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

INCOME TAX APPEAL NO. 2294 OF 2013
AND
INCOME TAX APPEAL NO. 2295 OF 2013

Director of Income Tax (Exemption)
Mumbai .. Appellant

v/s.

M/s.G.D.Birla Medical Research and
Educational Foundation ..Respondent

Mr. A.R.Malhotra a/w N.A.Kazi, for the appellant.
Mr.Madhur Agarwal a/w Mr.Atul Jasani, for the respondent.

CORAM : M.S. SANKLECHA &
B.P. COLABAWALLA, J.J.

DATED : 01st FEBRUARY, 2016.

P.C.

1. Both these appeals by the Revenue under Section 260-A of the Income Tax Act, 1961 (the Act) challenge the common order dated 13th May 2013 passed by the Income Tax Appellate Tribunal (Tribunal). The common impugned order dated 13th May 2013 relates to Assessment Years 2007-08 and 2008-2009.

2. At the time of admission, the Revenue urges following question of law for our consideration:

> "Whether on the facts and circumstance of the case and in law, the Tribunal was right in upholding the order of the CIT(A) whereby the claim of depreciation of Rs.2,16,96,784/- was allowed by relying on the decision of this Court in the case of CIT Vs. Instituted of Banking personnel Services reported at 264 ITR 110 (Bom) ignoring the ratio of Supreme Court judgment in Escorts Ltd. Vs. Union of India (199 ITR 43) wherein it has been held that double deduction cannot be presumed if the same is not specifically provided by law, in addition to normal deduction, for A.Y. 2007-08 & 2008-09 respectively?"

3. The common impugned order of the Tribunal has dismissed the Revenue's appeal from two separate orders both dated 19th March 2012 of the Commissioner of Income Tax Appeal [CIT (A)] for Assessment Years 2007-08 and 2008-09 respectively. The issue before the Tribunal was whether the respondent – assessee, a charitable trust was entitled to a claim of deduction on account of depreciation in respect of the assets which has been acquired and used for the purpose of activities of the trust.

4. The CIT(A) in both orders dated 19th March 2012 has held that the issue raised in the appeal before it about claim of depreciation being disallowed by the Assessing Officer stands covered against the Revenue by the decision of this Court in the case of ***CIT Vs. Institute of Banking Personnel Selection (264 ITR 110).*** On appeal to the Tribunal, the Revenue contended that the decision of this Court in ***Institute of Banking Personnel Selection*** *(supra)* was rendered

without noticing the decision of the Apex Court in the case of ***Escorts Ltd. Vs. Union of India (199 ITR 43)*** and therefore, not binding. However, the common impugned order dated 13th March 2013 of the Tribunal negatives the aforesaid submission and records that in subsequent decision of this Court in the case of ***DIT (E) Vs. G.K.R. Charities (32 Taxmann.com 208)*** wherein an identical dispute as raised before it had been raised by the Revenue placing reliance on ***Escorts Ltd.*** *(supra)* was dismissed. In view of the fact that the impugned order of the Tribunal has followed the decision of the jurisdiction of Court i.e. Bombay High Court, we were not inclined to entertain the appeal.

5. Mr.Malhotra, learned Counsel for the Revenue, in support of the appeal, urges that this Court on 05th March 2014 has admitted the Revenue's appeal in the case of ***Director Income Tax (Exemption) Vs. Sri Shanmukhananda Fine Arts & Sangeetha Sabha, (Income Tax Appeal No. 1413 of 2012)*** on an identical question. It is therefore submitted that this appeal also be admitted.

6. The respondents point out that the Revenue in Income Tax Appeal No. 968 of 2013 along with Income Tax Appeal No. 1043 of 2013 (***The Commissioner of Income Tax-II, Thane Vs. M/s.Jawaharlal Nehru Port Trust)*** had raised an identical issue which

is raised before us including the reliance upon the admission this Court in Revenue's appeal in ***Sri Shanmukhananda Fine Arts & Sangeetha Sabha*** *(supra)*. This Court by order dated 08th June 2015 had dismissed the Revenue's appeals in M/s.Jawaharlal Nehru Port Trust (supra). This by placing reliance upon the earlier decision of this Court dismissing the Revenue's appeal in ***The Director of Income Tax (Exemption) Vs. The Watch Tower Bible & Trust Society of India*** being Income Tax Appeal No. 1548 of 2012 rendered on 10th December 2014 which had also considered identical issue including the admission of Revenue's appeal in ***Sri Shanmukhananda Fine Arts & Sangeetha Sabha*** *(supra)*. Thus, both the aforesaid decisions M/s. Jawaharlal Nehru Port Trust (supra) and The Watch Tower Bible & Trust Society of India (supra) had come to the conclusion that there is no question of double deduction in allowing of depreciation in respect of assets acquired and used by the Trusts.

7. In view of above, the question as proposed for our consideration stands concluded by the decisions of this Court in the cases of ***M/s.Jawaharlal Nehru Port Trust*** *(supra) and* ***The Watch Tower Bible & Tract Society of India*** *(supra)* in favour of the respondents and against the Revenue.

8. Therefore, the question as proposed does not give rise to

any substantial question of law. Accordingly, we see no reason to entertain the same.

9. Appeal is dismissed. No order as to costs.

(B.P. COLABAWALLA, J.) **(M.S. SANKLECHA, J.)**