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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 786 OF 2015

The Pr. Commissioner of Income Tax – 14. … Appellant
Versus
Oleofine Organics (India) Pvt. Ltd. …Respondent

Mr. Arvind Pinto, for the Appellant.
Mr. Girish Dave, with Kadambari Dave, with Atul Jasani, for the Respondent.

CORAM: M.S.SANKLECHA, &
MR. RIYAZ I. CHAGLA, JJ.
DATED: 17TH JANUARY 2018

PC:-

1. This Appeal filed under Section 260A of the Income Tax Act, 1961 (the Act) challenges the impugned order dated 22 August 2014 passed by the Income Tax Appellate Tribunal (Tribunal) relates to the Assessment Year 2009-10.

2. The Revenue has urged the following questions of law for our consideration:-

> 1) "***Whether in law, and in the facts and circumstances of the case, the Tribunal was correct in holding conditions for qualifying as a small scale industry was to be fulfilled in the initial year alone***

and not on year to year basis for grant of deduction under Section 80-IB"?

3. The Appeal admitted on the above substantial question of law.

4. At the request of the learned counsel for the parties, the Appeal is taken up for final disposal at this stage.

5. The impugned order dated 22 August 2014 of the Tribunal dismissed the Revenue's Appeal by following the decision of the Karnataka High Court in ***M/s. Ace Multi Axes Systems Ltd Vs. DCIT***[1] holding that the deduction under Section 80 - 1B of the Act cannot be denied to an assessee who has been granted its benefit in the earlier years of assessment during the span of 10 years when exemption is available thereunder. The learned counsel for the parties very fairly point out that the decision of the Karnataka High Court in the case of ***M/s. Ace Multi Axes Systems (Supra)*** has now been reverted by the Apex Court in ***Deputy Commissioner of Income Tax Vs. ACE Multi Axes Systems***

1 ITA No. 477 of 2013 decided on 28th July 2014.

Ltd.[2]. Thus the condition of Section 80 - 1B of the Act are required to be satisfied on year to year basis.

6. In the above view, the substantial question of law as proposed for our consideration has to be answered in the negative i.e. in favour of the Appellant – Revenue and against the Respondent – Assessee.

7. In the above view, the Appeal is allowed.

(RIYAZ I. CHAGLA J.) **(M.S.SANKLECHA, J.)**

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2 (2017) 88 taxmann.com 69 (SC) = 400 ITR 141.