IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 433 OF 2016

The Principal Commissioner of
Income Tax (Central)-4 ....Appellant
V/s.
M/s. Acquatic Remedies Pvt. Ltd. ....Respondent

* * * *

Mr. N.C. Mohanty, Advocate for the appellant.

Mr. F.V. Irani a/w. Mr. Atul Jasani, Advocate for the respondent.

CORAM :- M.S. SANKLECHA, &
SANDEEP K. SHINDE, JJ.

DATE : 30TH JULY, 2018.

P.C. :-

1. This Appeal under Section 260A of the Income Tax Act, 1961 (the Act), challenges the common impugned order dated 17th April, 2015 passed by the Income Tax Appellate Tribunal (the Tribunal). The common impugned order dated 17th April, 2015 is in respect of Assessment Years 2005-06 to 2011-12. This Appeal relates to Assessment Year 2010-11.

2 The Revenue has urged the following re-framed question of law, for our consideration:

(A). Whether, on the facts and in the

circumstances of the case and in law, the Tribunal is justified in deleting the addition made under Section 68 of the Act, without appreciating the fact that the assessee had failed to discharge its onus in terms of Section 68 of the Act by not furnishing evidence to substantiate the identity, genuineness of the transaction and creditworthiness of the shareholder/investor ?

(B) Whether, on the facts and in the circumstances of the case and in law, the Tribunal has erred in deleting the addition of 5% of cash purchases as profit by way of discount, without appreciating the fact that the assessee had failed to furnish supporting evidence to prove the identity of the party and genuineness of such purchases ?

(C) Whether on the facts and in the circumstances of the case and in law, the Tribunal has erred in deleting the addition of 2% as unexplained expenses by way of commission/service charges paid for arranging accommodation bills ?

(D) Whether, on the facts and in the circumstances of the case and in law, the Hon'ble Tribunal is justified in deleting the addition of

Rs.43,46,518/- on account of peak cash credit ?"

3. **<u>Regarding Questions (A) to (C) :</u>**

(i). It is an agreed position between the parties that Questions No.(A) to (C) raised in this Appeal, stands concluded by the order passed by us today in Income Tax Appeal No. 83 of 2016 and other connected Appeals concerning Assessment Years 2005-06 to 2009-10 arising from the common impugned order dated 17th April, 2015 of the Tribunal. Therefore, for the reasons indicated therein, (order passed today in Income Tax Appeal No. 83 of 2010), Questions No.(A), (B) and (C) raised herein would not give rise to any substantial questions of law as it stands concluded by our passed today in Income Tax Appeal No. 83 of 2010.

(ii). Thus, these questions as proposed do not give rise to any substantial questions of law. Thus, not entertained.

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

(i). the impugned order of the Tribunal has held that in the absence of any addition on account of bogus purchases and/or accommodation bills being sustained, the question of making addition on account of peak credit would not arise.

(ii) Mr. Mohanty, Learned Counsel appearing for the Revenue, very fairly states that, this Question would not arise if the Revenue's contention in respect of bogus purchases/accommodation bills, is not accepted. In view of the above, this Question as proposed would not give rise to any substantial question of law. Thus, not entertained.

5. Accordingly, Appeal dismissed. No order as to costs.

(SANDEEP K. SHINDE, J) **(M.S. SANKLECHA, J)**

Neeta Shailesh Sawant

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Date: 2018.08.02 15:42:22 +0530