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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.1589 OF 2014

Director of Income Tax (Exemption) ..Appellant
Versus
Sir Ratan Tata Trust ..Respondent

....

Mr. Suresh Kumar for the Appellant.
Mr. Anil R. Wani a/w Ms. Supriya S. Devergudi i/b. ANS Law Associates for the Respondent.

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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 20th March, 2014 passed by the Income Tax Appellate Tribunal (the Tribunal). The impugned order relates to Assessment Years 2008-09.

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)) that*

depreciation is allowable on the assets of the trust inspite of cost of which has been fully allowed as application of income in current or past years by relying upon the decision of this Court in the case of CIT v/s. Institute of Banking (264 ITR 110) and ignoring the ratio of the Supreme Court in the case of Escorts Ltd. v/s. Union of India (199 ITR 43) wherein Supreme Court has held that double deduction cannot be a matter of inference, it must be provided for in clear and express language regarding bring had to its unusual nature and its serious impact on the revenues of the State?

(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) The impugned order of the Tribunal dismissed the Revenue's appeal before it by following the decision 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 as well as the decision of its Co-ordinate Bench in ***Dy. Director of Income Tax (Exemptions) v/s. Aditya Birla Foundation*** (Income Tax Appeal No.5922/Mum/2012) decided on 27th February, 2014.

(b) Mr. Suresh Kumar, the learned counsel appearing for the Revenue very fairly states that so far question no.(i) is concerned, it has been concluded against the Revenue by the decision of this Court in the order passed today in Income Tax Appeal No.1497 of 2014 in the case of ***DIT (Exemptions) Mumbai v/s. M/s. Aditya Birla Foundation.*** This is particularly so as the impugned order of the Tribunal has placed reliance upon the decision of its Co-ordinate bench in M/s. Aditya Birla Foundation (supra).

(c) In view of the above submission, 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) So far as question no.(ii) is concerned, we find that the impugned order of the Tribunal has followed the decision of this Court in M/s. Gem & Jewellery Exports Promotion Council (supra). No distinguishing features have been shown to us which would warrant taking a different view from that taking by this Court in Gem & Jewellery Exports Promotion Council (supra).

(b) In the above view, the question no.(ii) as proposed does not give rise to any substantial question of law as it stands concluded by the decision of this Court in M/s. Gem & Jewellery Exports Promotion Council (supra) as well as ***CIT v/s. Institute of Banking Personnel Services reported at 264 ITR 110 (Bom)*** and the order passed today in Income Tax Appeal No.1497 of 2014 (M/s. Aditya Birla Foundation (supra)).

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

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

Wadhwa