IN THE HIGH COURT OF BOMBAY AT GOA

TAX APPEAL NO. 28 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 09.01.2012 on the following substantial questions of law :

> i) *Whether on the facts and in law, the Tribunal was right in allowing deduction of 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 calculating the "profit of the business" in accordance with Clause (baa) of the Explanation below Section 80 HHC for the purpose of computing "Total Income" under the regular provisions of the Act as well as for the purpose of computing 'book profit' under Section 115JB of the Act ?*
>
> *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. 1997-98, 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, transhipper loader charges and machinery hire charges was to be*

reduced while calculating the 'profit of the business' under Section 80HHC for the purpose of computing 'Total Income' under the provisions of the Act ?

iii) Whether on the facts and in law, the Tribunal was right in holding that both for the purpose of computing 'Total Income' under the provisions of the Act as well as for the purpose of computing 'book profit' under Section 115JB of the Act, Clause (baa) of the Explanation below Sec. 80HHC, requires 90% of the gross receipts instead of net receipts (i.e. after allowing related expenses) from truck hire, barge hire, ore processing receipts, transhipper loader and machinery hire activities be reduced from the profits of the business for the purposes of calculation of deduction under Section 80HHC of the Act ?

iv) Whether the Tribunal was right in holding that for the purpose of computing 'Total Income' under the provisions of the Act as well as for the purpose of computing 'book profit' under Section 115JB of the Act, Clause (baa) of the Explanation below Section 80HHC, requires reduction of 90 % of the *gross receipts instead of new receipts, which resulted into enhancing the income of the Appellant ?*

v) Whether the Order of the Tribunal insofar as it holds that Clause (baa) of the Explanation below Section 80HHC, requires reduction of 90% of the gross receipts instead of net receipts is beyond jurisdiction and hence deserves to be quashed?

vi) Whether on the facts and 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 for the purpose of computing 'Total Income' under the provisions of the Act as well as for the purpose of computing 'book profit' under Section 115JB of the Act ?

3. Mr. Diniz, learned Counsel for the appellant, at the very outset submits that the substantial question of law at (ii) does not really arise in this matter and, in any case, the same is not pressed.

4. The substantial questions at (i), (iii), (iv) and (v) are virtually similar to the substantial question of law framed in Tax

Appeal No.21 of 2011. We hold that the Tribunal in the present case as well was right in allowing deduction of 90% of the income from truck hire charges, barge hire charges, ore processing receipts, transhipper loader charges, machinery hire charges and launch hire charges while calculating the profit of the business in accordance with Clause (baa) of the Explanation below Section 80HHC for the purpose of computing total income under the regular provisions of the Act as well as for the purpose of computing book profit under Section 115JB of the Act.

5. However, such deduction ought to have been made on the basis of net receipts as was held by the Hon'ble Apex Court in the case of *ACG Associated Capsules (P) Ltd. vs. Commissioner of Income Tax, 2012 18 Taxman.com 137(SC).* We answer the substantial questions of law at (i), (iii), (iv) and (v) accordingly. The impugned orders are modified accordingly.

6. Insofar as the substantial question of law at (vi) is concerned, we find that the same is entirely covered 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 (vi) 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.**

arp/*