R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

INCOME TAX APPEAL (IT) NO. 456 OF 2016

Commissioner of Income Tax
(Exemptions) .. Appellant

Versus

M/s. Somaiya Vidyavihar .. Respondent

....

- Mr. Sham Walve i/by Mr. Suresh Kumar for the Respondent

....

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

DATE : NOVEMBER 22, 2018.

P.C.:

1. This appeal under Section 260 A of the Income Tax Act, 1961 (Act), challenges the order dated 9.3.2015 passed by the Income Tax Appellate Tribunal, Mumbai ("**the Tribunal"** for short). This appeal relates to the Assessment Year 2008-09. Mr. Walve for the Revenue urges following two questions for our consideration.

> "(i) Whether on the facts and in the circumstances of the case and in law, the Hon'ble Tribunal was justified in allowing the Assessee's appeal on account of disallowing depreciation on fixed assets of Rs. 3,90,32,963/- in contravention of the decision in the

case of Escorts Ltd. Vs. UOI (199 ITR 43) wherein it was held that since section 11 of the I.T. Act provides for deduction of capital expenditure incurred on assets acquired for the objects of the trust as application and does not specifically & expressly provide for double deduction on account of depreciation on the same very assets acquired from such capital expenditure, no deduction shall be allowed u/s. 32 for the same or any other previous year in respect of that asset as it amounts to claiming a double deduction?

(ii) Whether on the facts and in the circumstances of the case and in law, the Hon'ble Tribunal was justified in allowing the carry forward of deficit and allowing set off against the income of the subsequent years, allowing the deficit will tantamount to double deduction on account of expenditure out of exempt income?

2. Mr. Walve, the learned counsel for the Revenue fairly states that Question NO. 1 stands concluded against the Revenue and in favour of the respondent - assessee by the decision of the Apex Court in the case of **Commissioner of Income Tax-III, Pune Vs. Rajasthan & Gujarati Charitable Foundation Poona** reported in **[2018] 89 taxmann.com 127 (SC)**, while Question No. 2 stands concluded by the decision of this Court in the case of **CIT Vs/. Institute of Banking Personnel Selection (IBPS)** reported in **(2003) 131 Taxman 386 (Bom.)**.

3. In view of above, both the questions do not give rise to any substantial question of law, hence, not entertained. The Income Tax Appeal is dismissed.

[M.S. SANKLECHA, J.] **[AKIL KURESHI, J]**