IN THE HIGH COURT OF BOMBAY AT GOA

TAX APPEAL NO.39 OF 2018

Hindustan Foods Ltd.
Thr. Aut.Sign,Bhagwant Gaonkar … Petitioner.

Versus

The Assistant Commissioner of
Income Tax Circle (1), Panaji and Anr. …. Respondents

Mr. S.R.Rivankar with Mr. Sagar Rivankar, Advocates for the Petitioner.

Ms.Susan Linhares, Standing Counsel for the Respondents.

Coram : N.M. Jamdar &
Prithviraj K. Chavan, JJ.

Date : 2 July 2018.

P.C.:

By this appeal, the Appellant has challenged the order passed by the Income Tax Appellate Tribunal, Panaji dated 16 June 2017.

2. The Appellant had filed his return of income for the assessment year 2008-09 on 24 September 2008 declaring a loss of Rs.63,50,518/-. The return was processed and one of the issues that arose was regarding laying of cables as to whether the expenses incurred for the said was Capital in nature or Revenue Expenditure.

The Assessing Officer passed an order on 12 November 2010. Thereafter the Appellant filed an appeal before the Commissioner of Income Tax (Appeals), which was dismissed by the Commissioner on 25 October 2016. Thereafter the Appellant filed the Appeal bearing No.ITA 25/PANAJI/2016 before the Income Tax Appellate Tribunal, Panaji. The Tribunal noting the fact that the issue regarding depreciation and whether the amounts in question were the Revenue or the Capital Expenditure was conceded before the Assessing Officer by the representative of the Appellant, dismissed the appeal as issue has been given up.

2. The learned counsel for the Appellant submits that there was an duty on the part of the Assessing Officer, to determine the question irrespective of the concession of the representative of the assessee and in case of cement pipes, the law declared by the Apex Court would show that the amounts are admissible as depreciation.

3. The question whether the expenses were Capital in nature or Revenue in nature would depend on the nature of the business and the nature of the activity on which the amount was spent. This cannot be considered as a pure question of law, but is based on the factual position also. Thus, if such a question which is essentially a factual question, is conceded by the assessee before the Assessment Officer, the learned Appellate Tribunal was not in error in

refusing to consider the issue in view of the concession given by the assessee. We do not find that this approach taken by the Tribunal is illegal or beyond jurisdiction. No substantial question of law arises. The appeal is accordingly dismissed.

Prithviraj K. Chavan, J. ***N.M. Jamdar, J.***