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

INCOME TAX APPEAL NO. 1574 OF 2013

Commissioner of Income Tax-4, Mumbai ..Appellant

Vs.

M/s Hindustan Organics Chemicals Ltd. ..Respondent

....

Mr. A.R. Malhotra a/w N.A. Kazi, Advocates for Appellant.
Mr. Jitendra Singh a/w Neha Paranjape, Advocates for Respondent.

....

CORAM : M.S. SANKLECHA &
G.S. KULKARNI, JJ.
DATED : 8 SEPTEMBER 2015

P.C.:

This appeal by revenue under Section 260A of the Income Tax Act, 1961 (the 'Act') challenges the order dated 9 November 2012 passed by the Income Tax Appellate Tribunal (the 'Tribunal''). The Assessment Year involved is A.Y. 2008-09.

2. The revenue urges the following questions of law for our consideration:

> "(a) Whether on the facts and in the circumstances of the case, the Tribunal, in law, was

right in allowing the claim of the assessee on account of delayed payments of P.F. of employee's contribution amounting to Rs.3,50,31,650/- by relying on the decision of the Supreme Court in the case of CIT Vs. Alom Extrusion Ltd. (319 ITR 306)?

(b) Whether, on the fact and in the circumstances of the case and in law, the Tribunal was justified in deleting the addition of Rs.6,81,25,800/- made by the A.O. being direct expenses added to the value of closing stock on estimate basis by the A.O. u/s 145A of the Income Tax Act, 1961?"

3. So far as Question (a) is concerned, this Court by an order dated 7 May 2015 had dismissed it by following the decision of Supreme Court in ***CIT Vs Alom Extrusions***[1]. However, at that time, so far as Question (b) is concerned, the appeal was adjourned to enable the parties to obtain details of pending appeals field by the revenue. Thus today we only concerned with the Question (b) as framed by the revenue for our consideration.

4. Mr. Malhotra, the learned Counsel for the revenue points out that the impugned order of the Tribunal follows it's order dated

1 (2009) 319 ITR 306

13 January 2011 passed for the Assessment Year 2007-08. Mr. Malhotra also informs us that though an appeal was filed by the revenue from the order dated 13 January 2011 of the Tribunal for the Assessment Year 2007-08 it was dismissed on 29 November 2012 for failure to remove office objections. The revenue has now taken out a Notice of Motion No. 1757/2015 on 6 July 2015 seeking condonation of delay and restoration of it's appeal for Assessment Year 2007-08. Mr. Malhotra submits that the Question (b) herein could be considered for admission by the Court today, as the relevant portion of the order dated 13 January 2011 passed by the Tribunal for the Assessment Year 2007-08 on which reliance has been placed is reproduced in the impugned order. Mr. Jitendra Singh, learned Counsel appearing for respondent-assessee also submitted copies of order dated 13 January 2011 passed by the Tribunal for the Assessment Year 2007-08 dealing with the issue arising in Question (b) above. In the above view, at the request of the Counsel, we take up Question (b) as proposed for consideration.

5. For the Assessment Year 2008-09, the Assessing Officer found that the Audit Report indicated that direct expesnes had not

been considered while computing the value of closing stock. Thus the Assessing Officer invoked Section 145A of the Act and enhanced value of closing stock as direct expenses incurred such as freight, etc. had not been included to arrive at valuation of the closing stock. The Assessing Officer enhanced the value of the closing stock on estimated basis of 2% of the value of closing stock in the his Assessment Order dated 29 December 2010.

6. Being aggrieved, the respondent-assessee filed an appeal to CIT(A). The CIT(A) on examination found that value of closing stock included direct charges incurred thereon such as freight, etc. duly supported by material receipt vouchers. Further, CIT(A) also relied upon it's orders for the earlier years i.e. Assessment Years 2002-03 and 2004-05 and of the Tribunal for the Assessment Years 2003-04 and 2004-05 in the respondent-assessee's own case. In view of the above, the appeal of the respondent-assessee was allowed by order dated 23 September 2011 of the CIT(A).

7. Being aggrieved, the revenue carried the issue in appeal to the Tribunal. By the impugned order, the Tribunal dismissed the

appeal of the revenue by placing reliance upon it's order dated 13 January 2011 passed in respect of the Assessment Year 2007-08. The relevant portion of the order dated 13 January 2011 has been quoted verbitam in the impugned order, wherein the CIT(A) had held that the valuation of closing stock was inclusive of expenses incurred to bring it to its location and condition on the date of valuation. It also relies upon the orders passed in the earlier assessment years, in favour of the respondent-assessee. In the absence of any distinguishing features in the subject year, the Tribunal dismissed the revenue's appeal.

8. Mr. Malhotra, learned Counsel for the revenue points out that audit report submitted by the assessee indicates that the respondent had not considered direct expenses while computing the valuation of closing stock. It is in the above view that the Assessing Officer has added estimated expenses to arrive at the appropriate valuation of the closing stock. It is further submitted that each assessment has to be considered on the facts arising in the case for that assessment year and undue reliance should not be placed upon

the orders passed in respect of an earlier assessment year. Therefore, it is submitted the appeal be admitted on Question (b) as it raises a substantial question of law.

9. We find that the CIT(A) has rendered a finding of fact in the subject assessment year that the valuation of closing stock includes direct expenses such as freight charges incurred on them and are duly supported by the material receipt vouchers. This finding of fact was upheld by the Tribunal by also relying upon it's own order dated 13 January 2011 for the earlier Assessment Year. The reliance placed by the revenue on the observations made in the audit report as reflected in the order of the Assessing Officer would not govern the field, where the CIT(A) and the Tribunal had rendered a finding of fact that direct expenses on account of freight charges, etc. incurred on the closing stock had been added to arrive at valuation of closing stock and are also duly supported by material receipt vouchers. In view of the fact that two authorities have reached a concurrent finding of fact on examination of material receipt vouchers, we see no substantial question of law

arising for our consideration so far as Question (b) is concerned. Moreover, the facts in the earlier Assessment Year 2007-08 were found identical and nothing was shown to us as to why the same was not correct and/or inapplicable to the subject assessment year.

10. Accordingly, Question (a) having been dismissed on 7 May 2015 and Question (b) is also not being entertained as it is a question of fact, not giving rise to any substantial question of law. Thus, appeal dismissed. No orders as to costs.

[G.S. KULKARNI, J] **[M.S. SANKLECHA, J.]**