IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

INCOME TAX APPEAL NO. 1709 OF 2017
WITH
NOTICE OF MOTION NO. 1018 OF 2018

WITH
INCOME TAX APPEAL NO. 1708 OF 2017
WITH
NOTICE OF MOTION NO. 1019 OF 2018

WITH
INCOME TAX APPEAL NO. 1714 OF 2017
WITH
NOTICE OF MOTION NO. 1020 OF 2018

WITH
INCOME TAX APPEAL NO. 1820 OF 2017
WITH
NOTICE OF MOTION NO. 1021 OF 2018

WITH
INCOME TAX APPEAL NO. 1713 OF 2017
WITH
NOTICE OF MOTION NO. 1024 OF 2018

WITH
INCOME TAX APPEAL NO. 1707 OF 2017
WITH
NOTICE OF MOTION NO. 1026 OF 2018

Co-operative Centrale Raiffeisen
Boerenleenbank, Mumbai .. Appellant
Vs
Dy. Director of Income Tax,
(International Taxation)-1(2), Mumbai .. Respondent

....

- Mr. Niraj Sheth i/by Mr. Atul Jasani for the Appellant
- Mr. S.V. Bharucha for the Respondent

....

CORAM : AKIL KURESHI &
M.S. SANKLECHA, JJ.

DATE : DECEMBER 14, 2018.

P.C.:

1. These appeals under Section 260A of the Income Tax Act, 1961 ("**the Act"** for short) challenge the common order dated 21.2.2017 passed by the Income Tax Appellate Tribunal, Mumbai ("**the Tribunal"** for short). The common impugned order relates to the assessment years 2004-05, 2006-07, 2007-08, 2008-09, 2009-10 and 2010-11. Thus, the six appeals.

2. The appellant-assessee have urged the following common questions of law for our consideration:

> "(i) Whether on the facts and in the circumstances of the case and in law, the Tribunal ought to have held that the appellant does not have a Permanent Establishment in India?
>
> (ii) Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in remanding the matter back to Assessing officer for fresh consideration when the Assessing Officer had not discharged the burden of proving that the appellant had a PE in India?

3. The impugned order of the Tribunal restored the issue of permanent establishment to the assessing officer by following the order of its coordinate bench dated 1.4.2015 in respect of the assessment years 2002-03, 2003-04 and

2005-06 in its own case. This was by way of remand.

4. It is agreed position between the parties that the appellant being aggrieved by the above order dated 1.4.2015 of the Tribunal had preferred appeals to this Court being Income Tax Appeal Nos. 1198/15, 260/16 and 264/16. The above appeals were disposed of by this Court on 29.8.2018 by setting aside the order of the Tribunal dated 1.4.2015 to the extent it had remanded the issue of permanent establishment to the assessing officer for fresh adjudication.

5. It is an agreed position between the parties that the above decision dated 29.8.2018 of this Court in Income Tax Appeal No. 1198 of 2015 & other appeals will equally apply to this appeal.

6. Thus, the common impugned order dated 21.2.2017 of the Tribunal for A.Y. 2004-05, 2006-07, 2007-08, 2008-09, 2009-10 & 2010-11 is quashed and set aside. The appeals are restored to the Tribunal, for final disposal on the question

Permanent Establishment in accordance with law.

7. Therefore, all the six appeals are disposed of in above terms.

8. In view of above, Notices of Motions taken out in all the six appeals disposed of as infructuous.

[M.S. SANKLECHA, J.] **[AKIL KURESHI, J]**