

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

**INCOME TAX APPEAL NO. 1222 OF 2011**

M/s Linklaters ... Appellant

*Versus*

The Deputy Director of Income Tax  
(International Taxation) 4 (1), Mumbai ... Respondent

**WITH  
INTERIM APPLICATION NO. 3356 OF 2022  
IN  
INCOME TAX APPEAL NO. 1222 OF 2011**

Linklaters ... Applicant

*in the matter between*

Linklaters ... Appellant

*Versus*

The Deputy Director of Income Tax  
(International Taxation) 4 (1), Mumbai ... Respondent

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Mr. J. D. Mistri, Senior Advocate a/w Mr. Niraj Sheth & Ms. Virangana Wadhawan i/b Economic Laws Practice, Advocate for the Appellant.

Mr. Suresh Kumar, Advocate for the Respondent.

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

**DATE : 23<sup>rd</sup> NOVEMBER, 2022.**

**PER : DHIRAJ SINGH THAKUR, J. (OPEN COURT):**

. The present appeal has been filed under Section 260A of the Income Tax Act, 1961 (“the Act”) against the order dated 27<sup>th</sup> December, 2010 passed by the Income Tax Appellate Tribunal ‘L’ Bench, Mumbai (“ITAT”).

2. By virtue of the order dated 30<sup>th</sup> April, 2014, this Court was pleased to admit the appeal on as many as four substantial questions of law. However, subsequently the memo of appeal was amended pursuant to permission granted by this Court vide order dated 03<sup>rd</sup> March, 2020, among others the following question of law was suggested:

“ Whether the Tribunal has erred in passing the impugned order only in relation to the Respondent’s appeal before the Tribunal from the order of the CIT(A) dated 28<sup>th</sup> February, 2008, even though the Appellant has also filed an appeal before the Tribunal from the said order of the CIT(A) and, therefore, is the impugned order contrary to the well settled law that cross-appeals before the Tribunal from the same order ought to be consolidated and disposed off vide a common order?”

In our opinion the question of law as suggested is a substantial question of law and shall be framed as substantial question No. 5 along with substantial questions framed vide order dated 03<sup>rd</sup> March, 2020.

3. With the consent of learned Counsel for the parties, the matter is taken up for final disposal.

4. Mr. Mistri, learned Senior Counsel for the Appellant submits that the Question No. 5 as proposed goes to the very root of the matter and be decided first of all, inasmuch as if the appeal is allowed on this question alone, the matter would have to be remanded back to the Tribunal for consideration afresh.

5. From the record it appears that two appeals came to be preferred, one by the assessee and other by the Revenue, against the order dated 28<sup>th</sup> February, 2008 passed by the Commissioner of Income-Tax (Appeals), Mumbai ("CIT(A)"). The appellant, who is a firm of solicitors within international presence was held by the CIT(A) to have a permanent establishment in India and further that only that part of the income would be taxable as it related to its activities in India. In the appeal preferred by the assessee before the Tribunal, various grounds were raised including that the finding of the CIT(A) regarding the assessee having a permanent establishment in India, was a finding which was erroneous. In the appeal filed by the Revenue, the ground of challenge among others

appears to be that the CIT(A) had committed an error in restricting the tax-ability to only the Indian operations of the assessee.

6. Be that as it may, the appeal of the Revenue having come up before the Tribunal for consideration, two communications dated 20<sup>th</sup> and 21<sup>st</sup> December, 2010 were addressed to the Tribunal by the appellant assessee requesting the consolidation of the two appeals for purposes of decision together. However, the Tribunal vide its order impugned dated 27<sup>th</sup> December, 2010, totally ignored the prayer of the appellant for consolidation of the two appeals and proceeded to decide the appeal of the Revenue, based upon the earlier decision taken by the Tribunal in the assessee's own case for the year 1995-96 and took a view in favour of the Revenue and against the appellant assessee. Learned Counsel for the appellant urged that the course of action adopted by the Tribunal was totally erroneous, inasmuch as the appeal preferred by the appellant before the Tribunal would be rendered infructuous, in view of a view already having been taken by the Tribunal by virtue of the order impugned, based upon an earlier opinion expressed on the subject.

It was urged that the right course for the Tribunal should have

been that a comprehensive view be taken upon hearing of the appeal preferred by the assessee as well. With a view to support and buttress this assertion, reliance was placed upon the Apex Court judgment in the case of *Commission of Sales Tax, U.P., Lucknow Vs. Jijay Int. Udyog, G.T. Road, Sikandrarao, Hathras*<sup>1</sup>, wherein, in similar circumstances, only one of the appeals preferred by the Revenue was decided by the U.P. Sales Tax Tribunal. The Apex Court held as under:

“3 We entirely agree with the High Court that the two appeals should have been heard at a time by the Tribunal. Since both the parties were before the Tribunal, it was proper that when the assessee’s appeal was taken up first, the Tribunal’s attention should have been drawn to the fact that the Commissioner’s appeal against the same decision of the Assistant Commissioner was pending and both should have been clubbed together. If that had been done the unfortunate situation which has necessitated the present appeal to be carried to this Court would not have arisen.”

7. We are also of the view that the course of action adopted by the Tribunal in deciding only the appeal of the Revenue in fact results in a lot of prejudice to the case of the appellant, whose appeal is still pending before the Tribunal. In fact the Tribunal would not be able to take a contrary view if at all it were to take one in the appeal preferred by the appellant, having already expressed

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1 (1984) 4 SCC 543: 1985 SCC (Tax) 1.

an opinion in the appeal preferred by the Revenue.

8. In our opinion, that situation could have well been avoided if both the appeals were taken for decision together. We also find in the order impugned that the Tribunal has not at all dealt with the request of the appellant herein, for purposes of a consolidation of the appeals preferred by the contesting parties, which prayer should have been dealt with appropriately in the order impugned.

9. Be that as it may, we allow the present appeal and answer question No. 5 in favour of the appellant. The matter is remanded to the Tribunal for a fresh consideration of both the appeals, which shall be clubbed and decided together.

10. All questions which were otherwise raised on merits in the present appeal shall remain open. The Income Tax Appeal is, accordingly, disposed of.

11. In view of disposal of the appeal, the Interim Application is rendered infructuous and the same is disposed of accordingly.

(VALMIKI SA MENEZES, J.)

(DHIRAJ SINGH THAKUR, J.)