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

INCOME TAX APPEAL NO.2390 OF 2018

Principal Commissioner of Income Tax-2,
Aayakar Bhavan, Mumbai-400 020. .. Appellant
Vs.
Tata Chemicals Ltd.,
Bombay House, Fort, Mumbai-400 001. .. Respondents

Mr. Abhishek Mishra, Advocate for the Appellant.
Mr. Shrihari Iyer, Advocate for the Respondents.

CORAM : SUMAN SHYAM & GAUTAM A. ANKHAD, JJ.

DATE : 8th October, 2026.

P.C. :

1. This Appeal is filed by the Revenue under Section 260A of the Income Tax Act, 1961 (**"the Act"**) challenging an order dated 15th September, 2017 passed by the learned Income Tax Appellate Tribunal for the Assessment Year 2001-02.

2. This Appeal was admitted on 9th July, 2026 on the following questions of law:

> "1. Whether on the facts and in the circumstances of the case and in law, the expenditure incurred on projects which are written off during the relevant assessment year can be allowed as Revenue expenditure under Section 37(1) of the Income Tax Act, 1961?
>
> 2. Whether on the facts and in the circumstances of the case and in law, the non-compete of Rs.40,00,000/- paid by the Assessee to its Managing Director is allowable as a Revenue expenditure under Section 37(1) of the Income Tax Act, 1961?"

3. At the outset, Mr. Iyer, learned counsel for the Respondent submitted that as regards the first question, the same has been decided as Question No.3 by this Court vide its judgment dated 25th June, 2024 in ***Principal Commissioner of Income Tax-2 Vs. Tata Chemicals Limited***[1]. As regards the second question of law is concerned, the same is covered by a judgment of the Hon'ble Supreme Court in ***Sharp Business System Vs. Commissioner of Income-tax***[2]**.** He, therefore, submits that there is no good ground to entertain the present Appeal.

4. Mr. Abhishek Mishra, learned counsel for the Appellant/Revenue, fairly submits that both the judgments are applicable to the questions of law formulated in this matter. However, as regards the second question, he submits that the judgment of the Hon'ble Supreme Court in ***Sharp Business System*** *(supra)* is distinguishable on facts as the issue therein pertained to a single assessment year, whereas in the present case the fee is paid over three assessment years.

5. Considering the above objection, we may indicate briefly that during the assessment proceedings, on the first issue, the Assessing Officer allowed deduction to the extent of Rs.60,57,597/- and disallowed the balance amount by treating it as capital in nature. The Assessee's challenge to the disallowance of the balance expenditure before the first

1 BHC-OS:9324-DB *(Income Tax Appeal No.1696 of 2018)*.
2 (2025) 181 taxmann.com 657 (SC)

Appellate Authority did not succeed. The learned Tribunal held that expenditure incurred was for improvement of existing plants and did not bring into existence any new asset. Mr. Mishra has not assailed the said factual finding, as recorded in the impugned order of the learned Tribunal.

6. On the second question, it was urged by Mr. Mishra that the expenditure of Rs.40 lakhs is paid as non-compete amount towards the settlement package payable to Dr. Seth, who was the Managing Director of the Assessee. The Assessing Officer did not allow the deduction and held that the payment made was in the nature of capital expenditure. The Assessee's Appeal before the Commissioner (Appeals) was dismissed. However, the learned Tribunal allowed the Assessee's claim for deduction on the ground that the non-compete fee is in the nature of compensation and on payment of such amount, no benefit of enduring nature has accrued to the Assessee. Mr. Mishra has, however, contended that as the payment is made in tranches, i.e. Rs.20,00,000/- in FY 2000-01, Rs.10,00,000/- in FY 2001-02 and Rs.10,00,000/- in FY 2002-03, the judgment in the case of ***Sharp Business System*** *(supra)* is not applicable in this case.

7. We have considered the submissions advanced on behalf of the parties and examined the questions of law in the light of the findings

recorded by the Tribunal and the decisions relied upon by learned counsel.

Question (i):

8. As regards the first question, the issue is covered by the decision of this Court dated 25th June, 2024 in ***Principal Commissioner of Income Tax-2 v. Tata Chemicals Ltd.*** *(Supra)*. The relevant portion of the said order is quoted:

> "***Question No.3:***
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> *Whether on the facts and circumstances of the case and in law, the ITAT was right in allowing advances paid by the assessee to M/s. Project Developer India Ltd. (PDIL) for A.Y. 2000-01 as revenue expense, without appreciating the fact that the project was initiated by the assessee for making profit and later it was shelved, the advances paid on the same should be treated as capital expense?*
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> …
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> *7. Insofar as question No.3 is concerned, the Tribunal has referred to the decision of the Calcutta High Court in the case of* ***Binani Cement Ltd. Vs. Commissioner of Income-tax & Anr.***[3]***.*** *However, apart from such decision, it is not in dispute that such question of law had also fell for consideration of this Court in the cases of* ***Commissioner of Income-tax-3 Vs. Idea Cellular***[4]*,* ***Principal Commissioner of Income-tax Vs. Trigent Software Ltd.***[5] *and* ***Principal Commissioner of Income-tax Vs. Rediff.com India Ltd.***[6]***.*** *These decisions are also placed on record in the compilation as tendered. We find that the decision of this Court in* ***Principal Commissioner of Income-tax Vs. Trigent Software Ltd.*** *was assailed by the Revenue before the Supreme Court in Petition for Special Leave to Appeal (C) No.11964 of 2024 which came to be dismissed in limine vide an order dated 17th May, 2024 reported in*

3 380 ITR 116 (Cal.)
4 (2016) 76 taxmann.com 77 (Bombay)
5 (2023) 457 ITR 765 (Bom.)
6 (2022) 441 ITR 195 (Bom.)

