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

INCOME TAX APPEAL NO. 996 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 2005-06.

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) which requires that either the price of the service availed for profit realized from 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 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 disallowance under Section 14A of the Income Tax Act?

3. Regarding question (i) :-

(a) Mr. Suresh Kumar, learned Counsel appearing for the Revenue fairly points out that the impugned order of the Tribunal has followed the decision of its co-ordinate bench in respect of the same respondent assessee on an identical issue relating to A.Y. 2003-04.

(b) Being aggrieved, by the order of the co-ordinate bench of the Tribunal relating to A.Y. 2003-04, the Revenue filed an appeal to this Court being Income Tax Appeal No.272 of 2014 (Commissioner of Income Tax Vs. M/s. MERCK Ltd.). This Court by an order dated 8th August, 2016 dismissed the Revenue's appeal being Income Tax Appeal No.272 of 2014 (supra) on the ground that the same does not give rise to any substantial question of law.

(c) It is an agreed position between the parties that for the reasons indicated in our order dated 8th August, 2016 in the above appeal, being Income Tax Appeal No.272 of 2014 (supra), the question as proposed does not give rise to any substantial question of law. Thus, not entertained.

4. **<u>Regarding Question (ii) :-</u>**

(a) Mr. Suresh Kumar, learned Counsel for the Revenue fairly states that this issue of retrospectivity of Rule 8D of the Income Tax Rules 1962 is concluded by the decision of this Court in ***DCIT Vs. Godrej & Boyce Manufacturing Co. Ltd. 382 ITR 81*** against the Revenue. However, this appeal has been filed only to keep the issue alive as it is pending before the Apex Court.

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

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

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