R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

INCOME TAX APPEAL NO. 373 OF 2017

Pr. Commissioner of Income Tax-14, Mumbai .. Appellant

Versus

M/s. Godrej Sara Lee Ltd
(Now amalgamated with Godrej Consumer Products Ltd) .. Respondent

....

- Mr. Suresh Kumar a/w Ms. Samiksha Kanani for the Appellant
- Mr. F.V. Irani i/by Mr. Atul Jasani for the Respondent

....

CORAM : AKIL KURESHI &
SARANG V. KOTWAL, JJ.

DATE : MARCH 22, 2019.

P.C.:

1. This appeal is filed by the Revenue to challenge the judgment of the Income Tax Appellate Tribunal ("the Tribunal" for short) raising following questions for our consideration.

> "(i) Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in accepting the respondent company's computation of the profits of the units eligible for deduction u/s. 80IB and 80IC, wherein expenditure was allocated on turnover basis, whereas the AO had reallocated expenditure of the eligible segments on the basis of the sales ratio, which was a reasonable basis of the allocation of expenditure?"

(ii) Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in rejecting the method proposed by the CIT(A) where he had allocated 50% of the different heads of expenditure between the various units in its order for A.Y. 2008-09?

(iii) Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in setting aside the orders of the AO to recompute the ALP without giving any specific directions?"

2. Question Nos. (i) and (ii) are overlapping and arise out of the issue of allocation of expenditure by the respondent assessee between the business which is eligible for deduction under Section 80IB and 80IC of the Income Tax Act,1961 ("the Act" for short) and the ineligible business. The Assessing Officer on ad-hoc basis allocated 50% expenditure between the two sets of businesses. The Tribunal, by the impugned judgment, applied the proportion of the ratio of turnover between two businesses.

3. Learned counsel for the assessee pointed out that this Court in the case of this very assessee while dismissing the Revenue's Income Tax Appeal 613 of 2016 by order dated 24.10.2018 had confirmed the Tribunal's similar order under similar circumstances. Under these circumstances no question of law arises in this respect.

4. Question No. (iii) relates to the arm's length price adjustment towards the corporate guarantee provided by the assessee to its associated enterprise. The assessee had charged 3% of the amount by way of corporate guarantee against which the assessing officer had assessed 5.22%. The Tribunal, while disposing of the appeal of the assessee, remanded the issue back to the Assessing Officer for fresh consideration and disposal, bearing in mind the earlier orders in case of the assessee and other precedents. We are informed that pursuant to such remand order, the Assessing Officer has already passed a fresh order assessing corporate guarantee fee at 3.5%. Learned counsel for the respondent assessee states that in view of smallness of the amount, the assessee had not carried this issue any further. Under these circumstances, this question has become academic.

5. In the result, the Income Tax Appeal is dismissed.

[SARANG V. KOTWAL, J.] **[AKIL KURESHI, J]**