IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 1319 OF 2007

M/s. Eurotex Industries and Exports Ltd. ....Appellant

V/s.

1. Commissioner of Income-tax-III and anr. ....Respondents

* * * * *

Mr. Pankaj Toprani, Advocate for the appellant.

Mr. Sham Walve, Advocate for the respondent.

CORAM :- M.S. SANKLECHA, &
SANDEEP K. SHINDE, JJ.

DATE :- 19TH JULY, 2018.

P.C. :-

1. This Appeal under Section 260A of the Income-tax Act, 1961 (the Act) challenges the order dated 10th July, 2006 passed by the Income-tax Appellate Tribunal (the tribunal).

2. This Appeal relates to 1998-99. On 14th July, 2008 this Appeal was admitted on the following substantial questions of law :

> *"i) Whether the Income Tax Appellate Tribunal was justified in applying the decision of the Ahmedabad Tribunal ; (Special) Bench) 95 ITD 165 holding that while claiming deductions under Section Chapter VIA viz Section 80-HH, 801A, 801B etc. depreciation has to be allowed whether it is claimed by the Assessee or not to the facts of the appellants case which were concerned only with regard to not availing of claim of depreciation while computing business income and while computing deduction under Section 80HHC ?*
>
> *ii) Whether the Income Tax Appellate Tribunal erred in overlooking the decision of the Supreme Court in the case of Commissioner of Income Tax v. Mahindra Mills (243 ITR 56) holding that depreciation can be allowed to the Assessee only if it is claimed by the Assessee ?*

> *iii) Whether the Income Tax Appellate Tribunal erred in not appreciating the fact that deletion of sub-sections (1) and (2) of section 34 w.e.f. 1.4.1988 will not alter the legal position as claim of allowance of depreciation relief to the Assessee still remains ?*

3. Mr. Toprani, Learned Counsel appearing for the respondent-assessee very fairly states that the issues raised in the three questions stand concluded against the appellant-Assesseee and in favour of the respondent-Revenue in view of the Apex Court decision in **Plastiblends India Limited vs. Additional Commissioner of Income-tax and anr., (2017) 398 ITR 568**. In the above view, the Appeal is dismissed.

(SANDEEP K. SHINDE, J) **(M.S. SANKLECHA, J)**