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

INCOME TAX APPEAL NO. 1636 OF 2013

M/s.Chhatariya Dehydrates Exports … Appellant

v/s

Commissioner of Income Tax -25 … Respondent

Mr.S.C. Tiwari along with Natasha Mangat for the appellant.

Mr.Arvind Pinto for the respondent.

CORAM: M.S. SANKLECHA &
N.M. JAMDAR, JJ.

DATED : 28TH JULY, 2015

P.C.:

This appeal under Section 260-A of the Income Tax Act, 1961 (the Act) challenges the order dated 2 January 2013 passed by the Income Tax Appellate Tribunal (the Tribunal). The impugned order is in respect of Assessment Year 2006-07.

2 The appellant urges the following question of law for our consideration :-

> *"Whether on the facts and in the circumstances of the case of the appellant and in law, the impugned order of the Tribunal is not perverse as being opposed to common sense ?"*

3 The appellant is engaged in manufacture of dehydrated onions from raw onions. As the appellant's manufacturing unit was exporting 100% of its manufactured goods, it claimed relief under Section 10B of the Act. During the subject assessment year, the appellant filed the return of income declaring its total income 'Nil' after claiming exemption of Rs.1.40 Crores under Section 10B of the Act.

4 During the assessment proceedings, the Assessing Officer noticed that the appellant was also engaged in export trading of dehydrated onions and had for that purpose, purchased dehydrated onions of Rs.11.19 Crores and almost Rs.10 Crores out of it from its Associated Enterprises. The appellant accepted the fact that profits on account of exports on account of trading is not entitled to benefit of Section 10B of the Act. The Assessing Officer found that various expenses were added to the trading account instead of being the part of manufacturing activity so as to enhance the manufacturing profit. Further, the appellant also failed to provide the comparative market rate in respect of purchases for export trading from related persons/associated enterprises. In the above facts, the Assessing Officer computed the eligible profit for the purpose of Section 10B of the Act on the basis of the ratio of turnover of sales. The Assessing Officer by Assessment Order dated 30th December, 2008 arrived at profits eligible to Section 10B of the Act at Rs. 55.23 lakhs as against Rs.1.40 Crores claimed by the appellant.

5 In appeal, the Commissioner of Income Tax (Appeals) after holding that the purchases and sales of dehydrated onions on trading account are not entitled to the benefit under Section 10B of the Act, concluded that the profits attributable to manufacturing profits was not correctly worked out. This on the ground that many of the expenses are incurred only for manufacturing activities and, therefore, ought not to be split. Thus the Assessing Officer concluded that the deduction allowable to the appellant under Section 10B of the Act shall be at Rs.1.35 crores as against Rs.1.40 crores as claimed by the appellant.

6 On further appeal, the Tribunal, on consideration of the orders passed by the Assessing Officer as well as by the Commissioner of Income Tax (Appeals) concluded that the order of the Assessing Officer needed to be restored. The Tribunal also recorded the fact that the appellant has not maintained separate books of accounts in respect of manufacturing and trading activities and in these circumstances the application of method of turnover i.e. percentage of total sales to arrive at net profit attributable to trading activity and manufacturing activity as adopted by the Assessing Officer was in the present facts reasonable/ correct method to arrive at the profits eligible for exemption under Section 10B of the Act.

7 The grievance of the appellant is that the impugned order of

the Tribunal is perverse, inasmuch as, it has proceeded to uphold the application of method of turnover to sale to allocate the profits between the appellant's trading and manufacturing activities. It is contended by the learned counsel for the appellant that the order of the Commissioner of Income Tax (Appeal) correctly lays down the extent of benefit under Section 10B of the Act available to it and the Tribunal should not have interfered. It is submitted that the Tribunal seemed to have been influenced by an irrelevant factor viz: failure to maintain two separate books of accounts in respect of manufacturing and trading activities so as to claim the benefit of Section 10B of the Act. This is not the requirement and in support, places reliance on the decision of Karnataka High Court in the case of ***Commissioner of Income Tax, Central Circle v/s Fusion Software Engg. (P) Ltd.***, reported in ***205 ITR 396.*** Mr.Pinto, the learned Counsel for the Revenue on the other hand, supports the impugned order of the Tribunal.

8 We find that the appellant-assessee had originally claimed benefit of Section 10B of the Act in its return in respect of its entire profit i.e. both trading as well as manufacturing activities. The Assessing Officer had called upon the appellant to furnish market rate of the purchases from its Associate Enterprises so as to determine whether or not the purchase price was reasonable. The appellant did not furnish the necessary information. However, it is also noticed by the Tribunal that the documents indicate that the profit of the appellant as per the tax audit report for the entire

business activity is 6.14%, when the profit from actual manufacturing activity was 20.70%. It is a settled position that the claimant to a benefit of an exemption must establish its case for the exemption and the quantum of exemption it seeks by leading necessary evidence before the authorities. This the appellant failed to do. Reliance upon the decision of the Karnataka High Court in the case of ***Fusion Software Engg. (P) Ltd.*** (supra), to our mind, is misplaced, as in the facts of that case, the exemption under Section 10A of the Act was denied in its entirety to the assessee therein merely because it had not maintained separate books of accounts. In the facts of the present case, exemption under Section 10B of the Act is not being denied to the assessee in its entirety. However, the profits earned are being allocated by application of turnover method i.e. percentage of total sales. It is indeed one of the methods of determining the profits to be allocated between two or more profit centres. Adoption of turnover method to allocate profit cannot in the present facts be said to be perverse, in any manner.

9 In view of the above, the question as formulated, does not give rise to any substantial question of law. Accordingly, we do not entertain the present appeal. Appeal dismissed. No order as to costs.

(N. M. JAMDAR, J.) ***(M.S. SANKLECHA, J.)***