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

INCOME TAX APPEAL NO. 1689 OF 2017

The Principal Commissioner of
Income Tax-3,
Room No.667A, Aayakar Bhavan,
Maharshi Karve Road,
Mumbai – 400 020. .. Appellant

Vs.

1. LML Ltd.
714, Raheja Chambers,
Nariman Point, Mumbai-400 021,
PAN : AAACL0141N
A.Y. 2009-10.

2. In Liquidation Through
Anil Gupta
S/o. Shri N.C. Gupta,
Insolvency Professional (IP Registration
Number : IBBI/IPA-002/
IPN00051/2016-17/10095
A-57, Sector, 30,
NOIDA, UP-201301 .... Respondents

WITH

INCOME TAX APPEAL NO. 866 OF 2017

The Principal Commissioner of
Income Tax-3,
Aayakar Bhavan, Maharshi Karve Road,
Mumbai – 400 020. .. Appellant

Vs.

1. M/s. LML Ltd.
714, Raheja Chambers,
Nariman Point, Mumbai-400 021,
PAN : AAACL0141N
A.Y. 2000-01.

2. In Liquidation Through
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A-57, Sector, 30,
NOIDA, UP-201301 .... Respondents

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Mr.Akhileshwar Sharma with Ms.Shilpa Goel, Advocate for appellant.

Mr.Ashok Singh with Mr.Jitendra Kesarkar, Advocate for respondents.

CORAM : DHIRAJ SINGH THAKUR AND VALMIKI SA MENEZES, JJ.

DATE : 10th NOVEMBER 2022

ORDER :

1. These are the appeals under section 260A of the Income Tax Act, 1961 ('the Act') against the orders passed by the Income Tax Appellate Tribunal, Mumbai ('Tribunal') in the appeals being Income Tax Appeal No.4396/Mum/2013 for the assessment year 2009-10, dated 31st March 2017 and Income Tax Appeal No.3668/Mum/2004 for the assessment year 2000-2001, dated 21st June 2001.

2. Counsel for the respondent-Official Liquidator, at the very outset, stated that the questions of law suggested for consideration in the Memo of Appeal and the discussion thereupon would be rendered academic inasmuch as the company is already under liquidation before the National Company Law Tribunal, Mumbai ('NCLT'). It is further stated that assuming that

the appellants were to succeed in the present appeals, yet the official liquidator would not be in a position to pay the tax amount involved in these appeals as the liabilities of the company (in liquidation) far exceed the assets under liquidation and further that the claim of the appellant-revenue figured as low as at Sr.No.5.

3. By virtue of order dated 6th June 2022, time was granted to counsel for the appellant to take instructions from the concerned as to whether they would like to proceed with the appeal keeping the questions of law raised in the appeal open, to be considered in an appropriate case. Today, however, counsel for the appellant has reported that as per the instructions received by him, the revenue would like to contest the issues raised in the appeals.

4. Counsel for the official liquidator, however, has brought to our notice the order dated 21st July 2020 passed by the Apex Court in the case of ***Commissioner of Income Tax Versus Moser Baer India Limited*** [1] wherein, in similar circumstances, considering the fact that the company (in liquidation), was not in a position to pay its outstanding dues, including taxes, the appeal

1 Civil Appeal No.4705 of 2014 dated 21st July 2020

was disposed of leaving the question of law open, to be decided in an appropriate case. It is prayed that a similar course be adopted in the present case, as well.

5. The fact that the company is in liquidation in the proceedings pending before the NCLT and further that the company would not be in a position to discharge its liabilities, in the event of the appellant's succeeding in the present case, is not specifically denied or contested by the counsel for the appellant. In these circumstances, we deem it appropriate to follow the course which was adopted by the Apex Court in the case of ***Moser Baer India Limited*** (Supra).

6. Be that as it may, we dispose of these appeals, leaving the questions of law, as framed in the Memos of Appeal, open, to be decided in an appropriate case.

7. Order accordingly.

[VALMIKI SA MENEZES, J.] **[DHIRAJ SINGH THAKUR, J.]**