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

**INCOME TAX APPEAL NO.1208 OF 2014**

The Commissioner of Income Tax-8,
Mumbai .... Appellant
Vs.
M/s. Birla Sunlife Insurance Co. Ltd. .... Respondent

Mr. Arvind Pinto for the Appellant.
Mr. Madhur Agrawal with Mr. Atul K. Jasani for the Respondent.

**CORAM:** S.C. DHARMADHIKARI &
SMT. SADHANA S. JADHAV, JJ.

**DATE :** APRIL 21, 2017

**P.C:**

1. This appeal of the Revenue impugns the order passed by the Income Tax Appellate Tribunal, "B" Bench at Mumbai dated 19-12-2013 for three Assessment Years: 2005-06, 2006-07 & 2007-08. By a common order, the Tribunal disposed of the three appeals.

2. We are concerned in this appeal with the substantial

questions of law, proposed on pages 5 and 6 being questions (a) to (f).

3. At the outset, Mr. Pinto submits that question (b) of para 4 on page 5 is not being pressed and that need not be therefore considered.

4. As far as questions (c), (d) & (e) so also (f) are concerned, once again Mr. Pinto does not dispute that the Tribunal allowed these questions as additional grounds and they being permitted to be entertained in this manner by applying the principles akin to the provisions of the Code of Civil Procedure, 1908. Thus, to enable the Tribunal to render complete justice as a fact finding authority, it allowed additional grounds to be raised. Though they were allowed to be raised, they were not answered either in favour of the Revenue or the assessee, but after entertaining them the matter has been relegated back to the Assessing Officer for a decision afresh and in the light of the law laid down by this Court as well.

5. We do not think that we should entertain these questions because that would be a guess work. The remaining

question is question (a) which reads as under:-

> "*(a) Whether on the facts and in the circumstances of the case and in law, the Hon'ble Tribunal was right in holding that the outlay of expenditure on raising of capital is revenue in nature, whereas the legal proposition holds that expenditure incurred on capital building is capital in character?*"

6. After reading it, we find that the Assessing Officer has in the assessment order, while disallowing the expenses for increase in authorised share capital, has quantified the sum at Rs.10,00,000/- (*see para 6.6 on page 19 of the paper-book*).

7. Though the present appeal by the Revenue in this Court is filed claiming that the tax effect is much more and in crores of rupees, but that is a cumulative valuation. In the sense, the questions (a) to (e) together are being taken as having a tax effect notionally of Rs.2,13,83,931/-. We have not entertained questions (b), (c), (d), (e) & (f).

8. For the above reasons, question (a) involves a tax effect of Rs.10,00,000/-, as referred above.

9. In a more appropriate and deserving case we would consider this ground. For the present, the tax effect being minimal and below the limit set out in the circular of the Revenue, we do not entertain question (a).

10. As a result of the above discussion, the appeal fails and is dismissed.

(SMT. SADHANA S. JADHAV, J.) (S.C. DHARMADHIKARI, J.)