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

INCOME TAX APPEAL NO. 1364 OF 2013

The Commissioner of Income Tax-24	**}**	**Appellant**
versus		
M/s. Silvassa Wooden Drums	**}**	**Respondent**

Mr. Arvind Pinto for the Appellant.

Mr. Madhur Agarwal i/b. M/s. Rajesh Shah and Co. for the Respondent.

CORAM :- S. C. DHARMADHIKARI &
A. K. MENON, JJ.

DATED :- APRIL 7, 2015

P.C. :-

This Appeal of the Revenue challenges the order passed by the Income Tax Appellate Tribunal, Bench at Mumbai dated 2nd January, 2013. The assessment year in question if 2004-05.

2) The Assessee before the Tribunal and before us is a firm engaged in the business of manufacturing galvanied steel tapes and cold rolled strips. A return of income for the assessment year 2004-05 was filed declaring total income of Rs.2,52,191/- after claiming deduction of Rs.78,00,367/- under section 80IB of the Income Tax Act, 1961. The claim for this deduction was rejected by the Assessing Officer on 21st December, 2009. The matter was carried in Appeal by the Assessee

before the Commissioner and the Commissioner allowed the Appeal of the Assessee by his order dated 27th September, 2010. Aggrieved by this order of the Commissioner, the matter was carried in Appeal to the Tribunal, by the Revenue and the Tribunal has confirmed the order of the Commissioner. The Commissioner, in arriving at the conclusion, relied upon an order passed by this Court. The Commissioner in para 2 of his order found that the product galvanized steel tape has a specific use for armoring jelly filled polythene telephone cables. It is used by Bharat Sanchar Nigam Limited, Department of Defence, Indian Railways etc. Thus, the Tribunal seems to have had a doubt whether this process amounts to manufacture, however, in the light of the authoritative pronouncement of this Court and in the case of the very Assessee that the deduction under section 80IB of the Income Tax Act, 1961 was granted. The Tribunal's earlier order has been followed by the Commissioner.

3) When the matter was brought before the Tribunal in Appeal by the Revenue, the Tribunal followed this Courts order in Income Tax Appeal No. 2504 of 2011 decided on 19th April, 2012. We do not think that this Court's observations were restricted only to the exercise of power under section 263 of the Income Tax Act, 1961. This Court, in para 4 of that order, held as under:-

> "4. The Tribunal has carefully evaluated the nature of the process carried on by the assessee. The detailed manufacturing flow chart furnished by the assessee has been considered in para 13 of the decision. The Tribunal has in para 14 considered the input and output material. The Tribunal noted that under the Central Excise Act, HR coils, CRCA coils/strips and galvanizing steel tapes are classified under different heads. Moreover, upon the evidence before it, the Tribunal has noted that the uses of the final product are distinct in respect of various industries. On this basis the Tribunal has entered two fold findings. Firstly, the raw material and end products have a different commercial connotation and use. A new and distinct product emerges during the course of the manufacturing process. Secondly, even if two views were possible, the CIT ought not to have exercised jurisdiction under section 263. The first conclusion of the Tribunal is based on the material on record and consistent with the law laid down by the Supreme Court which has been adverted to in the decision of the Tribunal. In any event, the impugned order of the Tribunal could also be sustained on the second finding, since recourse to the provisions of section 263 was not warranted."

4) We do not think that a different view can be taken and in the present case. The very process, the very Assessee was before this Court. In the circumstances, we do not think that the Tribunal has committed any error of law apparent on the face of the record in following and applying this Court's view. Once the facts and circumstances were identical, then, the Tribunal's order cannot be termed as perverse. Consequently, the Appeal does not raise any substantial question of law. It is accordingly dismissed. No costs.

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