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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.1631 OF 2014

The Commissioner of Income Tax-7 ..Appellant
Versus
M/s. Schmetz India (P) Ltd. ..Respondent

....

Mr. N. C. Mohanty for the Appellant.
Mr. Atul Jasani for the Respondent.

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

DATE : 6th MARCH, 2017

P.C.

1. This Appeal under Section 260-A of the Income Tax Act, 1961 (the Act) challenges the order dated 21st April, 2014 passed by the Income Tax Appellate Tribunal (the Tribunal). The impugned order is in respect of Assessment Year 2008-09.

2. This appeal raises the following questions of law for our consideration :-

> *"(i) Whether on the facts and in the circumstances of the case and in law, the Tribunal is justified in coming to the conclusion that the profits shown in Kandla Division is not abnormally high due to any arrangement between the assessee and its German Principal?*

(ii) Whether on the facts and in the circumstances of the case and in law, the Tribunal is justified in holding that there was no material to support the Assessing Officer's estimation of profit of Kandla Division @60%?"

3. The respondent-assessee has a manufacturing unit located in Kandla Special Economic Zone and also a trading unit at Mumbai dealing in industrial needles. The Assessing Officer restricted the respondent-assessee's claim for benefit of Section 10A of the Act in respect of its Kandla unit by adopting a G.P. (Gross Profit) ratio of 60% instead of that claimed following its decision for earlier Assessment Year i.e. A.Y. 2004-05.

4. In appeal, the Commissioner of Income Tax (Appeals) (CIT(A)) by order dated 2nd November, 2012 allowed the respondent's appeal and deleted the restriction of the claim to 60% of G.P. Thus allowing the deduction under Section 10A of the Act to the extent claimed by the respondent-assessee. This by following the order of the Tribunal dated 30th July, 2008 in the case of the respondent-assessee on identical fact situation for the earlier Assessment Year 2004-05.

5. Being aggrieved, the Revenue filed an appeal to the Tribunal. The impugned order of the Tribunal dismissed the Revenue's appeal. This by

following the order of this Court in the case of same respondent-asseseee for the Assessment Year 2004-05 (Income Tax Appeal No.4508 of 2010) decided on 4th September, 2012 by which the order dated 30th July, 2008 of the Tribunal was upheld/not disturbed on identical factual and legal matrix.

6. In appeal before us the Revenue is not able to show any distinguishing features in the present Assessment Year from that existing in A.Y. 2004-05. Thus no fault can be found in the impugned order dated 21st April, 2014 at it has merely followed and applied the decision of this Court rendered in the case of the same respondent-assessee for the Assessment Year 2004-05.

7. In the above view, the questions as proposed being concluded against the Revenue by the decision of this Court dated 4th September, 2012 for A.Y. 2004-05, the questions of law as raised are not substantial question of of law. Thus not entertained.

8. Accordingly, the appeal is dismissed. No order as to costs.

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

Wadhwa