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

INCOME TAX REFERENCE NO.1184 OF 1998

The Hindustan Sugar Mills Ltd. .. Applicant

v/s.

The Commissioner of Income Tax .. Respondent

Ms. Vasanti Patel for the applicant
Mr. Suresh Kumar a/w Ms. Samiksha Kanani for the respondent

CORAM : M.S. SANKLECHA &
A.K. MENON, J.J.

DATED : 11th JULY, 2016.

P.C.

1. This Reference under Section 256(1) of the Income Tax Act, 1961 (the Act) made by the Income Tax Appellate Tribunal at the instance of the applicant assessee seeks our opinion on the following two questions of law :-

(a) Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the liability of the assessee company to pay sur-tax did not represent allowable deduction for computing the profit and gains of the business of the assessee-company?

(b) Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that investment

allowance and depreciation in respect of the assets of cement Unit No.2 were not allowable in the relevant accounting year and that the same would be allowable in the year in which the complete installation of machinery of the said cement unit took place?

2. Regarding question (a) it is an agreed position between the parties that the question as posed for our opinion stand concluded against the applicant assessee and in favour of the Revenue by the decision of the Apex Court in ***Smith Kline & French (India) Ltd. Vs. Commissioner of Income Tax 96 ITR 581***. In the above view, question (a) is answered in the affirmative i.e. in favour of the Revenue and against the assessee.

3. So far as question (b) is concerned, Ms. Patel, learned Counsel appearing for the applicant assessee in support of the Reference, on instructions, states that she does not press the question for our opinion. This for the reason that for the subsequent assessment years, the applicant assessee has received the benefit of investment allowance and depreciation and has accepted it. Thus, the question now becomes academic. Thus, question (b) is returned unanswered.

4. However, she further states that for the very subject assessment year in respect of question (b) as framed hereinabove, the Assessing Officer had imposed a penalty upon the applicant assessee under Section 271(1)(c) of the Act. However, the Commissioner of Income Tax (Appeal) deleted the penalty. The order of the CIT(A) was upheld by the Tribunal. The applicant assessee has not been served with any notice from the Revenue that it has preferred any appeal to this Court from the order of the Tribunal upholding the deletion of the penalty. Nevertheless, it is made clear that not pressing this question would not be held against the applicant assessee, in case the Revenue has already challenged the order of the Tribunal upholding the order of CIT(A) deleting the penalty before this Court.

5. In the above view, our response to the question framed for our opinion is as under :-

(i) Question (c) :- In the affirmative i.e. in favour of the Revenue and against the assessee; and

(ii) Question (b) :- Returned unanswered as not pressed.

6. The Reference is disposed of in the above terms. No order as to costs.

(A.K. MENON, J.) **(M.S. SANKLECHA, J.)**