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

INCOME TAX APPEAL (IT) NO.1654 OF 2017

Commissioner of Income Tax
-(Exemption), Mumbai. ... Appellant
V/s.
Matunga Gymkhana ... Respondent

Mr.Pritish Chatterjee i/by Mr.Sham Walve, Advocate for the Appellant.
Mr.Nitesh Joshi with Mr.A.K.Jasani, Advocate for the Respondent.

CORAM : UJJAL BHUYAN &
MILIND N. JADHAV, JJ.
DATE : MARCH 2, 2020

P.C.:-

1. Heard Mr.Pritish Chatterjee, learned counsel instructed by Mr.Sham Walve, learned standing counsel, Revenue for the appellant; and Mr.Nitesh Joshi, learned counsel for the respondent-assessee.

2. This appeal has been preferred by the Revenue under Section 260A of the Income Tax Act, 1961 (briefly "the Act" hereinafter) assailing the order dated 30th November, 2016 passed by the Income Tax Appellate Tribunal, Mumbai Bench "B", Mumbai (briefly "the Tribunal" hereinafter) in Income Tax Appeal No.4768/Mum/2013 for the assessment year 2006-07.

3. The appeal has been preferred proposing the following questions as substantial questions of law:-

> "(a) Whether on the facts and in the circumstances of the case and in law, the Tribunal was right in deleting the orders of A.O. without acknowledging the fact that once the trust loses its character being hit by the proviso to section 2(15) of the Act, the only blanket available to it, was principle of mutuality. Further the Tribunal also failed to appreciate the fact that interest income earned from non-members could neither be exempted from tax under Section 11 of the Act, as it had lost its charitable character being hit by proviso to section 2(15) nor could be exempted under the principle of mutuality as the interest income was earned from non-members?
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> (b) Whether on the facts and in the circumstances of the case and in law, the Tribunal erred in not appreciating the fact that in the case of Escorts Ltd. Vs. UOI 199 ITR 43 it was held that since section 11 of the Income Tax Act provides for deduction capital expenditure incurred on assets acquired for the objects of the trust as application and does not specifically and expressly provide for double deduction on account of depreciation on the same very assets acquired from such capital expenditure, no deduction shall be allowed under Section 32 for the same or any other previous year in respect of that asset as it amounts to claiming a double deduction?
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> (c) Whether on the facts and in the circumstances of the case and in law, the Tribunal erred in relying upon the judgment of Hon'ble High Court in the case of CIT Vs. Institute of Banking Personnel Selection without appreciating the fact that Department has not accepted the decision on merit, but due to smallness of tax effect appeal was not filed before Hon'ble Supreme Court. Moreover, department has filed SLP on the issue of depreciation in the case of G.D.Birla Medical

Research & Educational Foundation in which leave granted by the Hon'ble Apex Court-S.L.P. (C)No.24904 of 2016 (C.A.No.8294 of 2016) and pending for adjudication?

(d) Whether on the facts and in the circumstances of the case and in law, the Tribunal erred in relying upon the judgment of Hon'ble Bombay High Court in the case of Institute of Banking Personnel Selection, ignoring the fact that the Department has not accepted the said decision of the jurisdictional High court on merit of the case, but due to smallness of tax effect appeal was not filed before Hon'ble Supreme Court. However, on the issue the department has filed SLP before the Apex Court in the case of MIDC (SLP (Civil) 9891 of 2014) in which leave granted by the Hon'ble Apex court after considering the fact that the SLP on this issue in the case of The Gem & Jewellery Export Promotion Council dismissed by the Apex Court without discussion?

(e) Whether on the facts and in the circumstances of the case and in law, the Tribunal erred in holding that reopening by AO under Section 147 of the Act was bad in law as it was made on covered issues and no fresh material was there for reopening, without appreciating the facts that the assessee had claimed excessive allowance or relief 1 double deduction in its return of income?

(f) Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in relying upon the decision of Tribunal in ITA No.7375/Mum/2011 dated 30.10.2015 and holding that reopening of the assessment by AO u/s. 147 of the Act was made on covered issues and no fresh material was there for reopening?

(g) Whether on the facts and in the circumstances of the case and in law, the Tribunal erred in holding that reopening u/s 147 of the Income Tax Act, 1961 was made on covered issues and no fresh material was there for reopening, without appreciating the facts that the assessee had claimed excessive allowance or

> relief and double deduction on account of depreciation in its return of income and no assessment u/s 143 (3) was carried out in the case of the assessee for the A.Y. 2006-07?"

4. Mr.Joshi, learned counsel for the respondent/assessee submits that order of the Tribunal dated 30th November, 2016 is a common order disposing of four appeals in the case of the same respondent/assessee for four different assessment years. In respect of assessment year 2009-10 the appeal preferred by the Revenue before this court being Income Tax Appeal No.1764 of 2017 was dismissed by the order dated 22nd January, 2020. Question Nos.(a) to (d) are covered by the said judgment. He submits that questions Nos.(e), (f) and (g) relate to reopening of assessment. If question Nos.(a) to (d) are decided on merit, question Nos.(e),(f) and (g) becomes academic.

5. Mr.Chatterji, learned counsel submits that in Income Tax Appeal No.1764 of 2017 (CIT Vs. Matunga Gymkhana) decided on 22nd January, 2020 question Nos.(a) to (d) have been dealt with and answered by this court.

6. We have perused the order dated 22nd January, 2020 and we are of the view that questions Nos.(a) to (d) are squarely covered by the decision of this court dated 22nd January, 2020. Therefore, question Nos.(a) to (d) are decided against the Revenue and in favour of the assessee.

7. Following the above decision, question Nos.(e), (f) and (g) are rendered redundant and no adjudication is called for.

8. Consequently, the appeal at the instance of the Revenue fails and accordingly, the appeal is dismissed. No cost.

(MILIND N. JADHAV, J.) **(UJJAL BHUYAN, J.)**

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