Talwalkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 2924 OF 2018

The Pr.Commissioner Of Income-Tax-2 …Appellant
Versus
Persistent Systems Pvt Ltd. …Respondent

Mr Vikas T. Khanchandani, for the Appellant.
Mr(Dr.) Sunil M. Lala i/b. Mr. Atul K. Jasani, for the Respondent.

CORAM: SUMAN SHYAM &
ADVAIT M. SETHNA, JJ.

DATED: 9th JULY 2026.

PC:-

1. Heard Mr. Khanchandani, learned Counsel for the Appellant.

2. This Appeal has been filed by the Revenue assailing the Judgment and Order dated 12th July, 2017 passed by the Income Tax Appellate Tribunal, Pune Bench in Income Tax Appeal No. 1295/PUN/2015 for Assessment year 2010-11. The learned Departmental Counsel has reformulated the substantial question of law which is as follows :

> "A. Whether addition made u/s. 10A(7) r.w.s. 80IA (10) of the Income Tax Act, 1961 could have been deleted when the ordinary profits of the comparables furnished by Assessee in their transfer pricing report

> was 9.35% as against the arranged net profit margin of 27.86% shown by the assessee?”

3. Mr. Lala, learned Counsel appearing for the Respondent however, submits that the same issue has already been dealt with by the Coordinate Bench of this Court in the cases of **Commissioner of Income Tax-7 v/s. Schmetz India (P) Ltd. [(2012) 26 taxmann.com 336(Bom.)** and **Pragati Aroma Oil Distillers Private Ltd. v/s. Deputy Commissioner of Income Tax [(2026) 187 taxmann.com 31(Bombay)],** wherein the question of law has been answered against the Revenue and in favour of the Assesses.

4. In the case of **Schmetz India (P) Ltd**(supra), we find that the substantial questions of law framed by the Court were as follows :

> “Whether on the facts and in the circumstances of the case and in law the Tribunal was justified
>
> (A) in coming to the conclusion that there was nothing on record to show that the profits arrived at by the assessee in respect of the 10A unit carrying on the business of manufacturing Industrial Sewing Machine Needless was not in the normal course of its business and that the abnormally high profit was due to extraordinary arrangement between the assessee and the German company entered into only with a view to boost the profits of assessee and therefore allowing deduction of Rs. 20,54,27,335/-?
>
> (B) in holding that the there was no material available with the A.O. to estimate the profits of the 10A unit eligible for deduction invoking the provisions of S.80 IA(10) read with S.10A(7) of the Act was based on

> proper and reasonable appraisal of the material available on record?
>
> (C) in holding that the deduction under S. 10A of the Act has to be computed without setting off of the loss from the trading unit against the profits of the export oriented unit entitled to deduction under S. 10A of the Act.?"

5. The decision in **Schmetz India (P) Ltd. (**supra) was followed in **Pragati Aroma Oil Distillers Private Ltd. v/s. Deputy Commissioner of Income Tax [(2026) 187 taxmann.com 31(Bombay)]** and the appeal was admitted on the following substantial question of law :

> "Whether in the facts and circumstances of the case and in law, the Appellate Tribunal was justified in comparing and adopting net profit margin of sister concern Pragati Aroma Oil Distillers Pvt. Ltd. (as existed during the relevant Assessment Year), even in the absence of any arrangement as contemplated in Section 10B (7) read with section 801A (10) of the Income Tax Act, 1961?"

The said substantial questions of law have been answered by this Court against the Revenue and in favour of the Assessee.

6. After going through the decision of the Coordinate Bench in the case of **Pragati Aroma Oil Distillers Private Ltd.(supra),** more particularly, the observations in paragraph Nos. 24 and 25 of the said decision, we find ourselves in agreement with the submission of Mr. Lala, learned Counsel for the Respondent. Mr. Khanchandani, learned Counsel for the Appellant has also, in all fairness, submitted that the issue is covered under the decision of this Court in **Pragati Aroma Oil Distillers Private Ltd.(supra)**.

7. In view of the above, there is no substantial question of law which arises for consideration of this Court in the present Appeal. The Appeal therefore, stands dismissed by affirming the Judgment and Order dated 12th July, 2017 passed by the learned Income Tax Appellate Tribunal, Pune Bench.

(ADVAIT M. SETHNA, J.) **(SUMAN SHYAM, J.)**