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

WRIT PETITION NO. 3357 OF 2019
ALONGWITH
WRIT PETITION NO. 3358 OF 2019
ALONGWITH
WRIT PETITION NO. 3359 OF 2019

Clough Projects International Pty. Ltd. ….Petitioner

V/s.

Income Tax Appellate Tribunal and Ors. …Respondents

ALONGWITH
INCOME TAX APPEAL (L) NO. 2656 OF 2019
ALONGWITH
INCOME TAX APPEAL (L) NO. 2657 OF 2019
ALONGWITH
INCOME TAX APPEAL (L) NO. 2658 OF 2019

Clough Projects International Pty. Ltd. ….Appellant

V/s.

Deputy Director of Income Tax
(International Taxation) -1 (2), Mumbai …Respondents

Mr. Hiten Chande i/b PDS Legal for Petitioner/Appellant.
Mr. Charanjeet Chanderpal a/w Ms. Rachna Bhanushali and Ms. Priti Chabaria for Respondents-Revenue.

CORAM : K.R. SHRIRAM &
AMIT B. BORKAR, JJ.
DATED : 17th NOVEMBER 2021

P.C. :

1. Heard Mr. Chande and Mr. Chanderpal. The main ground in this petition is that the Income Tax Appellate Tribunal (ITAT) had passed an order on 6th October, 2017 in the appeal filed by Revenue and cross objections had also been filed by petitioner wherein concession made by

petitioner has been recorded. Against this observations petitioner had filed Miscellaneous Application which came to be rejected by an order dated 10th July, 2019. Mr. Chande pointed out to this court that in the written submissions that was filed by petitioner before the ITAT in the appeal filed by Revenue, petitioner had made submissions which would show that no concession as recorded in the order of ITAT was ever made. Against the order of ITAT separate appeals have also been filed on merits. Mr.Chanderpal as an officer of the court left it to the wisdom of the court.

2. Mr. Chande for petitioner also submitted that the ITAT has not considered the cross objections filed by petitioners.

3. Both the counsel to a query posed by the court stated that if the court is inclined to remand the matter to ITAT only to consider the limited issue on the concession of petitioner recorded and the cross objections, there would be overlapping arguments which would also have a bearing in the appeals filed by petitioner in this court. Therefore, in our view, interest of justice will be meet if the order dated 6th October, 2017 be set aside and the entire matter be remanded to ITAT where the ITAT would consider afresh the appeal filed by the Revenue alongwith cross objections and pass such orders as it deems fit in accordance with law.

4. In view of the above, the order dated 6th October, 2017 in the Appeal and order dated 10th July, 2019 in the Miscellaneous Application are

set aside. The ITAT is requested to re-hear the appeal as well as the cross objections and dispose of the same on or before 31st January, 2022.

5. We also clarify that we have not considered or made any observations on the merits of the case.

6. The parties shall appear before the ITAT on 29th November, 2021 and place a copy of this order before the ITAT for proceeding further in the appeal and cross objections.

7. Learned counsel states that the same order be passed to apply in Writ Petition No. 3358 of 2019 and Writ Petition No. 3359 of 2019. Ordered accordingly.

8. In view of the above, Mr. Chande seeks leave to withdraw Income Tax Appeal (L) No. 2656 of 2019, 2657 of 2019 and 2658 of 2019.

9. In view of the above, Writ Petition No.3357 of 2019, 3358 of 2019 and 3359 of 2019 are disposed and Income Tax Appeal (L) No. 2656 of 2019, 2657 of 2019 and 2658 of 2019 are dismissed as withdrawn.

10. Consequently, Interim Applications pending also stand dismissed.

(AMIT B. BORKAR, J.) **(K.R. SHRIRAM, J.)**