IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 260 OF 2014

DIT (Exemptions), Mumbai ...Appellant
v/s.
Saurashtra Trust ...Respondent

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Mr. A.R. Malhotra a/w N.A. Kazi I/b Padma Divakar,for the Appellant.
Mr. Atul K. Jasani, for the Respondent.

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CORAM : M.S. SANKLECHA &
M.S. KARNIK, JJ.

DATED : 15th July, 2016

P.C :

1. This Appeal under Section 260-A of the Income Tax Act, 1961 (the Act) challenges the order dated 11th July, 2013 passed by the Income Tax Appellate Tribunal (the Tribunal). The impugned order relates to Assessment Year 2007-2008.

2. The Revenue has raised the following questions of law for our consideration :-

> *1. "Whether, on the facts and in the circumstances of the case and in law the Tribunal was justified in allowing*

the claim of depreciation by relying on the decision of the Hon'ble Bombay High Court in the case of CIT V/s. Institute of Banking Personnel Services reported at 264 ITR 110 (Bom). The ratio of Hon'ble Supreme Court judgment in the case of Escorts Ltd. Vs. Union of India (199 ITR 43) ?

2. *"Whether, on the facts and in the circumstances of the case and in law, the Tribunal was right in allowing the claim of the assessee for carry forward of the said deficit, ignoring the fact that there was no express provision in the act, 1961 permitting allowance of such claim ?"*

3. <u>Regarding Question No. 1</u>

(a) We note that the impugned order of the Tribunal dismissed the Revenues Appeal by following the decision of this court ***CIT Vs. Institute of Banking Personnel Selection (264 ITR 110)*** and also ***Commissioner of Income Tax, Kolhapur Vs. Munisuvrat Jain, 1994 TAX.L. R. 1084.***

(b). Mr Malhotra learned counsel for the Revenue does not dispute that the issue stands covered by the decision of this court in ***CIT Vs. Institute of Banking Personnel Selection (Supra)*** and ***Commissioner***

of Income Tax, Kolhapur Vs. Munisuvrat Jain (Supra). The reliance upon the decision of the Apex Court in Escorts Ltd (Supra) has been negatived by this Court in ***DIT (E) Vs. G.K.R. Charities (32 Taxmann. com. 208)*** and order of this court in ***DIT Vs. M/s. G.D. Birla Medical Research and Educational Foundation (ITXA NO. 2294 of 2013)*** on 1st Feb 2016. Therefore, so far as this court is concerned no fault can be found with the impugned order of the Tribunal in having followed the binding decisions of this court.

(c) Accordingly, Question No. 2 is formulated does not give rise to any substantial question of law. Therefore, not entertained.

4. Regarding Question No. 2 :-

(a) Similarly, we note that the impugned order of the Tribunal has while dismissing the Revenue's Appeal followed the decision of this Court in ***Institute of Banking Personnel Selection (Supra)***.

(b) Mr. Malhotra, learned counsel for the Revenue does not dispute that the aforesaid issue stands concluded against the Revenue by the decision of this court in ***Institute of Banking Personnel Selection***

(Supra). However, he submits that the Revenue is contesting this issue in principle and would seek to urge this issue before the Apex Court.

(c) However, so far as we are concerned, no fault can be found with the impugned order of the Tribunal in following the binding decision of this court.

(d) Therefore, the question as proposed does not give rise to any substantial question of law. Thus not, entertained.

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

(M.S. KARNIK J.) **(M.S. SANKLECHA J.)**