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

INCOME TAX APPEAL NO. 449 OF 2016

Commissioner of Income Tax-14 .. Appellant

v/s.
Oleofine Organics (India) Pvt. Ltd. .. Respondent

Mr. Suresh Kumar for the appellant
Mr. Atul Jasani for the respondent

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

DATED : 4th FEBRUARY, 2019

P.C.

1. In view of short controversy, this appeal is taken up for final disposal at the admission stage.

2. This appeal is filed by the Revenue to challenge the judgment of the Income Tax Appellate Tribunal ("the Tribunal" for short). Following question is presented for our consideration :-

(i) Whether in law and on facts of the instant case, the Tribunal was justified in holding that once a benefit u/s 80IB has been granted to a unit, it cannot be denied the benefit, even after it fails to qualify as per the conditions laid down in the statute?

3. It is undisputed position that the question is decided in favour of the Revenue by the judgment of the Supreme Court in case of ***Deputy Commissioner of Income Tax Vs. ACE Multi Axes Systems, 401 ITR 141***. Identical issue had also come up for consideration in Income Tax Appeal No.455 of 2016 filed by the Revenue against this very assessee, in which this Court had by order dated 19th February, 2018 allowed the Revenue's appeal. This appeal, however, would present an another angle to the entire controversy. Before the Tribunal, the assessee had questioned the very jurisdiction of the Assessing Officer to reopen the assessment during which proceedings, the subject issue come up for consideration. The Tribunal in the impugned judgment in view of holding the issue on merits in favour of the assessee, did not find it necessary to examine the question of validity of reopening of assessment. Now that we have reversed the decision of the Tribunal on merits of the assessee's claim of deduction, the question of validity of reopening of the assessment assumes significance. As noted, though such a question was raised before the Tribunal, the Tribunal did not decide the same being an alternative contention. Under the circumstances, this question we place back to the Tribunal for its consideration and decision on merits. For such limited purpose, the

proceedings are placed before the Tribunal. We are informed that the assessee has already filed an application for rectification before the Tribunal on this ground. It would be open to the Tribunal to combine the above application with this direction and give a common decision.

4. The appeal is disposed of in above directions.

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