JPP

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

INCOME TAX APPEAL NO. 390 OF 2018

Commissioner of Income Tax (IT-4) … Appellant
V/s.
M/s. WNS North America Inc. ... Respondent

Mr. Tejveer Singh for the Appellant
Ms. Porus Kaka, Senior Advocate a/w. Mr. Manish Kanth i/b. Mr. Atul Jasani for the Respondent

CORAM : NITIN JAMDAR &
M.S. KARNIK, JJ.

DATE : 09 JANUARY 2020.

***P.C.* :-**

Heard learned Counsel for the parties.

2. The Appeal pertains to Assessment Year 2011-12.

3. This Appeal under Section 260A of the Income Tax Act, 1961 challenges the order of the Income Tax Appellate Tribunal (Tribunal) dated 18 November 2016.

4. The Appellant – Revenue has framed following questions as substantial questions of law :-

“ (i) Whether on the facts and in the circumstances of the case and in law, the Hon’ble Tribunal was justified in

holding that reimbursement of lease line charges by WNS India does not qualify as "Royalty" under Article 12(3)(b) of the India-UK DTAA ?

(ii) Whether, on the facts and in the circumstances of the case and in law, the Hon'ble Tribunal was justified in not treating the reimbursement of lease line charges amounting to Rs.10,76,41,998/- as business profits under Article 7 read with Article 5 of India USA DTAA in view of 'Force of Attraction rule ?"

5. The learned Counsel for the parties have fairly brought to our attention that these questions of law in Assessee's own case have been held against the Appellant – Revenue in order dated 7 February 2018 in Income Tax Appeal Nos. 890 of 2015 and 891 of 2015. In view of this position, the questions as framed do not give rise to any substantial question of law. The Appeal is accordingly dismissed.

6. Before closing, we may note the contentions advanced by the learned Senior Advocate for the Respondent that there is a concurrent finding by the Commissioner (Appeals) and the Tribunal that the amounts are pure reimbursements and in view of this finding of fact and in view of the decision of the Apex Court in the case of *Director of Income-Tax (International Taxation v/s. A.P. Moller Maersk A/S - (2017) 392 ITR 186 (SC),* the questions as proposed do not give rise to any substantial question of law.

M.S. KARNIK, J. **NITIN JAMDAR, J.**

Jyoti P. Pawar Digitally signed by Jyoti P. Pawar Date: 2020.01.15 15:36:44 +0530