IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

Writ Petition No.1151 of 2014

(Sunil Vishwambharnath Tiwari .vs. Deputy Commissioner of Income Tax, Nagpur)

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's orders

Mr.N.S.Bhattad, Adv. for the petitioner.
Mr.Anand Parchure, Adv. for the respondent.

CORAM : B. R. GAVAI AND
P. N. DESHMUKH, JJ.

DATE : 18.11.2015.

Heard.

The petitioner has approached this Court being aggrieved by notice dt.27.8.2012 issued under Section 148 of the Income Tax Act, 1961 and order dt.13.11.2013 passed by respondent no.1 rejecting objection of the petitioner.

The notice came to be issued to the petitioner under the provisions of Section 148 of the Income Tax Act stating therein that the income tax in respect of the assessee of the year 2006-07 has escaped assessment within the meaning of Section 147 of the said Act. The petitioner raised a preliminary objection objecting to the notice. The objection was rejected vide order dt.13.11.2013 holding that disallowance u/s.40(a)(ia) of the Act was not permissible under the provisions of the Income Tax Act.

The issue is no more res integra. The

Division Bench of this Court (of which one of us - Deshmukh, J is a party) in the Judgment dt.11.9.2015 delivered in Income Tax Appeal No.2 of 2011 has held that the order passed by the Income Tax Appellate Tribunal challenged in the said appeal holding that the entire amount of gross total income of assessee was eligible for deduction under Section 801B(10) of the Income Tax Act did not warrant interference. The Division Bench also held that the learned Tribunal was justified in holding that disallowance under Section 40(a) of the Income Tax Act separately also did not warrant interference.

It is pertinent to note that the afore-said findings are arrived at between the same parties and for the same assessment year. In the result, we find that, in view of the Judgment of the Division Bench of this Court in Income Tax Appeal No.2 of 2011, present petition deserves to be allowed. Hence, the petition is allowed.

The impugned notice dt.27.8.2012 and if any assessment orders are passed on the basis of said notice, shall stand quashed and set aside.

No order as to costs.

JUDGE JUDGE