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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.1497 OF 2014

DIT (Exemptions) Mumbai ..Appellant
Versus
M/s. Aditya Birla Foundation ..Respondent

....
Mr. Ashok Kotangale i/b. Padma Divakar for the Appellant.
Mr. Madhur Agarwal i/b. Atul Jasani for the Respondent.
....

CORAM: M. S. SANKLECHA &
A. K. MENON, JJ.

DATE : 6th MARCH, 2017

P.C.

1. This Appeal under Section 260-A of the Income Tax Act, 1961 (the Act) challenges the order dated 27th February, 2014 passed by the Income Tax Appellate Tribunal (the Tribunal). The impugned order relates to Assessment Years 2009-2010.

2. The Revenue has urged the following substantial question of law for our consideration:-

> *"(i) Whether on the facts and in the circumstances of the case and in law, the Tribunal was right in upholding the order of the Commissioner of Income Tax (Appeals) CIT(A) allowed the claim of depreciation of Rs.3,75,52,814/- relying on the*

decision of this Court in the case of CIT v/s. Institute of Banking Personnel Services reported at 264 ITR 110 (Bom) ignoring the ratio of Supreme Court judgments in the case of Escorts Ltd. v/s. Union of India (199 ITR 43) wherein Supreme Court has held that double deduction cannot be presumed if the same is not specifically provided by law, in addition to normal deduction?

(ii) 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 permitting allowance of such claim?"

3. Regarding question no.(i):-

(a) Mr. Kotangale, the learned counsel appearing for the Revenue very fairly states that the issue arising herein stands concluded against the Revenue and in favour of the respondent-assessee. This by the decision of this Court in ***Director of Income Tax (Exemption) Mumbai v/s. M/s. G.D. Birla Medical Research and Educational Foundation*** (Income Tax Appeal No.2294 of 2013) decided on 1st February, 2016.

(b) In view of the above submission, the question no.(i) as proposed does not give rise to any substantial question of law. Thus not entertained.

4. <u>Regarding question no.(ii):-</u>

(a) Mr. Kotangale, the learned counsel for the Revenue very fairly states that the issue arise herein stands concluded by the decision of this Court in ***CIT v/s. Institute of Banking 264 ITR 110*** and the order of this Court in ***Director of Income Tax (Exemption) v/s. M/s. Gem & Jewellery Exports Promotion Council*** (Income Tax Appeal No.610 of 2011) decided on 15th February, 2011.

(b) In view of the above submission, question no.(ii) as proposed also does not give rise to any substantial question of law. Thus not entertained.

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

(A. K. MENON, J.) **(M. S. SANKLECHA, J.)**

Wadhwa