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

INCOME TAX APPEAL NO. 2424 OF 2013

The Commissioner of Income Tax-6 .. Appellant

v/s.

M/s. Glaxo India Ltd. .. Respondent

Mr. Suresh Kumar for the appellant
None for the respondent

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

DATED : 26th APRIL, 2016.

P.C.

1. This Appeal under Section 260-A of the Income Tax Act, 1961 (the Act) challenges the order dated 12th June, 2013 passed by the Income Tax Appellate Tribunal (the Tribunal). The impugned order dated 12th June, 2013 is in respect of Assessment Year 2000-01.

2. This appeal raises the following questions of law for our consideration :-

"(1) Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in holding that the share

issue expenses incurred or raising capital for purchase of plant and machinery should be capitalized and depreciation be allowed on the same ?

(2) Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in holding that the entire expenditure incurred on purchase of consumables like diesel, oil and coal is to be allowed as business expenditure even if the entire purchases are not actually consumed during the relevant previous year ?

(3) Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in holding that the interest on DPEA liability is to be allowed as expenditure on year to year basis without appreciating the fact that the interest liability was neither claimed as deduction in the return of income nor claimed as expenses in its books of account and at the best was treated as liability in the nature of contingent liability which had neither accrued nor arisen ?

(4) Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in holding that the advance license receivable by the assessee is to be taxed in the year in which the benefits actually accrue after the imports are effected and not in the year in which the licence is granted to the licencee / assessee?

(5) Whether on the facts and in the circumstances of the case

and in law, the Tribunal was justified in holding that no expenditure was involved in earning dividend and directing to allow deduction u/s 80M on the entire dividend income received, without appreciating the fact that deduction u/s 80M is to be allowed on net dividend only?

(6) Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in holding that no expenditure was involved in earning dividend and directing to allow deduction u/s 80M on the entire dividend income received, without appreciating the fact that the assessee has been maintaining a common P&L account in respect of all sources of income and all types of expenses and, therefore, the expenses incurred / attributable to the exempt income can only be estimated?

(7) Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in holding that the payments made to Glaxo Sports Club do not fall within the purview of Section 40A(9) of the Income Tax Act ?

(8) Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in directing the Assessing Officer that entire Head Office Administrative Expenses and interest cost be not allocated to the Nasik Units for computing the quantum of deduction under Section 80I/80IA for the Nasik Units?

(9) Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in directing the Assessing Officer to consider the disallowances made by him as part of profit of eligible unit on proportionate basis for the purpose of deduction u/s 80IB and 80IB of the Income Tax Act, 1961 without appreciating the fact that deduction u/s 80IB of the Act cannot be allowed more than what was claimed by the assessee?

3. Mr. Suresh Kumar, learned Counsel appearing for the Revenue very fairly states that all the questions, which arises in this appeal for consideration are concluded against the Revenue and in favour of the respondent assessee. In fact, an affidavit dated 26th April, 2016 has been filed by the Principal Commissioner of Income Tax-7, Mumbai setting out the decision of Courts (this Court and Apex Court) by which the question as raised by the Revenue stands concluded.

4. <u>Re. question Nos. (1), (2), (5), (6), (7) and (8) :-</u>

. Mr. Suresh Kumar, learned Counsel for the Revenue states that all the above questions stand concluded against the Revenue and in favour of the respondent assessee by virtue of decision of this Court in respondent assessee's own case for Assessment Year 1996-96. This Court dismissed the Revenue's appeal being Income Tax Appeal No.6203 of 2010 filed from the order of the Tribunal for the A.Y. 1995-

96 on 25th February, 2013. The questions raised therein were identical to question arrived herein. No distinguishing features have been shown to us for the subject assessment year from that existing for the A.Y. 1995-96. In the above view, question nos. (1), (2), (5), (6), (7) and (8) do not give rise to any substantial question of law. Thus, not entertained.

5. <u>Re. question no. (3) :-</u>

Mr. Suresh Kumar, learned Counsel for the Revenue very fairly states that question arising herein was an issue which arose for the Assessment Year 1996-97 before the Tribunal and decided against the Revenue. Being aggrieved, the Revenue had filed an appeal from the order of the Tribunal for A.Y. 1996-97 on an identical question being Income Tax Appeal No. 1375 of 2012 and this Court by order dated 7th March, 2014 dismissed the Revenue's appeal. No distinguishing features are shown to exist in the subject assessment year to that existing in A.Y. 1996-97. In the above view, question (3) as formulated does not give rise to any substantial question of law. Thus, not entertained.

6. <u>Re. Question (4) :-</u>

Mr. Suresh Kumar, learned Counsel for the Revenue very fairly states that issue raised herein stands concluded against the Revenue by the decision of the Apex Court in ***Commissioner of Income Tax Vs. Excel Industries Ltd. 2013 (358) ITR 295***. No distinguishing features are urged before us to warrant our taking a different view from that taken in Excel India Ltd. (supra). In the above view, question (4) does not give rise to any substantial question of law. Thus, not entertained.

7. Re. Question (9) :-

Mr. Suresh Kumar, learned Counsel for the Revenue very fairly states that question arising herein stands concluded against the Revenue the the decision of this Court in ***Associated Capsules (P) Ltd. Vs. Commissioner of Income Tax, 197 Taxman Page 84***. No distinguishing features have been pointed out in respect of the present assessee which would warrant taking a different view then that taken in *Associated Capsules (P) Ltd. (supra)*. In the above view, question no.(9) as formulated does not give rise to any substantial question of law. Thus, not entertained.

8. Before closing, we must place on record our appreciation for fairness (which is expected but many times found lacking) and the

efforts put by the Principal Commissioner of Income Tax as well as the learned Counsel appearing for the Revenue in filing this affidavit so as to save the time of the Court. We only wish such preparation on the part of the Revenue is seen in all its matters before us.

9. Accordingly, the appeal is dismissed.

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