

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

INCOME TAX APPEAL NO. 37 OF 2013

The Commissioner of Income Tax-8 .. Appellant.
V/s.
M/s. Proctor and Gamble Home Products Ltd. .. Respondent.

Mr. Tejveer Singh, for the Appellant.
Mr. F. V. Irani i/b. Rajesh Shah & Co., for the Respondent.

**CORAM: M.S.SANKLECHA, &
G.S.KULKARNI, JJ.**

DATE : 19th JANUARY, 2015.

PC:-

This appeal by the Revenue under Section 260-A of the Income Tax Act, 1961 (the Act), challenges the order dated 5th October, 2011 passed by the Income Tax Appellate Tribunal (the Tribunal).

2 The following question of law has been raised for our consideration:-

“ Whether on the facts and in the circumstances of the case and in law, the Tribunal is justified in holding the expenditure of Rs.6,43,47,284/- incurred for production of T. V. films and commercials as revenue in nature, without appreciating the fact that the advertisement films are assets which are owned by the assessee and are reusable over an indefinite period of time?”

3 The Tribunal by the impugned order dated 5th October, 2011 dismissed the Revenue's appeal on the ground that the issue arising in the

present case is covered against the Revenue by the decision of this Court in *CIT v/s. Geoffrey Manners and Co. Ltd. - 315 ITR 134*. We find that even for the earlier Assessment Years 1997-98, 2002-03 and 2003-04, the appeal of the Revenue on an identical issue from the orders of the Tribunal were dismissed by this Court in Income Tax Appeal Nos.202 of 2011 on 4th July, 2012, Income Tax Appeal (L) No.1321 of 2011 and Income Tax Appeal (L) No.1322 of 2011 on 12th March, 2013.

4 In spite of the issue being covered by the decision of this Court in *Geoffrey Manners and Co. Ltd. (supra)* as well as by the order dated 4th July, 2012 in Income Tax Appeal No.202 of 2011 in respect of Assessment Year 1997-98, the Revenue has chosen to persist with this Appeal. However, not only the appeal memo does not indicate any reason why the Revenue is seeking to appeal against order which already stands concluded in favour of the Respondent-Assessee but even today they are unable to explain.

5 In view of the fact that the issue being challenged in the impugned order stands concluded by the decision of this Court, no substantial question of law arises. Therefore, Appeal is dismissed.

6 However, before parting, it needs to be pointed out that we have noticed that the Revenue has been preferring appeals from the orders of the Tribunal even where the issue stands concluded by the orders of this High Court. These appeals are filed by the Revenue in a very causal manner without indicating the basis of the challenge i.e. some distinction in facts from the order of the High Court or that the order of the jurisdictional High Court is a subject matter of challenge before

the Apex Court. In the absence of the above explanation, it follows that there are times when even though the decision of the jurisdictional High Court has been accepted by the Revenue and yet the Revenue chooses to file an appeal on the same issue before this Court. Rule of law implies certainty of law and the State filing appeals on settled issues arbitrarily and/or without any application of mind. This filing of appeal without due application of mind leads to attempting to unsettle settled position without reasons. This casual manner of filing appeals subjects an assessee to unnecessary expenditure and at times anxiety. Even the Revenue incurs substantial expenses in pursuing unwarranted cases, which are a sheer waste of public money. The least that the Revenue should do is to examine whether or not the decision of the jurisdictional High Court being relied upon by the Tribunal, is subject matter of challenge before the Apex Court or is otherwise distinguishable and the same must be indicated in the appeal memo.

7 In the above view, we were contemplating to impose costs on the Revenue. However, we noticed that on earlier occasion when costs were imposed on the Revenue, it seemed to matter little to the Officers, for after all the amount came out of the general pool of tax paid by the tax payers. In the circumstances, we are now putting the Officers of the Revenue to notice, that in all cases including where appeals are filed, the Offices instructing the Counsel would review whether the appeal should at all be pressed in view of the Revenue having accepted the jurisdictional High Court's order on an identical issue and take necessary instructions from the Commissioner of Income Tax to withdraw and/or not press the appeal. Alternatively, in case a conscious decision is taken to press the appeal, then an averment to the effect that either the case is

distinguishable or an appeal has been preferred from the decision of this Court to the Apex Court if not averred in the appeal memo, then a further affidavit in support be filed indicating the reasons. In the absence of the above, we will be compelled to impose heavy/exemplary costs to be personally paid by the jurisdictional – Commissioner of Income Tax under whose jurisdiction, the appeal is being filed and pressed in spite of the issue being settled by this Court and the same having been accepted by the Revenue.

8 It is expected of the Revenue that in the light of the above observations it would review all the appeals which are already filed and where the issue stands concluded by virtue of decision of this Court which has been accepted by the Revenue, withdraw such appeals. Needless to state that above examination will also be done in case of new appeals under Section 260A of the Act before filing them.

9 With the above observations/directions, **Appeal is dismissed.**
No order as to costs.

10 A copy of this order be communicated by the Office and the Counsel for the Revenue to the Chief Commissioner of Income Tax, Mumbai and the Central Board of Direct Taxes for necessary action.

(G.S.KULKARNI,J.)

(M.S.SANKLECHA,J.)