R.M. AMBERKAR
(Private Secretary)

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

INCOME TAX APPEAL NO. 1967 OF 2017

Pr. Commissioner of Income Tax - Exemption .. Appellant

Versus

M/s. Dawat-E-Hadiyah .. Respondent

....

- Mr. Suresh Kumar for the Appellant

....

CORAM : UJJAL BHUYAN &
MILIND N. JADHAV, JJ.

DATE : JANUARY 23, 2020.

P.C.:

1. Heard Mr. Suresh Kumar, learned standing counsel, revenue for the appellant .

2. This appeal under Section 260A of the Income Tax Act, 1961 (**"the Act"** for short) is directed against the order dated 22.7.2016 passed by the Income Tax Appellate Tribunal, Mumbai Bench "J", Mumbai (**"Tribunal"** for short) in Income Tax Appeal No. 4333/M/2015 for the assessment year 2009-10.

3. Following two questions have been proposed as substantial questions of law:-

(i) Whether on the facts and in the circumstances of the case and in law, the Tribunal was erred in allowing the assessee's appeal on account of disallowing depreciation in contravention of the decision in the case of Escorts Ltd. V/s UOI (199 ITR 43) wherein it was held that since Section 11 of the 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 assets as it amounts to claiming a double deduction?

(ii) Whether on the facts and in the circumstances of the case and in law, the 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?"

4. Mr. Suresh Kumar very fairly submits that in so far question No. (i) is concerned, the same has been answered in favour of the assessee and against the revenue by this Court in **Commissioner of Income Tax Vs. Institute of Banking Personnel Selection (IBPS)[1].**. This finding has been affirmed by the Supreme Court in **Commissioner of**

1 [2003] 131 Taxman 386 (Bombay)

Income Tax-III, Pune Vs. Rajasthan & Gujarati Charitable Foundation Poona[2]**.**

5. In so far question No. (ii) is concerned, the same is also concluded in favour of the assessee and against the revenue by the Supreme Court in **Commissioner of Income Tax (Exemption), New Delhi Vs. Subros Educational Society**[3]**.**

6. As a matter of fact, in appeals filed by the revenue against the present assessee for the assessment years 2010-11 and 2011-12 being Income Tax Appeal Nos. 741 and 755 of 2016, this Court had dismissed the two appeals vide order dated 3.12.2018.

7. Following the above, we hold that no substantial question of law arises from the impugned order of the Tribunal. Consequently, Appeal is dismissed but without any order as to cost.

[MILIND N. JADHAV, J.] **[UJJAL BHUYAN, J.]**

2 [2018] 89 taxmann.com 127 (SC)
3 [2018] 7 SCC 548