# IN THE HIGH COURT OF BOMBAY AT GOA

## TAX APPEAL NO. 14 OF 2011

V. M. Salgaoncar & Brother Private Limited, Salgaocar House, Off Francisco Luis Gomes Road, Vasco-Da-Gama, Goa, 403 802. ... Appellant

*Versus*

Commissioner of Income Tax having office at Aayakar Bhavan, Patto Plaza, Panaji, Goa 403 001. ... Respondent

Mr. A. F. Diniz and Mr. Ryan Menezes, Advocates for the Appellant.

Ms. Amira Razaq, Standing Counsel for the Respondent.

**Coram :-** **M. S. SONAK & C. V. BHADANG, JJ.**

**Date :** **22nd November, 2019.**

**JUDGMENT (Per M. S. Sonak, J.)**

**1.** Heard Mr. A. F. Diniz, learned Counsel for the appellant and Ms. Amira Razaq, learned Standing Counsel for the Department.

**2.** This appeal was admitted on 05.09.2011 on the following substantial questions of law :

> *(i) 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, trans-shipper loader charges, machinery hire charges and launch hire charges while computing the "profits of the business" in accordance with Clause (baa) of the Explanation below Section 80HHC?*
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> *ii) 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. 1997-1998, 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, trans-shipper loader charges and machinery hire charges was to be reduced while computing the profits of the business for the purpose of deduction under Section 80HHC?*
>
> *iii) Whether the Tribunal was right in law in holding that Clause (baa) of the Explanation below*

*Section 80HCC, requires 90 % of the gross receipts instead of net receipts when the only controversy before it was the manner of computation of net receipts?*

*iv) Whether on the facts and in law, the Tribunal was right in not permitting adding of losses from export of trading goods in respect of disclaimed turnover to the profit eligible for deduction under Section 80HHC of the Act?*

*v) Whether the Tribunal was right in confirming the disallowance of expenditure on brokerage/commission incurred while computing the income chargeable under the head "Income form House Property"?*

**3.** Mr. Diniz, learned Counsel for the appellant, at the very outset states that the substantial question at (ii) above does not really arise in this appeal and, consequently, the same is not pressed. He also makes a statement that the substantial question of law at (v) is also not being pressed. Accordingly, what survives in this appeal is the consideration of substantial question at (i), (iii) and (iv).

**4.** Insofar as the substantial questions of law at (i) and (iii) are concerned, the same are covered by our separate judgments and orders dated 22.11.2019 passed in TXA No.21 of 2011 and TXA No.28 of 2011. For the reasoning recorded therein, we hold that 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, trans-shipper loader charges, machinery hire charges and launch hire charges while computing the profits of the business in accordance with Clause (baa) of the Explanation below Section 80HHC of the Income Tax Act (IT, Act).

**5.** However, such deduction ought to have been made on the basis of net receipts and not gross receipts as held by the Hon'ble Supreme Court in the case of *ACG Associated Capsules (P) Ltd. vs. Commissioner of Income Tax, 2012 18 Taxman.com 137(SC).* The impugned orders are modified accordingly.

**6.** Insofar as the substantial question of law at (iv) is concerned, the same stands entirely covered in favour of the assessee and against the revenue in terms of our decision dated 27.03.2012 in the case of *The Commissioner of Income Tax vs. V. M. Salgaonkar & Brothers Ltd. & anr.* in *Income Tax Appeal Nos.5, 6 and 7 of 2002*. Incidentally, all these appeals were in the case of the present assessee and the ITAT had in fact held in favour of the present assessee. The appeals instituted by the revenue were accordingly dismissed. The substantial question of law at (iv) is consequently answered in favour of the assessee-appellant and against the revenue-respondent. The impugned orders are modified accordingly.

**7.** The present appeal is disposed off in the aforesaid terms. There shall be no order as to costs.

**C. V. BHADANG, J.** **M. S. SONAK, J.**

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