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

INCOME TAX APPEAL NO.844 OF 2016

Commissioner of Income Tax (Exemption)
Mumbai .. Appellant

v/s.

M/s. Consmopolitan Education Society .. Respondent

Mr. N.C. Mohanty a/w Ms. Padma Divakar for the appellant
None for the respondent

CORAM : AKIL KURESHI &
M.S. SANKLECHA, J.J.

DATED : 11th DECEMBER, 2018.

P.C.

1. Appeal is filed by the Revenue challenging the judgment of the Income Tax Appellate Tribunal dated 23.09.2015.

2. Following question was presented for our consideration :-

"Whether on the facts and circumstances of the case and in law, the Tribunal was right in allowing the appeal fo the assessee on account of disallowing depreciation on fixed assets for A.Y. 2010-11 of Rs.1,14,71,022/-?"

3. It is not necessary to record facts in details since the issue is squarely covered by the judgment of the Supreme Court in case of ***Commissioner of Income Tax Vs. Rajasthan and Gujarati Charitable***

Foundation (2018) 402 ITR 441. However, in brief, we may note that the Revenue's objection is to the respondent - assessee Trust claiming depreciation on the Trust property. The Revenue would contend that this would amount to double deduction. This issue came up for consideration before the Supreme Court in the case of *Commissioner of Income Tax Vs. Rajasthan and Gujarati Charitable Foundation* (supra). The Supreme Court while dismissing the Revenue's appeal and upholding the decision of this Court in case of ***CIT Vs. Institute of Banking (2003) 131 Taxman 386,*** held and observed as under :-

> *"After hearing the learned counsel for the parties, we are of the opinion that the aforesaid view taken by the Bombay High Court correctly states the principles of law and there is no need to interfere with the same.*
>
> *It may be mentioned that most of the High Courts have taken the aforesaid view with only exception thereto by the High Court of Kerala which has taken a contrary view in Lissie Medical Institutions V. CIT."*

4. In the result, Tax Appeal is dismissed.

(M.S. SANKLECHA, J.) **(AKIL KURESHI, J.)**