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

INCOME TAX APPEAL NO. 1281 OF 2014
WITH
INCOME TAX APPEAL NO. 1282 OF 2014
WITH
INCOME TAX APPEAL NO. 1283 OF 2014
WITH
INCOME TAX APPEAL NO. 1295 OF 2014

The Commissioner of Income Tax-3 .. Appellant
Mumbai

v/s.

Siro Clinpharm Pvt. Ltd. .. Respondent

Mr. Ashok Kotangle a/w Ms. Padma Divakar for the appellant
Mr. Prakash Shah a/w Mr. Jas Sanghavi i/b PDS Legal for the respondent

CORAM : M.S. SANKLECHA &
A.K. MENON, J.J.

DATED : 9th JANUARY, 2017.

P.C.

1. These Appeals under Section 260-A of the Income Tax Act, 1961 (the Act) challenge the common order dated 27th September, 2013 passed by the Income Tax Appellate Tribunal (the Tribunal). The common impugned order is in respect of Assessment Years 2004-05, 2006-07, 2005-06 and 2003-04. Thus, the four appeals.

2. The Revenue urges the following substantial 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 holding the initiation of reassessment proceedings as bad in law and consequently cancelling the reassessment completed by the Assessing Officer under Section 143(3) r/w Section 147 of the I.T. Act without appreciating the fact that the reassessment proceeding was not initiated merely on the change of opinion but was initiated on the basis of the facts of the case and as per the provisions of the Act.*
>
> *(ii) Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in allowing the assessee's claim of deduction under Section 80IB(8A) of the I.T. Act without appreciating the fact that the assessee did not disclose the complete facts and has also not fulfilled the conditions stipulated in Rule 18DA for claiming deduction under Section 80IB(8A) of the Act and accordingly the same was disallowed by the assessing officer appropriately as per the provisions of the Act."*

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

(a) The respondent is a company engaged in the business of clinical research of pharmaceutical products. For the subject assessment years, the respondent had filed its returns of income and the same were assessed to tax under Section 143(3) of the Act.

(b) Thereafter, on 26th March, 2009, notices under Section 148 of the Act were issued to the respondent assessee seeking to reopen the assessment for the subject assessment years. The reasons recorded in support of the impugned notice was that on examination of the record, it was found that the respondent assessee was not entitled to the benefit of deduction under Section 80IB(8A) of the Act. This on the basis that the respondent assessee did not have any facility for laboratory testing and analysis. The respondent assessee objected to the reopening of the assessment *inter alia* on the ground that this matter was a subject for examination during the regular assessment proceedings and thus, the reopening notice was without jurisdiction. However, the same was not accepted by the Assessing Officer and for all the subject assessment years proceeded to pass an order under Section 143(3) r/w 147 of the Act, holding that on merits, the respondent assessee is not entitled to the benefit of deduction under Section 80IB(8A) of the Act.

(c) Being aggrieved, the respondent assessee filed an appeal to the Tribunal. By the impugned order, the Tribunal held that the reopening notices were without jurisdiction as it emanates from a change of opinion. The impugned order holds that orders passed during the regular assessment proceedings under Section 143(3) of the Act are presumed to have been passed by the Assessing Officer on application of his mind to the claim of deduction during the regular assessment proceedings. Thus, a fresh application of mind on the same set of facts being a change of opinion would not entitle the Assessing Officer to reopen the assessment completely under Section 143(3) of the Act.

(d) The Revenue's grievance before us is that there was no application of mind by the Assessing Officer to the respondent assessee's claim for deduction under Section 80IB(8A) of the Act during the regular assessment proceedings for subject assessment years under Section 143(3) of the Act. Consequently, there could be no occasion for a change of opinion as no opinion had been earlier in respect of deduction under Section 80IB(8A) of the Act while passing the orders under Section 143(3) for the subject assessment years.

(e) We find that in all orders passed under Section 143(3) of the Act, during the regular assessment proceedings for the subject assessment years, the Assessing Officer records the fact that the assessee's claim for deduction under Section 80IB(8A) were examined in detail and found to be in order. There can be no clear case of application of mind to the respondent assessee's claim for deduction under Section 80IB(8A) of the Act then this. Therefore, in the facts of this case, it is not to be presumed that the Assessing Officer had applied his mind to the respondent assessee's claim for deduction under Section 80IB(8A) of the Act when assessment orders were passed under Section 143(3) of the Act for the subject assessment years as it has in fact been considered therein. Thus, this is a clear case of change of opinion. Consequently, the reopening notices issued for the subject assessment years are without jurisdiction as they are founded upon a change of opinion.

(f) Accordingly, question (i) as proposed does not give rise to any substantial question of law. Thus, not entertained.

4. **<u>Regarding question (ii) :-</u>**

(a) This question in the present facts became academic. This for the reason that the question (i) raising the issue of jurisdiction to reassess the respondent assessee has been decided against the Revenue and in favour of the respondent assessee. Thus, no occasion can arise to the authorities under the Act to re-examine the claim for deduction under Section 80IB(8A) of the Act made by the respondent assessee.

(b) Accordingly, question (ii) as proposed is not being examined. Thus, not entertained.

5. Accordingly, all these appeals are dismissed. No order as to cost

(A.K. MENON, J.) **(M.S. SANKLECHA, J.)**