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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX REFERENCE NO.503 OF 1997

The Commissioner of Income Tax,
Mumbai City-IV, Mumbai ..Applicant.
V/s.
Dr. Beck & Co. (India) ..Respondent.

Mr.Suresh Kumar for the applicant.
Mr.Sanjiv M. Shah for the respondent.

CORAM : S.C.DHARMADHIKARI AND A.K. MENON, JJ.

DATED : 5TH MAY, 2015

P.C. :-

1. This reference is forwarded by the Tribunal at the instance of the Revenue for giving opinion of this Court on the following question of law :-

> “ Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in upholding the order of the CIT (A) allowing weighted deduction u/s.35B in respect of whole of export inspection charges of ₹3,26,944/- although as per proviso to Rule 6AA only 44% thereof was allowed ? ”

2. The assessee company for the assessment year

1984-85 claimed weighted deduction under section 35B of the Income Tax Act, 1961 in respect of whole of export inspection charges of ₹3,26,944/-. Before the assessing officer, the assessee claimed that the restriction mentioned in sub-rule (c) of Rule 6AA of Income Tax Rules, 1962 would be applicable only to such expenditure which was incurred for the goods both exported as well as locally sold. The assessing officer did not accept this contention and the stand, but the Commissioner of Income Tax (Appeals) upheld the same.

3. The Tribunal dismissed the revenue's appeal by following its order rendered in Income Tax Appeal No.610 & 113/Bom/88 for the assessment year 1983-84. That was in relation to the same assessee and raising the same contentions.

4. On the earlier occasions, we inquired as to what was the outcome of the reference by the Tribunal of a similar question for the assessment year 1983-84 and whether the same has been disposed of by this Court.

5. Today, Mr.Suresh Kumar appearing on behalf of the

revenue and at whose instance the question has been referred, fairly points out the Income Tax Reference No. 389 of 1995 in relation to the same assessee and raising the same question pertains to the assessment year 1983-84. A Division Bench of this Court disposed of this reference on 7th December, 2011 and in the following manner:-

> *"1. At the instance of the Revenue, the ITAT has referred the following two questions for the opinion of this Court under Section 256(1) of the Income Tax Act, 1961 relating to the assessment year 1983-84 :*
>
> *i) Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in upholding the order of the CIT(A) allowing full / initial contribution to superannuation fund amount to ₹1,57,287/- ?*
>
> *ii) Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in upholding the order of the CIT(A) allowing weighted deduction under s. 358 of the Income Tax Act, 1961 in respect of the whole export inspection charges of ₹12,55,181/-?*
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> 2. *As regards question (i) is concerned, the Counsel for the parties state that similar question raised by the Revenue in the assessee's own case*

being ITR No.22 of 1991 has been decided in favour of the assessee by order dated 13.7.2005. Accordingly, the first question is answered in favour of the assessee and against the Revenue.

3. As regards the second question is concerned, Counsel for the parties state that in view of the amendment to Rule 6AA of the Income Tax Rules, 1962 by the Income Tax (3rd Amendment) Rules, 1982 w.e.f. 27.5.1982 having been not considered by the ITAT, it would be just and proper to restore the issue to the ITAT for fresh consideration. Accordingly, second question is restored to the file of the ITAT for fresh consideration in the light of the aforesaid provision.

4. Income Tax Reference is accordingly disposed of. "

6. In the light of this order passed by a Division Bench, Mr.Suresh Kumar submits that the present reference can also be disposed of in like manner.

7. Following the Division Bench order, we dispose of the reference and with the same observations and directions.

(A.K.MENON, J.) **(S.C.DHARMADHIKARI, J.)**