nature inadmissible as per the provisions of the Act ?"

2 Mr.Pinto, the learned counsel for the Appellant contends that Tribunal was not justified in allowing the expenses in excess of 6% of the liability of the Mutual Fund Company. The said liability was not that of Respondent. As the Assessee was not

liable to bear the expenses, the same could not have been allowed. According to the learned counsel even the Tribunal was in error in allowing expenses relating to IT infrastructure expenses when evidence was provided and the said expenses is capital in nature.

3 Mr.Jasani, the learned counsel for the Assessee submits that as per Regulation 52(5) of the Securities and Exchange Board of India (Mutual Funds) Regulations, 1996, as it stood clearly, states that any expense other than those specified in Sub-regulations (2) and (4) shall be borne by the Asset Management Company. Respondent is the Asset Management Company. As such, it is statutorily liable to meet the said expenses. The learned counsel states that this Court in Income-Tax Appeal No.1286 of 2008 decided on December 10, 2008 has considered the same issue. The learned counsel further submits that as far as IT infrastructure expenses is concerned, in the first assessment year no such dis-allowance was made by the Assessing Officer in the order and had accepted the case of the Assessee.

4 We have considered the arguments canvased by the learned counsel for the respective parties. Section 52(5) with its proviso reads as under :

> “52. Limitation on fees and expenses on issue of schemes.
> 1..
> 2..

3..
4..
5. Any expenses other than those specified in Sub-Regulations (2) and (4) shall be borne by the asset management company or trustee or sponsors.

Provided that initial expenses of launching a close-ended scheme shall not exceed six per cent of initial resources raised under that scheme:

Provided further that any excess over the 6 per cent initial issue expense shall be borne by the asset management company."

5 Reading the said proviso, it is manifest that any excess over the 6% initial issue expense shall be borne by the Asset Management Company. In the Assessment Order, the Assessing Officer accepted that the Assessee is Asset Management Company. There is no dispute in this regard. The Respondent Assessee is statutorily liable to bear the expenses over and above 6%. The same has been rightly considered by the Tribunal.

6 As far as allowing the expenses relating to IT infrastructure is concerned, it would appear that in the subsequent assessment year 2009-10, the Assessing Officer has accepted the expenditure on account of IT infrastructure as separate expenses and has allowed the same. There is no reason to take different view for the present assessment year.

7 In light of the above, the Appeal is bereft of any substantial question of law and stands dismissed, however, with no order as to costs.

8 Mr.Jasani, the learned counsel states that in view of dismissal of Appeal, he withdraws the Notice of Motion. Notice of Motion is disposed of as withdrawn.

(A.M.BADAR J.) **(S.V.GANGAPURWALA J.)**