R.M. AMBERKAR
(Private Secretary)

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

INCOME TAX APPEAL NO. 348 OF 2017

Pr. Commissioner of Income Tax -15 .. Appellant

Versus

M/s. Strides Arcolab Ltd .. Respondent

....

- Mr. Suresh Kumar for the Appellant
- Mr. Nitesh Joshi a/w Mr. Atul Jasani for the Respondent

....

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

DATE : MARCH 15, 2019.

P.C.:

1. This appeal is filed by the Revenue challenging the judgment of the Income Tax Appellate Tribunal raising following questions for our consideration:-

(i) Whether on the facts and in the circumstances of the case and in law, the Tribunal was correct in directing the AO to grant the benefit of deduction u/S. 35(2AB) when the approval for the R&D activities were given in the subsequent assessment years and not for the assessment year under consideration?

(ii) Whether on the facts and in the circumstances of the case and in law, the Tribunal was correct in directing the AO to grant the deduction u/S. 80HHC(4C) when SEZ unit to which assessee has effected sales viz. Mission Pharma Logistics Pvt Ltd is not an eligible unit under Section 10A, as it is not engaged in any manufacturing activity but is doing only repacking, relabeling and kit packing?

2. Learned counsel for the Revenue fairly pointed out that Question No. (i) was examined by this Court in case of this very assessee in Income Tax Appeal No. 1674 of 2016 and rejected the appeal by making following observations:-

> "2. Question no. (i) relates to the Revenue's objection to the assessee's claim of deduction under Section 35(2AB) of the Income Tax Act, 1961 ("the Act" for short) primarily on the ground that the approval for the research facility established by the assessee was granted by the competent authority subsequently. We notice that several High Courts have held that such research and development activity once approved by the competent authority, the approval would relate back to the date of application. Reference in this respect can be made to the decision of the Division Bench of Gujarat High Court in the case of ***CIT Vs. Claris Lifesciences Ltd. (2008) 174 Taxman 113*** and the decision of the Delhi High Court in case of ***CIT New Delhi Vs. Sandan Vikas (India) Ltd. 335 ITR 117***. We are informed that the decision of Delhi High Court in case of Sandan Vikas (India) Ltd. (Supra) was carried in appeal before the Supreme Court and the SLP came to be dismissed by an order dated 09th January, 2012. This question is therefore not entertained."

3. So far as Question No. (ii) is concerned, the issue pertains to the assessee's claim of deduction under Section 80HHC(4C) of the Income Tax Act, 1961 ("the Act" for short).

4. The assessee is a manufacturer whose manufacturing unit is situated outside Special Economic Zone ("SEZ" for short). The assessee made sales to a unit situated in SEZ. The only ground on which the Assessing Officer denied the deduction was that the unit situated in SEZ area was not entitled to exemption under Section 10A of the Act. The CIT(A) and the Tribunal held that this was factually incorrect. In fact, the Tribunal recorded that the Assessing Officer has not given reasons for coming to such a conclusion. The entire issue is thus based on facts. The CIT(A) and the Tribunal concurrently held that the purchaser unit was entitled to exemption under Section 10A of the Act.

5. In view of above, the appeal is dismissed.

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