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

INCOME TAX APPEAL NO. 1613 OF 2016

The Pr. Commissioner of Income Tax-1 .. Appellant
v/s.
Mahalaxmi Infra Projects Ltd. .. Respondent

Mr. N.N. Singh for the appellant
Mr. Mihir Naniwadekar I/b Alisha Pinto for the respondent

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

DATED : 30th JANUARY, 2019

P.C.

1. The Revenue has filed this appeal to challenge the judgment of the Income Tax Appellate Tribunal ("the Tribunal" for short) raising following substantial questions for our consideration :-

(i) Whether on the facts and in the circumstances of the case and in law, the Tribunal erred in allowing depreciation @80% on civil construction, electrical and other non-integral installations ?

(ii) Whether on the facts and in the circumstances of the case and in law, the Tribunal erred in allowing depreciation @80% on civil work on which depreciation was allowable @ 10% and since civil works are not specially designed devices, the same are

not entitle for higher rate of depreciation?

(iii) Whether on the facts and in the circumstances of the case and in law, the Tribunal erred in allowing higher rate of depreciation on electrical and other installations without appreciating the fact that electrical items are not part of electricity generating apparatus but are part of electricity selling apparatus and these constitute the block 'Plant and Machinery' on which depreciation is allowable @15% ?

(iv) Whether on the facts and in the circumstances of the case and in law, the Tribunal was right in deleting the additions made by the AO on account of undervaluation of WIP for income earned by way of security deposit against material cost u/s 153A?

2. In so far as question nos. (i), (ii) and (iii) are concerned, it relate to the Revenue's objection to the assessee claiming higher rate of depreciation on the civil construction, electric and other installations by the assessee in the process of erecting and installing windmill. The Revenue argues that the expenditure in such activities cannot be seen as a part of installation of windmill and, therefore, the depreciation prescribed for the same would not be available to the assessee. We notice that the similar question had come up for consideration before this Court in Income Tax Appeal No.1326 of 2010, wherein the appeal

was dismissed by order dated 14th June, 2017 making following observations:-

> *"2. The Tribunal has recorded finding of fact that windmill was erected in the desert area of Rajasthan which required special foundation of reinforced cement concrete and that the said reinforced cement concrete formed integral part of the windmill. The Tribunal has also followed the decision of this Court in the case of Commissioner of Income Tax Vs. Herdilla Chemicals Ltd. reported in (1995) 216 I.T.R. 742 (Bom) in allowing the claim of the assessee. In our opinion, the finding recorded by the Tribunal that RCC foundation forms integral part of the windmill is a finding of fact and no question of law arises from the same. Hence the appeal is dismissed with no order as to costs."*

3. In the result, these additional questions are not entertained.

4. In so far as question no.(iv) is concerned, it relates to the additions made by the Assessing Office while passing order under Section 153A of the Income Tax Act, 1961. The Tribunal by the impugned judgment held that there was no incriminating material found during the search in relation to the additions and the Tribunal, therefore, correctly deleted such additions. In the result, this

additional question is not entertained.

5. The Income Tax appeal is dismissed.

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