

Sbw

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INCOME TAX APPEAL NO.1571 OF 2014**

The Commissioner of Income Tax	..Appellant
<i>Versus</i>	
M/s. Aditya Birla Nuvo Ltd.	..Respondent

.....

Mr. A. R. Malhotra a/w N. A. Kazi for the Appellant.
Mr. J. D. Mistri, Senior Counsel, a/w Madhur Agrawal, i/b. Atul Jasani
for the Respondent.

.....

**CORAM: M. S. SANKLECHA &
A. K. MENON, JJ.**

DATE : 23rd FEBRUARY, 2017

PC.

1. This Appeal under Section 260-A of the Income Tax Act, 1961 (the Act) challenges the order dated 9th October, 2013 passed by the Income Tax Appellate Tribunal (the Tribunal). The impugned order is in respect of Assessment Year 2000-01.

2. This appeal raises 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 right in allowing depreciation on goodwill as the assessee had not claimed it in subsequent years?

(ii) Whether on the facts and in the circumstances of the case and in law, the Tribunal was right in holding that the expenses

incurred on buy back of shares is revenue in nature?

(iii) Whether on the facts and in the circumstances of the case and in law, the Tribunal was right in holding that the premium on redemption of debentures should be allowed in full, in the year of redemption?

(iv) Whether on the facts and in the circumstances of the case and in law, the Tribunal was right in holding that the expenditure on acquisition of marketing and technical know-how is revenue in nature as the benefit would accrue over a period of time?"

3. Regarding question no.(i):-

(a) The impugned order of the Tribunal allowed the respondent-assessee's appeal on this issue of depreciation on goodwill by following the decision of the Apex Court in *CIT v/s. Smifs Securities Ltd. 348 ITR 302*.

(b) In the above view, question no.(i) as proposed does not give rise to any substantial question of law. Thus, not entertained.

4. Regarding question no.(ii):-

(a) The impugned order of the Tribunal allowed the respondent-assessee's appeal by holding that the expenses incurred on buy back of shares is revenue expenditure by following the decision of this Court in *CIT v/s. M/s. Hindalco Industries Ltd.* (Income Tax Appeal No.517 of 2009) decided on 9th August, 2012. No distinguishing features in the

present facts have been pointed out, which would warrant taking a view different from this Court in *M/s. Hindalco Industries Ltd.* (supra).

(b) In the above view, question no.(ii) as proposed does not give rise to any substantial question of law. Thus not entertained.

5. Regarding question no.(iii):-

(a) The impugned order dismissed the Revenue's appeal in respect of the issue raised herein viz. allowability of premium paid on pre-redemption of debentures as revenue expenditure by following a decision of its Co-ordinate Bench in *CIT v/s. M/s. Grindwell Norton Ltd.* (Income Tax Appeal No.5512/Mum/2007). The Revenue being aggrieved with the order of the Tribunal in *Grindwell Norton Ltd.* (supra) challenged the same before this Court in *CIT v/s. Grindwell Norton Ltd.* (Income Tax Appeal No.694 of 2012) decided on 24th December, 2014. The appeal of the Revenue was dismissed as not giving rise to any substantial questions of law.

(b) No distinguishing features in the present case from that which arose before this Court in *Grindwell Norton Ltd.* (supra) is pointed out to us which would justify a different view. Thus, the question as proposed stands concluded against the Revenue by the decision of this Court in *Grindwell Norton Ltd.* (supra).

(c) Accordingly the question as proposed does not give rise to any substantial question of law. Thus not entertained.

6. Regarding question no.(iv):-

(a) The impugned order dismissed the Revenue's appeal on the issue of allowing expenditure incurred on technical and marketing know-how aggregating to Rs.18.67 crores as revenue expenditure. The Assessing Officer in his order dated 20th March, 2003 passed under Section 143(3) of the Act out of the aforesaid claim allowed an amount of Rs.97.90 lakhs (being 1/5th proportionate 3 month) as revenue for the subject Assessment year and the balance expenditure was allowed as revenue over for further six years (last year again proportionately for 9 month). This disallowance was not on the basis that the expenditure was not revenue but solely on the basis that the respondent-assessee had in its profit and loss account had debited only Rs.97.90 lakhs in the subject Assessment year on account of marketing and technical know-how and spread the balance 4/5th over the subsequent six Assessment years.

(b) Being aggrieved the Revenue carried the issue in appeal to the Commissioner of Income Tax (Appeals) (CIT(A)). By an order dated 20th December, 2004 the CIT(A) allowed the respondent-assessee's appeal by placing reliance upon the decision of the Apex Court in *Kedarnath Jute*

Mfg. Co. Ltd. v/s. Commissioner of Income Tax (Central) Calcutta 82 ITR 363 that entries in the account books are not conclusive of the nature of expenditure i.e. revenue or capital and whether an assessee is entitled to a deduction or not would entirely depend upon the provisions of law and not treatment given to it in the books of accounts by the assessee.

(c) Being aggrieved, the Revenue carried the issue in appeal to the Tribunal. The impugned order of the Tribunal dismissed the Revenue's appeal by again placing reliance upon the decision of the Kedarnath Jute Mfg. Co. Ltd. (supra). Moreover, it also records the submission on behalf of the assessee that the expenditure incurred on account of technical and marketing know-how was in the revenue field is not disputed by the Revenue. Consequently the entire expenditure of Rs.18.67 crores has to be allowed in the subject assessment year.

(d) We find that the impugned order of the Tribunal has while dismissing the appeal, applied the decision of the Apex Court in Kedarnath Jute Mfg. Co. Ltd. (supra). Thus the question of law as proposed does not give rise to any substantial question of law. Therefore not entertained.

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

(A. K. MENON, J.)

(M. S. SANKLECHA, J.)