THE HON'BLE THE CHIEF JUSTICE SRI KALYAN JYOTI SENGUPTA
AND
THE HON'BLE SRI JUSTICE K.C. BHANU

I.T.T.A. No.389 OF 2013

DATED:5.9.2013

Between:
M/s. Sawaria Pipes Pvt. Ltd.,
Rajendernagar Mandal,
R.R. District.

… Appellant

And

The Assistant Commissioner of Income Tax,
Hyderabad.

….Respondent

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I.T.T.A. No.389 OF 2013

Judgment: (per the Hon'ble the Chief Justice Sri Kalyan Jyoti Sengupta)

This appeal is preferred against the judgment and order dated 9.7.2012 of the learned Tribunal and is sought to be admitted on the following suggested question of law :

1. Whether on the facts and circumstances of the case, the Hon'ble Income Tax Appellate Tribunal is right in sustaining the rejection of claim for deduction under Section 80IB of the Income Tax Act, 1961 ?

We have heard the learned counsel for the appellant and have gone through the impugned judgment and order of the learned Tribunal.

The learned Tribunal came to a fact finding as follows:

> "The total WDV of plant and machinery of Rs.9,40,00,858/-, therefore, much exceeded the limit of Rs.3 crore applicable to an SSI on the last day of the previous year."

Therefore, the pre-condition for taking the benefit under Section 80IB of the Income Act, 1961 (for short 'the Act') is not satisfied. The learned Tribunal, accordingly held that the assessee cannot be considered as a Small Scale Industrial Undertaking within the meaning of Section 11-B of the IDR Act, 1951 as on the last day of previous year relevant to the A.Y. 2008-09. Since the assessee did not comply with the conditions of the proviso to Clause (iii) of sub-section 2 of Section 80IB, it is not eligible for claiming deduction under Section 80IB of the Act.

We cannot come to a fact finding once again in order to admit the appeal. Therefore, we do not find that any element of law is involved in this matter.

The appeal is accordingly dismissed.

K.J. SENGUPTA, CJ

K.C. BHANU, J

5.9.2013

PNB