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

INCOME TAX APPEAL NO. 773 OF 2015

Commissioner of Income Tax (Exemptions) … Appellant
Versus
Maharashtra Industrial Development Corporation …Respondent

Mr. N.C. Mohanty, for the Appellant.
Mr. Ruturaj Gurjar, i/b Mihir Naniwadekar, for the Respondent.

CORAM: M.S.SANKLECHA, &
MR. RIYAZ I. CHAGLA, JJ.
DATED: 11TH JANUARY 2018.

PC:-

1. This Appeal under Section 260 A of the Income Tax Act, 1961 (Act) challenges the order dated 6th January 2015 passed by the Income Tax Appellate Tribunal (Tribunal). This Appeal relates to Assessment Year 2006-07. The impugned order dated 6th January 2015 dismissing the Revenue's Appeal before it from the order dated 7th August 2012.

2. The Revenue urges the following questions of law for our consideration :-

> *(a) "Whether on the facts and circumstances of the case and in law, the Tribunal was right in upholding the order of the CIT(A) whereby the CIT(A) allowed the claim of depreciation of Rs.8,40,20,907/- relying on the decision of this Court in the case of CIT V. Institute of Banking Personnel Services reported at*

264 ITR 110 (Bom.)"?

(c) "Whether on the facts and in the circumstances of the case 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 I T Act, 1961 permitting allowance of such claim"?

3. **Question (a)**:-

(a) It is an agreed position between the parties that the issue raised herein is concluded against the Revenue by the decision of this Court in ***Institute of Banking Personnel Services***[1] and ***Director of Income Tax, Exemptions Vs. Mumbai Educational Trust***[2]**.**

(b) Mr. Mohanty, the learned counsel for the Revenue very fairly invites our attention to the decision of the Apex Court in ***CIT Vs. Rajasthan and Gujarati Charitable Foundation Poona***, (Civil Appeal No. 7186 of 2014) rendered on 13th December 2017. In the above case, the Supreme Court records the fact that the decisions of High Courts (including this) which were in challenge before it had followed the decision of this Court in ***Institute of Banking (Supra)*** on the above issue. The Apex Court records that the view taken by the Bombay High Court in ***Institute of Banking (Supra)*** is correct and the Revenue's Appeals before it calls for no interference.

(c) Accordingly, the question (a) as raised by the Revenue does not give rise to any substantial question of law.

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1 264 ITR 110.

2 (2017) 244 Taxman 163 (Bombay).

Thus not entertained.

4. **Question (c)**:-

(a) We find that the impugned order of the Tribunal has dismissed the Revenue's Appeal by following the decision of this Court rendered in respect of the same Respondent assessee for the AY 2005-06.

(b) It is an agreed position between the parties that the Revenue's Appeal for the earlier AY i.e. 2005-06 to this Court being 2652 of 2011, The Director of Income Tax (Exemptions) V. Maharashtra Industrial Development Corporation (MIDC) was dismissed on 20th March 2013 by following the decision of this Court in ***CIT Vs. Institute of Banking Personnel Selection, 264 ITR 110***.

(c) In view of the above, this question also does not give rise to any substantial questions of law. Thus not entertained.

5. Therefore, the Appeal is dismissed. No order as to costs.

(RIYAZ I. CHAGLA J.) **(M.S.SANKLECHA, J.)**