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

INCOME TAX APPEAL NO. 1648 OF 2013

The Commissioner of Income Tax-8, Mumbai ..Appellant

Vs.

M/s Bisleri Advertising Ltd., Mumbai ..Respondent

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Mr. Arvind Pinto, Advocate for Appellant.
Mr. S.E. Dastur, Sr. Advocate a/w Nishant Thakkar and Jas Singhvi a/w Ms. Meghana Bansal, Advocates i/b PDS Legal for Respondent.

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CORAM : M.S. SANKLECHA &
N.M. JAMDAR, JJ.
DATED : 1 JULY 2015

P.C.:

This appeal by the revenue arises from order dated 30 November 2012 passed by the Income Tax Appellate Tribunal (the 'Tribunal') disposing of cross appeals as well as cross objection filed by the assessee and the Revenue for the Assessment Year 1999-00.

2. It is an agreed position between the Counsel that the issues arising herein stand covered by the decision rendered by us yesterday i.e. 30 June 2015 in Income Tax Appeal No. 1436/2013

in the case of CIT Vs. Bisleri Sales Ltd. In favour of the assessee. Both the appeals arise from a common order. In view of the reasons contained in the order passed yesterday in Income Tax Appeal No. 1436/2013, the present appeal is also not entertained.

3. However, Mr. Pinto, the learned Counsel appearing for Revenue states that there is one more additional ground arising in the present appeal and the question is formulated thus:

> "Whether, on the facts and circumstances of the case and in law, the Tribunal was justified in not adjudicating the assessee's cross objection with regard to non-applicability of Section 115 of the Act to capital receipts to the extent exempt u/s 5EA of the Act?"

4. The question as framed indicates that the grievance of the Revenue is that the cross objection as filed by the assessee has not been dealt with by the Tribunal. We enquired of Mr. Pinto how the Revenue is aggrieved by virtue of cross objection of the assessee not being dealt with. Mr. Pinto without addressing our concern insisted on the question as framed being answered.

5. Mr. Dastur, the learned Senior Counsel appearing for the assessee invites our attention to paragraph 29 of the order wherein while dealing with assessee's cross objection, the Tribunal has discussed the same by observing as under:

> "The assessee has taken an alternative ground which is similar to the ground raised in C.O. No. 292/Mum./2003. In view of our findings given therein, this ground becomes infructuous and the same is hereby dismissed."

6. Accordingly, no question of law arises for our consideration much less no substantial question to be entertained. Accordingly, with the above observations the appeal is dismissed.

7. However, before closing we must record our displeasure at the revenue raising issues/questions on matters which do not cause any prejudice to the revenue and moreover factually incorrect. The cause for concern is that when the same is pointed out instead of withdrawing the question, Mr. Pinto insist on the same being answered. This leads to waste of judicial time on non-

issues. The revenue seems oblivious of the fact that a large number of appeals (majority filed by the revenue) are pending admission. Mr. Pinto submits that he has been instructed to press this question and the revenue needs our response. We have thus dismissed the appeal as pointed out above. However in these circumstances we direct the payment of cost of Rs.5,000/- by the Commissioner of Income Tax (the appellant herein) to the Legal Services Authority within one week from the order being available and report compliance within two weeks thereafter.

8. The Registry is directed to serve a copy of this order upon the Commissioner of Income Tax, the appellant herein.

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