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ITXA-130-2016  
& ITXA-151-2016 (SR.7)  
Wednesday, 27.6.2018

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 130 OF 2016  
ALONGWITH  
INCOME TAX APPEAL NO. 151 OF 2016

The Pr. Commissioner of Income  
Tax-8

....Appellant

V/s.

M/s. Starflex Sealing India Pvt. Ltd.

....Respondent

\* \* \* \* \*

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

**CORAM :-**

**M.S. SANKLECHA, &**

**SANDEEP K. SHINDE, JJ.**

**DATE :-**

**27TH JUNE, 2018.**

**P.C. :-**

1. These two appeals under Section 260A of the Income-Tax Act, 1961 (the Act) challenge the order dated 8th June, 2015 passed by the Income-Tax Appellate Tribunal (the Tribunal) relating to Assessment Years 2009-10 and 2010-11.

<http://itatonline.org>

2. In both the Appeals, the Revenue has urged the following questions of law for our consideration :-

*“1. Whether, on the facts and in the circumstances of the case and in law, the Hon'ble Tribunal is justified in deleting the disallowance made under Section 36(1)(Va) read with Section 2(24)(x) of the Act on account of Employees' Contributions to ESIC paid by the assessee-Company beyond the due dates under ESIC Act?*

*2. Whether, on the facts and in the circumstances of the case and in law, the Hon'ble Tribunal is justified in allowing the claim of set-off of unabsorbed depreciation of assessment year 2000-01 beyond the period of 8 years ?”*

3. Regarding Question no.1,

(i) Mr. Mohanty, Learned Counsel appearing for the Revenue very fairly states that the issue arising herein stands concluded against the Revenue and in favour of the respondent-Assessee by the decision of this Court in **Commissioner of Income-Tax,**

**(Central), Pune V/s. Ghatge Patil Transports  
Ltd. 368 ITR 749 (Bombay).**

(ii) In the above view, Question no.1 does not give rise to any substantial question of law.

4.

Regarding Question no.2,

(i) Mr. Mohanty fairly invites our attention to the decisions of this Court in the case of **Commissioner of Income-Tax-1, Mumbai V/s. M/s. Hindustan Unilever Ltd.** (Income Tax Appeal No. 1873 of 2013) rendered on 26th July, 2016 and in the case of **The Commissioner of Income Tax, Central-III V/s. M/s. Arch Fine Chemicals Pvt. Ltd** (Income Tax Appeal No.1037 of 2014) rendered on 6th December, 2016 dismissing the Revenue's appeal on this very question of law. In spite of the above, in the subsequent case of **Commissioner of Income-Tax V/s. M/s. Milton's Pvt. Limited** (Income Tax Appeal No. 2301 of 2013) and **Commissioner of**

**Income-Tax-8 Vs. M/s. Confidence Petroleum India. Ltd.** (Income Tax Appeal No. 582 of 2014) on an identical issue as raised herein were admitted on 20th February, 2017 and 3rd April, 2017 respectively. The order dated 20th February, 2017 of this Court listed the hearing of the Appeal alongwith Income Tax Appeal No. 841 of 2011 and Income Tax Appeal No. 842 of 2011 admitted earlier on the same issue.

(ii) It appears that in *Milton's (Pvt) Ltd.* (supra) and *Confidence Petroleum (I) Ltd.* (supra), the attention of the Court was not drawn to the orders of this Court in *Hindustan Unilever* (supra) and *M/s. Arch Fine Chemicals* (supra) although rendered prior to the admission of the appeals of Milton (P) Ltd. (supra) and *Confidence Petroleum (I) Ltd.* (supra). The decision of this Court in *M/s. Hindustan Unilever Ltd.* (supra) placed reliance upon the decision of Gujarat High Court in **General**

**Motors (I) Pvt. Ltd vs. DCIT, 354 ITR 244** and the CBDT Circular No.14 of 2001 dated 22<sup>nd</sup> November, 2001. The order also records that nothing was shown by the Revenue as to why the decision of Gujarat High Court should not be followed. Infact, it appears earlier orders in respect of appeals of 2011 admitting this question was pointed out by the Revenue. It may be pointed out that, the same Advocate appeared for the Revenue in *M/s. Hindustan Unilever* (supra) and in *M/s. Milton (P) Ltd.* (supra) and *Confidence Petroleum (I) Ltd.* (supra). It is noted that, the decision in *M/s. Hindustan Unilever* (supra) at the time, the Court admitted the appeals by *M/s. Milton (P) Ltd.* (supra) and *Confidence Petroleum (I) Ltd.* (supra) was not pointed out to the Court. Besides, at the hearing of the appeal of *Hindustan Unilever* (supra) the fact that Income Tax Appeals No. 841 and 842 of 2011 were already admitted was not pointed out.

(iii) We are pained at this attitude on the part of the State to obtain orders of admission on pure questions of law by not pointing out that an identical question was considered by this Court earlier and dismissed by speaking order.

(iv) This is not for the first time that this has happened on the part of the Revenue. On an earlier occasion also, in the case of **The Commissioner of Income Tax-8 V/s. TCL India Holdings Pvt. Ltd. (ITA No. 2287 of 2013)** on 6<sup>th</sup> May, 2016 on similar issue arising, we were assured by the Revenue that proper steps would be taken to ensure that the State takes a consistent view and decisions on any issue which are already taken by this Court would be informed to their Advocates who would also be continuously updated of the decisions taken by this Court on the questions of law. This is to ensure that there is consistency in the view taken by this Court. However, it appears that the Revenue

has not carried out the assurance which was made to the Court.

(v) We would expect the Revenue to look into this issue at the highest level and ensure that the State takes a consistent view and does not agitate matters on which the Court has already taken a view, without pointing out the earlier order of this Court to the subsequent Bench. It is possible that, there can be certain distinguishing features which may require the next Court to admit the question which has been otherwise dismissed by an earlier order. But this would not be an issue which could arise in the case of pure question of law as raised herein. The decision on the question raised is not related to and/or dependent upon finding upon any particular fact.

(vi) We note that the decision of this Court in *Milton Private Limited* (supra) rendered on 20th

February, 2017 makes a reference to a Supreme Court decision in the case of **Deputy Commissioner of Income Tax vs. General Motors India P. Ltd.**

Mr. Mohanty is directed to produce a copy of the same on the next occasion. We would also want, Mr. Mohanty on the next occasion to bring on record by Affidavit, whether appeals have been filed from the orders of this Court in *Hindustan Unilever* (supra) decided on 26th July, 2016 and *Arch Fine Chemicals* (supra) decided on 6th December, 2016 to the Apex Court, when filed and the decision, if any, thereon.

5. We adjourn the hearing of both these appeals by a period of 3 weeks as prayed for by Mr. Mohanty, for the Revenue.

6. On the next occasion, we would expect a proper response from the Revenue and explanation as to why assurance given to us earlier that consistent view would be taken by the Revenue is not being followed. It is time,



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responsibility is fixed and the casual approach of the Revenue in prosecuting its appeals is stopped. We would also request the Additional Solicitor General to assist us on the next date.

7. Stand over to 3 weeks i.e. 18th July, 2018.

**(SANDEEP K. SHINDE, J)**

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

