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

INCOME TAX APPEAL NO. 611 OF 2016

Pr. Commissioner of Income Tax-8	}	**Appellant**
versus		
M/s. Albright & Wilson Chemicals	}	
India Ltd.	}	**Respondent**

Mr.Suresh Kumar for the appellant.

Mr. F. V. Irani I/b. Mr. Atul K. Jasani for the respondent.

CORAM :- S. C. DHARMADHIKARI &
B. P. COLABAWALLA, JJ.

DATE :- OCTOBER 10, 2018

P.C. :-

1. This appeal arises out of the order of the tribunal dated 13th May, 2015 pertaining to assessment year 2006-07. The tribunal dealt with cross appeals. The four questions proposed by the Revenue are to be found at pages 4 and 5 of the paper book. It is fairly stated by Mr. Suresh Kumar appearing in support of this appeal that the first three questions have been answered in favour of the assessee and against the Revenue in a Division Bench judgment of this court in the case of *Commissioner of Income Tax vs. Sulzer India Ltd.*[1]. It is now stated across the bar that the Revenue, aggrieved by the view taken in *Sulzer* (supra),

1 **(2014) 369 ITR 717**

approached the Hon'ble Supreme Court, but in the case of a distinct assessee, namely, Balkrishna Industries Ltd. A detailed judgment has been rendered in that case, namely, Civil Appeal No.19587 of 2017 and connected matters decided on 21st November, 2017. The Hon'ble Supreme Court affirmed the view taken by the Division Bench of this court in *Sulzer* (supra). In these circumstances, the first three questions, according to Mr.Suresh Kumar, do not survive as they are not substantial questions of law.

2. However, the fourth question at page 5 of the paper book is a substantial question of law, according to Mr.Suresh Kumar. He submits that the issue pertaining to this question was not raised before the assessing officer and he had no opportunity to examine it. That was raised before the first appellate authority and also before the tribunal. Yet, the tribunal has accepted the contentions of the assessee in that behalf and therefore, we must entertain this question.

3. Mr. Irani appearing for the assessee argues otherwise and invites our attention to the impugned order. With the assistance of Mr.Suresh Kumar and Mr. Irani, we have perused the discussion in relation to this question. The assessee raised four grounds. Ground Nos. 1 and 2 relate to taxability of surplus on

cessation of deferred sales tax liability amounting to Rs.13,80,510/- and 2,66,52,374/-. It is evident that the assessee availed of the benefit of a scheme, under which, there was an option for deferring payment of sales tax to the Government. In terms of this package scheme, advantage flowed and the issue squarely arises in relation to the taxability of the amount stated to be the income of the assessee.

4. We find from the tribunal's order that the departmental representative argued on merits of this issue. He has not objected to the tribunal holding in favour of the assessee by relying on the view in the case of *Sulzer* (supra). Rather, it was conceded that the issue is answered in favour of the assessee by the judgment of this court in *Sulzer* (supra). Once the judgment of this court and the view taken therein being affirmed by the Hon'ble Supreme Court, even this question no. 4 cannot be termed and treated as a substantial question of law. The result is that the appeal fails and it is dismissed. There would be no order as to costs.

(B. P. COLABAWALLA, J.) **(S.C.DHARMADHIKARI, J.)**