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

INCOME TAX APPEAL NO. 161 OF 2013

Commissioner of Income Tax-11 } Appellant
versus
M/s. NGC Network India P. Ltd. } Respondent

Mr. P. C. Chhotaray for the Appellant.

Mr. Porus F. Kaka-Senior Advocate with Mr. Divesh Chawla i/b. Mr. Atul K. Jasani for the Respondent.

CORAM :- S.C.DHARMADHIKARI &
S.P.DESHMUKH, JJ.
DATED :- JANUARY 9, 2015

P.C. :-

This Appeal of the Revenue challenges the order passed by the Income Tax Appellate Tribunal, Mumbai Bench in Income Tax Appeal No. 2867/Mum/2010 for the assessment year 2002-03. The order of the Tribunal dated 29th June, 2012 decided the Appeal and the Cross Objection of the Respondent Assessee.

2) According to Mr. Chhotaray appearing for the Appellant, this order of the Tribunal raises substantial questions of law. They pertain to the finding on the proceedings under section 148 of the Income Tax Act, 1961 being held and termed as invalid and secondly, the deduction allowed in respect of whole advertisement and promotion

expenditure. Mr. Chhotaray submits that it was not the Assessee who benefited by such expenditure, but it was the Assessee's principal and for whom the expenditure was incurred. Thus, the expenditure was not incurred wholly and exclusively for the purpose of the business of the Assessee in terms of section 37 of the Income Tax Act, 1961.

3) Mr. Chhotaray and Mr. Kaka-Senior Counsel appearing for the Assessee/Respondent fairly invite our attention to the two orders, which have been delivered by this Court in the very Assessee's case. The Income Tax Appeal No. 538 of 2012 decided on 13th October, 2014 dealt with the very issue and particularly, "whether the expenditure was incurred wholly for the business of the Assessee in terms of section 37 of the Income Tax Act, 1961?" The detailed order passed after hearing both sides concludes the issue in favour of the Assessee and against the Revenue. That order was followed in Income Tax Appeal Nos. 539 and 595 of 2012. Each of these Appeals raised the identical question and the issue.

4) In the light of the detailed order, we are of the opinion that the present Appeal does not raise any substantial question of law. Once the issue has been answered on merits in favour of the Assessee and against the Revenue, then, we are not required to consider the other grievance of the Revenue, namely, the proceedings were valid and not

vitiated, as held by the Tribunal. The argument of Mr. Chhotaray that recourse to section 148 of the Income Tax Act, 1961 was permissible need not detain us as it is not required to be gone into once the merits of the case have been dealt with extensively by this Court.

5) We are also not required to give any clarification or correction with regard to the earlier Judgment and order simply because this Court concluded that the expenditure was incurred wholly for the business of the Assessee and the Assessee is a company based in India. In these circumstances, the present Appeal does not raise any substantial question of law. It is dismissed. No costs.

(S.P.DESHMUKH, J.) **(S.C.DHARMADHIKARI, J.)**