Santosh

IN THE HIGH COURT OF BOMBAY AT GOA

TAX APPEAL NO.7 OF 2011

V.M. Salgaocar & Brother Limited
(now known as V.M. Salgaocar &
Brother Pvt. Ltd. .... Appellant.
Versus

Commissioner of Income Tax, Panaji. ...... Respondent.

Mr. A. F. Diniz, Advocate for the Appellant.

Ms. Amira Abdul Razaq, Standing Counsel for the Respondent.

Coram : N.M. Jamdar &
Prithviraj K. Chavan, JJ.

Date : 26 October 2018.

P.C.:

This Appeal was taken up for admission along with Tax Appeals No.6, 8 and 9 of 2011, which Appeals we have disposed of today. At the time of Admission, the following questions of law were framed in all the Appeals :

> *"A. Whether the Appellant is entitled to not claim depreciation under Section 32 of the Act in arriving at its business income under Chapter IV-D of the Act for the Assessment Year 2000-01 as permitted by decision of the Apex Court in Mahendra Mills v. CIT 243 ITR 56?*
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> *B. Whether for the purposes of computing the deduction under Section 80HHC(3)(c)(i) of the Act depreciation allowable under Section 32 of the Act, which has not been claimed by the Appellant in*

computing profits under Chapter IV-D of the Act, ought not to be allowed?

C. Whether on the facts and in law, the Tribunal was right in upholding the action of the Assessing Officer of deducting 90% of the income from truck hire charges, barge hire charges, ore processing receipts, transhipper loader charges and machinery hire charges while computing the "profits of the business" in accordance with Clause (baa) of the Explanation below Section 80HHC?

D. Whether on the facts and in law, the Tribunal was right in not following its earlier Order dated February 26, 2010 in the Appellant's own case for the earlier Assessment Year i.e. 1997-98 where the Tribunal had upheld the Appellant's claim that no part of the income from truck hire charges, barge hire charges, ore processing receipts, transhipper loader charges and machinery hire charges was to be reduced while computing the profits of the business?

E. Whether for the purposes of computing deduction under Section 80HHC(3)(c)(ii) of the Act depreciation ought not to be considered as a part of cost and hence ought not to be reduced from the export turnover in view of the decision of the Apex Court in the case of Nectar Beverages P.Ltd. v. DCIT(267 ITR 385)?

F. Whether, if depreciation allowable under Section 32 of the Act, though not claimed, is to be reduced for the purposes of computing the profits derived from the exports of trading goods under Section 80HHC(3)(c)(ii) of the Act, it is the depreciation as recorded in the Books of Accounts, and not as computed under Section 32 of the Act, that is to be reduced from the export turnover?

> *G. Whether the Tribunal was right in law in holding that the loss suffered on export of trading goods ought to be reduced from the total profits of the business to arrive at the adjusted profits of the business for the purposes of Section 80HHC(3)(c)(i) of the Act?*
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> *H. Whether the Tribunal was right in law in taking a view different from the view taken by it in its earlier decision in the Appellant's own case for the earlier year under consideration i.e. Assessment Year 1997-98 on the presumption that the earlier decision had not taken into consideration the then existing decision of the Apex Court of IPCA Laboratories v. DCIT (reported in 266 ITR 521)?"*

2. The learned Counsel for the Appellant points out to us that as far as questions of law at (E) and (F) they do not arise in this appeal, but arise in Tax Appeals No.6, 8 and 9 of 2011 and since this is a common order, the questions of law get incorporated in the present Appeal as well. In view of this submission, which has not been controverted, the questions at (E) and (F) do not arise in this Appeal and they stand deleted.

3. The learned Counsel for the Appellant points out, which is not controverted, that the questions of law at (A) and (B) are covered by the Judgment of this Court dated 27 March 2012 passed in the case of *Commissioner of Income Tax vs. V.M. Salgaonkar & Brothers Ltd.* (the Assessee herein) [1]. He submitted that the Apex

1 Tax Appeal No.2/2002

Court in the case of *Plastiblends India Ltd. vs. V.M. Salgaonkar & Brothers Ltd.* [2] wherein the Appeal in respect of the present Assessee was a part of a group and the said Judgment was upheld. It is further pointed out that the Review was rejected by an order dated 30 January 2018. In view thereof, the questions of law at (A) and (B) stand covered.

4. As regards the questions of law framed at (C), (D), (E) and (F) are concerned, it is pointed out to us that they were subject-matter of a remand order by the ITAT, and consequent to the remand, fresh assessment orders were made on 13 December 2011 for the very same assessment years i.e. 1999-2000, 2000-2001 and 2001 to 2002. It is stated that against the assessment orders, the Appellants have filed appeal before the Commissioner of Appeals which are pending. In view of this fresh assessment, the learned Counsel points out that these questions of law do survive.

5. As regards questions of law at (G) and (H) are concerned, it is stated that in case of Assessee itself [3], dated 27 March 2012, which Judgment has been upheld by the Apex Court in Civil Appeal No.8794 of 2012.

6. The questions of law are answered as contended by the

2 [2012) 21 taxmann.com 178 (Bom).

3 [2012] 21 taxmann.com 178 (Bom.)

Assessee. Nothing has been pointed out by the Revenue to show otherwise.

7. In view of this position, this appeal will have to be disposed of in the above terms. Accordingly, the Appeal stands disposed of.

Prithviraj K. Chavan, J. ***N.M. Jamdar, J.***