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

INCOME TAX APPEAL NO.1740 OF 2014

The Commissioner of Income Tax-V ..Appellant

Versus

Kala Gensets Pvt. Ltd. ..Respondent

Mr. Tejveer Singh for the appellant
None for the Respondent.

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

DATE : 20th MARCH, 2017

P.C.

1. This Appeal under Section 260-A of the Income Tax Act, 1961 (the Act) challenges the order dated 27th March, 2014 passed by the Income Tax Appellate Tribunal (the Tribunal). The impugned order is in respect of Assessment Year 2009-10.

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 allowing the assessee's claim of Rs.1,31,38,957/- claimed as deduction u/s 80IB of the I.T. Act, 1961, when the assessee is not involved in manufacturing or producing activity but is only*

carrying out the activity of assembling at its Silvassa Unit.

(ii) Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in restricting the disallowance made u/s 80IB(10) r.w.s. 80IA(13) to 15% of the disallowance of CIT(A) in disregard to the fact of shifting of profit brought out by the Assessing Officer scientifically?"

3. <u>Regarding question no.(i):-</u>

(a) The impugned order of the Tribunal dismissed the Revenue's appeal before it by following the order of its co-ordinate bench in respect of Assessment Years 2007-08 and 2008-09 relating to the same respondent assessee. The impugned order further records that no distinction in fact has been pointed out which would warrant the Tribunal to take a different view in the subject assessment year than that taken in the Assessment Years 2007-08 and 2008-09.

(b) Mr. Tejveer Singh, the learned Counsel for the Revenue very fairly states that no appeal from the order passed by the Tribunal for Assessment Years 2007-08 and 2008-09 is pending before this Court. Mr. Tejveer Singh, further states that although appeals were filed from the order of the Tribunal for Assessment Years 2007-08 and 2008-09, the same were dismissed for non-removal of office objection as far back as in 2014. The Revenue has taken no steps till date to restore those appeals.

(c) In the above view, as the Revenue has accepted the orders of the Tribunal in the earlier Assessment Years i.e. Assessment Years 2007-08 and 2008-09 by not taking any steps to restore the same for over a period of 3 years, it must necessarily follow that the Revenue has accepted the order of the Tribunal for the earlier two years i.e. Assessment Years 2007-08 and 2008-09 in respect of the issue raised herein.

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

4. **<u>Regarding question no.(ii) :-</u>**

(a) We note that the impugned order of the Tribunal has dismissed the Revenue's appeal by following its order rendered for Assessment Year 2007-08 in respect of the same respondent assessee. The impugned order further records that the Revenue has not shown any distinguishing features in the subject assessment year which would warrant the Tribunal to take a view different from that taken in the earlier assessment years.

(b) Mr. Tejveer Singh, learned Counsel for the Revenue very fairly states that the Revenue had preferred appeals from the order of the Tribunal for Assessment Years 2007-08 and 2008-09, being Income Tax Appeal No.(L) No. 1457 of 2014 and Income Tax Appeal (L) No. 1458 of 2014. However, the same were rejected for non-removal of office objection as far back as in 2014. The very fact that the Revenue has not taken any steps to restore the same for all these years is an indication of the fact that the impugned orders of the Tribunal for Assessment Years 2007-08 relating to issue arising herein has been accepted by the Revenue.

(c) In the above view, in the absence of anything on record being pointed out to indicate the reason why the present appeal should be entertained even if the order from the earlier assessment years has been accepted, we see no occasion to entertain the present appeal.

(d) Accordingly, the question as raised herein does not give rise to any substantial question of law. Thus, not entertained.

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

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