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IN THE HIGH COURT OF JUDICATURE AT BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION****INCOME TAX APPEAL NO.2190 OF 2013**

Commissioner of Income Tax-10	..Appellant
<i>Versus</i>	
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

PC.:

1. This Appeal was heard along with Income Tax Appeal No.2357 of 2013. The impugned order dated 21st March, 2013 for A.Y. 2008-09 of the Tribunal follows its order rendered for A.Y. 2007-08 which was a subject matter of challenge before this Court in Income Tax Appeal No.2357 of 2013.

2. In the above view, only the following two questions of law are pressed by the Revenue 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?”

3. We have today by a separate speaking order in Income Tax Appeal No.2357 of 2013, disposed of the two substantial questions of law raised for our consideration by answering them in the negative i.e. in favour of the Appellant-Revenue and against the Respondent-Assessee. Thus following the same in this Appeal we answer the identical questions raised in this Appeal in the negative i.e. in favour of the Appellant-Revenue and against the Respondent-Assessee.

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

(A. K. MENON, J.)

(M. S. SANKLECHA, J.)