

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**ORDINARY ORIGINAL CIVIL JURISDICTION**  
**INCOME TAX APPEAL NO.1399 OF 2012**

The Commissioner of Income Tax-10 ...Appellant

v/s.

M/s.Colgate Palmolive (India) Ltd. ...Respondent

...

Mr.Arvind Pinto for the Appellant.

Mr.Firoz Andhyarujina, Sr.Advocate with Ms.Maneek Andhyarujina  
and Mr.Sameer Chitnis for the Respondent.

...

**CORAM : S.C.DHARMADHIKARI &  
A.A. SAYED, JJ.**

**DATED : 10 DECEMBER 2014**

**P.C.**

This Appeal of the Revenue challenges the order passed on 25 October 2011 by the Income Tax Appellate Tribunal, Mumbai Bench in Income Tax Appeal No.5485/Mum/2009 and for the Assessment Year 2003-04.

2. Two orders namely one of the Commissioner of Income Tax (Appeals) dated 15 July 2009 and that of the Tribunal, according to the Revenue, raise following three questions and which are termed as substantial questions of law:

5.1) Whether on the facts and circumstances of the case and in law, the ITAT is justified in holding that the loss incurred on the sale of shares of Camelot a wholly owned subsidiary was a business loss when the investment made

in the latter was not a business asset, but investment for obtaining an enduring benefit.

5.2) Whether on the facts and circumstances of the case, the ITAT was justified in holding that the cessation of sales tax liability not liable to be brought to tax u/s 41(1)?

(5.3) Whether on the facts and circumstances of the case, the ITAT was justified in ordering the deletion of interest leviable u/s 234D on the excess refund paid to the company. The interest u/s 234D was brought into the statute book with effect from 01-06-2003.

3. The question 5.2 above has been concluded by judgment and order passed by this Court in a batch of Appeals, **Income Tax Appeal No.450 of 2013 (Commissioner of Income Tax-8 v/s. M/s. Sulzer India Limited)** and other connected matters decided on 5 December 2014. The question stands answered against the Revenue and in favour of the Assessee in terms of this judgment, as fairly conceded before us.

4. So far as the question 5.3 is concerned, it stands answered in terms of the judgment dated 12 December 2012 in **Income Tax Appeal No.2012 of 2011 (Commissioner of Income Tax-10 v/s. M/s.Indian Oil Corporation Ltd.** The question of law,

which is identical to the one framed at question 5.3 has been answered in favour of the Appellant-Revenue and against the Respondent-Assessee.

5. Remaining question 5.1 is stated to be substantial question of law. On that we have heard Mr.Pinto appearing on behalf of the Revenue and Mr.Andhyarujina learned Sr.Counsel appearing on behalf of the Assessee.

6. The facts necessary for that question are that the Assessee is engaged in the business of manufacturing and trading of oral care products. In the course of the assessment proceedings, the Assessing Officer noted that the Assessee claimed deduction on account of loss on sale of shares held in Camelot Investment Pvt.Ltd. (Camelot, in short) amounting to Rs.5,50,00,000. The Assessee had made investment in 100% owned subsidiary Camelot as claimed for purely business reasons. The stand of the Assessee that the investment was made because and for the purposes of business, the loss on sale of such investment is required to be treated as business loss. The Assessee placed reliance, inter alia, on a judgment of the Hon'ble Supreme Court in the case of **Patnaik**

**& Co. Ltd. Vs. CIT, 161 ITR 365** and of this Court in the case of **CIT vs. Investa Industrial Corporation Ltd., 119 ITR 360**. The alternate argument and which was canvassed without prejudice need not detain us.

7. The Commissioner and the Tribunal concurrently found that the Camelot was fully owned subsidiary of the Assessee and engaged in the manufacturing of tooth brushes exclusively for the sole client namely the Assessee. Shares purchased of Camelot were also sold by the Assessee to one Ramesh Sukharam Vaidya for consideration of Rs.45,00,000/-. The Assessing Officer held that the sum of Rs.5,50,00,000/- which was invested by the Assessee in the equity of Camelot on 17 March 2003 and which have been used to repay the loan to the Assessee company, amounting to Rs.5.5 crores, before 1 March 2003 would demonstrate that the purpose of investment was to give a Long Term Enduring Benefit to the Assessee. Merely because it was made in the normal course of business, it cannot be termed as anything but long term investment. This conclusion of the Assessing Officer was challenged in the Appeal before the First Appellate Authority and the Commissioner concluded that the main reason for setting up Camelot was to

manufacture tooth brushes exclusively for the Assessee. Since the Assessee was relying on Camelot for manufacturing of tooth brushes to be traded by the Assessee, the investment is nothing but a measure of commercial expediency to further business objectives and primarily related to the business operations of the Assessee. At no point of time the investment in Camelot was made with an intention to realize any enhancement value thereof or to earn dividend income. The investment was made to separately house the integral part of the business activity. In such circumstances, the Commissioner relied upon the above judgments and allowed the Appeal. He concluded that the loss of Rs.5.50 crores is a business loss in the hands of the Assessee. He set aside the order of the Assessing Officer.

8. The Revenue carried the matter in Appeal and the Tribunal has dealt with this issue extensively. In para 7 of its order, the Tribunal has upheld the conclusion of the Commissioner and by giving additional reason.

9. Upon perusal of this material, we are unable to agree with Mr.Pinto that question 5.1 reproduced above is a substantial question of law. Given the peculiar facts and circumstances and the nature of the investment so also being for commercial expediency, the view taken by the Commissioner and the Tribunal concurrently cannot be termed as perverse. That view being imminently possible in the given facts and circumstances. It does not raise any substantial question of law.

10. The Appeal, is, therefore, partly allowed and in terms of the judgment in the case of M/s.Indian Oil Corporation Ltd. (supra). The Appeal is dismissed to the extent of other two questions.

**(A.A. SAYED, J.)**

**(S.C.DHARMADHIKARI,J.)**