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

INCOME TAX APPEAL NO.1614 OF 2016

Principal Commissioner of Income Tax-2,
Kolhapur .... Appellant

versus

M/s RDS Construction Company ... Respondent

…....

- Mr.N.N. Singh, Advocate for Appellant.
- Mr.Rohan Deshpande, Advocate for Respondent.

CORAM : AKIL KURESHI &
SARANG V. KOTWAL, JJ.
DATE : 01st APRIL, 2019.

P.C. :

1. The Income Tax Appeal is filed by the revenue to challenge the Judgment of Income Tax Appellate Tribunal. By an order dated 13/02/2019, the questions (A) to (E) contained in the Appeal memo were disposed of. The sole question (F) was kept for hearing. This question reads as under;

"(F) Whether on the facts and in the circumstances of the case and in view, the ITAT was justified in

> *allowing the assessee's claim of deduction u/s 80IA (4)(iv) by adjusting loss suffered by it from eligible business against its products earned from civil construction activity; ignoring the crystal clear provisions of sub-section (50 of Section 80IA of the IT Act, 1961?*"

2. Learned Counsel for the Respondent/Assessee brought to our notice an order dated 27/02/2019 passed in Income Tax Appeal No.1773/16, in which this very question in case of assessee's sister concern, came up for consideration. The Court rejected the question making following observations;

> *"The sole surviving question (h) relates to interpretation of the sub-section (5) of Section 80IA of the Income Tax Act, 1961 (in short "the Act"). The learned Counsel for the Assessee brought to our notice the decision of the Division Bench of Madras High Court in case of Velayudhaswamy Spinning Mills (P) Ltd., v/s. Asst. CIT reported in 340 ITR 477, in which, in similar factual back-ground, this question was considered by the Court at length. It was held that, once assessee exercised the right to*

change the 'initial assessment year', only loss of the years beginning from initial assessment year are to be brought forward and not losses of the earlier years which were already set off against income of the assessee. Sub-section (5) of Section 80IA of the Act does not allow Revenue to look backward and find out if there is any loss of earlier years and bring forward the same notionally, even though, the same were set off against other income of the assessee and set it off against current income of the eligible business. In view of above, this question is also not entertained."

3. In view of this, no question of law arises in this Appeal. Income Tax Appeal is dismissed.

(SARANG V. KOTWAL, J.) **(AKIL KURESHI, J.)**