Santosh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2361 OF 2010
WITH
WRIT PETITION NO. 2360 OF 2010
WITH
WRIT PETITION NO. 2362 OF 2010

Zydus Nycomed healthcare Private Limited ...Petitioner

Versus

Income Tax Officer – 10 (3)(4) & ors. ...Respondents

Mr. V. Sridharan, Senior Advocate, a/w Mr. Ravi Sawana i/b Mr. B. V. Jhaveri, for the Petitioner.
Mr. Suresh Kumar, for the Respondents.

CORAM: K. R. SHRIRAM &
N. J. JAMADAR, JJ
DATED: 18th FEBRUARY, 2022

COMMON ORDER:

1. Writ Petition No.2361 of 2010 pertains to Assessment Year 2004 – 2005, Writ Petition No.2360 of 2010 pertains to Assessment Year 2003 - 2004 and Writ Petition No.2362 of 2010 pertains to Assessment Year 2005 – 2006.

2. Since the reasons recorded for proposed reopening are almost identical, we are disposing these three petitions by this common order.

3. The assessment for the three assessment years mentioned above are proposed to be reopened under Section 147 of the Income Tax Act, 1961 ("the Act") solely based on the allegations made in the Assessment Year 2006 – 2007 i.e. petitioner had violated the conditions specified in Section 10B(9) of the Act in the respective assessment years.

4. Petitioner had challenged the assessment order for Assessment Year 2006 – 2007 before the Commissioner of Income Tax (Appeals), who had dismissed the appeal of petitioner. Petitioner thereafter challenged the order of the Commissioner of Income Tax (Appeals) for Assessment Year 2006 – 2007 before the Income Tax Appellate Tribunal, Mumbai ("ITAT"). The ITAT by an order dated 26th June 2013 allowed the appeal of petitioner for Assessment Year 2006 – 2007 holding that petitioner had not violated the conditions provided in Section 10B(9) of the Act during Assessment Year 2003 – 2004.

5. Aggrieved by the order of the ITAT, Revenue filed an appeal before this Court. By an order dated 24th February 2017 this Court was pleased to dismiss the appeal by holding that the finding of the ITAT that petitioner had not violated the condition of Section 10B(9) of the Act do not suffer from any error.

6. Mr. Shridharan states to the best of petitioner's knowledge and information the order of the High Court passed on 24th February 2017 for Assessment Year 2006 – 2007 has not been challenged by the Revenue in the Supreme Court and hence it has become final.

7. Mr. Suresh Kumar also states that he has no instructions or information regarding any appeal having been filed. Therefore, as on date the order of this Court passed on 24th February 2017 is final.

8. Since, as noted earlier, the sole basis for proposed reopening under Section 147 of the Act was on the allegations made in the assessment order for Assessment Year 2006 – 2007, i.e., petitioner had violated the condition specified in Section 10B(9) of the Act in Assessment Year 2003 – 2004 itself, none of the notices can survive in view of the findings mentioned earlier of the ITAT / this Court.

9. In the circumstances, the notices issued under Section 148 of the Act dated 30th March 2010 in Writ Petition No.2361 of 2010, dated 30th March 2010 in Writ Petition No.2360 of 2010 and dated 30th March 2010 in Writ Petition No.2362 of 2010, are hereby quashed and set aside. Consequently the order on objections passed for the three Assessment Years are also quashed and set aside.

10. Petitions disposed with no order as to costs.

[N. J. JAMADAR, J.] **[K. R. SHRIRAM, J.]**