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

INCOME TAX APPEAL NO.1159 OF 2016

Pr.Commissioner of Income-Tax-6 … Appellant

V/s.

Birla Sunlife Insurance Company … Respondent

Mr.Suresh Kumar for the Appellant.
Mr.Madhur Agrawal with Mr.Atul Jasani for the Respondent.

CORAM : AKIL KURESHI AND
M.S.SANKLECHA, JJ.
DATE : JANUARY 16, 2019.

P.C.:-

1. Revenue has filed this appeal against the judgment of the Income Tax Appellate Tribunal dated 14th May, 2015 raising following questions for our consideration:

> "I. Whether on the facts and in the circumstances of the case and in law the Tribunal has not considered the fact that the Assessing Officer has not made any mistake in rejecting the rectification application in view of decision in the case of M/s Goetze India Ltd. Vs. CIT (2006) 284 ITR 323 (SC)?
> II. Whether on the facts and in the circumstances of the case and in law the Tribunal erred in allowing inclusion of loss, arising from fund under the

pension scheme in the “assessed loss” from remaining sources, ignoring the settled position of law that income includes loss and that the income from fund under the pension scheme does not form part of the total income of the assessee u/s 10(23AAB) of the Income Tax Act, 1961?”

III. Whether on the facts and in the circumstances of the case and in law the Tribunal erred in ignoring the fact that the no obstante clause in section 44 is not extended to section 10(23AAB) of the Income Tax Act, 1961?”

3. Brief facts are as under:-

The respondent-assessee had filed a return of income for the assessment year 2009-10, which was assessed by the Assessing Officer. Subsequently, the assessee filed an application for rectification contending that a particular claim was accepted by the decision of the High Court. The Assessing Officer and CIT (Appeals) did not grant the relief upon which the assessee carried the matter in appeal before the Tribunal. The Tribunal referred to various decisions and came to the conclusion that even the subsequent decision of the jurisdictional High Court would give rise to exercise of powers for rectification. In so far as the assessee's claim itself is concerned, counsel for the revenue fairly pointed out that the same has been decided by the judgment of the division bench of this Court in case of **Commissioner of Income Tax Vs. Life Insurance Corporation of India Ltd.**[1]. In view of such facts, we do not find any error in view of the Tribunal. No question of law arises. Tax appeal is dismissed.

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

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1 (2011) 338 ITR 212 (Bom)