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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INCOME TAX Appeal NO. 269 OF 2015

The Commissioner of IncomeTax-LTU, Mumbai ... Appellant

vs.

Tata Consultancy Services Ltd. ... Respondent

....

Mr.A. R. Malhotra for the Appellant.

Mr. Dinesh Vyas, Senior Counsel a/w. Mr. Mandar Vaidya & Mr. Srihari Iyer for the Respondent

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CORAM : A.S. OKA & A.K. MENON, JJ.

DATE : 5th DECEMBER, 2017

P. C.

1. Heard the learned Counsel appearing for the Appellant and the learned Counsel appearing for the Revenue. The learned Counsel appearing for the Appellant has pressed into service the following substantial questions of law :

"(A) *Whether on the facts and in the circumstance of the case and in law the Tribunal was right in holding that on-sight consultancy services expenses of Rs.5,32,25,662/-, Telecommunication expenses of Rs.2,37,31,480/-, travel expenses of Rs.1,38,70,716/-, expenses borne by the customers of the Assessee Company on behalf of the Assessee Company amounting to Rs.4,86,53,446/-, were to be reduced from Total Turnover while computing exemption u/s 10A of the Income Tax Act?*

(B) Whether on the facts and in the circumstance of the case and in law the Tribunal was right in not allowing set off of the loss incurred by the Assessee Company from the Non-STPI Unit with the profit of the STPI Unit to arrive at the profits of the business eligible for exemption u/s 10A of the Income-Tax Act?"

2. The present Appeal takes an exception to the judgment and order dated 28th March, 2014 passed by the Income Tax Appellate Tribunal by which two Appeals preferred by the Appellant-Revenue for the Assessment years 2003-04 and 2004-05 were decided. The challenge in this Appeal is confined to the Appeal pertaining to the year 2004-05. The Appellate Tribunal while dismissing the Appeal preferred by the Appellant-Revenue first relied upon a decision of this Court in Income Tax Appeal No. 3474 of 2010 in the case of ***CIT vs Tata Infotech (***amalgamated with Tata Consultancy Services Ltd.-present respondent). This Court while deciding the said case, relied upon a decision in the case of ***CIT vs. Gemplus Jewellery Ltd***.[1] Based on the said decisions, the first question of law which is pressed into service has been decided against the Appellant-Revenue. As far as the decision in the case of *CIT vs Tata Infotech* is concerned, the learned Counsel appearing for the Appellant-Revenue stated that he could not get information whether the said decision was challenged by the Revenue. As regards the other decision of the Court in the case of *Gemplus Jewellery Ltd (supra),* he pointed out that an Appeal has been preferred by the Appellant Revenue being Civil Appeal No.

1 **[2010] 233 CTR 248 (Bom)**

8492 of 2013 which is pending for final hearing before the Apex Court. However, there is no dispute that as of today, the decisions of this Court in both the cases stand.

3. As regards the second question of law, the Appellate Tribunal has followed the decision of Karnataka High Court dated 9th August, 2011 in the case of ***CIT vs Yokogawa India Ltd***. Similar view was taken by this Court in the case of ***Hindustan Unilever Ltd vs. Deputy Commissioner of Income-tax 1(1), Mumbai.***[2] It was fairly pointed out that the decision of the Karnataka High Court was carried to the Apex Court and that the Apex Court by its judgment in the case of ***Commissioner of Income-tax vs. Yokogawa India Ltd.***[3] confirmed the view taken by the Karnataka High Court.

4. On the first question, the submission is that the Appeal requires consideration on the ground that an Appeal preferred by the Appellant Revenue against the decision of this Court in the case of *Gemplus Jewellery Ltd.(supra)* is pending before the Apex Court.

5. The law is very well settled. So long as the decision of the Co-ordinate Bench of this Court is not set aside by the higher Court, all Co-ordinate Benches of this Court continue to be bound by the said decision. Even if a judgment of the Co-ordinate bench is stayed by the higher Court, as far as this Court is concerned, it continues to be bound by the judgment.

2 **[2010] 325 ITR 102 (Bombay)**
3 **[2017] 77 taxmann.com 41 (SC)**

6. A Division Bench of this Court in the case of ***Commissioner of Income Tax vs Desai Bros. Ltd.***[4] has dealt with the issue of effect of the pending of Special Leave Petition before the Apex Court in the context of entertaining an application under Section 256(2) of the Income Tax Act, 1961. It was accepted position before the Division Bench that the issue which was sought to be raised by the application filed by the Revenue was already decided in the case of ***CIT vs. Century Spg. & Mfg. Co. Ltd.***[5] in favour of the assessee by the Division Bench of this Court. It was urged by the revenue that a Special Leave Petition against the said decision of this Court was pending before the Apex Court. This Court held that pendency of the Special Leave Petition or Appeal before the Apex Court is of no consequence as this Court continues to be bound by its own decision until it is set aside.

7. Therefore, in our view, no substantial question of law arises as both questions pressed into service have been already answered against the Appellant. Accordingly, the Appeal is dismissed. No order as to costs.

(A.K. MENON, J.) **(A.S. OKA, J.)**

4 **[1991] 189 ITR 88 (Bom)**
5 **[1978] 111 ITR 6 (Bom)**