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

INCOME TAX APPEAL NO. 1538 OF 2016

Commissioner of Income Tax-LTU .. Appellant

v/s.
M/s. Asian Paints Ltd. .. Respondent

Mr. Tejveer Singh for the appellant
Mr. Atul Jasani for the respondent

CORAM : AKIL KURESHI &
M.S. SANKLECHA, J.J.

DATED : 23rd JANUARY, 2019

P.C.

1. The appeal is filed by the Revenue to challenge the judgment of the Income Tax Appellate Tribunal ("the Tribunal" for short). Following question is presented for our consideration :-

> *"Whether on the facts and in the circumstances of the case and in law, the Tribunal is right in holding expenditure incurred on software is revenue expenditure?*

2. Learned Counsel for the parties point out that identical issue in case of this very assessee come up for consideration before this Court in Income Tax Appeal No.778 of 2016 and connected appeals, which were dismissed by order dated 4th December 2018 making following

observations :-

> *"5. When the appeal was taken up for admission herein, learned counsel for the Revenue pointed out that the decision of the Tribunal in the case of Glanmark Pharmaceuticals (supra) was challenged by the Revenue in Income Tax Appeal No. 1754 of 2011. Such appeal was admitted by an order dated 26.2.2013. On the other hand, learned counsel for the assessee submitted that before the High Court in Revenue's Tax Appeal No. 1754 of 2011 (relating to M/s. Glenmark Pharmaceuticals), the decision of this Court in the case of Raychem RPG Ltd (supra) was snot brought to the notice of the Court. He further pointed out that the same view has been taken in two more decisions of this Court namely in the cases of* ***Commissioner of Income Tax Vs. KSB Pumps Ltd*** *reported in* ***[2016] 75 taxmann.com 184 (Bombay)*** *and* ***Commissioner of Income Tax Vs. Geoffrey Manners & Co Ltd*** *reported in* ***[2014] 49 taxmann.com 320 (Bombay).***
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> *6. We have perused the documents on record and also the judgments cited before us. It is true that in Tax Appeal No. 1754 of 2011, this Court has admitted the appeal of the Revenue which involves a somewhat similar question as has arisen in the present appeal. However, as noted, the learned counsel for the assessee has cited three judgments of this Court clearly holding that the expenditure for software development was a revenue expenditure. In case of Raychem RPG Ltd (supra), the Division Bench upheld the decision of the Tribunal allowing software expenditure as revenue expenditure.*
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> *7. In the case of Geoffrey Manners & Co Ltd (supra), this issue once again came up before the High Court. In a detailed judgment passed therein, the High Court observed as under:-*
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> > *"12. In relation to this the Tribunal in the impugned order observed that there is room for certain flexibility in the views taken from time to time. The Assessee in such cases installs the computers. This technology is now said to be acceptable in changing world. The rapid advancement of research also contributes a small degree of endurability, but that by itself does not mean that the expenses incurred cannot be revenue in nature. Since technology advancement is an aspect which must*

be taken judicial note of, so also, machinery becoming obsolete that there is necessity of acquiring further technology. This is to meet the growing competition and considering trends in the market. Therefore, such expenditure will have to be treated as revenue expenditure. This decision of the Tribunal for the present Assessment Years also is in accord with its earlier decisions which are referred to in paragraph 14 of the order under challenge.

13. Further, in the case of CIT Vs. Raychem RPG Ltd. [2012] 346 ITR 138/21 taxmann.com 507, a Division Bench of this Court held that similar view of the Tribunal in the case of that Assessee cannot be said to be perverse or vitiated by any error of law apparent on the face of record. This Court approved the findings of the Tribunal in favour of the Assessee-Raychem RPG Limited. The expenditure referred to by the Division Bench is identical. The view taken, therefore, in the case of the present Assessee is in accord with the settled principles and advancement in technology and judicial notice of which has been taken by this Court."

8. Yet again, in case of KSB Pumps Ltd (supra), the Division Bench of this Court referred to the judgment in the case of Geoffrey Manners & Co Ltd and upheld the decision of the Tribunal.

9. In view of such facts, we have no reason to entertain the Revenue's appeals since no question of law arises. Both the Tax Appeals are, therefore, dismissed."

3. In the result, the tax appeal is dismissed.

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