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

INCOME TAX APPEAL NO. 1370 OF 2013

The Commissioner of Income Tax-8, Mumbai ..Appellant

Vs.

M/s Delhi Bisleri Company Ltd., Mumbai ..Respondent

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Mr. Arvind Pinto, Advocate for Appellant.
Mr. S.E. Dastur, Sr. Advocate a/w Nishant Thakkar and Jas Singhvi a/w Ms. Meghana Bansal, Advocates i/b PDS Legal for Respondent.

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CORAM : M.S. SANKLECHA &
N.M. JAMDAR, JJ.
DATED : 1 JULY 2015

P.C.:

This appeal by the revenue arises from order dated 30 November 2012 passed by the Income Tax Appellate Tribunal (the 'Tribunal') disposing of cross appeals as well as cross objection filed by the assessee and the revenue for the Assessment Year 1999-00.

2. Counsel for both the sides are agreed that issues arising herein are identical to issue which were raised by the Revenue in Income Tax Appeal No. 1436/2013 in the case of CIT Vs. Bisleri

Sales Ltd. which has been disposed of by this Court on 30 June 2015. In view of the decision in Bisleri Sales Ltd., the question raised in the present appeal also do not warrant consideration as they do not raise any substantial question of law.

3. However, Mr. Pinto, the learned Counsel for the Revenue submits that there is one additional question in this appeal which reads as under:

> "Whether on the facts and circumstances of the case and in law, the Tribunal was justified in holding that unabsorbed depreciation allowance brought forward from 1991-92 to 1996-97 was eligible for set off against short term capital gains u/s. 50 of the Act, without appreciating that as per the provisions of section 32(2)(iii)(a) of the Act as applicable to A.Y. 1999-00, brought forward unabsorbed depreciation allowance could be set off only against profits and gains, if any, of any business or profession carried on by the assessee and assessable for that assessment year?"

4. We find that the impugned order has upheld the claim of the respondent-assessee by following the decision of the Special

Bench of the Tribunal in ***DCIT Vs. Times Guarantee Ltd. [2010] 131 TTJ (Mum.) 257 (SB)*** wherein it has been held that for the Assessment Year 1999-00, depreciation under Section 32(1) can be set off firstly against the business income and then against income under any other head. We specifically asked Mr. Pinto whether any appeal is preferred against the order of the Special Bench, he was not able to give any categorical answer. Besides he has not pointed out any distinguishing feature in the present facts which would warrant the Tribunal taking a different view from that taken by the Special Bench in Times Guarantee Ltd. (supra). Moreover, neither the appeal memo indicates as to why the Revenue is of the view that decision in Times Guarantee Ltd. (supra) would not apply in the facts of the present case nor does it indicate whether the appeal has been preferred by the decision of Special Bench in Times Guarantee Ltd. (supra). In the above view, the additional question as proposed does not give rise to a substantial question of law.

5. Accordingly appeal dismissed. No order as to costs.

[N.M. JAMDAR, J] **[M.S. SANKLECHA, J.]**