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

INCOME TAX APPEAL NO. 714 OF 2014

The Commissioner of Income Tax-6 .. Appellant

v/s.

M/s. Glaxo India Ltd. .. Respondent

Mr. Suresh Kumar a/w Ms. Samiksha Kanani for the appellant
None for the respondent

**CORAM : M.S. SANKLECHA &**
**G.S.KULKARNI, J.J.**

**DATED : 5th OCTOBER, 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 is in respect of Assessment Year 1998-99.

> *(i) 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?*

*(ii) Whether on the facts and in the circumstances of the case and in law, the Tribunal was correct 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?*

*(iii) 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 tot he licensee/assessee?*

*(iv) 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?*

*(v) Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in deleting the disallowance of penalty paid to Central Excise Authorities, without appreciating the fact that the same was paid in respect of overutilization of modvat which is in the nature of infraction*

*of law?*

*(vi) 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?*

*(vii) 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 expenditure and, therefore, the expenses incurred / attributable to the exempt income can only be estimated?*

*(viii) Whether on the facts and in the circumstances of the case and in law, the Tribunal was right 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?*

*(ix) 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 disallowance made by him as part of profit of eligible unit on proportionate basis for the purpose of*

*deduction u/s 80I and 80IA of the Income Tax Act, 1961 without appreciating the fact that deduction u/s 80I and 80IA of the Act cannot be allowed more than what was claimed by the assessee?*

*(x) Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in deleting the expenditure claimed for payment made under Voluntary retirement Scheme of the company, holding the expenditure to be revenue in nature without appreciating that the expenditure either ought to be amortized for 5 years as per the analogy of Section 35DDA of the Income Tax Act, 1961 or treated as capital in nature giving benefit of enduring nature to the assessee?*

*(xi) 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 tot he Nasik Units for computing the quantum of deduction under Section 80I / 80IA for the Nasik Unit?*

**2. <u>Re. question nos. (i). (ii), (vi), (vii), (viii), (ix), (x) and (xi):-</u>**

(a) Mr. Suresh Kumar learned Counsel appearing for the appellant Revenue very fairly states that the issues raised herein stand concluded against the Revenue by order of this Court dated 25th February, 2013 rendered in Income Tax Appeal No.6203 of 2010 filed by the Revenue for A.Y. 1995-96. It concerned the same respondent assessee.

(b) In the above view, these questions do not give rise to any substantial question of law before this Court. Accordingly, these questions are not entertained.

3. **<u>Re. question (iii) :-</u>**

a) Mr. Suresh Kumar, learned Counsel appearing for the revenue very fairly states that the issue now stands concluded by the decision of the Apex Court in ***Commissioner of Income Tax Vs. Excel Industries Ltd. (2013) 38, taxmann.com 100 (SC)***.

(b) In the above view, question as raised does not give rise to any substantial question of law. Thus, not entertained.

4. **<u>Re. question (iv) :-</u>**

(a) Mr. Suresh Kumar, learned Counsel for the revenue very fairly states that the revenue on identical issue had preferred an appeal to this Court from the order of the Tribunal for A.Y. 1996-97 being Income Tax Appeal No. 6715 of 2010. This Court by an order dated 17th December, 2012 did not entertain the revenue's appeal on this issue. Therefore, this issue stands considered in favour of assessee and against the revenue.

(b) Accordingly, the question as raised does not give rise to any substantial question of law. Thus, not entertained.

**5. <u>Re. question (v) :-</u>**

(a) The impugned order of the Tribunal dismissed the Revenue's appeal on this issue by following the decision of this Court in Commissioner of Income Tax Vs. International Fisheries Ltd., reported in 220 Taxation 11.

(b) Mr. Suresh Kumar, learned Counsel for the revenue very fairly states that the issue raised herein stands concluded against the revenue by the decision of this Court in International Fisheries Ltd. (supra).

(c) Therefore, the question as raised does not give rise to any substantial question of law. Thus, not entertained.

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

**(G.S. KULKARNI, J.)** **(M.S. SANKLECHA, J.)**