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

INCOME TAX APPEAL NO. 999 OF 2014

Commissioner of Income Tax-6 .. Appellant

v/s.

M/s. Merck Ltd. .. Respondent

Mr. Suresh Kumar for the appellant
Ms. A. Vissanji a/w Mr. S.J. Mehta for the respondent

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

DATED : 22nd FEBRUARY, 2017.

P.C.

1. This Appeal under Section 260-A of the Income Tax Act, 1961 (the Act) challenges the order dated 21st August, 2013 passed by the Income Tax Appellate Tribunal (the Tribunal). The impugned order is in respect of Assessment Year 2004-05.

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

> *"(i) Whether in the facts and circumstances of the case and in law, the Tribunal was right in upholding the entity level benchmarking of the International Transaction relating to*

Technical Knowhow fees in violation of Rule 10(B)(1) realized from the international transaction (not profit of entity) be compared with uncontrolled transaction ?

(ii) Whether in the facts and circumstances of the case and in law, the Tribunal was right in not appreciating that Rule 8D as inserted by the Income Tax (Fifth Amendment) Rule, 2007 with effect from March, 2007, was machinery provision / procedural in nature, prescribing mechanism for the purpose of disallowance relatable to earning exempt income for the purpose of disallowances under Section 14A of the Income Tax Act?

(iii) Whether on the facts and in the circumstances of the case and in law, was justified in allowing double deduction under Section 80IB and Section 80HHC of the Income Tax Act without appreciating that as per provision of Section 80IB(13) / 80IA(9) the expression "shall in no case exceed the profits and gains of such eligible business of undertaking or enterprise" starts with conjunction 'and', & this expression is in addition to the expression "deduction to the extent of 'such' [as per provision of Section 80IA(9) and 80IB(13)] profits and gains shall not be allowed under any other provisions of this chapter ?

3. **Regarding question (i) :-**

(a) Mr. Suresh Kumar, learned Counsel appearing for the Revenue very fairly states that issue raised herein stands concluded against the Revenue by the decision dated 8th August, 2016 of this Court, rendered in Revenue's appeal being Income Tax Appeal No.272 of 2014 (Commissioner of Income Tax Vs. MERCK Ltd.) in respect of A.Y. 2003-04.

(b) Therefore, for the reasons indicated in our order dated 8th August, 2016 in Income Tax Appeal No.272 of 2014 (supra) the question as proposed also does not give rise to any substantial question of law. Thus, not entertained.

4. **Regarding Question (ii) :-**

(a) The issue arising herein viz. retrospectivity of Rule 8D of the Income Tax Rules, 1962 stands concluded against the Revenue by the decision of this Court in ***DCIT Vs. Godrej & Boyce Manufacturing Co. Ltd. 382 ITR 81*** as held by the impugned order.

(b) The Revenue does not dispute the above position save stating that this issue is pending before the Supreme Court.

(c) However, in the absence of any stay of the order of this Court in Godrej & Boyce Manufacturing Co. Ltd. (supra) it continues to be binding upon the Tribunal and upon us. Therefore, question of law as proposed being concluded by the decision of this Court in Godrej &

Boyce Manufacturing Co. Ltd. (supra), no substantial question of law arises. Therefore, not entertained.

5. <u>Regarding Question (iii) :-</u>

(a) Mr. Suresh Kumar, learned Counsel appearing for the Revenue very fairly states that the issue of concurrent deduction under Section 80HHC and 90IB of the Act stands concluded against the Revenue by the order of this Court dated 8^{th} August, 2016 passed in Revenue's appeal in the case of the same respondent assessee, being Income Tax Appeal No.272 of 2014 (DCIT Vs. MERCK Ltd.).

(b) For the reasons indicated in our order dated 8^{th} August, 2016 passed in Income Tax Appeal No.272 of 2014 relating to A.Y. 2003-04, the question as proposed does not give rise to any substantial question of law. Thus, not entertained.

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

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