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

INCOME TAX APPEAL NO. 519 OF 2020

Commissioner Of Income Tax (IT)-3 .. Appellant
v/s.
M/s. J. Ray MC Dermott
Eastern Hemisphere Ltd. .. Respondent

...

Mr. Suresh Kumar for the appellant.
Mr. Jeet Kamdar i/by Mr. Atul K. Jasani for the respondent.

...

CORAM : DHIRAJ SINGH THAKUR AND
KAMAL KHATA, JJ.

DATED : 9TH FEBRUARY, 2023.

P.C. :

. This is an appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal dated 6th May 2016 for the Assessment Year 2000-01.

2. The following questions of law have been framed for our consideration:

a) "Whether on the facts and circumstances of the case and in law the ITAT is correct in holding that the assessee's case does *not constitute the "PE" as per Article 5(2)(c) of Indo-Mauritius DTAA without appreciating the clear facts detected at the time of survey u/s. 133A of the I.T. Act, wherein the assessee has carried out all the business acitivity from the Liaison office?"*

b) "Whether on the facts and circumstances of the case and in law the ITAT is correct in holding that the assessee's case cannot be covered simultaneously by the Article 5(2)(i) and 5(2)(c) of Indo-Mauritius DTAA without appreciating that the PE can be examined under "an office PE" or "project PE?"

c) "Whether on the facts and circumstances of the case in law the ITAT is correct in holding that the activities detected at the Liaison Office constitute auxiliary and preparatory services and not the business activity without appreciating that the entire range of activities from beginning to end are conducted at the Liaison office?"

3. The learned counsel for the respondent states that similar questions of law in the case of the respondents were framed for the consideration of this court in Income Tax Appeal No. 1670 of 2017 for the Assessment Year 1998-99, which appeal was dismissed vide order dated 8th June 2022. It is stated that by virtue of judgment dated 8th June 2022, this Court in the said appeal upheld the view expressed by the tribunal for the Assessment Year 1998-99 holding that the case of the respondent would fall under Article 5(3)(e)(ii) of the Agreement for Avoidable of Double Taxation And Prevention of Fiscal Evasion with Mauritius (Indo-Mauritius Treaty).

While upholding the tribunal's order in the said appeal, the tribunal had examined the role of employees namely Mr. Tarkar and

Mr. Rodrigues and found that they were only concerned with the logistic and coordination and arranging meetings while two other employees were stated to have been looking after communications. After considering all these documents, the Tribunal found that the concerned place of business was only for the supply of information having preparatory or auxiliary character and therefore, would fall under Article 5(3)(e)(ii) of the Indo-Mauritius Treaty. The order passed by the tribunal which was subject matter of challenge in appeal No. 1670 of 2017 was a common order which also decided similar issues as for the assessment year in question i.e. 2000-01.

4. The decision referred by this Court in Income Tax Appeal No.1670 of 2018 squarely applies in the present case. No substantial question of law arises in this appeal and the same is accordingly dismissed.

(KAMAL KHATA, J.) **(DHIRAJ SINGH THAKUR, J.)**