S.S.Kilaje

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

INCOME TAX APPEAL NO. 79 OF 2016

Pr. Commissioner of Income Tax - 5 .. Appellant

Versus

Q-India Investment Advisors Pvt. Ltd. .. Respondent

....

- Mr. N.C. Mohanty, Advocate for the Appellant.
- Mr. Harsh R. Shah, Advocate for the Respondent.

....

CORAM : UJJAL BHUYAN &
MILIND N. JADHAV, JJ.

DATE : FEBRUARY 03, 2021.

P.C.:

Heard Mr. N.C.Mohanty, learned counsel for the appellant and Mr. Harsh Shah, learned counsel for the respondent.

2. This appeal under section 260A of the Income Tax Act, 1961 has been preferred by the revenue as the appellant against the order dated 24.04.2015 passed by the Income Tax Appellate Tribunal, "K" Bench, Mumbai in ITA No. 923/Mum/2015 for the assessment year 2010-11.

3. The appeal was admitted by this Court on 30.07.2018 on the substantial questions of law framed in the said order, which reads thus:-

> *"1. Heard.*
> *2. Appeal relates to Assessment Year 2010-11.*

> *3. Appeal admitted on the following re-framed substantial questions of law :*
>
> *"1. Whether, on the facts and in the circumstances of the case and in law, the Tribunal was justified in directing the AO to exclude M/s. Motilal Oswal Investment Advisory Pvt. Ltd. from the list of comparables on the ground that the said Company is engaged in diversified activities and is functionally different from the assessee, overlooking the Annual Report of the said Company and the finding of the fact by Learned Commissioner of Income-tax (Appeal) that the income of the said Company during the year was predominantly from advisory fees at Rs.64.94 crores as against minor component of other income at Rs.58.14 lakhs only ?*
> *2. Whether, on the facts and in the circumstances of the case and in law, the Tribunal was justified in observing that M/s. Motilal Oswal Investment Advisory Pvt. Ltd. derived its business income from four different verticals viz. Equity Capital Markets, Mergers & Acquisitions, Private Equity Syndications and Structured Debt and that the income source across the four products was more or less evenly balanced, when the Annual Report, including Audit Report, of the said Company for the concerned year does not support this observation of the Tribunal, thereby making the observation of the Tribunal perverse ?"*
>
> *4. Registry is directed to communicate copy of this order to the Tribunal. This would enable the Tribunal to keep papers and proceedings relating to the present appeal available, to be produced when sought for by the Court.*
>
> *5. Mr. Sawla, Learned Counsel waives service for the respondent."*

4. During the pendency of the appeal respondent has filed the related interim application stating that it had opted for settlement under the Direct Tax *Vivad Se Vishwas Act, 2020* (briefly 'the Act' hereinafter); in fact the matter has been settled under the scheme provided under the Act. However, the appeal is required to be withdrawn for passing of the final order.

5. On 20.01.2021 we had passed the following order in the interim application :-

> *"Respondent-assessee has preferred this interim application stating that it had opted for settlement under the Direct Tax Vivad Se Vishwas Act, 2020. However, the appeal is at the*

> *instance of the revenue and the same is required to be withdrawn by the revenue to facilitate settlement under the aforesaid Act.*
>
> *2. In this connection, we had passed a detailed order yesterday in Income Tax Appeal No. 1544 of 2012 (OS) fixing it on 03.02.2021 for response*
>
> *3. List along with Income Tax Appeal No. 1544 of 2012 on 3rd February, 2021."*

6. Today Income Tax Appeal No. 1544 of 2012 (OS) has been disposed of on withdrawal by learned standing counsel on instructions. When the matter is called upon, Mr. Mohanty submits that he has instructions to withdraw the appeal.

7. In that view of the matter, the appeal is disposed of as withdrawn.

8. Refund as per Rules.

[MILIND N. JADHAV, J.] **[UJJAL BHUYAN, J.]**

Ravindra M. Amberkar Digitally signed by Ravindra M. Amberkar Date: 2021.02.05 10:34:38 +0530