IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 448 OF 2017

Director of Income Tax (International
Taxation) II, Mumbai. … Appellant.
V/s.
MSM Satellite (Singapore) Pte Ltd. … Respondent.

Mr.Arvind Pinto for the appellant.

Mr.P.Pardiwalla, Senior Advocate with Mr.Nitesh Joshi i/b.
Mr.Sameer Dalal for the respondent

CORAM : AKIL KURESHI AND S.J.KATHAWALLA, JJ.

DATE : 1st July 2019.

P.C.:

This appeal is filed by the Revenue to challenge the judgment of the Income Tax Appellate Tribunal ("Tribunal" for short). The issue pertains to the interpretation of Double Taxation Avoidance Agreement between India and Singapore. The Tribunal in the impugned judgment has relied on its own decision in the case of the very same assessee for the earlier assessment year. We notice that such a decision of the Tribunal was carried in appeal by the Revenue before this Court in Income Tax Appeal No.1676/2011 which came to be dismissed by the judgment dated 28th April 2014 in which the following observations were made:

> "7 Both the Commissioner of Income Tax (Appeals) as also the Tribunal held that if the underlying facts noted by

us hereinabove are not in dispute, then, the payment for the cricket rights is made only for broadcasting operations of the assessee which are carried out from Singapore. The liability for the payment is incurred by the assessee in connection with the broadcasting operations in Singapore. That has no connection with the marketing activities carried out through its alleged permanent establishment in India. It is in these circumstances that we are of the view that the finding of fact that in the present case there is no economic link between the payments assuming that they are in the nature of royalties made out of India cannot be termed as perverse. Then, the Revenue stand cannot be upheld. Even with regard to the alleged permanent establishment of the assessee in India, the Tribunal's finding of fact is that the economic link is entirely with the assessee's head office in Singapore. The payment to GCC cannot be said to have been incurred in connection with the appellant's permanent establishment in India. Such a finding of fact and which is reaffirmed in paragraph no.20 cannot raise any substantial question of law. The finding of fact is that the payer is not a resident of India. Secondly, the liability to pay royalty has not been incurred in connection with and is not borne by the permanent establishment of the payer in India. The absence of economic link is thus the foundation on which the Tribunal's conclusions are based. These are essentially factual conclusions. They are peculiar to the facts and circumstances of the case of the assessee before the Tribunal and before us. There has been no general rule laid down nor can the Tribunal's order be seen as having any impact or repercussion on cases pending before the authorities or before the Tribunal. We have no doubt in our mind that the conclusion reached is possible, given the nature of the agreement between the payer and the Singapore party, the economic link has been traced from the transactions and which has been the subject matter of the agreement. In these circumstances, none of the apprehensions of Mr.Tejveer Singh can enable us to entertain this appeal. Once it does not raise any substantial question of law, then, the Appeal deserves to be dismissed. It is also dismissed because the view taken by the Tribunal in the given facts and circumstances cannot be said to be perverse or based on no material. It also cannot be said to be based on irrelevant and non-germane consideration and materials either.

8 The Appeal is thus dismissed. No costs."

2. In the result, this appeal is also dismissed.

(S.J.KATHAWALLA, J.) (AKIL KURESHI, J.)