

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

**INCOME TAX APPEAL NO. 2271 OF 2013**

The Commissioner of Income Tax -V  
Pune

.. Appellant

v/s.

Behr India Ltd.

.. Respondent

Mr. Tejveer Singh for the appellant

Mr. Sanjiv M. Shah for the respondent

**CORAM : M.S. SANKLECHA &  
B.P. COLABAWALLA, J.J.**

**DATED : 25<sup>th</sup> JANUARY, 2016.**

**PC.**

1. This appeal by the Revenue under Section 260A of the Income Tax Act, 1961 (the Act) challenges the order dated 6<sup>th</sup> May, 2013 passed by the Income Tax Appellate Tribunal (the Tribunal).

2. Although multiple questions have been raised in the Memo of Appeal, Mr. Tejveer Singh, learned Counsel for the Revenue is pressing only following questions of law for our consideration :-

*(i) Whether on the facts and circumstances of the case and in law, the Tribunal was justified in upholding the order of Ld. 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 ?*

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

*(iii) Whether on the facts and circumstances of the case and in law, the Tribunal was justified in setting aside the issue of addition made by the A.O. On account of 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 Tribunal, Special Bench, Mumbai in Case of Sulzer India Ltd. (2010) 42 SOT 457 and ignoring the decision of Hon'ble Supreme Court in the case of Commissioner of Income Tax Vs. Thirumalaiswamy Naidu and Sons (230 ITR 534) ?*

3. Re. Question (i) :-

(a) Mr. Tejveer Singh, learned Counsel for the Revenue very fairly states that the question as framed by the Revenue stands concluded against the Revenue by the decision of this Court in ***Commissioner of Income Tax Vs. Black and Veatch Consulting Pvt. Ltd. (2012) 348 ITR 72. (Bom.)***. We find that the impugned order of the Tribunal has in fact places reliance upon the decision of this Court in *Black and Veatch (Supra)* in allowing the respondent assessee's appeal.

(b) In the above view, question (i) as framed does not give rise to any substantial question of law. Accordingly, not entertained.

4. Re. Question No.(ii) :-

(a) We find that the impugned order records the fact that the respondent assessee had not pressed the issue with regard to prepayment of deferred sales tax liability before the CIT (Appeals). However, we find that the respondent assessee has raised an additional grounds in its appeal before the Tribunal in respect of the aforesaid issue. The Tribunal after considering the grounds on the basis of which the additional question of law had been framed being pure legal question of law, allowed the respondent assessee to urge the additional ground. Mr. Tejveer Singh is not able to point out any error in the Tribunal's order in allowing the additional ground of appeal to be taken by the respondent assessee.

(b) In the above circumstances, question (ii) as framed does not give rise to any substantial question of law. Hence, not entertained.

5. Re. Question (iii) :-

(a) Mr. Tejveer Singh, learned Counsel for the Revenue very fairly states that the impugned order in allowing the respondent assessee's appeal and restoring it to the Assessing Officer in respect of the applicability of Section 41(1) of the Act on account of prepayment of deferred sales tax liability, relied upon its Special Bench decision in

*Sulzar India Ltd. (2010) 42 SOT 457.* The Revenue has challenged the aforesaid decision of the Special Bench of the Tribunal before this Court and the same was dismissed in *Commissioner of Income Tax Vs. Sulzar India Ltd. & Ors. 369, ITR 317.*

(b) Thus, the question (iii) as framed is a concluded issue before this Court, it does not give rise to any substantial question of law. Thus, not entertained.

5. Accordingly, the Appeal is dismissed. No order as to costs.

(B.P. COLABAWALLA, J.)

(M.S. SANKLECHA, J.)