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

INCOME TAX APPEAL NO. 248 OF 2013

Director of Income Tax (Exemptions)	**}**	**Appellant**
versus		
M/s. Anjuman E. Mohammedi Trust	**}**	**Respondent**

Mr. A. R. Malhotra with Mr. N. A. Kazi for the Appellant.

Mr. Firoze B. Andhyarujina-Senior Advocate with Mr. Maneck F. Andhyarujina i/b. Mr. Sameer G. Dalal for the Respondent.

CORAM :- S.C.DHARMADHIKARI &
S.P.DESHMUKH, JJ.
DATED :- JANUARY 9, 2015

P.C. :-

We have heard Mr. Malhotra in support of this Appeal, Which challenges the order passed by the Income Tax Appellate Tribunal dated 24th February, 2012 in Income Tax Appeal No.3248/Mum/2011. The assessment year in question is 2007-08.

2) Mr. Malhotra appearing for the Revenue submits that the two questions and formulated at paras 6.1 and 6.2, at pages 7 and 8 of the paper book, are substantial questions of law. Those arise out of the ground No. 2 in the Memorandum of Appeal before the Income Tax Appellate Tribunal.

3) Mr. Malhotra submits that the ground Nos. 2 and 3 in the Memo of Appeal before the Tribunal raise a challenge to the order of the Commissioner of Income Tax (Appeals) dated 9th November, 2010. The Commissioner had before him a ground of Appeal, namely the Income Tax Officer has erred in assessing the total income as Nil instead of the deficit/losses of Rs.5,65,88,990/- claimed by the Appellant which will be carried forward. The argument was that sections 11 to 13 of the Income Tax Act, 1961 are a complete Code. There is nothing in these provisions and elsewhere in the Income Tax Act which permits the exercise directed by the Commissioner. In other words, the argument was that the income from the current year is to be applied to the objects of the Trust and the deficit cannot be allowed to be carried forward to the subsequent years. There is no provision in the Act to carry forward the deficit where the expenditure, which causes the deficit, exceeds the income.

4) The Tribunal found that this very argument was raised and duly considered by a Division Bench of this Court in the case of *Commissioner of Income Tax vs. Institute of Banking Personnel Selection*, reported in **(2003) 264 ITR 110**. Therefore, the Commissioner did not commit any error in directing the Assessing Officer to allow the claim of the Assessee if made through its computation of income.

5) The only reason assigned by the Tribunal in para 4 is assailed before us by Mr. Malhotra and he contends that this Court has admitted Income Tax Appeal No. 1413 of 2012 on 5th March, 2014. That admits a similar question. Thus, the correctness of the view taken in the case of *Institute of Banking Personnel Selection* (supra) is in issue before this Court. Therefore, this Appeal deserves to be admitted.

6) We are unable to agree with Mr. Malhotra and for more than one reason. Firstly, the ground which the Assessee raised in the Appeal before the first Appellate Authority regarding the carry forward or computation of the deficit was not discussed before the Assessing Officer. The Assessing Officer made no observation regarding the same. Yet, when the same was raised before the Commissioner, the Commissioner observed that looking to the facts of the case as well as the submissions of the Assessee, the claim deserves to be considered and duly allowed in the light of the Division Bench Judgment. To this course, adopted by the Commissioner, the Revenue did not object. Secondly, the Revenue also did not urge before the Commissioner that since the Assessing Officer has not discussed this ground or claim in the assessment order, the matter be sent back to him for due consideration and in accordance with law. The Assessee was allowed to raise the ground, argue it fully and rely upon a Division Bench Judgment of this

Court. The Commissioner, therefore, duly noted this Judgment, followed and applied it because the facts and circumstances were identical. Para 4.4 of the Commissioner's order contains this line of reasoning.

7) When the matter was carried by the Revenue to the Tribunal, the Tribunal dealt with this argument of the Revenue in paras 4 and 5 and held that if the Commissioner followed and applied the Division Bench Judgment of this Court which was rendered in identical facts and circumstances, then, his order deserves to be upheld.

8) In the above circumstances, we refrain from entertaining the ground or issue raised before us by Mr. Malhotra, particularly about the correctness of the Judgment of this Court in the case of *Institute of Banking Personnel Selection* (supra). Merely because in another Appeal such question is admitted and at the instance of a distinct Assessee does not mean that we are obliged to admit this Appeal as well. If the Judgment of the Division Bench of this Court has to be reexamined and reconsidered, it would be done in an appropriate case.

9) In the facts and circumstances of the present case, we do not find that the Tribunal misdirected itself in law in upholding the conclusion of the Commissioner. The Commissioner as well allowed the

ground to be raised by the Assessee because all the facts and circumstances in relation to the said ground were before him. He held that no prejudice would be caused if parties were allowed to argue this ground. All this being conceded and consented to by the Revenue, it can hardly now complain.

10) In the circumstances, we do not think that the present Appeal raises any substantial question of law. It is dismissed. No costs.

(S.P.DESHMUKH, J.) **(S.C.DHARMADHIKARI, J.)**