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

**INCOME TAX APPEAL NO. 203 OF 2002**

The Commissioner of Income Tax, City-VII,
Mumbai ..Appellant
Vs.
M/s National Organic Chemicals Industries Ltd. ..Respondent

....

Mr. Suresh Kumar, Advocate for Appellant.

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**CORAM : M.S. SANKLECHA &**
**N.M. JAMDAR, JJ.**
**DATED : 11 AUGUST 2015**

**P.C.:**

This appeal under Section 260A of the Income Tax Act, 1961 (the 'Act') challenges the order dated 5 October 2001 for the Assessment Year 1988-89.

2. The appeal was admitted on 13 August 2004 on the following substantial question of law:

> "(A) Whether on the facts and in circumstances of the case, the penalty paid by the assessee to the extent of Rs.8 lakhs to the customs authorities is allowable as the business expenditure under Section 37 of the Income Tax Act, 1961?"

3. It is an undisputed position that the disputed claim in the appeal is valued at Rs.9.88 lacs therefore follows that the tax effect in the present appeal is less than Rs.10 lacs.

4. This Court in ***CIT Vs. Vijaya Kavekar***[1] while dealing with appeals filed by the revenue dismissed a pending appeal having low tax effect i.e. less than Rs.10 lacs by pacing reliance upon Central Board of Direct Taxes (the 'CBDT') Instruction NO.3/2011. This Court held that the circular/instruction issued by CBDT would apply to pending appeals.

5. The CBDT has now issued Instruction No.5/2014 wherein it has also been specifically provided that where the tax effect is less than Rs.10 lacs, the revenue should not file appeal unless it falls within exclusion clause provided therein. Nothing has been shown to us to indicate that the issue arising in the present appeal would fall within the exclusion clause under Instruction No.5/2014. Therefore we are inclined to dismiss this appeal.

1. 350 ITR 237

6. However, Mr. Suresh Kumar, the learned Counsel for the revenue urges that the aforesaid two questions would have a cascading effect and therefore in view of the decision of the Apex Court in ***CIT Vs. Surya Herbal Ltd.***[2], the present appeal should be disposed of on merits. We find that the questions which arise for our consideration in the present appeal would not give rise to any cascading effect. So far as Question raised herein is concerned, it seeks to disallow payment of penalty to the Customs Department on the ground that it is not an allowable expenditure. This would not have any cascading effect as a question of penalty and allowing it as expenditure would be considered independently in each assessment year depending upon the facts existing during the year under consideration.

7. In view of the fact that we are not considering the appeal on merits, the substantial question of law as formulated is left open to be decided in an appropriate case.

2. 350 ITR 300

8. In view of the above, as the tax effect is less than Rs.10 lacs, we dismiss the present appeal. No order as to costs.

**[N.M. JAMDAR, J]** **[M.S. SANKLECHA, J.]**