

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

INCOME TAX APPEAL NO. 1140 OF 2013

Commissioner of Income Tax- 10 ... Appellant

Vs

M/s. Hindustan Construction Co. Ltd. ... Respondent

Mr. Arvind Pinto for the Appellant.

Mr. Sanjiv M. Shah for the Respondent.

**CORAM : S.C. DHARMADHIKARI &
A.K. MENON, JJ.**

THURSDAY, 9TH APRIL, 2015

P.C. :

1. Parties concede that question No.6.1 in this appeal is covered by a judgment of this Court in the case of *Commissioner of Income Tax vs. Ghatge Patil Transports Limited* (2014) 368 ITR 749.

2. Having heard both sides and finding that this appeal by the Revenue against the order passed by the Income Tax Appellate Tribunal, dated 28th September, 2012, for assessment years 2003-04,

2006-07, we cannot accede to the submissions of Mr. Pinto that it should be admitted simply because assessee's appeals from that order and impugning a part of it has been admitted. The Revenue has to independently satisfy us that this appeal raises substantial questions of law.

3. Mr. Pinto would submit that the same indeed raises substantial questions of law. In that he projects the questions at pages 5 (6.1, 6.2 and 6.3).

4. However, in relation to para 6.3 he concedes that a judgment of a Division Bench of this Court in the case of *Godrej & Boyce Manufacturing Company Limited vs. Deputy Commissioner of Income Tax 328 ITR 81* covers the controversy against the Revenue and in favour of the assessee. Following that, we do not think that question 6.3 is a substantial question of law. We hold the same opinion on questions 6.1 and 6.2 as well.

5. Mr. Pinto could not satisfy us on a plain reading of section 35 of the Income Tax Act, 1961, that there was no requirement of any

project being completed or the entire amount capitalised in the books of account as reported by the auditors. The Tribunal found that the understanding of the Assessing Officer was completely faulty. The Assessing Officer had not referred to the plain language of section 35. There, the amount which has been incurred for research and particularly scientific research can be claimed. In relation to that at page 80 of the paper-book and from paragraph 11.1 onwards, the Tribunal found that the assessee had incurred expenses on scientific research development which has been recognised by the appropriate authorities. He has shown the expenditure in the books of account as on 31st March, 2003, waiting capitalisation. The Assessing Officer found that this claim cannot be granted as the expenditure has not been capitalised in the books of account but shown as waiting as such.

6. However, the assessee's representative pointed out to the Tribunal the undisputed position that an expenditure of Rs.27,25,243/- was indeed incurred on research which is duly approved by the competent authority being the Ministry of Science and Technology, Government of India and a letter dated 4th December, 2002, was

produced. For that provision to apply, it is sufficient that the assessee incurs the expenditure of a capital nature on scientific research and there is no requirement that such an expenditure should be capitalised in the books of account. The Tribunal found that once there is no dispute that such expenditure is incurred and the legal provision not warranting any further capitalisation of the amount and in the books of account, the Assessing Officer and the Commissioner erroneously rejected this claim. The reasoning in paragraph 13 of the Tribunal's order is not only in consonance with the factual position, but the plain language of section 35 of the Income Tax Act, 1961. The Tribunal has also taken care to observe that when the Assessing Officer found that the expenditure on research and development is eligible for deduction under the same provision in the subsequent year then the view taken by the Assessing Officer all the more cannot be sustained.

7. Such a conclusion of the Tribunal does not raise any substantial question of law.

8. In relation to question 6.2, the Tribunal found that there was no

question of section 43B being invoked and at the stage when the interest was not payable. The loan itself was availed of on 26th December, 2002, and for one year. It was payable with interest. However, the interest had not become payable and hence the question of relying on section 43B to disallow the claim does not arise. By the plain language of this provision and given the factual and admitted position, we do not think that the Tribunal erred in the view that it has taken and hence even with regard to this question, we do not agree that the Tribunal's conclusion as reached in paragraph 9.2 of the impugned order raises any substantial question of law. The view taken is neither perverse nor vitiated by any error of law apparent on the face of the record.

9. The appeal is thus devoid of merits. Hence it is dismissed. There shall be no order as to costs.

A.K. MENON, J.

S.C. DHARMADHIKARI, J.