Sharayu Khot.

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

INCOME TAX APPEAL NO. 1042 OF 2015

The Pr. Commissioner of Income Tax-5 ...Appellant

Versus

Hindustan Antibiotics Limited ...Respondent

Mr. Suresh Kumar, for the Appellant.

Mr. Mihir Naniwadekar, a/w Mr. Ruturaj Gurjar, for the Respondent.

CORAM : M.S. SANKLECHA & RIYAZ I. CHAGLA, JJ.

DATE : 20 February 2018

ORDER :

1. This Appeal under Section 260A of the Income Tax Act, 1961 ("***The Act***" for short), challenges the order dated 29 January 2015 passed by the Income Tax Appellate Tribunal ("***The Tribunal***" for short). The impugned order dated 29 January 2015 is in respect of Assessment Year 2007-08.

2. The Revenue urges the following question of law for our consideration:-

1) Whether on the facts and in the circumstances of the case and in law, the Tribunal was right in holding that Section 263 of the Act cannot be invoked as the twin conditions are not satisfied without testing on the touch stones of such conditions laid down in the Act?

2) Whether on the facts and in the circumstances of the case and in law, the Tribunal was right in holding that the order passed by the Assessing Officer for assessment year 2007-08 is not erroneous even though the Assessing Officer has allowed set-off of brought forward loss in the said year without application of mind, which is not in accordance with the provisions of law?

3. The basic issue which arises in this Appeal on merits is, whether the Respondent-Assessee would be entitled to carry forward unabsorbed deprecation of Rs. 87.08 Crores pertaining to the period 1974-75 to 1996-97 for more than eight years that is beyond assessment year 2004-05. In the facts of the present case, the Assessing Officer by order dated 31 December 2009 for assessment year 2007-08 had allowed the benefit of carry forward unabsorbed deprecation pertaining to the years claimed by the Respondent-Assessee. However, the Commissioner of Income Tax was of the view that the same cannot be allowed and in exercise of his powers of Revision under Section 263 of the Act, set aside the assessment order dated 31 December 2009. Being aggrieved, the Respondent-Assessee filed an Appeal to the Tribunal. By the impugned order dated 29 January 2015, the Appeal was allowed by holding that on merits the order dated 31 December 2009 of the Assessing Officer does not call for interference and relied upon the decision of the Gujarat High Court in ***General Motors India Pvt.Ltd. Vs. Deputy Commissioner of Income Tax***[1].

1 ***(2013)354 ITR 244 (Guj.)***

4. Mr. Suresh Kumar, learned Counsel appearing for the Revenue, very fairly states that the questions as proposed have become academic in view of the decision of this Court in ***Commissioner of Income Tax Vs. Hindustan Unilever Ltd.***[2] which has approved and the decision of the Gujarat High Court in ***General Motors India Pvt.Ltd.*** (supra) on this very issue.

5. In the light of above, the questions as proposed does not give rise to any substantial question of law. Thus, not entertained.

6. Accordingly, the Appeal is dismissed, with no order as to costs.

[RIYAZ I. CHAGLA J.] **[M.S. SANKLECHA, J.]**

2 (*2017)394 ITR 73 (Bom.)*