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

INCOME TAX APPEAL NO. 609 OF 2016

Pr. Commissioner of Income Tax-2 } Appellant
versus
M/s. Arisaig Partner India Pvt. Ltd. } Respondent

Mr. Suresh Kumar for the appellant.

Mr. Jeet Kamdar I/b. Mr. Atul K. Jasani for the respondent.

CORAM :- S. C. DHARMADHIKARI &
B. P. COLABAWALLA, JJ.

DATE :- OCTOBER 10, 2018

P.C. :-

1. This appeal challenges the order passed by the tribunal dated 25th March, 2015 for assessment year 2009-10. Mr.Suresh Kumar submits that the Revenue proposes the questions at page nos. 4 and 5 of the paper book as substantial questions of law. They squarely arise from the order of the tribunal.

2. To appreciate this argument, we must refer to the basic facts. A return of income was filed by the assessee. The case was selected for scrutiny. A notice was issued and thereafter, the assessing officer discovered that an international transaction with associate enterprise entered into by the assessee exceeded

the threshold limit of Rs.15 crores. The assessing officer, therefore, made a reference to the Transfer Pricing Officer after seeking approval of the Commissioner of Income Tax-2, Mumbai. The Transfer Pricing Officer made an order under section 92CA(3) of the Income Tax Act, 1961 on 26th November, 2012, based on which, the assessing officer made his order. The Transfer Pricing Officer considered certain instances as comparables. The assesee was aggrieved by this exercise carried out by the Transfer Pricing Officer as also the assessing officer and filed objections before the Dispute Resolution Panel. The Dispute Resolution Panel deleted certain comparables from the Transfer Pricing Officer's order, but maintained the rest. In terms of the directions of the Dispute Resolution Panel, the assessing officer passed the assessment order dated 20th October, 2013.

3. The Revenue being aggrieved thereby, filed an appeal to the tribunal and the assessee also filed cross objections. The Revenue, in the appeal, challenged the deletion of certain comparables, whereas, the assessee challenged the upholding of the Dispute Resolution Panel's view insofar as a comparable in the form of Motilal Oswal Investment Advisors Pvt. Ltd. That could not have been, in the submission of the assessee, taken as comparable for determining an arms length price.

4. By the impugned order, the tribunal dismissed the appeal of the Revenue. However, it allowed the cross objections of the assessee. Aggrieved thereby, the Revenue has proposed the above referred questions as substantial questions of law.

5. In the case of Motilal Oswal Investment Advisors Pvt. Ltd., a view has been taken by this court in its order dated 18th September, 2018 in Income Tax Appeal No. 406 of 2016. There, the assessee was a venture capital company. For a similar international transaction, the arms length price was to be determined and the Transfer Pricing Officer, *inter alia*, included Motilal Oswal Investment Advisors Pvt. Ltd. as a comparable. The aggrieved assessee approached the Dispute Resolution Panel, which deleted the instance of Motilal Oswal Investment Advisors Pvt. Ltd. as comparable. That is how maintaining of that view by the tribunal triggered Income Tax Appeal No. 406 of 2016 and proposing identical questions as substantial questions of law.

6. In a detailed order passed by this court, it has been held that there is a difference between services and business of comparable like Motilal Oswal Investment Advisors Pvt. Ltd. and the assesee. The Division Bench held that the activities of Motilal Oswal Investment Advisors Pvt. Ltd. were functionally

incomparable to the activities of investment advisory services rendered by the assessee to its associate enterprise.

7. Here as well, similar is the factual position. Once the factual findings rendered in the impugned order are based on the materials before the tribunal, then, it is not permissible for us to re-appraise and re-appreciate the same and arrive at a different conclusion. No perversity has been demonstrated in the view taken by the tribunal nor is it vitiated by an error of law apparent on the face of the record. Consequently, none of the questions proposed before us can be treated as substantial questions of law. The appeal fails and it is dismissed. There would be no order as to costs.

Jayant Vishwanath Salunke

Digitally signed by Jayant Vishwanath Salunke
Date: 2018.10.11 18:10:17 +0530

(B. P. COLABAWALLA, J.) **(S.C.DHARMADHIKARI, J.)**