IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 611 OF 2007

Brook Crompton Greaves Ltd.
Ahmednagar ....Appellant

V/s.

The Income-tax Officer,
Ward-I, Ahmednagar & anr. ....Respondent

* * * * *

Dr. K. Shivram, Senior Counsel a/w. Mr. Rahul Hakani, Advocate for the petitioner.

CORAM :- **M.S. SANKLECHA, &**
SANDEEP K. SHINDE, JJ.

DATE :- **19TH JULY, 2018.**

P.C. :-

1. None appears for the Revenue despite service. Mr. Shivram, Learned Senior counsel appearing in support of the Appeal, undertakes that an Affidavit of service will be filed within a week from today.

2. This Appeal under Section 260A of the Income-Tax Act challenges the order dated 10th March, 2006 passed by the Income-Tax Appellate Tribunal (the tribunal). The impugned order relates to Assessment Year 2001-02.

3. This Appeal was admitted on 24th September, 2008 on numerous substantial questions of law. However, Dr. Shivram, Learned Senior Counsel appearing for the appellant, on instructions presses only the following questions of law for our consideration :

> *"I. Whether the Appellate Tribunal was correct in law in denying deduction u/s. 80HHC of Rs.1,06,92,643/- by reducing the export profit for the year by amount of brought forward unabsorbed depreciation of Rs.7,16,15,019/- and unabsorbed losses of Rs.3,49,41,687/- ?*
>
> *II. Whether while computing book profit under Section 115JB of the Act, the appellant is entitled to reduce the net profit as per Profit and loss*

Account by the profit eligible for deduction u/s. 80HHC computed with reference to book profit (after adjustments) as per explanation (iv) to section 115JB ?

III. Whether in computing book profit u/s. 115JB the deduction should be of 100% of the amount calculated u/s. 80HHC(3) i.e. Rs.1,33,65,804/- and not Rs.1,06,92,643/- being the quantum of deduction eligible u/s. 80HHC(1B) ?

(IV) Whether the Appellate Tribunal was correct in law in confirming the levy of interest u/s. 234B, 234C and 234D on income taxes payable on the deemed income u/s. 115JB of the Act ?

2. **<u>Regarding Question no.I :</u>**

(i). Dr. Shivram, Learned Counsel appearing for the appellant-assessee very fairly states that, this issue stands concluded against the appellant-assessee and in favour of the respondent-Revenue by the decision of the Apex Court in **IPCA Laboratory Ltd. vs. Deputy Commissioner of Income-Tax, (2004) 266 ITR 521**.

(ii). In the above view, Question no.I is to be answered in the affirmative, that is, in favour of the respondent-Revenue and against the appellant-assessee.

3. **Regarding Questions No. II :**

(i). Dr. Shivram, Learned Counsel appearing in support of the Appeal points out that this issue is no longer res-integra as it stands concluded in favour of the appellant-assessee by the decision of the Apex Court in **Commissioner of Income-Tax V/s. Bhari Information Technology Systems P. Ltd, [2012] 340 ITR 593.** It is further pointed out that, an earlier decision of this Court in **CIT V/s. Al-Kabeer Exports Ltd. (2010), 193 Taxman 56 (Bom)** was in favour of the Revenue. However, the appeal filed from the above order by Al-Kabeer Exports Limited before the Supreme Court **Al-Kabeer Exports Ltd. Vs. CIT** (Civil Appeal No. 1546 of 2012) was allowed ON 3rd August, 2012 in favour of the assessee.

(ii) In the above view, this question has to be answered in the affirmative i.e. in favour of the appellant-assessee and against the respondent-Revenue.

4. **Regarding Question no.III:**

(i). Dr. Shivram, Learned Counsel appearing in support of the Appeal points out that this issue is also no longer *res-integra.* This is so as it stands concluded by the decision of the Apex Court in **Ajanta Pharma Ltd. vs. CIT, 327 ITR 305** in favour of the appellant-assessee and against the Respondent-Revenue.

(ii) Accordingly, this question has to be answered in the affirmative i.e. in favour of the appellant-assessee and against the respondent-Revenue.

5. **Regarding Question no. IV :**

(i). Mr. Shivram, Learned Counsel appearing for the Revenue very fairly states that this issue stands concluded against the appellant-assessee and in favour of the respondent-Revenue. This, by the decision of this Court in **Joint Commissioner of Income-Tax v. Rolta India Ltd. [2011] 330 ITR 470**.

(ii) In the above view, this question is to be answered in the affirmative, that is, in favour of the respondent-Revenue and against the appellant-Assessee.

6. For the above reasons, the substantial questions of law which are being pressed are answered as under :

(i) Question no.I is answered in the affirmative, that is, in favour of the respondent-Revenue and against the appellant-assessee.

(ii) Question no.II is answered in the affirmative, that is, in favour of the appellant-assessee and against the respondent-Revenue.

(iii)Question no.III is answered in the affirmative, that is, in favour of the appellant-assessee and against the respondent-Revenue.

(iv) Question no.IV is answered in the affirmative, that is, in favour of the respondent-Revenue and against the appellant-assessee.

6. Appeal disposed of in the above terms.

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