IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 508 OF 2004

M/s. Alfred C. Toepfer (I)
Export Ltd. ....Appellant
V/s.
The Income-Tax Officer
Ward No.3(4), Mumbai ....Respondent

* * * * *

Mr. Atul Jasani, Advocate for the appellant.

Mr. Sham Walve, Advocate for the respondent.

CORAM :- M.S. SANKLECHA, &

SANDEEP K. SHINDE, JJ.

DATE :- 12TH JULY, 2018.

P.C. :-

1. This Appeal challenges the order dated 25th November, 2003 of the Tribunal relating to Assessment Year 1995-96.

2. The High Court website shows this appeal has

having been admitted. However, a hard copy of the order noting the substantial questions of law admitting this Appeal is not found in the court records. Therefore, the Learned Counsel for the parties, were asked to supply a copy of the order admitting this appeal. However, they also state that they are unable to locate the copy of the order admitting the Appeal.

3. From the records, we find that, the Appeal had come up for hearing on 30th July, 2008. On that date, the Court had directed that the Appeal be placed for admission before the appropriate Bench. Thereafter, this Appeal has remained to be considered for admission. Thus, with the consent of the Counsel for both sides, this Appeal is now taken up for admission.

4. Mr. Jasani, Learned Counsel appearing in support of the Appeal urges the following question of law for our consideration :

"1. Whether, in computing an assessee's entitlement to the deduction under Section 80-O of the Act, the assessee's "gross" foreign exchange receipts are to be taken into account or whether the assessee's entitlement to the aforesaid deduction is to be computed only after deducting expenses from the said "gross" foreign exchange receipts ?

2. Whether the ITAT erred in law in holding that the appellant was entitled to a deduction under Section 80-O of the Act only in respect of its "net" foreign exchange receipts i.e. in respect of its "gross" foreign exchange receipts less expenses, instead of on its "gross" foreign exchange receipts without deduction of expenses ?

3. Whether the ITAT erred in holding that in computing the deduction to which the appellant was entitled under Section 80-O of the Act, expenses were to be deducted from the foreign exchange receipts of the appellant ?

4. Whether the ITAT erred in not holding that in computing the deduction to which the appellant was entitled under Section 80-O of the

Act, no deduction of expenses was warranted and that the appellant was entitled to a deduction under the said Section in respect of its "gross' foreign exchange receipts ?

5. Whether the ITAT erred in its interpretation an construction of Section 80-O of the Act ?

6. Without prejudice to th above, whether the ITAT, in any event, erred in not holding that even if a deduction was to be made in respect of expenses in determining the appellant's entitlement to the deduction under Section 80-O of the Act, such deduction was to be made only in respect of expenses which were directly relatable to the earning of the foreign exchange and not in respect of indirect, general and overhead expenses ?

5. Mr. Jasani, very fairly states that, the questions as raised herein stands concluded against the appellant-asseessee and in favour of the respondent-revenue by the decision of this Court in **Tata Unisys Ltd. Commissioner of Income-Tax, [2016] 388 ITR 550**

(Bom).

6. In the above view, no substantial question of law arises for our consideration as the issue now stands concluded against the appellant-Assessee by the decision of this Court in *Tata Unisys Ltd. (supra).*

7. Accordingly, the Appeal is dismissed. No order as to costs.

(SANDEEP K. SHINDE, J) **(M.S. SANKLECHA, J)**