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

INCOME TAX APPEAL NO. 1618 OF 2016

Pr. Commissioner of Income Tax-10 .. Appellant

v/s.

M/s. Monsanto India Ltd. .. Respondent

Mr. Arvind Pinto for the appellant
Mr. Nishant Thakkar a/w Ms. Jasmine Amalsadvala, Mr. Hiten Chande I/b PDS Legal for the respondent

CORAM : AKIL KURESHI &
M.S. SANKLECHA, J.J.

DATED : 23rd JANUARY, 2019

P.C.

1. This Appeal under Section 260-A of the Income Tax Act, 1961 (the Act) challenges the order dated 14th December, 2014 passed by the Income Tax Appellate Tribunal (the Tribunal). This appeal relates to Assessment Year 2006-07.

2. The Revenue urges the following substantial questions of law for our consideration :-

"(i) Whether on the facts and in the circumstances of the case and in law, the Tribunal was correct in treating its commercial income of the sale of hybrid seeds, as agricultural income exempt

under Section 10(1) of the Act?

(ii) Whether on the facts and in the circumstances of the case and in law, the Tribunal erred in concluding that the allocation of corporate expenses as an estimated rate of 10% made by the company had a scientific basis; where no evidence was produced before either the AO or the appellate authorities as against the AO's allocation being based on the turnover of the units?

3. ***Regarding question no.(i)*** :-

(a) We note that the impugned order of the Tribunal dismissed the Revenue's appeal before it on the above issue following an order of this co-ordinate bench for Assessment Year 2000-01 in respect of the same respondent assessee. It also notes the binding order of this Court dated 5th August, 2011 in *CIT Vs. M/s. Monsanto India Ltd.* (Income Tax Appeal No.633 of 2010 and other connected appeals) raising the same issue, which were dismissed by this Court.

(b) Therefore, as the impugned order has followed the decision of this Court, no fault can be found with the same. This in the absence of the Revenue pointing out any difference in facts and / or in law.

(c) In the above view, the question as proposed does not give rise to any substantial question of law. Thus, not entertained.

4. ***Regarding question no.(ii)*** :-

(a) The impugned order of the Tribunal allowed the assessee's appeal with regard to allocation of expenses amongst its two 80IB units. The impugned order records the fact that corporate expenses could not be identified as being incurred in any particular 80IB unit. In the above circumstances, the impugned order of the Tribunal noted the fact that in Note 4 b of the Notes to Accounts, had declared that 10% of the corporate expenses were allocated between the two units in the ratio of production hours utilized by the two plants. The impugned order also records the fact that for the earlier assessment year i.e. A.Y. 2004-05, the Assessing Officer himself under Section 143(3) of the Act allocated the common corporate expenses at 10% between the two 80IB units. In the above view, the impugned order of the Tribunal concluded that as the respondent has provided a scientific basis for allocation of expenses and therefore disregarded the allocation of expenses on the basis of turnover.

(b) Mr. Pinto, learned Counsel for the Revenue invites our attention to the order of the CIT(A), wherein it has been recorded that the respondent has not furnished the basis of allocation at 10% of "corporate expenses" between the two units. This resulted in his acceptance of the allocation on the basis of turnover by the Assessing Officer.

(c) However, we find that the impugned order of the Tribunal records the fact that the basis of allocation of corporate expenses had been declared by the respondent in Note 4B of its Notes to Accounts. Thus, it is not a case of the respondent not formulating the basis of its allocation. The Tribunal found that the basis of allocation adopted by the respondent is more scientific than the allocation being done on the basis of turnover. Thus, a possible view.

(d) In the above view, the question as proposed does not give rise to any substantial question of law. Thus, not entertained.

5. Accordingly, the appeal is dismissed.

(M.S. SANKLECHA, J.) **(AKIL KURESHI, J.)**