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

INCOME TAX APPEAL NO. 2040 OF 2013

The Commissioner of Income Tax-2, Mumbai. … Appellant

v/s

M/s.Dalmia Dyechem Industries Ltd. … Respondent

Mr.P.C. Chhotaray for the appellant.

Mr.Atul Jasani for the respondent.

CORAM: M.S. SANKLECHA &
N.M. JAMDAR, JJ.

DATED : 8TH JULY, 2015

P.C.:

The Revenue has challenged the order passed by the Income Tax Appellate Tribunal (the Tribunal) dated 21 November 2012 dismissing the appeal filed by the revenue to the extent it deleted penalty on account of interest attributable to loans to sister concerns. The present appeal concerns the Assessment Year 2001-02.

2 The Respondent-Assessee had filed a return declaring loss of Rs.6,90,77,611/-. The Assessing Officer made additions as regard interest attributable to loans and advances to sister concerns and interest payable to banks and financial institutions. The Assessee

filed an appeal before the Income Tax Appellate Tribunal and the matter was restored to the file of the Assessing Officer for re-examination. Thereafter, the penalty proceedings under Section 27(1)(c) were initiated against the Assessee and the Assessing Officer accordingly levied penalty on the ground that the Assessee had furnished incorrect particulars and concealed the income. The Assessee filed an appeal to the Commissioner of Income Tax (Appeals) which was allowed by an order dated 18 June 2011. The Revenue filed an appeal against this order to the Tribunal which was partly allowed. The levy of penalty in respect of the disallowance of interest of Rs.6770646 was held to be rightly deleted by the Commissioner of Income Tax (Appeals). As regard the penalty on disallowance of Rs.546043 on interest payable to banks, the same was restored to the file of the Commissioner of Income Tax (Appeals).

3 Mr.Chhotaray submitted that the Tribunal erred in relying on the decision of the Apex Court in the case of ***C.I.T. v/s Reliance Petro Products Pvt. Ltd.,*** reported in ***322 ITR 158 (SC),*** without appreciating the factual backdrop in which the decision was rendered and mechanically applied the ratio. He submitted that the questions of law that arise for consideration in this appeal are as under :-

(a) Whether on the facts and in the circumstances of the case and in law the Tribunal was justified in upholding the order of the Commissioner of Income Tax (Appeals) deleting the penalty imposed under Section 271(1)(c) of the Act by the Assessing Officer ?

(b) Whether on the facts and in the circumstances of the case, the Tribunal was correct in law in upholding the order of the Commissioner of Income Tax (Appeals) deleting the penalty imposed by the Assessing Officer under Section 271(1)(c) of the Act ignoring that the assessee had wilfully claimed deduction in respect of interest on borrowed funds which were diverted to its sister concerns free of interest and not utilized for the purpose of business of the assessee ?

4 On 6 July 2015, we have dismissed the appeal filed by the revenue bearing Income Tax Appeal No.1396 of 2013 arising from the common order passed by the Tribunal relating to Assessment Years 2001-02 and 2003-04. Learned counsel for the parties agree that the contentions advanced in Income Tax Appeal No.1396 of 2013 would be the same as in the present appeal. Since we have already dealt with the submissions in Income Tax Appeal No.1396 of 2013 and nothing is shown to take any different view. This appeal is also dismissed for the reasons recorded in our order dated 6 July 2015 passed in Income Tax Appeal No.1396 of 2013. No order as to costs.

(N. M. JAMDAR, J.) ***(M.S. SANKLECHA, J.)***