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

INCOME TAX APPEAL NO. 909 OF 2014

Commissioner of Income Tax-6 .. Appellant

v/s.

M/s. Merck Ltd. .. Respondent

Mr. A.R. Malhotra 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 2006-07.

2. The Revenue urges the following substantial 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 on the facts and in the circumstances of the case and in law, the Tribunal erred in not appreciating that Rule 8D as inserted by Income Tax (Fifth Amendment) Rule, 2007 with effect from March, 2007, was procedural in nature and hence would apply retrospectively to all pending proceedings?"

3. Regarding question (i) :-

(a) Mr. Malhotra, learned Counsel appearing for the Revenue fairly points out that the impugned order of the Tribunal while allowing the appeal of the respondent assessee has followed the decision of its co-ordinate bench on an identical issue relating to A.Y. 2003-04. Being aggrieved, with the order of the co-ordinate bench of the Tribunal relating to A.Y. 2003-04, the Revenue had preferred 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 above appeal being Income Tax Appeal No. 272 of 2014 (supra) on the ground that the same need not give rise to any substantial question of law.

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

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

(a) Mr. Malhotra, learned Counsel for the appellant Revenue very fairly states that this issue of retrospecting of Rule 8D of the Income Tax Rules 1961, stands concluded against the Revenue by a decision of this Court in ***DCIT Vs. Godrej & Boyce Manufacturing Co. Ltd. 382 ITR 81***. However, this issue has been filed only to keep the issue alive as it is pending before the Apex Court.

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

5. The appeal is dismissed. No order as to costs.

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