

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.1857 OF 2014

THE COMMISSIONER OF INCOME TAX)
CENTRAL - 1)...APPELLANT

V/s.

MR.JAGDISHPRASAD MOHANLAL JOSHI)...RESPONDENT

Mr.Suresh Kumar a/w. Ms.Samiksha Kanani, Advocate for the Appellant.

Mr.J.D.Mistry, Senior Counsel, a/w. Mr.Madhur Agarwal and
Mr.A.K.Jasani, Advocate for the Respondent.

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

DATE : 26th JULY 2017

P.C. :

1 The appeal pertains to Assessment Year 2000-2001.

The Revenue has raised the following questions :

(i) Whether on the facts and circumstances of the case and in law, the Hon'ble Income Tax Appellate Tribunal is correct in confirming the order of the

Ld.CIT(A) in allowing deduction u/s.80IB without considering the fact and disregarding the provision of section 80IB(2)(i) that the business of the assessee was set up by splitting up or reconstruction of the business of an existing concern having the same nature of business and manufacturing similar items controlled by the same proprietor ?

(ii) Whether on the facts and circumstances of the case and in law, the Hon'ble Income Tax Appellate Tribunal is correct in confirming the order of the Ld.CIT(A) in allowing deduction u/s.80IB without appreciating the factual evidence of bogus and fabricated purchases and sale with two arms of the same business of the assessee ?

(iii) Whether on the facts and circumstances of the case and in law, the Hon'ble Income Tax Appellate Tribunal is correct in allowing the assessee's claim of deduction u/s.80IB on interest income ignoring the fact that the interest income was not derived from the manufacturing activity of the assessee and it is not part of eligible business for qualifying the deduction u/s.80IB ?

(iv) Whether on the facts and circumstances of the case and in law, the Hon'ble Income Tax Appellate Tribunal is correct in directing the Assessing Officer to delete the addition of Rs.11 Crores made on account of business receipts from Shri Rasiklal Dhariwal ignoring the provision of law by not considering the confessional statement recorded under Maharashtra Control Organized Crime Act, 1999, as admissible evidence u/s.18 of Maharashtra Control Organized Crime Act, 1999 ?

2 Mr.Suresh Kumar, the learned counsel for the appellant, strenuously contends that the Tribunal has failed to consider that the business of assessee was set up by splitting up or reconstruction of the business of an existing concern having the same nature of business and manufacturing similar items controlled by the same proprietor. The learned counsel submits that even proceedings under Section 263 of the Income Tax Act has been initiated and the same is subject matter of Income Tax Appeal bearing No.7 of 2013 and the same is admitted by this court.

3 The learned counsel further submits that the Tribunal was not correct in confirming the order of the Commissioner of Income Tax in allowing the deduction under Section 80-IB without appreciating the factual evidence of bogus and fabricated purchases and sale with two arms of the same business of the assessee.

4 With regard to Question No.3, the learned counsel accedes that for the earlier assessment year the said question is decided against the Revenue and the appeal filed before this court is dismissed.

5 The learned counsel further submits that it was erroneous on the part of the Tribunal to direct the Assessing Officer to delete the addition of Rs.11 Crore made on account of business receipts from Shri Rasiklal Dhariwal. It failed to consider that the confessional statement recorded under the Maharashtra Control of Organized Crime Act 1999, is an admissible evidence under Section 18 of the said Act.

6 Mr.Mistry, the learned senior advocate for the respondent submits that for the earlier assessment year, the Assessing Officer has accepted the claim of the assessee of carrying out independent business and the benefit under Section 80-IB has been allowed. Income Tax Appeal No.7 of 2013 with regard to assessment under Section 263 is for the year 2001-02.

7 The learned senior advocate submits that the Question No.2, as framed herein, does not arise in the light of the order passed in Miscellaneous Application No.282 of 2014 wherein it is observed that the Tribunal has considered the sales made to those parties though the sale made to those parties is not the issue raised by the Revenue in its ground. The learned senior advocate further submits that the statement of the accused recorded under the Act of 1999 was never confronted to the present assessee and as such, is not admissible. Further, the Tribunal has observed that no corroborative evidence has been produced or brought on record to substantiate the fact that Mr.Dhariwal, infact, has made the alleged payment.

8 We have considered the submissions. The present appeal pertains to assessment year 2000-2001. In the said year, Sachin Perfumery and Cosmetics had not come into existence. It had started its operation in the Assessment Year 2001-2002.

9 In the light of the above, the admission of the Income Tax Appeal bearing no.7 of 2013 pertaining to assessment year 2001-2002 would not inure to the benefit of the present appellant and the same need not be considered. For earlier year the claim of the assessee of carrying out independent business has been accepted.

10 As far as ground no.2 is concerned, infact, the said issue did not arise. Still, the Tribunal has considered the genuineness of these transactions and upon consideration of the transactions, it has observed that such transactions are genuine transactions. The said finding is a finding of fact. As far as Question No.3 is concerned, in the earlier assessment year, it is already decided in favour of the assessee and the appeal filed against the said order is dismissed by this court.

11 With regard to the Question No.4, it has been observed

by the Tribunal that the basis on which the Assessing Officer concluded that the present assessee has received amount from Rasiklal Dhariwal, that is, the statement of an accused in MOCA case, the said statement has not been confronted to the assessee to verify whether the amount was actually paid to the assessee. It is further observed that no corroborative evidence has been produced or brought on record to substantiate the fact of alleged payment. The Tribunal has also considered the statement of Mr. Ansari, the accused in MOCA case, that the transaction took place in Karachi. However, nothing is brought on record to show as to how the alleged amount was transmitted from Karachi to India. It is further observed by the Tribunal that though the amount stood invested in Karachi, the assessee is not doing any business in Karachi. It is further observed that the assessee's premises was searched under Section 132 of the Act. Even during the search operations, no such incriminating material was found from the business / residential premises of the assessee which could suggest that some settlement took place in Karachi. The reliance placed on the confessional statement without

corroborating was certainly unsafe to be relied upon.

12 Considering all the aforesaid conspectus, no substantial questions of law arise. As such, the appeal is dismissed. No costs.

(A. M. BADAR, J.)

(S.V.GANGAPURWALA, J.)