IN THE HIGH COURT OF BOMBAY AT GOA.

Tax Appeal No. 29 of 2015

M/S. SHAIV DISTILLERIES (P) LTD.,
A Company incorporated under the
Companies Act, 1956, having its Registered
Office at Plot No.101-104, Bicholim
Industrial Estate, Bicholim,
Goa, represented by its Authorised
Signatory Shri Pravin Kerkar, major of
age, Indian National, having office at
the above address .. **Appellant**

Versus

THE ASST. COMMISSIONER OF
INCOME TAX,
Circle – 2(1), having office
at Aaykar Bhawan, Patto Plaza,
Panaji, Goa. .. **Respondent**

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Mr. Nitin Sardessai, Senior Advocate with Mr. V. Amonkar, Advocate for the appellant.
Ms. Asha Desai, Advocate for the respondent.

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CORAM : F.M. REIS & K.L. WADANE, JJ.
Dated : 07th JULY, 2015.

ORAL JUDGMENT (**Per F.M. Reis, J**):

1] Heard Mr. Nitin Sardessai, learned Senior Counsel with Mr. V. Amonkar, learned Counsel for the appellant and Ms. Asha Desai, learned Advocate for the respondent.

2] Admit, on the following substantial questions of law:-

(i) Whether the non-consideration of the provisions of Section 145A of the Income Tax Act vitiates the finding of the Income Tax Appellate Tribunal?

(ii) Is the benefits under Section 80IB of the Income Tax Act, 1961 erroneously rejected by the learned Tribunal.

3] The appeal is heard forthwith by consent of the learned counsel appearing for the parties. Ms. Asha Desai, learned counsel waives notice on behalf of the respondent.

4] Mr. Sardessai, the learned Senior Counsel appearing for the appellant has pointed out that the appellant is entitled for the benefits of Section 80IB of the Income Tax Act, which have been rejected by the authorities below without examining the effect of the provisions of Section 145A of the said Act. The learned Senior Counsel has taken us through the order passed by the Income Tax Appellate Tribunal at paragraph no.4 wherein though there is a reference to the said provision the effect of the said provision has not been examined whilst deciding the contention by the learned Tribunal. The learned Senior Counsel further points out that the Tribunal has relied upon the judgment of the Apex Court in the case of **Liberty India**

<u>Vs. CIT reported in 317 ITR 218 (SC)</u> referred to at paragraph no.3.3.2 and disallowed the benefits to the appellant without realising that the said judgment was not applicable to the facts of the present case. The learned Senior Counsel further submits that the appellant is entitled to the benefits after including the amounts deducting 75% of VAT recovered to be included in the computation of profits and, as such, the Tribunal was not justified to refuse such benefits.

5] On the other hand, Ms. Desai, the learned counsel appearing for the respondent has disputed the contentions of Mr. Sardessai, the learned Senior Counsel for the appellant, as according to her, the learned Tribunal has rightly refused the benefits to the appellant. The learned counsel for the appellant, however, does not dispute the fact that there are no reasons in arriving at the decision as to why the provisions of Section 145A of the Income Tax Act would not be applicable to the facts of the present case. The learned counsel, as such, points out that the Tribunal can examine the matter on that count afresh.

6] Upon hearing the learned counsel appearing for the parties and on perusal of the records, we find that, in fact, though there is a reference to the provisions of Section 145-A of the Income Tax Act relied upon by the appellant, nevertheless there are no reasons in the impugned order of the learned Tribunal as to why the said provisions were not applicable to the facts of the present case.

7] In such circumstances, without going into the merits of the rival contentions and the submissions of the learned counsel appearing for the parties, we find that the order passed by the Income Tax Appellate Tribunal deserves to be partly quashed and set aside and to remand the matter to the learned Tribunal to decide the appeal preferred by the appellant on ground no.2 afresh, in accordance with law. Both the substantial questions of law are answered accordingly.

8] In view of the above, we pass the following order:-

<u>Order</u>

(i) The impugned order dated 14th August, 2014 passed by the Income Tax Appellate Tribunal in ITA No.179/PNJ/2014 to the extent it decides ground no.2 therein is quashed and set aside.

(ii) The ITA No.179/PNJ/2014 is restored to file of the learned Income Tax Appellate Tribunal.

(iii) The learned Tribunal is directed to decide ground no.2 afresh after hearing both the parties in accordance with law.

(iv) All the contentions of the parties on merits in that regard are left open.

(v) The above appeal stands disposed of accordingly.

K.L.WADANE, J F.M. REIS, J

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