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

INCOME TAX APPEAL NO. 1615 OF 2016

Pr CIT-2 Kolhapur ...Appellant
vs
M/s RDS Construction Co. ...Respondent.

.....

Mr N.N.Singh for the Appellant.

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CORAM : AKIL KURESHI &
B.P.COLABAWALLA, JJ.
FEBRUARY 13, 2019.

P.C. :

This appeal is filed by the Revenue challenging the Judgment of the Income Tax Appellate Tribunal. The following questions are presented for our consideration

"(A)Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT erred in allowing depreciation @ 80 % on civil construction, electrical and other non-integral installations?

(B) Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT 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?

(C) Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT 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 %?

(D) Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in upholding the decision of CIT(A) for deleting the addition at Rs.1,47,35,000/- which was made on addition basis"

2 Insofar as question Nos.(a)(b)(c) are concerned, the same came up for consideration in Income Tax Appeal Nos. 60 of 2015 which concerns the same assessee. By a separate order passed today, the same was disposed of making the following observations.

"This appeal is filed by the Revenue challenging the Judgment of the Income Tax Appellate Tribunal. The following questions are presented for our consideration

"(A) Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT erred in allowing depreciation @ 80 % on civil construction, electrical and other non-integral installations?

(B) Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT 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?

(C) Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT 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 %?"

2 Learned counsel for the Revenue brought to our notice an order dated 30st January, 2019 in Income Tax Appeal No.1769 of 2016 in which all these question as produced above, came up for consideration. While disposing of the Revenue's appeals, following observations were made

"7. Question Nos. (ii), (iii) and (iv) 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. recorded 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"*
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> *8.* In the result, these additional questions are not entertained."
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> **3** In the result this Income Tax Appeal is dismissed. No order as to costs."

3 Question No.(d) relates to deletion of sum of Rs.1.47 crores (rounded off) by the CIT(A) and the Tribunal. Perusal of the impugned judgment of the Tribunal would show that the entire issue is based on an appreciation of material on record. The Tribunal noted that the amount was already taxed in the hands of the sister concern M/s Mahalaxmi Infra Projects Ltd., and therefore, the same could not be taxed in the hands of the assessee again. No question of law arises. In the result Income Tax Appeal is dismissed. No order as to costs.

(B.P.COLABAWALLA, J.) **(AKIL KURESHI, J.)**