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

INCOME TAX APPEAL NO. 106 OF 2002

The Commissioner of Income Tax, City-II,
Mumbai ..Appellant
Vs.
M/s National Peroxide Ltd. ..Respondent

....
Mr. Suresh Kumar, Advocate for Appellant.
....

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 27 June 2001 for the Assessment Year 1985-86.

2. The appeal was admitted on 23 April 2004 on the following substantial questions of law:

> "(A) Whether on the facts and circumstances of the case and in law, the Tribunal was justified in directing the Assessing Officer to allow depreciation and investment allowance on the plant and machinery when the Assessee had not carried out

any manufacturing activity during the previous year relevant to the Assessment Year 1985-86?

(B) Whether on the facts and circumstances of the case and in law, the Tribunal was justified in holding that the provisions of Sec.37(3A) are not applicable to the expenses incurred on repairs and taxes of Motor Cars?"

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

1. 350 ITR 237

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.

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 (A) is concerned, it seeks to disallow depreciation and investment allowance on the ground that plant and machinery was not put to use during the relevant assessment year. This would not have any cascading effect as a question of depreciation and investment allowance would have to be considered independently in each assessment year depending upon the facts existing during the year under consideration. So far

2. 350 ITR 300

as Question (B) is concerned, it is in respect of disallowance of expenses incurred on repairs and taxes in respect of motor cars. This again would depend on facts as existing from year to year and the not answering the question would not have any cascading effect. In view of the fact that we are not considering the appeal on merits, the substantial questions of law as formulated are left open to be decided in an appropriate case.

7. 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.]**