> *(2024) 464 ITR 770 SC. In this view of the matter, we are of the opinion that the advances which were paid by the assessee to M/s. Project Development India Limited for the assessment year in question being treated as revenue expenses, was rightly accepted by the Tribunal by the impugned order. For these reasons, such question of law would not arise for our consideration."*

9. In the present case, the Revenue has fairly accepted the applicability of the aforesaid decision. No distinguishing feature has been demonstrated which would warrant a departure from the view already taken by this Court in the Assessee's own case.

Question No. (ii):

10. The second question concerns the deduction claimed in respect of the non-compete fee of Rs.40,00,000/- paid to Dr. Seth. The payment formed part of a settlement package under restrictive covenants by which Dr. Seth agreed not to compete with the Assessee and not to disclose information acquired during the course of his employment.

11. The law governing the treatment of non-compete payments has since been considered by the Hon'ble Supreme Court in ***Sharp Business System v. Commissioner of Income-tax*** (supra). The decision addresses the distinction between capital and revenue expenditure in the context of payments made under non-compete arrangements and recognises that such expenditure, where incurred for the purposes of business and not resulting in the acquisition of a capital asset is allowable as revenue

expenditure under Section 37(1) of the Act. The relevant portion of the said judgment reads as under:-

> "25. Having adverted to the relevant case laws, we may now examine the nature and character of non-compete fee; whether payment of non-compete fee is revenue expenditure or capital expenditure. Non-compete fee is paid by one party to another to restrain the latter from competing with the payer in the same line of business. It may be by way of a written agreement or by an oral understanding. The restriction may be limited to a specified territory or otherwise; similarly, it can be for a specified period or otherwise. Purpose of non-compete payment is to give a head start to the business of the payer. It can also be for the purpose of protecting the business of the payer or for enhancing the profitability of the business of the payer by insulating the payer from competition.
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> 26. Thus, non-compete fee only seeks to protect or enhance the profitability of the business, thereby facilitating the carrying on of the business more efficiently and profitably. Such payment neither results in creation of any new asset nor accretion to the profit earning apparatus of the payer. The enduring advantage, if any, by restricting a competitor in business, is not in the capital field.
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> 27. Following the judicial trend, <u>it can be safely inferred that the length of time over which the enduring advantage may enure to the payer is not determinative of the nature of expenditure</u>. As long as the enduring advantage is not in the capital field, where the advantage merely facilitates in carrying on the business more efficiently and profitably, leaving the fixed assets untouched, <u>the payment made to secure such advantage would be an allowable business expenditure, irrespective of the period over which the advantage may accrue to the payer (assessee) by incurring of such expenditure</u>.
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> 28. The non-compete compensation from the stand point of the payer of such compensation is so paid in anticipation that absence of a competition from the other party may secure a benefit to the party paying the compensation. However, there is no certainty that such benefit would accrue. Notwithstanding such an arrangement, the payer (assessee) may still not achieve the desired result. Insofar as the present case is concerned, on account of payment of non-compete fee, the assessee had not acquired any new business and there is no addition to the profit making apparatus of the assessee. The assets remained the same. The expenditure incurred was essentially to keep a potential competitor out of the same business.

> Further, there is no complete elimination of competition. Such payment made by the appellant to L&T did not create a monopoly of the appellant over the business of electronic products/equipments. Payment was made to L&T only to ensure that the appellant operated the business more efficiently and profitably. Such payment made to L&T cannot, therefore, be considered to be for acquisition of any capital asset or towards bringing into existence a new profit earning apparatus.
>
> **Conclusion**
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> 29. That being the position, we are of the considered opinion that payment made by the appellant to L&T as non-compete fee is an allowable revenue expenditure under Section 37(1) of the Act."

12. The distinction sought to be drawn by the Revenue, namely, that the payment in *Sharp Business System* pertained to a single assessment year whereas the payment in the present case was made over three financial years, does not, in our view, materially alter the legal character of the expenditure so incurred. Once it is held that such payment is of revenue nature, it is of no consequence if the same is paid as a lump-sum or in installments over different financial years. This question was also dealt with by the Hon'ble Supreme Court in paragraph 27 quoted above. Hence, we are unable to accept the distinction sought to be drawn by the Revenue. The Tribunal has considered the nature of the payment and rightly concluded that it was in the nature of compensation and did not result in a benefit of an enduring nature so as to constitute capital expenditure.

13. For the aforesaid reasons, both substantial questions of law are answered against the Revenue and in favour of the Assessee.

14. The Income Tax Appeal is accordingly dismissed.

[GAUTAM A. ANKHAD, J.] **[SUMAN SHYAM, J.]**

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