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

INCOME TAX APPEAL NO. 821 OF 2018

Pr. Commissioner of Income Tax-10 … Appellant
Versus
J. P. Morgan Services India Pvt. Ltd. … Respondent

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Mr. Suresh Kumar for the Appellant.
Mr. Porus F. Kaka, Senior Advocate a/w Mr. Divesh Chawla i/by Mr.Atul K. Jasani for the Respondent.

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CORAM: DHIRAJ SINGH THAKUR AND ABHAY AHUJA, JJ.
DATE : 12th AUGUST, 2022

P.C. (Per Abhay Ahuja, J.) :-

. This is an appeal filed under Section 260-A of the Income Tax Act, 1961 (‘the Act’) by the revenue for the assessment year 2009-10 impugning the order dated 31st January, 2017 passed by the Tribunal partly allowing assessee’s appeal. The revenue has proposed the following questions as substantial questions of law :

> “6.1 Whether on the facts and circumstances of the case and in Law, the Tribunal was correct in directing the AO/TPO to adopt 15.32% as the Arm's Length Margin for transactions with the non US associated enterprises as against the margin of 39.20% taken by the AO/TPO based only on margins decided in MAP proceedings concluded by the Indian competent authority with the USA competent authority, ignoring the fact that agreement under MAP is based on negotiations between competent authorities reach a set of terms which are acceptable to both the competent authorities, whereas arm's length price is to be determined in other cases in accordance with the Indian transfer pricing regulations?

> 6.2 Whether on the facts and circumstances of the case and in Law, the Tribunal was correct in directing the AO/TPO to adopt 15.32% as the Arm's Length Margin for transactions with the non US associated enterprises, based purely on MAP proceedings concluded with the USA competent authority, even though MAP proceedings are country specific and cannot, therefore, be applied directed to transactions with enterprises in other jurisdictions?
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> 6.3 Whether on the facts and circumstances of the case and in Law, the Tribunal was justified in holding that interest income is business income ignoring the fact that this income was derived from Fixed Deposits and not from the business of the undertaking?"

2. Learned counsel for the parties are *ad-idem* that question nos. 6.1 and 6.2 as proposed are similar and that the proposed questions are covered by the decisions of this Court in the assessee’s own case for earlier assessment years.

3. With respect to questions 6.1 and 6.2 pertaining to the Mutual Agreement Procedure (MAP) proceedings, Mr. Porus Kaka, learned senior counsel for the respondent company would submit that this issue is covered against the revenue in the assessee’s own case for the assessment years 2005-06, 2006-07, 2007-08 and 2008-09. He submits that the SLP filed by the revenue for assessment year 2008-09 (ITA No. 662 of 2017) in respect of this question has been dismissed on 7th February, 2020. He also draws the attention of this Court to paragraph 8 of the impugned order to submit that the Tribunal after considering the view of the co-ordinate bench that there was no distinction between the services rendered by the assessee to the US and non-US entities with respect to the tested transactions relying upon the decisions of the Tribunal in the assessee’s own case, where there is a complete

similarity of facts for the assessment years 2006-07 and 2007-08 has directed the Assessing Officer to adopt the MAP approved margin of 15.32% for assessment year 2009-10 for bench marking the international transactions of rendering ITE services to non-US associated enterprises. Learned senior counsel further submits that the Advance Pricing Agreement (APA) dated 28th March, 2018 entered into between the Central Board of Direct Taxes (CBDT) and the assessee clearly records that the outcome agreed under the Mutual Agreement with US for assessee's international transactions with US Associated Enterprises (AEs) would also be applied to its transactions with non-US AEs and as such the same has been accepted by the revenue for all subsequent years.

4. With respect to question 6.3, learned senior counsel submits that this question is also covered against the revenue by the decisions of this Court in the assessee's own case for the assessment years 2007-08 and 2008-09 and as mentioned the revenue had filed SLP against the order in assessment year 2008-09 (ITA No. 662 of 2017) which as stated earlier, came to be dismissed on 7th February, 2020 concluding this issue as well in favour of the assessee.

5. He submits that therefore, the questions as proposed do not raise any substantial question of law and the appeal be dismissed.

6. Having heard Mr. Porus Kaka, learned senior counsel as well as Mr. Suresh Kumar, learned counsel for the revenue and with their able assistance having perused the relevant orders, agreement and the proceedings in the matter, we are of the view that the questions as proposed are conclusively covered in favour of the assessee and against

the revenue as mentioned above. The issues having been concluded in the previous years in the assessee's own case and the revenue being signatory to the APA as noted above, it would not be open to the revenue to re-agitate covered issues. The Appeal therefore does not raise any substantial question of law and is dismissed. No costs.

[ABHAY AHUJA, J.] **[DHIRAJ SINGH THAKUR, J.]**

BIPIN DHARMENDER PRITHIANI
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