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

INCOME TAX APPEAL NO. 1407 OF 2014

Commissioner of Income Tax-8, Mumbai … Appellant

V/s.

M/s. Procter & Gamble India Limited … Respondent

Mr. Arvind Pinto for the Appellant.
Mr. Madhur Agarwal a/w Mr. Balasaheb Yewale i/b Rajesh Shah and Co. for the Respondent.

CORAM : S.C.DHARMADHIKARI &
SMT. VIBHA KANKANWADI, JJ.
DATE : 18th AUGUST, 2017

P.C.:

. This Appeal challenges the order passed by the Income Tax Appellate Tribunal Bench at Mumbai in ITA No. 845/M/2003 on 26th March, 2010.

2 The assessment year is 1995-1996. The Revenue submits that this Appeal was directed against the order of the First Appellate Authority dated 25th November 2002. Though, the Respondent/Assessee raised disputes on seven different grounds, the present Appeal concerns only the issue/ground No.6 regarding claim of deduction under Section 80HH.

3 The Tribunal in the initial order appears to have considered this claim

under two heads. It considered the claim in general in respect of business profit and in paragraphs 7 and 7.1 of the initial order, it directed that the Commissioner of Income Tax (Appeals) was in error, insofar as addition made in the business income under Section 43B of the Income Tax Act.

4 We are not concerned with this part. From para 7.2 onwards, the Tribunal in the initial order considered the allocation of the interest expenditure to Medak unit. The Tribunal found that in the Assessee's own case for the assessment year 1989-90, it considered an identical claim. The Tribunal held that only interest payable on the bank overdraft has to be allocated towards Medak unit.

5 Even with regard to this aspect, the revenue is not aggrieved. The revenue is aggrieved only with regard to allowing of the assessee's Appeal by the Tribunal by its initial order insofar as, the allocation of research and development expenses incurred in relation to Medak unit. In para 7.2 of the initial order, the Tribunal on this aspect held as under:-

> *"As regards the R& D expenses, in our view, only actual research & development expenditure incurred in relation to Medak unit can be allocated. In this case, there is no material placed on record to show that any research and development expenditure had been incurred by Medak Unit. The allocation has been made on estimate on the basis of turnover, which in our view is not correct. The assessee had maintained separate*

> *accounts from which it could be easily found out whether the expenditure had been incurred or not but no material has been placed on record by the revenue to prove, that the assessee had incurred any such expenditure in relation to Medak Unit. Therefore, in our view, the expenditure cannot be allocated to the Medak Unit on estimate. This view is also supported by the judgment of Hon'ble Madras High Court in case of Brakes India Ltd (161 Taxman 47) on which the reliance has been placed by the learned Authorized Representative. We, therefore, set aside the order of CIT (A) on this point and allow the claim of the assesseee."*

6 The revenue preferred a Misc. Application and invoked Section 254(2) of the Income Tax Act, only in relation to the ground No.6 and restricted to the deduction under Section 80HH of the Medak unit.

7 The revenue filed Misc. Application mainly with regard to the observations concerning allocation of research and development expenditure by urging that the ultimate decision of the Tribunal is based upon an erroneous assumption that the Assessee has maintained separate Books of Account and hence, the burden is upon the revenue to prove that the Assessee has incurred some additional expenditure over and above what was shown in the Books of Account. According to the revenue, the initial order contains an obvious and patent error. The fact is that the Assessee has not maintained any separate Books of Account. The Assessee never pleaded before the Assessing Officer or before the First Appellate

Authority or before the Tribunal in the initial round that it had maintained the separate Books of Account.

8 The Tribunal noted this contention of the Revenue as also rival contention of the Assessee in the order passed on the Misc. Application 250/MUM/2013 dated 06th December 2013 and observed as under:-

> *"7. When the Bench requested the counsel to prove that it had maintained separate books of account in respect of its Medak unit, no material, whatsoever, could be furnished except stating that the books were subjected to tax audit. In fact there is no specific contention before any of the authorities below as well as before the Tribunal that the assessee maintained separate books of account in respect of each and every expenditure.*
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> *8. We have carefully considered the rival submissions and perused the record. As could be noticed from the specific findings of the AO in respect of the subsequent assessment year the assessee appears to have not maintained separate books of account in respect of its Medak unit. Had there been separate books of account a specific contention would have been raised in this year also either before the AO or before the CIT(A) or in the grounds of appeal before the Tribunal. Thus, it has to be assumed that the assessee has not maintained separate accounts for its Medak unit but the fact remains that by the powers vested under Section 254(2) the Tribunal cannot look into some other circumstances to reconsider the matter or to review the matter. So long as the overall judgment of the Tribunal is based on proper logic, even if there is an*

error of judgment that by itself cannot give rise to exercise of powers under Section 254(2) of the Act, as held by the Hon'ble Bombay High Court in the case of CIT vs. Ramesh Electric and Trading Co. 203 ITR 497. The Tribunal has taken into consideration three aspects i.e.:-

I) there is no material placed on record to show that any research and development expenditure had been incurred by Medak unit,

II) the allocation has been made on estimate, on the basis of turnover, which is not correct, and

III) the assessee had maintained separate books from which it could easily be found out whether the expenditure has been incurred or not but no material has been placed on record by the Revenue to prove that the aseessee had incurred any such expenditure in relation to Medak unit.

By virtue of long drawn process of reasoning it could, no doubt, be argued that the ultimate decision was influenced by the assumption that the assessee maintained separate books of account in respect of its Medak unit but the chronology in which the issue was considered in para 7.2 of the order indicates that the Revenue has to prove that some expenditure was incurred by Medak unit and it cannot allocate some expenditure on estimate basis. To further support that conclusion an additional factor appears to have been taken into consideration that the assessee had also maintained separate books of account in respect of its Medak unit. It could thus be seen that dehors the second finding the order of the Tribunal and the ultimate conclusion is based on proper reasoning and thus the impugned order cannot be stated to be suffering from any mistake apparent from record. Under these circumstances we reject the miscellaneous application filed by the Revenue."

9 From a perusal of both these factual findings which we find to be in consonance with the language of Section 80HH of the Income Tax Act, which enables claiming deduction in respect of profits and gains from newly established industrial undertaking or hotel business in backward areas, that no substantial question of law arises for determination and consideration in this Appeal. Such findings of fact, cannot be termed as perverse or vitiated by any error of law apparent on the face of record.

10 The questions proposed at paragraphs 7.1 to 7.3 in the memo of this appeal are not substantial questions of law. The Appeal is therefore, dismissed. No costs.

(SMT. VIBHA KANKANWADI, J.) **(S.C.DHARMADHIKARI, J.)**