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

INCOME TAX APPEAL NO. 2354 OF 2013

The Commissioner of Income Tax-9
Mumbai .. Appellant

v/s.

M/s. Russan Pharma Ltd. .. Respondent

Mr. Tejveer Singh for the appellant
Mr. Prashant Pandit i/b P.C. Tripathi for the respondent

CORAM : M.S. SANKLECHA &
B.P. COLABAWALLA, J.J.
DATED : 19th JANUARY, 2016.

P.C.

1. This Appeal under Section 260-A of the Income Tax Act, 1961 (the Act) challenge the order dated 18th June, 2013 passed by the Income Tax Appellate Tribunal (the Tribunal) for the Assessment Year 2005-06. The impugned order relates to Assessment Years 2005-06.

2. The Revenue has raised the following questions of law for our consideration :-

(i) Whether on the facts and in the circumstances of the case and in law, the Tribunal was correct in upholding the order of the CIT(A) holding that while computing deduction u/s 10A of the IT Act, the loss of another unit of the assessee company cannot be set off against the profit of the unit eligible for

deduction u/s 10A of the Income Tax Act 1961?

3. We find that the impugned order of the Tribunal has dismissed the appeal before it on the question as framed for our consideration by following the decision of this Court in ***Commissioner of Income Tax Vs. Black and Veatch Consulting Pvt. Ltd. (2012) 348 ITR 72***. By order dated 6th January, 2016 we had recorded the fact that Mr. Tejveer Singh, learned Counsel for the Revenue fairly states that the issue arising in this appeal is concluded against the Revenue by the decision of this Court in Black and Veatch Consulting Pvt. Ltd. (Supra). However, we asked Mr. Tejveer Singh, learned Counsel for the Revenue as to why the present appeal has been filed when the impugned order merely followed the order of the jurisdictional High Court and whether or not the Revenue has filed any appeal from the order of this Court in Black and Veatch Consulting Pvt. Ltd. (Supra) to the Apex Court. We had *inter alia* observed in our order dated 6th January, 2016 as under :-

> *"3. We would have normally dismissed the Revenue's appeal and the matter would have ended. However, we are constrained to go into this as if this appeal has been filed casually as it appears at this stage then the officers concerned in filing such appeals must be held responsible. This would alone ensure the Administration being sensitive to the woes of*

> *an assessee and appeals are not filed only to harass an assessee.*
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> *4. In the above view, the appeal is adjourned to 13th January, 2016 to enable Mr. Tejveer Singh to take instructions and file necessary affidavit indicating whether or not an appeal is filed by the Revenue against the decision of this Court in Black and Veatch Consulting Pvt. Ltd. (Supra) and the result of the above appeal, if any."*

4. Today when the appeal reached, Mr. Tejveer Singh filed an affidavit dated 18th January, 2016 of Mr. Rajkumar, Dy. Commissioner of Income Tax 9(3), Mumbai wherein no mention is made about the specific query put in our order dated 6th January, 2016 as to whether any appeal has been filed by the Revenue against the decision of this Court in Black and Veatch Consulting Pvt. Ltd. (Supra) and the result of the above appeal, if any. The appeal is sought to be justified on the basis of a Circular dated 16th July, 2013 by the Central Board of Direct Tax. We are unable to understand how in the face of the decision of this Court which is binding upon all the Officers within the State of Maharashtra coupled with the absence of any evidence of filing of appeal and grant of stay by the Apex Court of the order of this Court in Black and Veatch Consulting Pvt. Ltd. (Supra) could it be urged that the impugned order is fallacious. Be that as it may, no fault can be found with the impugned order of the Tribunal, inasmuch as it follows the

order of this Court in Black and Veatch Consulting Pvt. Ltd. (Supra). Thus, the question as framed does not give rise to any substantial question of law.

5. Accordingly, the appeal is dismissed.

(B.P. COLABAWALLA, J.) **(M.S. SANKLECHA, J.)**