Santosh

***IN THE HIGH COURT OF BOMBAY AT GOA***

***TAX APPEAL NO.9 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 is filed by the Assessee, challenging the orders passed by the Income Tax Appellant Tribunal, Panaji, dated 10 January 2011. It relates to the Assessment Year 1999-2000.

2. This Appeal came to be admitted on the following substantial questions of law :

> *"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?*

*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?*

*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)?"*

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 Court in the case of *Plastiblends India Ltd. vs. V.M. Salgaonkar & Brothers Ltd.* [2] wherein the Appeal in respect of the

1 Tax Appeal No.2/2002

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

present Assessee was a part of a group and the Judgment of the High Court 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 year i.e. 1999-2000. It is stated that against the assessment order, the Appellants have filed an appeal before the Commissioner of Appeals which is 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 [1], dated 27 March 2012, which Judgment has been upheld by the Apex Court in Civil Appeal No.8794 of 2012.

6. Accordingly, these questions of law are answered as contended by the Assessee. Nothing has been pointed out by the Revenue to show otherwise.

1 [2012] 21 taxmann.com 178 (Bom.)

7. In view of this position, this appeal is disposed of in the above terms.

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