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

INCOME TAX APPEAL NO.1152 OF 2014
WITH
INCOME TAX APPEAL NO.1145 OF 2014

Commissioner of Income Tax-2
Mumbai .. Appellant

v/s.

Bharat Petroleum Corporation Ltd. .. Respondent

Mr. Suresh Kumar a/w Ms. Samiksha Kanani for the appellant
Mr. J.D. Mistri, Senior Counsel a/w Mr. Atul Jasani for the respondent

CORAM : M.S. SANKLECHA &
S.C. GUPTE, J.J.

DATED : 23rd AUGUST, 2016.

P.C.

1. The Income Tax Appeal No.1145 of 2014 is not on board. Mentioned. As the issue involved in Appeal No.1145 of 2014 is identical to the issue in Income Tax Appeal No.1152 of 2014 which is on board, the Counsel request that both appeals be heard together.

2. The Income Tax Appeal No.1152 of 2014 is in respect of the A.Y. 1995-96 and Income Tax Appeal No.1145 of 2014 is in respect of A.Y. 1994-95.

3. Mr. Suresh Kumar, learned Counsel for the Revenue urges the only following two questions of law for our consideration :-

> *(i) Whether the activity of mere bottling of LPG gas into cylinders amounts to production or manufacturing activity for the purpose of Sections 80HH/80I/80IA of the Income Tax Act, 1961?*
>
> *(ii) Whether in the facts and circumstances of the case and in law, the Tribunal is correct in holding that the activity of bottling of LPG amounts to production or manufacturing activity for the purposes of Sections 80HH/80I/80IA of the Income Tax Act, 1961, as the process of bottling the LPG into gas cylinders makes the same marketable on execution of the process even though no new product comes into existence?*

4. The impugned order of the Tribunal allowed the respondent assessee's appeal for both the Assessment Years by placing reliance upon the decision of this Court dated 3rd May, 2013 in the respondent assessee's own case being Income Tax Appeal Nos. 612 of 2001 and 613 of 2001 in appeals filed by the Revenue. This Court by an order dated 3rd May, 2013 allowed the respondent assessee's appeals from the order

of the Tribunal rejecting the respondent assessee's contention herein that the activity carried out by them in respect of its LPG bottling plant would entitle it to the benefit under Section 80HH, 80I and 80IA of the Act.

5. Mr. Suresh Kumar, learned Counsel for the Revenue very fairly states that the issue stands concluded by the decision of this Court in Income Tax Appeal Nos. 612 of 2001 and 613 of 2001 decided on 3rd May, 2013 against the appellant Revenue and in favour of the respondent assessee.

6. In the above view, the questions as raised do not give rise any substantial question of law being covered by the decision of this Court in favour of the respondent assessee. Thus, the appeals are not entertained.

7. Accordingly, both the appeals are dismissed. No order as to costs.

(S.C. GUPTE, J.) **(M.S. SANKLECHA, J.)**