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

INCOME TAX APPEAL NO. 469 OF 2014

The Commissioner of Income Tax-2
Mumai .. Appellant

v/s.

M. Pallonji & Co. Pvt. Ltd. .. Respondent

Mr. Suresh Kumar a/w Ms. Samiksha Kanani for the appellant
Mr. J.D. Mistri, Senior Counsel a/w Mr. Ryan Saldana for the respondent

CORAM : M.S. SANKLECHA &
S.C. GUPTE, J.J.

DATED : 26th SEPTEMBER, 2016.

P.C.

1. This Appeal under Section 260-A of the Income Tax Act, 1961 (the Act) challenges the order dated 28th August, 2013 passed by the Income Tax Appellate Tribunal (the Tribunal). The impugned order is in respect of Assessment Year 2006-07.

2. The Revenue urges following questions of law for our consideration :-

(a) Whether on the facts and in the circumstances of the case, the Tribunal was correct in law, in allowing the claim of deduction u/s 80IA of the Income Tax Act, 1961 of

Rs.30,83,852/- on the income generated from the Electric Plant even though the same was not allowable as there was no income from the plant".

(b) Whether on the facts and in the circumstances of the case, the Tribunal was correct in law, in restoring back the issue to the file of the Assessing Officer to adjudicate afresh the disallowance made under Section 14A of the Income Tax Act, 1961, in accordance with the Ratio laid down by the Hon'ble jurisdictional High Court in the case of Godrej & Boyce Mfg. Co. Ltd. (2010) 328 ITR 81 which has not been accepted by the Income Tax Department and SLP No.12872 of 2011 has been filed before the Hon'ble Apex Court?

3. <u>Re. Question (a) :-</u>

(i) The impugned order of the Tribunal extended the benefit of deduction under Section 80IA of the Act in respect of its Wind Mill Power project to the extent of Rs.30.83 lakhs. The impugned order of the Tribunal placed reliance upon its order in respect of the same respondent assessee for the A.Y. 1997-98 reported as ***M. Pallonji & Co. (P) Ltd. Vs. Commissioner of Income Tax 6 SOT 287*** and also on its order passed for A.Y. 1996-97. The Revenue does not dispute that the fact situation in the two earlier Assessment Years relied upon is identical to the facts in the subject Assessment Year.

(ii) The memo of appeal indicates that the Revenue has preferred appeals from the orders of the Tribunal for the Assessment Years 1997-98 and 1998-99. Therefore, we specifically asked Mr. Suresh Kumar as to the fate of those appeals. Mr. Suresh Kumar states that so far as the order of the Tribunal relating to A.Y. 1997-98 is concerned, there is nothing available with the Department to evidence that an appeal has in fact been preferred to this Court. However, so far as the A.Y. 1998-99 is concerned, Mr. Suresh Kumar states that although an appeal was filed the same came to be dismissed for non-prosecution. Mr. Suresh Kumar further states that nothing is available to indicate that any steps were taken to restore the above appeal.

(iii) In view of the fact that the Revenue has on an identical fact situation in respect of orders passed for the Assessment Years 1997-98 and 1998-99 has accepted the same, the impugned order of the Tribunal is not assailable because it merely follows its earlier orders which has been accepted by the Revenue. Therefore, in the absence of any distinguishing features in the subject assessment year to that existing in A.Y. 1996-97 and 1997-98 being pointed out the questions as raised herein cannot be said to give rise to substantial queston of law.

(iv) In the above view, we see no reason to entertain the present question of law. Accordingly, question (a) is not entertained as it does not give rise to any substantial question of law.

4. Re. Question (b) :-

Mr. Suresh Kumar, learned Counsel appearing for the Revenue very fairly states that the same stand concluded against the Revenue and in favour of the respondent assessee by the decision of this Court in ***Godrej and Boyce Manufacturing Co. Ltd. vs. Dy. Commissioner of Income Tax , 328 ITR 81***. In the above view, question (b) also does not give rise to any substantial question of law. Hence, not entertained.

5. Accordingly, the appeal is dismissed. No order as to costs.

(S.C. GUPTE, J.) **(M.S. SANKLECHA, J.)**