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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.2357 OF 2013

Commissioner of Income Tax-10 ..Appellant
Versus
M/s. West Gujarat Expressway Ltd. ..Respondent

....
Mr. Arvind Pinto for the Appellant.
Mr. Sameer Dalal for the Respondent.
....

CORAM: M. S. SANKLECHA &
A. K. MENON, JJ.

DATE : 5TH APRIL, 2016

P.C.:

1. At the outset, Mr. Dalal, the learned counsel appearing for the Respondent-Assessee sought time. This Appeal was first heard on 15th March, 2016. At that time we were of the view that the issues raised herein stand concluded by the decision of this Court in ***North Karnataka Expressway Ltd. V/s. Commissioner of Income Tax (2014) 272 CTR (Bom) 225.*** However, Mr. Pardiwala, the learned Senior Counsel appearing for the Respondent-Assessee sought time. At his request, the Appeal was adjourned to 4th April, 2016. The Appeal was on board yesterday when Mr. Dalal sought a week's adjournment, wanting to take

instructions from his client. We declined to grant a week's adjournment and informed him that the matter would be kept today and he should be ready to proceed with the Appeal. Today when the matter was called out, Mr. Dalal again seeks time. We see no reason to grant further time. We, therefore, take up the Appeal for consideration.

2. This Appeal under Section 260A of the Income Tax Act, 1961 (the Act) challenges the order dated 27th February, 2013 passed by the Income Tax Appellate Tribunal (the Tribunal). The impugned order is in respect of Assessment Year 2007-08.

3. Mr. Pinto, the learned counsel for the Revenue urges only the following two questions of law for our consideration:-

> *"(i) Whether on the facts and in the circumstances of the case and in law, the Tribunal was right in directing the AO to grant depreciation on assets not owned by the Respondent that goes against provisions of Section 32 of the I.T. Act?*
>
> *(ii) Whether on the facts and in the circumstances of the case and in law, the Tribunal was right in its decision of treating toll roads as plant and machinery, when this is not as per rule 5 of New Appendix I of the I.T. Rules?"*

4. In view of the fact that according to us the decision in North Karnataka Expressway Ltd. (supra) concludes the issue, we proceed to hear the Appeal finally. Mr. Dalal, the learned counsel for the Respondent sought to distinguish the decision of North Karnataka Expressway Ltd. (supra) by pointing out that in the present Appeal, there is a clause which provides that for the purpose of claiming tax depreciation, the property representing the capital investment made by the appellant shall be deemed to be acquired and owned by the Appellant. According to him such a clause was not present in the decision rendered by this Court in North Karnataka Expressway Ltd. (supra). This is not so. Paragraph 8 of the order passed in North Karnataka Expressway Ltd. (supra) specifically records that the appellant relied upon a clause which is identical to that pressed into service by Mr. Dalal. Thus, the aforesaid clause being relied upon by Mr. Dalal to distinguish the decision of this Court in North Karnataka Expressway Ltd. (supra) is not sustainable. This is so as the very clause was very much a subject matter of consideration by this Court in North Karnataka Expressway Ltd. (supra). We find that this Court had dealt with the issue arising herein on merits as is evident from paragraph 24 onwards of North Karnataka Expressway Ltd. (supra).

5. In the above view, following the decision of this Court in North

Karnataka Expressway Ltd. (supra) we answer the two substantial questions of law in the negative i.e. in favour of the Appellant-Revenue and against the Respondent-Assessee.

6. The Appeal is disposed of in above terms. No order as to costs.

(A. K. MENON, J.) **(M. S. SANKLECHA, J.)**

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