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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.1858 OF 2014

The Commissioner of Income Tax
(Large Tax Payer Unit) ..Appellant
Versus
M/s. KSB Pumps Ltd. ..Respondent

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Mr. A. R. Malhotra a/w N.A. Kazi for the Appellant.
Mr. R.Murlidhar a/w B.G. Yewale i/b. Rajesh Shah & Co. for the Respondent.

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

DATE : 23rd MARCH, 2017

P.C.

1. This Appeal under Section 260-A of the Income Tax Act, 1961 (the Act) challenges the order dated 3rd February, 2014 passed by the Income Tax Appellate Tribunal (the Tribunal). The impugned order is in respect of Assessment Year 2008-09.

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 holding that the professional fees paid by the assessee to its Associate Enterprise*

KSB AG of Germany for the implementation of the SAP is revenue in nature, without appreciating that the true nature of the payment is capital?

(ii) Whether on the facts and in the circumstances of the case and in law, the Tribunal was right in holding that the exchange loss incurred on acquisition of SAP programme is revenue without appreciating its nature as being capital?"

3. <u>Regarding question no.(i):-</u>

(a) We note that the impugned order of the Tribunal dismissed the Revneue's appeal by following the order dated 8th August, 2013 of its co-ordinate bench in relation to Assessment Years 2004-05 and 2007-08 in case of the same respondent-assessee.

(b) Mr. Malhotra, learned counsel for the Revenue very fairly points out that being aggrieved with the above order dated 8th August, 2013 of the Tribunal the Revenue had preferred an appeal to this Court on identical issues relating to Assessment Years 2006-07 and 2007-08 being Income Tax Appeal Nos.728 and 777 of 2014. This Court by an order dated 5th October, 2016 did not entertain the Revenue's appeal on the above issue.

(c) For the reasons indicated in our order dated 5th October, 2016 passed in Income Tax Appeal Nos.728 and 777 of 2014, the proposed question does not give rise to any substantial question of law. Thus not entertained.

4. **Regarding question no.(ii):-**

(a) It is an agreed position between the parties that the response to the above query same would be a consequence of the answer to question no.(i). So far as question no.(i) is concerned, the same has been held to be a revenue expenditure by the Tribunal and not interfered by us today. Question no.(ii) would consequently have to be answered in favour of the Revenue. Thus the nature of expenditure is revenue as held by the Tribunal.

(b) In view of the above, question no.(ii) as proposed 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. SANKLECHA, J.)**

Wadhwa