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

INCOME TAX APPEAL NO.1587 OF 2016

Commissioner of Income Tax-LTU … Appellant

V/s.

M/s Indian Petrochemicals Corporation Ltd. … Respondent

Mr.Tejveer Singh for the Appellant.
Mr.Jehangir Mistri, Senior Counsel with Mr.P.C.Tripathi with Mr. Amit K. Mathur i/by Mr.Raj Daraka for the Respondent.

CORAM : AKIL KURESHI AND
M.S.SANKLECHA, JJ.
DATE : FEBRUARY 18, 2019.

P.C.:-

1. This appeal is filed by the revenue raising following question for our consideration:

> "1. Whether, on the facts and in the circumstances of the case and in law, the ITAT was right in holding that notional sales tax exemption amount of Rs.85,97,07,481/- is a capital receipt not liable to Income-tax?
> 2. Whether on the facts and in the circumstances of the case and in law, the Tribunal was right in deleting the addition made by the AO by disallowing the deduction u/s 80IA of Rs.86,51,99,227/- claimed by the assessee?"

2. Respondent-assessee is a registered company. For the assessment year 2006-07, the assessee had filed a return of income. Question No.1 raised by the revenue relates to the assessee's claim of a sum of Rs.85.97 crores (rounded off) received by way of sales tax exemption scheme of the Government of Gujarat and Government of Uttar Pradesh in relation to the assessee's three different projects. The assessee contended that the receipt was capital in nature as against the revenue's contention that the sales tax exemption/waiver resulted into revenue receipts in the hands of the assessee. The Commissioner of Income Tax in the Appellate Order after detailed discussion held that the receipts were capital in nature. In so far as the receipts arising out of the sales tax exemption scheme of State of Gujarat is concerned, we find that the issue is no longer res-integra. Gujarat High Court in case of **Commissioner of Income Tax-1 Vs. Indian Petrochemicals Corporation Ltd., Income Tax Appeal No.1773 of 2018 and connected appeal by judgment dated 19th July, 2016** while dismissing the revenue's appeal, in this context made following observations :

> "5. We have heard both the learned counsel and perused the record. We have also gone through the decisions cited before us. After considering the material on record, we are of the view that the issues involved in this appeal are squarely covered by the decisions of Apex Court in the cases of Ponni Sugars and Chemicals Ltd. (supra), Meghalaya Steels Ltd. (supra), Sri Venkata Satyanarayana Rice Mill Contractors Co.(supra), Ajanta Pharma Ltd.(supra) and the decisions of this Court in Tax Appeal No.226 of 2010, Tax Appeal No.77 of 2008, Sarabhai M.Chemicals (P.) Ltd. (supra). Learned advocate for the revenue is not in a position to controvert the law laid down in the aforesaid decisions. Therefore, the questions of law posed for our consideration in these appeals are answered in favour of the assessee and against the revenue. Accordingly appeal is dismissed."

3. We may notice that similar issue came up before this Court in case of **The Commissioner of Income-Tax-LTU Vs. M/s. Indian Petrochemicals Corporation Limited reported in Income Tax Appeal No.1428 of 2016**. Following the decision of the Gujarat High Court in the above noted decision revenue's appeal was dismissed.

4. Learned counsel Shri Mistri for the respondent-assessee however fairly pointed out that in the present case the asssessee's

claim arose out of two more receipts both under the sales tax exemption scheme of Government of Uttar Pradesh. We notice that this issue has been elaborately discussed by the Commissioner (Appeals). He took note of the various terms of the scheme of State of Uttar Pradesh and noted that depending on the location of the units of the eligible assessees, sales tax exemption was granted in terms of percentage of capital investment. The scheme itself was founded on the basis of attracting capital investments in certain backward areas. That bring the position, the scheme of Utter Pradesh which came up for consideration before the CIT (appeals) and Tribunal in the present case is substantially similar. Though obviously cannot be identical to the sales tax exemption scheme of the Government of Gujarat which was examined in case of **M/s. Indian Petrochemicals Corporation Limited (supra)**. Under the circumstances, the first question raised by the revenue is not entertained.

5. In so far as the third question is concerned, undisputedly the issue is covered by the decision of this Court in case of

Commissioner of Income Tax-LTU Vs. M/s Reliance Industries Ltd. reported in Income Tax Appeal No.1056 of 2016. The revenue's appeal was dismissed on this ground making following observations:

> "7. Counsel for the assessee pointed out that the judgment of the Tribunal in case of **Reliance Infrastructure limited(supra)** was carried in appeal by the revenue before the High Court in Income Tax Appeal No.2180 of 2011, such appeal was dismissed making following observations:-
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> > "6. As far as question (d), namely, the claim relating to purchase price from Tata Power Company is concerned and that was for the deduction under Section 80IA, the ITAT in paragraph 21 onwards has noted the factual findings and also referred to the order of the Maharashtra Electricity Regulatory Authority (for short "MERC"). Paragraph 36 set outs as to how the claim arose. The claim has been considered in the light of Section 80IA and particularly proviso and explanation thereto. The Tribunal eventually held that till the Assessment Year 2005-2006, the Revenue considered the rate at which the power was purchased by the Assessee from Tata Power Company as market value. There is nothing brought on record as to how the rate determined by the MERC is the true market value. The Assessee gave explanation that the rates determined by the MERC do not reflect the correct market rate. The finding is that the mode of computation and deduction under Section 80IA requires no deviation from the past. The findings of fact and to be found in paragraphs 42 to 50 also reflect that the very

> issue came up for consideration for the Assessment Year 2003-2004. For the reasons assigned by the ITAT and finding that the attempt is to seek reappreciation and reappraisal of the factual data that we come to a conclusion that even question (d) as framed is not a substantial question of law."

> 8. Thus, the issue at hand had been examined by this Court on earlier occasion and the view of the Tribunal under similar circumstances was approved."

6. In the result, Income Tax Appeal is dismissed.

(M.S.SANKLECHA,J.) **(AKIL KURESHI,J.)**

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