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

**INCOME TAX APPEAL NO. 552 OF 2015**
**WITH**
**INCOME TAX APPEAL NO. 605 OF 2015**
**WITH**
**INCOME TAX APPEAL NO. 607 OF 2015**

The Pr. Commissioner of Income Tax-4 … Appellant
Versus
M/s. Hindustan Organics Chemicals Ltd. … Respondent

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Mr. A. R. Malhotra a/w Mr. N. A. Kazi, for the Appellant.
Mr. K. Gopal a/w Mr. Jitendra Singh, for the Respondent.

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**CORAM : S. V. GANGAPURWALA AND**
**A. M. BADAR, JJ.**

**DATE : 25th JULY, 2017**

**P. C. :**

1. The present appeals pertain to the assessment year 1999-2000, 2004-2005 and 2003-2004, respectively.

2. The appeals filed by the Revenue are dismissed by the Tribunal.

3. The appeals are filed on following grounds.

Income Tax Appeal No. 552 of 2015 is filed on following questions of law.

(i) “whether, on the facts and in the circumstances of the case and in law, the Hon'ble Tribunal was justified in deleting the addition of 2% of the total value of raw materials, stores and spares in closing stock made u/s 145A of the Income Tax Act, 1961 on account of direct expenses like freight, storage, etc. ?”

(ii) “Whether, on the facts and in the circumstances of the case and in law, the Hon'ble Tribunal is right in allowing the claim of the Assessee on account of delayed payments of P.F. And ESIC of employees' contribution amounting to Rs.30,87,586/- by relying on the decision of Hon'ble Bombay High Court in Assessee's own case for A.Y. 2006-07 reported in 366 ITR 1 ?”

(iii) “Whether, on the facts and in the circumstances of the case and in law, the Hon'ble Tribunal was justified in deleting the addition of excise duty not included in the value of the closing stock thereby violating the provisions of section 145A ?”

Income Tax Appeal No. 605 of 2015 is filed on following questions of law.

(i) "Whether, on the facts and in the circumstances of the case and in law, the Hon'ble Tribunal was justified in deleting the addition of 2% of the total value of raw materials, stores and spares in closing stock made u/s 145A of the Income Tax Act, 1961 on account of direct expenses like freight, storage, etc. ?"

(ii) "Whether, on the facts and in the circumstances of the case and in law, the Hon'ble Tribunal is right in allowing the claim of the Assessee on account of delayed payments of P.F. And ESIC of employees' contribution amounting to Rs.2,50,39,240/- by relying on the decision of Hon'ble Bombay High Court in Assessee's own case for A.Y. 2006-07 reported in 366 ITR 1 ?"

Income Tax Appeal No. 607 of 2015 is filed on following question of law.

(i) "Whether, on the facts and in the circumstances of the case and in law, the Hon'ble Tribunal is right in allowing the claim of the Assessee on account of delayed payments of P.F. And ESIC of employees' contribution amounting to Rs.76,17,656/- by relying of the decision of Hon'ble Bombay High Court in Assessee's own case for A.Y. 2006-07 reported in 366 ITR 1 ?"

4. Mr. Malhotra, learned Counsel for the Appellant strenuously contends that two contradictory reports submitted by the Assessing Officer, wherein, in one report it was stated that the provision for excise duty was made in the closing stock, and in other, it was also stated that the impact of non provision of excise duty on profit of the company is nil. According to the learned Counsel, the Commissioner (Appeals) and the Tribunal, have mainly relied on the fact that the assessee is a Public Sector Company undertaking, whose accounts are audited by the auditors of the Comptroller & Auditor General of India. However, no effective finding could be arrived at as to whether the excise duty was included in the closing stock. In absence of the same, Tribunal could not have deleted the addition of excise duty. Learned Counsel further submits that the Tribunal was not justified in deleting the addition of 2% of the total value of the raw materials, stores and spares in closing stock made under Section 145A of the Income Tax Act, 1961 (for short 'the Act'). The Tribunal could not have allowed the claim of the assessee on account of delayed payment of PF and for delayed payment of ESIC of employees' contribution.

5. Learned Counsel for the respondent supports the order and submits that as far as first two issues in Appeal No. 552 of 2015 are concerned, the same are covered by the Judgment of this Court in the assessee's own case for the assessment year 2008-2009 bearing Income Tax Appeal No. 1574 of 2013 dated 8th September, 2015 and as far as the question with regard to the inclusion of the excise duty in the closing stock is concerned, the accounting is done as per Section 145A of the Act and the audit was done and the auditor also stated that the impact of tax is nil.

6. We have considered the submissions.

7. As far as first two issues in Appeal No.552 of 2015 are concerned, the same are covered by the order of this Court in the assessee's own case for the assessment year 2008-2009 in Income Tax Appeal No. 1574 of 2013 dated 8th September, 2015. Said questions are decided against the Revenue and in favour of the assessee. The same questions are raised in Appeal Nos. 605 of 2015 and 607 of 2015.

8. As far as the order of Tribunal, deleting the addition of excise duty is concerned, the same appears to be on the basis of

report of the Comptroller & Auditor General of India. The apecial audit was done under Section 142(2A) of the Act. The special auditor in his report also stated that the tax impact is nil. The Tribunal has considered the tax report. The tax audit report of the statutory auditor and the audit report of the Comptroller & Auditor General of India shows that the impact of inclusion of excise duty in the value of closing stock stands nil.

9. In view of the above finding of facts, no substantial question of law arises in these appeals. These appeals, as such, are dismissed. No costs.

**(A. M. BADAR, J.)** **(S. V. GANGAPURWALA, J.)**