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

INCOME TAX APPEAL NO. 386 OF 2014

Reliance Industries Ltd. .. Appellant

v/s.

Dy. Commissioner of Income Tax
Rg.3(3) and Anr. .. Respondents

Mr. J.D. Mistri, Senior Counsel a/w Mr. Raj Darak a/w Mr. P.C. Tripathi for the appellant
Mr. A.R. Malhotra a/w Mr. N.A. Kazi for the r espondent

CORAM : M.S. SANKLECHA &
S.C. GUPTE, J.J.

DATED : 23rd AUGUST, 2016.

P.C.

1. This Appeal under Section 260-A of the Income Tax Act, 1961 (the Act) challenges the order dated 31st July, 2013 passed by the Income Tax Appellate Tribunal (the Tribunal). The impugned order is in respect of Assessment Year 2001-02.

2. The appellant has urged following questions of law for our consideration :-

(i) Whether the disclaimer by an assessee of deduction for depreciation under Section 32 of the Act in arriving at its

business income for the assessment year 2001-02 as permitted by this Hon'ble Court's decision in Mahendra Mills Vs. Commissioner of Income Tax 242 ITR 56 is of no consequence when it comes to computing the deduction which an assessee is entitled to under Section 80IB of the Act?

(ii) Whether deduction u/s 80IB is allowable on gross income of undertaking without deducting the depreciation, in case the assessee exercise option not to claim depreciation u/s 32 for computation of its gross total income ?

3. The impugned order of the Tribunal rejected the appeal of the appellant assessee to the extent the appellant assessee contended that it had an option to claim or not claim depreciation while computing its income under the head profits and gains of business. It is this income which forms the basis for computing deduction under Section 80IB of the Act. The impugned order of the Tribunal relied upon the Full Bench decision of this Court in ***Plastiblends India Ltd. Vs. Additional Commissioner of Income-Tax and Ors. 318 ITR 352*** to hold that for the purposes of determining the quantum of deduction available under Chapter VI of the Act and in particular Section 80IB thereof, the income

has to be computed after allowing the deduction available under Sections 30 to 43D of the Act. This would necessarily include depreciation under Section 32 of the Act. It is not disputed that the issues raised herein are concluded by the decision of the Full Bench decision of this Court in *Plastiblends India Ltd. (supra)* in favour of the Revenue.

4. In the above view, the questions as formulated do not give rise to any substantial question of law. Thus, not entertained.

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

(S.C. GUPTE, J.) **(M.S. SANKLECHA, J.)**