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

INCOME TAX APPEAL NO.1054 OF 2016
WITH
INCOME TAX APPEAL NO.1044 OF 2016

Pr. Commissioner of Income Tax .. Appellant

v/s.

M/s. Shah Originals .. Respondent

Mr. Arvind Pinto for the appellant
Mr. Atul Jasani for the respondent

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

DATED : 15th JANUARY, 2019

P.C.

1. These appeals arise out of common background and concern same assessee.

2. We may note the facts from Income Tax Appeal No.1044 of 2016. This appeal is filed by the Revenue to challenge the judgment of the Income Tax Appellate Tribunal raising following questions for our consideration :-

(i) Whether in law and on the facts of the instant case, was the Tribunal in error in confirming the orders of the CIT(A)

ignoring the fact that Form 10CCB attached with the assessee's Return of income had mentioned AY 1993-84 as the year of the commencement of business?

(ii) Whether in law and on the facts of the instant case, was the Tribunal correct in the confirmation of the orders of the CIT(A) who, deleted the addition on the basis of the Auditor's affidavit, while ignoring that the business activity as per the partnership deed had commenced in the year 1992, when machinery for in-house stitching of apparel was in production as per facts of record?

(iii) Whether in law and on the facts of the instant case, was the Tribunal justified in ignoring the decision of the jurisdictional High Court in CIT Vs. Penwalt India 196 ITR 813, where manufacturing includes also goods produced by outside parties?

(iv) Whether in law and on the facts of the instant case, was the Tribunal justified in confirming the orders of the CIT(A) ignoring the fact that all the firm claimed deduction u/s 80HHC without a claim u/s 80IB; thus this claim u/s 80IB for the year was to set off the effect of the sunset clause in the case of Section 80HHC?

3. The assessment year under consideration is A.Y. 2003-04, in which the issue pertains to the initial year of commencement of assessee's manufacturing activity for the purpose of deduction under

Section 80IB of the Income Tax Act, 1961 ("the Act" for short). The assessee contended that the initial year was A.Y. 1995-96 and the deduction which is available for a period of 10 years beginning with the initial year, would continue to be available for the assessment year under consideration also. The Assessing Officer however, was of the opinion that the assessee's initial year was the year 1992-93 and, therefore, the period of 10 years since then having already expired, the assessee's claim for deduction in the present year, is not allowable.

4. Before the Revenue authorities and the Tribunal, the assessee pointed out that the assessee had purchased the relevant material only in the Assessment Year 1995-96. The registration of the unit as a Small Scale Industry was also granted in the year 1995-96. The assessee further pointed out that the manufacturing activity had also commenced only from such year. The assessee explained an error in the Audit Report by pointing out that the industrial undertaking had not commenced the manufacturing activity earlier. Only the partnership firm had come into existence. It was pointed out that there is a vital difference between commencement of the partnership and the commencement of the industrial undertaking.

5. These contentions were accepted by the CIT(A) and the Tribunal. The Assessing Officer had relied on a decision of this Court in case of ***Commissioner of Income Tax Vs. Penwalt India Ltd. 196 ITR 813*** to hold that in case of the assessee, the initial year was 1992-93.

6. As is well known, Section 80IB of the Act grants certain deduction of profits and gains from certain industrial undertakings. sub-section (3) of Section 80IB of the Act provides that such deduction at the specified rate would be available to such industrial undertaking for a period of 10 consecutive assessment years, beginning with the initial assessment year. The term “Initial Assessment Year” has been explained in sub-section (14) to Section 80IB of the Act *inter alia* as to mean, in case of an industrial undertaking, the assessment year relevant to the previous year in which the industrial undertaking begins to manufacture or produce articles or things. It was in this context, the question arose before the Assessing Officer. As noted, the CIT(A) and the Tribunal concurrently came to the conclusion that the initial year for assessee was A.Y. 1994-95. This was on the basis of material produced by the assessee to establish that it was only in this period that the assessee had procured the material and started manufacturing. The registration as an industrial unit was granted only during the said

period. We find no perversity in the finding of the Tribunal.

7. The decision of this Court in case of *Penwalt India Ltd.* (supra) was rendered in entirely different background. It was a case in which the assessee had claimed expenditure on scientific research. The Court held that the assessee can be said to be engaged in the manufacturing activity, which is done directly by himself or even in which the assessee engages the services of somebody else on contract basis. It was found that the manufacturing activity carried on behalf of the assessee was also under the direct quality control and supervision of the assessee. On such findings, the Court granted the depreciation allowance to the assessee.

8. In the result, both the Appeals are dismissed.

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