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

INCOME TAX APPEAL NO. 69 OF 2013

The Director of Income Tax (Exemption) … Appellant

Versus

M/s. Najam Baug Trust … Respondent

Mr. A.R. Malhotra along with Mr. N.A. Kazi, A.P.P. for Appellant-Revenue.

Mr. F.B. Andhyarunjina, Sr. Counsel i/by Mr. Sameer Dalal for respondent.

CORAM : M.S. SANKLECHA &
G.S. KULKARNI, JJ.
DATED : JANUARY 14, 2015

P.C.

By this appeal filed by the revenue under section 260A of the Income Tax Act, 1961, (the "Act") challenges the order dated 20th Mach, 2012 passed by the Income Tax Appellate Tribunal (the "tribunal") for the Assessment Year 2007-08.

2. The appellant revenue have formulated the following questions of law for consideration of this court :

"(1) Whether on the facts and in the circumstances of the case and in law, the Tribunal was right in law, in allowing the claim of the assessee for carry forward and set off of deficit of earlier years ignoring the fact that no provisions as such exist in the I.T. Act, 1961?

(2) Whether on the facts and in the circumstances

of the case and in law, the Tribunal was right in law, in accepting the claim of brought forward of deficits of earlier years and deciding the issue ignoring the fact that as per the accounting norms, capital expenditure is not to be debited to income and expenditure account and hence no occasion arises when a deficit can be computed while allowing claim of application of income by way of capital expenditure as deduction?"

3. We find that the order of the tribunal dated 20th March, 2012 dismissed the revenue's appeal inter alia recording as under :

> "4. At the time of hearing both the parties have agreed that this issue is squarely covered in favour of the assessee by the decision of the Hon'ble Jurisdictional High Court in CIT Vs. Institute of Banking Personnel Selection (2003) 264 ITR 110 (Bom.)."

4. Mr. Malhotra learned counsel for the Revenue submits that although the issue stands covered by the decision of this court in Institution of Banking Personnel Selection (supra), the fact is that revenue is aggrieved by it, however, Revenue did not challenge it in the higher forum in view of low tax effect. Be that as it may, no fault can be found with the order of the tribunal giving rise to the substantial question of law as it merely followed the decision of this court in Institution of Banking (supra).

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

(G.S. KULKARNI,J.) **(M.S. SANKLECHA, J.)**