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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.1462 OF 2013

The Commissioner of Income Tax-8. Mumbai ..Appellant.
V/s.
m/s. Aventis Pharma Ltd. ..Respondent.

Mr.Arvind Pinto for the appellant.
Mr.Sanjiv Shah for the respondent.

CORAM : S.C.DHARMADHIKARI AND A.K. MENON, JJ.

DATED : 22ND APRIL, 2015

P.C. :-

1. This appeal of the revenue is directed against the order of the Income Tax Appellate Tribunal, Mumbai Bench.

2. The Tribunal was concerned with two appeals Income Tax Appeal No.4180/Mum/2003 for assessment year 1999-2000 which is of the assessee and Income Tax Appeal No. 4485/Mum/2003 for the same assessment year and it is by the revenue.

3. We are concerned in this case in so far as the legality and validity of the order dated 20th February, 2013 of

the Tribunal to the extent of the following four questions:-

a) Whether on the facts and circumstances of the case and in law, the ITAT was justified in holding that the sm of ₹33,30,203/- being software expenses is revenue in nature, relying on the decision of the Delhi High Court in the cases of CIT V/s. Amway India Enterprises (2012) (346 ITR 341) and Asahi India Safety Glass Limited (2012) (346 ITR 329) without appreciating the fact that the decisions relied upon are distinguishable from the facts of the instant case ?

b) Whether on the facts and circumstances of the case and in law, the ITAT was justified in deleting the addition of ₹33,30,203/- on account of software expenses without appreciating the fact that the expenditure incurred by the assessee was for purchase of basic software necessary for computer operations and these software are essential operating softwares which can be used for a number of years and the benefit of which is enduring in nature and hence rightly treated by the A.O. as capital expenditure ?

c) Whether on the facts and circumstances of the case and in law, the ITAT was justified in deleting the disallowance made under section 14A of the Act without appreciating that the entire interest bearing funds were wholly and exclusively for its business purpose and only no interest bearing funds were utilized for the impugned investments ?

d) Whether on the facts and circumstances of the case and in law, the ITAT was justified in deleting the disallowance made under section 14A of the Act without appreciating the decision of the ITAT Delhi “B” Special Bench in the case of Cheminvest Limited V/s. ITO (2009) 124 TTJ (Del) (SB) 577 and the decision of the jurisdictional High Court in the case of Godrej & Boyce Mfg. Co. Ltd. V./s. DCIT, Range 10(2), Mumbai (2012) 194 Taxman 203 ?

4. Having heard both sides and perusing the order passed by the Tribunal, we are of the view that the first two questions can hardly be termed as substantial questions of law. If the assessee had licence to use software and it was not capital asset according to it, then, based on that stand of the assessee, which was countered by the revenue, a partial relief came to be granted by the Commissioner of Income Tax (Appeals).

5. The assessee desired complete relief and not getting the same had urged that the questions (1) & (2) raised the issue which is fully covered by the Tribunal's order in its own case for the assessment year 1995-96 in Income Tax

Appeal No.70/Mum/2001. There is further reliance placed on the judgment of the High Court of Delhi. That reliance is noted in para 2.3.1 of the Tribunal's order. Equally, the Tribunal notes that the facts and circumstances in the previous assessment year and the assessment year in question are identical. There is absolutely no distinction pointed out by the departmental representative. Rather the departmental representative has conceded that the issue was covered in favour of the assessee (see para 2.3.1 to 2.3.2 o the Tribunal's order running page 105 and 106). We are really surprised as to why in such a situation, the revenue has preferred an appeal and under section 260A of the Income Tax Act, 1961 to this Court. We can understand that a concession of the representative of the revenue on law would not bind it. However, a concession purely on facts would definitely bind the revenue / department and it cannot resile from the same. Merely because the revenue effect or the tax amount is found enormous, we are not required to take a contrary stand. There is sanctity to a judicial process and any Commissioner in hierarchy cannot disrespect and disregard the Tribunal's order passed on clear concession from the revenue or department and on facts. We have repeatedly found that no explanation is provided either in the memo of appeal or during the course of arguments for filing appeals despite such concessions. This trend is disturbing to say the least. The State and the revenue ought to act as a model litigant and not take chances by filing appeals arising from merely factual issues.

6. Even otherwise, we find in this appeal that the two questions noted above cannot be entertained. A finding of fact is sought to be re-appreciated or re-appraised. In the light of the clear factual position and the earlier orders of the Tribunal, we do not find that the present appeal could be entertained. The same does not raise any substantial question of law.

7. The last two questions are answered by a Division Bench of this Court in the case of **Godrej & Boyce Manufacturing Co. Ltd. V/s. DCIT** reported in **(2010) 328 ITR 81.**

8. In the light of above, this appeal does not raise any substantial question of law and it is dismissed. No costs.

9. While we refrain from imposing heavy costs in this matter, we remind that any such attempt and to repeatedly raise questions covered against the revenue by authoritative pronouncements would invite heavy costs, adverse remarks against the officers filing such appeals and the costs will be then personally borne by them.

(A.K.MENON, J.) **(S.C.DHARMADHIKARI, J.)**