R.M. AMBERKAR
(Private Secretary)

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

INCOME TAX APPEAL NO. 1288 OF 2017

Pr. Commissioner of Income Tax (Central),
Pune .. Appellant

Versus

Rasiklal M. Dhariwal (HUF) .. Respondent

....

- Mr. Shyam Walve for the Appellant
- Mr. Nitesh Joshi i/by Mr. Atul Jasani for the Respondent

....

CORAM : AKIL KURESHI &
S.J. KATHAWALLA, JJ.

DATE : JUNE 3, 2019.

P.C.:

1. The appeal is filed by the Revenue to challenge the judgment of the Income Tax Appellate Tribunal, Pune Bench ("the Tribunal" for short) dated 28.10.2016. Following question is presented for our consideration:-

> "Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in allowing the claim of additional depreciation on windmills of the assessee for assessment year 2010-11, when the Financial Bill 2012 envisaged allowance of initial depreciation w.e.f. 2013-14 and subsequent years?"

2. Learned counsel for the parties pointed out that the identical issue came up for consideration before this Court in Income Tax Appeal No. 275 of 2017 filed by the Revenue against the group concern of the present assessee. The Court while dismissing the Revenue's appeal, against the judgment of the Tribunal which has been relied upon in the present case, had made following observations:-

> "3. The second question pertains to the assessee's claim of additional depreciation of installation of windmill in terms of Section 32(1)(iia) of the Act. The assessee raised two contentions. One that the assessee being engaged in manufacture of articles and things, such additional depreciation would be admissible, whether the installation of plant and machinery was in connection with such business or not. Secondly, according to the Revenue, generation of electricity amounts to production of goods.
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> 4. Learned counsel for the assessee correctly pointed out that the Supreme Court in the case of **Commissioner of Sales Tax, Madhya Pradesh, Indore Vs. Madhya Pradesh Electricity Board, Jabalpur**[1] has held that electricity is goods within the meaning of the Sales Tax Act and the Excise Act. We do not find any reason to interfere with the view of the Tribunal. We make it clear that we have not examined the first contention of the assessee in this respect namely additional depreciation under Section 32(1)(iia) would be available on installation of new plant and machinery, whether the same is for the purpose of assessee's manufacturing business as long

1 AIR 1970 SC 732

as the assessee is engaged in such activity."

3. In the result, this appeal is dismissed.

[S.J. KATHAWALLA, J.] **[AKIL KURESHI, J]**