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

INCOME TAX APPEAL NO. 2353 OF 2013

Commissioner of Income Tax-1
Mumbai .. Appellant

v/s.

M/s. Hindustan Petroleum Corporation
Ltd., Mumbai ..Respondents

Mr. Suresh Kumar for the appellant
Mr. Atul Jasani for the respondent

CORAM : M.S. SANKLECHA &
B.P. COLABAWALLA, J.J.

DATED : 6th JANUARY, 2016.

P.C.

1. This Appeal under Section 260-A of the Income Tax Act, 1961 (the Act) challenges the order dated 16th January, 2013 passed by the Income Tax Appellate Tribunal (the Tribunal). The impugned order is in respect of Assessment Year 2001-02.

2. This appeal raises the following questions of law for our consideration :-

(a) Whether on the facts and in the circumstances of the case

and in law, the Tribunal was justified in relying on Cylinders Rules 2004 referred to in the decisions of jurisdictional High Court in the case of HPCL Vs. MSDCEL in WP No.9455 of 2011 and Gujarat High Court in the case of Bharat Petroleum Corporation Ltd. Vs. State of Gujarat & Ors. as well as the notification u/s 80IB(4) issued on 04.08.1999 in view of the fact that the same are not applicable in the case of assessee for the assessment year under consideration?

(b) Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in holding that the bottling of the gas into gas cylinders as a production activity for the purpose of Section 80HH, 80I / 80IA ignoring the fact that no new product comes into existence in this process?

3. Mr. Suresh Kumar, learned Counsel for the Revenue very fairly states that the identical questions of law were urged by the Revenue from the common order of the Tribunal for the Assessment Years 1992-93 to 1995-96 being Income Tax Appeal Nos. 2131 of 2012 to 2135 of 2012. However, this Court by common order dated 7th March, 2013 dismissed the Revenue's above Appeals. Thus, it is submitted that the questions as proposed stand concluded against the Revenue.

4. In view of the above admitted position, the questions as framed by the Revenue do not give rise any substantial question of law.

5. Accordingly, the appeal is dismissed. No order as to costs.

(B.P. COLABAWALLA, J.) **(M.S. SANKLECHA, J.)**