

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.2134 OF 2013

The Commissioner of Income Tax ...Appellant.
Vs.
Techno Tarp and Polymers Pvt.Ltd. ... Respondent

Mr.Suresh Kumar with Mr.A.K.Saxena, for the Appellant.

Mr.S.C.Tiwari with Ms.Rutuja Pawar, for the Respondent .

**CORAM : M.S. SANKLECHA &
G.S. KULKARNI, JJ.**

DATE : 5th DECEMBER, 2015.

PC. :

1. This Appeal under Section 260-A of the Income Tax Act,1961 (the Act), challenges the order dated 1 March 2013 passed by the Income Tax Appellate Tribunal (the Tribunal) for the Assessment year 2009-10.

2. Although numerous questions of law have been

formulated in the Memo of Appeal, Mr.Suresh Kumar, learned Counsel for the Revenue urges only the following re-framed question of law for our consideration as under:-

“(i) Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in holding that the brought forward unabsorbed loss/ depreciation of the assessee's 10B unit was not liable for set off against the current year's profit of the same 10B unit ?”

2. We find that the impugned order of the Tribunal has allowed the respondent- Assessee's appeal by following the decision of this Court in “**CIT Vs. Black & Veatch Consulting (P) Ltd., ((2012) 208 Taxman 144)**”. Further the impugned order also placed reliance upon its own decision in the case of “**Ganesh Polychem Ltd. Vs. ITO**” decided in ITA No.8515/Mum/2010 on 10 August 2012 for the Assessment Year 2006-07 following the decision of this Court in **Black & Veatch Consulting(P) Ltd.**(supra).

3. The Revenue had carried the decision of the Tribunal in “**Ganesh Polychem Ltd. Vs. ITO**” (supra) to this Court being Income

Tax Appeal (Lodg) No.2083 of 2012 raising the following question of law:-

“Whether on the facts and in the circumstances of the case and in law the Tribunal was right in holding that the brought forward unabsorbed depreciation and losses of the unit, the income of which is not eligible for deduction u/s.10B of the Act cannot be set off against the current profit of the eligible unit for computing the deduction u/s.10B of the Act ?”

This Court by order dated 25 February 2013 dismissed the Revenue's above appeal as it was agreed that the issue raised therein stands concluded against the Revenue by the decision of this Court in **Black & Veatch Consulting(P) Ltd.(supra)**.

4. Mr.Suresh Kumar, learned Counsel for the Revenue does not dispute that the question as framed is covered by the decision of this Court in **Black & Veatch Consulting(P) Ltd.(supra)** & “**Ganesh Polychem Ltd. Vs. ITO**” (supra). However, he submits that the question as framed would require consideration as the contrary view taken by Karnataka High Court in “**CIT Vs. Himatasingike Seide Ltd., ((2006)156 Taxman 151 (Kar.))**” has now been upheld by the Apex Court in its order dated 19 September 2013 as under:-

“1. We have heard the learned Counsel for the parties to the lis.

2. Having perused the records and in view of the facts and circumstances of the case, we are of the opinion that the Civil Appeal being devoid of any merit deserves to be dismissed and is dismissed accordingly.

Ordered accordingly.”

5. We find that the decision of the Karnataka High Court in **Himatasingike Seide Ltd.** (supra) which was undisturbed by the Apex Court was in respect of Assessment Year 1994-95. Thus it dealt with the provisions of Section 10B of the Act as existing prior to 1 April 2001 which was admittedly different from Section 10B as in force during Assessment Year 2009-10 involved in this appeal. Section 10B of the Act as existing prior to 1 April 2001 provided for an exemption in respect of profits and gains derived from export by 100% Export Oriented Undertakings and now it provides for deduction of profits and gains derived from a 100% Exported Oriented Units..

6. In any view of the matter, the decision of the Karnataka High Court in **Himatasingike Seide Ltd.** (supra) which was

undisturbed by the Apex Court dealt with the provision of law different from that which was dealt with in the impugned Order. A decision has to be considered in the context of the law as arising for consideration and a change in law would render the decision under the old law inapplicable while considering the amended law.

7. The issue as raised stands concluded by the decision of this Court in **Black & Veatch Consulting(P) Ltd.**(supra) and “**Ganesh Polychem Ltd. Vs. ITO**” against the Revenue. Therefore, the question of law as proposed for our consideration does not give rise to any substantial question of law.

8. Accordingly, the appeal is dismissed. No order as to costs.

(G.S.KULKARNI, J.)

(M.S. SANKLECHA, J.)