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

WRIT PETITION NO. 2934 OF 2018

Procter & Gamble Hygiene Health
Care Ltd. .. Petitioner

v/s.
Pr. Commissioner of Income Tax-10
Mumbai & Ors. .. Respondent

Mr. Madhur Agarwal a/w. Mr. Balasaheb Yewale I/b Rajesh Shah & Co. for the petitioner
Mr. Akhileshwar Sharma for the respondent

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

DATED : 17th JANUARY, 2019

P.C.

1. The petitioner has challenged the order dated 6th March, 2018 passed by the Income Tax Appellate Tribunal ("the Tribunal" for short) rejecting petitioner's application for rectification of its earlier order dated 26th May, 2017.

2. The petitioner had filed its return of income for A.Y. 2004-05 in which one of the claims was deduction under Section 80IB of the Income Tax Act, 1961 ("the Act" for short) in relation to an Industrial Unit claimed to have been newly established by the assessee. The

Assessing Officer accepted the claim, upon which the Commissioner took the order in revision under Section 263 of the Act and passed an order requiring the Assessing Officer to re-examine the entire issue. Against such order of revision, the petitioner had preferred an appeal before the Tribunal. The Tribunal was largely satisfied that it was a mere remand of issue before the Assessing Officer and, therefore, no case for interference was made out. In the process, however, the Tribunal in the order dated 26th May, 2017 has made certain observations, which according to the petitioner, would *prima facie* suggest that the Tribunal confirmed the view of the Commissioner that the petitioner had not established a new Industrial undertaking. The petitioner had therefore filed a rectification application which as noted above, was dismissed by the impugned order.

3. Having heard learned Counsel for the parties and having perused the documents on record, we do not think either the Commissioner or the Tribunal intended to make any final conclusive observations with respect to the petitioner's claim. It is, therefore, clarified that the Assessing Officer would decide the entire issue on the basis of material that may be brought to record, unmindful of any of the observations of the Commissioner or Tribunal.

4. The petition is disposed of accordingly.

5. Nothing stated in the order would prevent the petitioner from pursuing its Income Tax Appeal against the base order of the Tribunal.

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