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

INCOME TAX APPEAL NO. 2440 OF 2013

The Commissioner of Income Tax-V .. Appellant.
v/s.
BEHR India Ltd. .. Respondent.

Mr. Tejveer Singh, for the Appellant.
Mr. Sanjeev M. Shah, for the Respondent.

CORAM: M.S.SANKLECHA, &
A.K.MENON, JJ.
DATE : 4th APRIL, 2016.

P.C:-

This Appeal under Section 260-A of the Income Tax Act, 1961 (the Act), challenges the order dated 6th May, 2013 passed by the Income Tax Appellate Tribunal (the Tribunal)for the Assessment Year 2005-06.

2 Although multiple questions of law have been raised in the memo of appeal, Mr. Tejveer Singh, learned Counsel appearing for the Revenue is pressing the following re-framed questions of law for our consideration:-

> *"(a) Whether on the facts and in the circumstance of the case and in law, the Tribunal was justified in law in upholding the order of the CIT(A) in respect of claim of deduction u/s. 10B made by the assessee by ignoring the fact that the assessee had substantial unabsorbed depreciation and business losses of earlier years to be set off against the profits of Export Oriented Unit?*

(b) Whether on the facts and circumstance of the case in the law, the Tribunal was correct in law to entertain a ground which was dismissed by the CIT(A) as not pressed?

(c) Whether on the facts and circumstances of the case and in law, the Tribunal was justified in setting aside the issue of profit gained on prepayment of deferred sales tax liability u/s. 41(1) to the file of A. O. and to decide the issue based on the judgment of ITAT, Special Bench, Mumbai in the case of Sulzer India Ltd. (2010) 42 SOT 457 and ignoring the decision of Hon'ble Supreme Court in the case of CIT v/s. Thirumalaiswamy Naidu and Sons [230 ITR 534]?".

3 The impugned order of the Tribunal is a common order passed in respect of subject Assessment Year as well as Assessment Year 2004-05.

4 The Revenue had carried the issue decided by the impugned order in relation to Assessment Year 2004-05 on an identical question of law as raised herein before us in Income Tax Appeal No.2271 of 2013. This Court by an order dated 25th January, 2016 did not entertain the Revenue's appeal on three questions as formulated herein above for our consideration.

5 For the reasons indicated in our order dated 25th January, 2016 in Income Tax Appeal No.2271 of 2013 filed by the Revenue in respect of the same Respondent-Assessee, the questions as framed do not give rise to any substantial questions of law.

6 Accordingly, **Appeal dismissed.** No order as to costs.

(A.K.MENON,J.) **(M.S.SANKLECHA,J.)**

S.R.JOSHI