IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.1824 OF 2014

The Commissioner of Income Tax-10 .... Appellant
Mumbai.

Vs.

Music Broadcast Pvt. Ltd. .... Respondent

Mr. Arvind Pinto, Advocate for the Appellant.
Mr. Manish Malik, Advocate for the Respondent.

CORAM : S.V. GANGAPURWALA AND G.S. KULKARNI, JJ.

DATE : 15 JUNE, 2017

PER COURT :

The Revenue assailed the order of the Tribunal upholding the order of the Commissioner.

2 The appeal relates to the Assessment Year 2005-2006.

3 The learned counsel for the appellant submits that the appeal involves following substantial questions of law :

"6.1 Whether in law, and on facts, the Tribunal was right in coming to the conclusion that the amount claimed by the Respondent company as deductible u/s 35D was permissible; whereas Section 35D permits the claim of 1/5 of the amortized expenditure and no such claim was made in the earlier years as borne from the records?

6.2 Whether in law, and on facts, the Tribunal was right in allowing the deduction when the full facts were not brought before it either by the Revenue or by the Respondent Company?

6.3 Whether in law and on facts, was the Tribunal justified in calling upon the Revenue to prove that this deduction was not claimed in the earlier years, when the burden of proof for the claim of a deduction is on the one who makes the claim ?

4 According to the learned counsel, Section 35D could not have been allowed to the Assessee. The Assessing Officer has rightly come to the conclusion. The Assessee is only entitled for 1/5 amortized amount. The Assessing Officer has rightly considered the said aspect. According to the learned counsel, the provisions of

Section 35-D had been misread by the Tribunal and the Commissioner.

5 The learned counsel for the Assessee submits that for the preceding Assessment Year, the same figure has been accepted by the Revenue. The said order has become final. Even on the basis of principle of consistency, the said order cannot be interfered with.

6 We have considered the submissions.

7 The Apex Court in the case of C.C.E., Navi Mumbai Vs. Amar Bitumen & Allied Products Pvt. Ltd., reported in 2006 (202) E.L.T. 213 (S.C.) has held that the principles of consistency has to be followed. According to the Assessee, in the last assessment year, the same amount was claimed as deduction under Section 35D of the Act and allowed by the Revenue.

8 The Revenue has not assailed the said order. In view of the above, the order with regard to previous assessment year has become final. The same principle will have to be adopted. More particularly, when the same amount was claimed as deduction under Section 35D of the Act for the earlier year also. The Appeal as such is dismissed. No costs.

(G.S. KULKARNI, J.) **(S.V. GANGAPURWALA, J.)**