IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.08.2019

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Tax Case Appeal Nos.290 to 292 of 2013

M/s.DXN Herbal Manufacturing (India) Pvt. Ltd.,
R.S.No.141/4 & 142/5,
Whirlpool Road, Thiruvandarkoil,
Pondicherry. ..Appellant/Appellant in all the Appeals

-vs-

The Income Tax Officer,
Ward-I(1), Puducherry. ..Respondent/Respondent in T.C.A.Nos.290 & 291 of 2013

The Joint Commissioner of Income Tax,
Range-I, Pondicherry. ../Respondent/Respondent in T.C.A.No.292 of 2013

Prayer in T.C.A.Nos.290 and 291 of 2013:- Appeals under Section 260A of the Income-tax Act, 1961, against the order dated 04.02.2013 on the file of the Income Tax Appellate Tribunal 'D' Bench, Chennai, in I.T.A.Nos.284 & 285/Mds/2012 for the assessment years 2006-07 and 2007-08 against the Order dated 28.1.2011 and 25.11.2010 made in ITA No.218/2008-09 and ITA No.118/2009-10 respectively passed by the Commissioner of Income Tax, Appeals -XII, Chennai -34, and against the order dated 26.12.2008 and 30.11.2009 passed by the Income Tax Officer, Ward-I(1), Puducherry and Assistant Commissioner of Income Tax Circle -I, Pondicherry for the Assessment Years 2006-07 and 2007-08.

Prayer in T.C.A.No.292 of 2013:- Appeal under Section 260A of the Income-tax Act, 1961, against the order dated 10.04.2013 on the file of the Income Tax Appellate Tribunal 'B' Bench, Chennai, in I.T.A.No.129/Mds/2013 for the assessment year 2009-10 against the Order dated 27.12.2012 made in ITA No.317/2011-12 passed by the Commissioner of Income Tax, Appeals -XII, Chennai -600 034 and against the order dated 16.12.2011 passed by the Joint Commissioner of Income Tax, Range -I, Pondicherry for the Assessment Year 2009-10.

For Appellant : Mr.K.Ravi
(In all Appeals)

For Respondent : Mr.T.R.Senthil Kumar,
(In all Appeals) Senior Standing Counsel
: assisted by Ms.K.G.Usharani,
Junior Standing Counsel

COMMON JUDGMENT
(Delivered by T.S.Sivagnanam, J.)

These appeals by the appellant/assessee filed under Section 260A of the Income-tax Act, 1961 are directed against the order dated 04.02.2013, passed by the Income Tax Appellate Tribunal 'D' Bench, Chennai, in I.T.A.Nos.284 & 285/Mds/2012 for the assessment years 2006-07, 2007-08; and the order dated 10.04.2013 passed by the Income Tax Appellate Tribunal 'B' Bench, Chennai, in I.T.A.No.129/Mds/2013 for the assessment year 2009-10.

2.The above appeals were admitted on, 07.06.2013, on the following substantial question of law:-

> "Whether under the facts and circumstances of the case, the Appellate Tribunal was right in holding that the appellant is not entitled to the claim u/s.80IB?"

3.We have heard Mr.K.Ravi, learned counsel for the appellant/assessee; and Mr.T.R.Senthil Kumar, learned Senior Standing Counsel, assisted by Ms.K.G.Usharani, learned Junior Standing Counsel for the respondent/Revenue.

4.The above substantial question law framed for consideration was considered by a Division Bench of this Court and was decided in favour of the assessee in the assessee's own case in T.C.(A) Nos.341 and 342 of 2007, dated 21.06.2018 [M/s.DXN Herbal Manufacturing (India) Pvt. Ltd., vs. The Income Tax Officer, Ward-I(1), Puducherry] to which, one of us (TSSJ) was a party. The operative portion of the judgment read as follows:-

> "23. The factual matrix clearly demonstrates that what has been done by the assessee is manufacture. The decision relied on by the Revenue in the case of Sacs Eagles Chicory Vs. Commissioner of Income Tax reported in [(2003) 255 ITR 178 SC] is distinguishable on facts as the activity which was the subject matter of the said case was making powder from chicory roots and the

appeal by the assessee was dismissed as the assessee failed to satisfy the test laid down in Aspinwall & Co. Ltd., case. The learned counsel for the Revenue relied upon the decision of the Division Bench of this Court in Commissioner of Income-tax Vs. Madurai Pandian Engg. Corpn. Ltd., reported in [(1999) 239 ITR 375 (Madras)]. The question was whether the business of tyre retreading done by the assessee amounts to production of a new article and whether the assessee was entitled to relief under Sections 80J and 80HH of the Act.

24. This Court held that the common thread which runs in all the decisions is that only when a new distinct commodity commercially accepted as such, comes into existence as a result of processing, that a commodity can be said to have been manufactured and in the said context, retreading of tyres did not result in the production of an articles for the purpose of Section 80HH of the Act. The said decision is clearly distinguishable on facts. In the assessees case, the product which emerges after the process of manufacture is commercially a distinct commodity, can be of consumption as such containing a requisite amount of ingredients in the appropriate percentage, preserved in proper form as contained in the licence issued under the authorised enactments as well as the technical logo shared by the foreign company.

25. For the above reasons, the Question No.1 is in favour of the assessee and against the Revenue."

5.Following the above decision, these tax case appeals are allowed and the substantial question of law is answered in favour of the assessee. No costs.

abr

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To
1.The Director,
Central Board of Direct Taxes,
New Delhi.

2. The Assistant Registrar,
Income Tax Appellate Tribunal,
Besant Nagar, Chennai-90.

3. The Assistant Commissioner of Income Tax,
Circle-I, Pondicherry.

4.The Commissioner of Income-tax (Appeals)-XII
121, Mahatma Gandhi Road, Nungambakkam, Chennai.

5. The Income Tax Appellate Tribunal
'D' Bench, Chennai.

6.The Income Tax Appellate Tribunal
'B' Bench, Chennai.

7. The Joint Commissioner of Income Tax,
Range-I, Pondicherry.

8. The Income Tax Officer,
Ward-I (1), Pondicherry.

+1cc to Mr.T.R.Senthil Kumar, Advocate, SR.No.75702

T.C.A.Nos.290 to 292 of 2013

Kak(17/10/2019)