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

INCOME TAX APPEAL NO. 1004 OF 2014

The Commissioner of Income Tax-6,
Mumbai .. Appellant
v/s.

M/s. Essel Propack Ltd. .. Respondent

Mrs. S.V. Bharucha for the appellant
Mr. Sanjiv M. Shah for the respondent

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

DATED : 25th OCTOBER, 2016.

P.C.

1. This Appeal under Section 260-A of the Income Tax Act, 1961 (the Act) challenges the order dated 31st October, 2013 passed by the Income Tax Appellate Tribunal (the Tribunal). The impugned order is in respect of Assessment Year 2005-06.

2. The Revenue urges following questions of law for our consideration :-

(i) Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in not upholding the findings of the Income Tax Authorities that the deferred sales tax liability is

chargeable to tax as business income of the assessee u/s. 41(1) of the Income Tax on remission thereof and instead treated the same as exempt from tax as capital receipt being remission of loan liability?

(ii) Whether on the facts and in the circumstances of the case and in law, the Tribunal erred in implicitly holding (by asking to compute disallowance u/s 14A following the decision of the Bombay High Curt in the case of M/s. Godrej & Boyce Mfg. Co. Ltd.) that Rule 8D of the Income Tax Rules will come into effect prospectively without appreciating the Rule is a machinery / procedural prescribing mechanism for computing quantum of expenditure relatable to earning exempt income for the purpose of disallowance under Section 14A of the Income Tax Act?

3. <u>Regarding question (i) :-</u>

(a) The impugned of the Tribunal allowed the respondent assessee's appeal by following the decision of its special bench in *Sulzer India Ltd. Vs. JCIT 42 SOT 457 (Mum.) (SB)*. The Revenue's appeal from the order of the Tribunal in Suzler India Ltd. was dismissed as reported in ***Commissioner of Income Tax Vs. Sulzer India Ltd. 369 ITR 717.*** Mrs. Bharucha, learned Counsel for the Revenue very fairly states that the issue as raised herein stands concluded by the order of this Court in Sulzer India Ltd. (supra).

(b) Therefore, the question as proposed herein does not give rise to any substantial question of law. Thus, not entertained.

4. Regarding question (ii) :-

(a) Mrs. Bharucha, learned Counsel for the Revenue very fairly states that the issue as raised herein stands concluded against the Revenue by the decision of this Court in ***Godrej and Boyce Mfg. Co. Ltd. Vs. DCIT, 328 ITR 81***, which has in fact been followed by the impugned order of the Tribunal.

(b) In Godrej & Boyce (supra), it is held that the disallowance under Section 14A of the Act has to be done on reasonable basis for the years prior to Assessment Year 2008-09 and it is only from Assessment Year 2008-09 onwards Rule 8D of the Income Tax Rules can be invoked. In these two appeals, we are concerned with the Assessment Years 2005-06 and 2006-07. Therefore, the disallowance under Section 14A of the Act as held by the Tribunal is to be done on reasonable basis.

(c) In the above view, the question as proposed does not give rise to any substantial question of law. Thus, not entertained.

5. The appeal is dismissed. No order as to costs.

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