R.M. AMBERKAR
(Private Secretary)

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

INCOME TAX APPEAL 333 OF 2017

Pr. Commissioner of Income Tax -2 .. Appellant

Versus

~~M/s. Pranav Agro Industries Ltd~~
Official Liquidator, High Court, Mumbai .. Respondent

....

- Mr. Sham Walve for the Appellant
- None present for the Respondent

....

CORAM : AKIL KURESHI &
S.J. KATHAWALLA, JJ.

DATE : JULY 8, 2019.

P.C.:

1. Revenue has filed this appeal challenging the judgment of the Income Tax Appellate Tribunal, Pune ("the Tribunal" for short) dated 9.5.2016.

2. Following questions are presented for our consideration:

(A) Whether on the facts and circumstances of the case and in law, the Tribunal erred in disregarding the motive of the tax payer of tax evasion on the basis of retrospective new investment policy, which was drafted just to claim / avail benefit of exemption and concessional rate of tax? Whether in law, facts and circumstances of the case, the Tribunal was correct in allowing the deduction u/S.

80JJA of the Act without appreciating that baggase / husk is not a waste but is a by-product of agri-produce processing industry which was purchased and not collected and processed or treated by the assessee, which is a prerequisite for claiming deduction under Section 80JJA of the Act?

(B) Whether in law, facts and circumstances of the case, the Tribunal was correct in allowing the assessee's claim of depreciation on windmills when the assessee was not a registered owner of the windmills and it was purchasing electricity from NAV Maharashtra Chakan Oil Mills Ltd (NMCOML) thus having no title / dominion and right to use the assets?

(C) Whether in law, facts and circumstances of the case, the Tribunal was correct in deleting the addition due to disallowance on account of employee's contribution to Provident Fund (PF), Employee's State Insurance Corporation (ESIC) and Maharashtra Labour Welfare Fund and ignoring the fact that the employee's contribution to such welfare funds is governed by the Provisions of Section 36(1)(va) of the I.T. and not by Section 43B, as clarified by Board's Circular No. 22 of 2015 dated 17.12.2015?

3. In so far as Question No. (A) is concerned, we notice that the issue is covered by the decision of the Division Bench of this Court in case of **CIT, Pune Vs. Padma S. Bora**[1]. This question is therefore, not considered.

4. With relation to Question No. (C), the same is covered by the decision of this Court in the case of **CIT-Central Vs.**

1 [2013] 355 ITR 368 (Bom)

Ghatge Patil Transports Ltd[2] in which it has held that the benefit of deduction of the employees' contribution to the provident fund would also be available as long as the same is made before filing of the return. This question is, therefore, not considered.

5. The sole surviving question pertains to the assessee's claim of depreciation on purchase of windmill. The Assessing Officer was of the opinion that the assessee not being the registered owner of the windmill could not have claimed the same. The Commissioner and the Tribunal, however, concurrently came to the conclusion that the assessee had purchased windmill for total consideration of Rs. 1.10 Crores. The payments were made between August 2007 to March 2008 through bank channel. The Sales Tax Entitlement Certificate of the assessee was also accordingly modified w.e.f. 5.12.2007. Memorandum of Understanding dated 1.6.2007 under which the said machinery was acquired by the assessee was also produced on record. It was, after examination of such materials on record, the Commissioner and the Tribunal concurrently held that the assessee had in

2 (2014) 368 ITR 749 (Bom)

fact purchased windmill and therefore, was entitled to claim depreciation thereon. No question of law arises. Income Tax Appeal is dismissed.

[S.J. KATHAWALLA, J.] **[AKIL KURESHI, J]**