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

INCOME TAX APPEAL NO. 88 OF 2018

CIT (Exemptions), Mumbai … Appellant.

V/s.

M. L. Charitable Trust … Respondent.

Mr. N. C. Mohanty, Advocate for the Appellant.
Mr. A. J. Patil, Advocate for the Respondent.

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

DATE : FEBRUARY 05, 2020.

PC :

1 Heard Mr. Mohanty, learned standing counsel Revenue for the Appellant and Mr. A. J. Patil, learned counsel for the Respondent.

2 This Appeal has been preferred by the Revenue under section 260A of the Income Tax Act, 1961 against the order dated 01.02.2017 passed by the Income Tax Appellate Tribunal, Mumbai Bench "SMC", Mumbai in Income Tax Appeal No. 5392/Mum/2016 for the assessment year 2011-12.

3 The Appeal has been filed on the following substantial questions of law :

i. Whether on the facts and in the circumstances of the case and in law, the ITAT was right in upholding the order of the CIT(A) whereby the CIT(A) allowed the claim of depreciation of Rs. 1,74,16,069/- relying on the decision of the Hon'ble Bombay High Court in the case of CIT vs. Institute of Banking Personnel Selection reported at 264 ITR 110 (Bom) ignoring the ratio of Hon'ble Supreme Court judgment in the case of Escorts Ltd., vs. Union of India (199 ITR 43) wherein Hon'ble Supreme Court has held that double deduction cannot be presumed if the same is not specifically provided by law, in addition to normal deduction ?

ii. Whether on the facts and in the circumstances of the case and in law, the ITAT was right in upholding the order of the CIT(A) when the Hon'ble Delhi High Court in the case of Charanjiv Charitable Trust and Hon'ble Kerala High Coiurt in the case of Lissie Medical Institutions vs. CIT 76 DTR (Ker) 372 have decided the issue in favour of the Revenue after considering the decision of Hon’ble Supreme Court in the case of Escorts Ltd. vs. Union of India (199 ITR 43) ?

iii. Whether on the facts and in the circumstances of the case and in law, the ITAT was justified in upholding the decision of the CIT(A) to allow carry forward of deficit of Rs. 8,15,69,105/- and directing the Assessing Officer to allow carry forward of deficit on account of excess expenditure without appreciating the fact that this would have the effect of granting double benefit to the assessee, first as ‘accumulation’ of income u/s. 11(1)(a) or as corpus donation u/s.11(1)(d) in earlier years/ current year and then as ‘application’ of income u/s. 11(1)(a) in the subsequent years which was legally not permissible ?.

iv. Whether on the facts and in the circumstances of the case and in law, the ITAT erred in allowing the claim of the assessee for carry forward of the said deficit by relying upon the judgment of Hon’ble Bombay High Court in the case of Institute of Banking Personnel Selection, ignoring the fact that the Revenue has not accepted the said decision of the Hon’ble 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 this issue the Revenue has filed SLP before the Hon’ble Apex Court in the case of MIDC (SLP (Civil) 9891 of 2014) in which leave has been granted by the Hon’ble Apex Court and the case has not reached finality ?.

v. Whether on the facts and in the circumstances of the case and in law, the ITAT was right in allowing the claim of the assessee for carry forward of the said deficit, ignoring the fact that there was no express provision in the Income Tax Act, 1961 permitting allowance of such claim ?.

4 Mr. Mohanty, learned standing counsel Revenue, fairly submits that insofar question Nos. (i) and (ii) are concerned, the same have been decided by the Supreme Court in the case of **Commissioner of Income Tax vs. Rajasthan and Gujarati Charitable Foundation** [2018] 402 ITR 441 (SC).

5 Mr. Patil, learned counsel for Respondent also submits that in respect of the above two questions in the case of the Respondent itself for the assessment year 2010-11, this court vide order dated 05.03.2019 had dismissed the Revenue’s Appeal No. 1804 of 2016 by following the decision of the Supreme Court, as referred above.

6 Insofar question Nos. (iii), (iv) and (v) are concerned, it is submitted at the Bar that those would be covered by the decision of the Supreme Court in **Commissioner of Income Tax (Exemption) vs. Subros Educational Society** [2018] 303 CTR 0001 (SC), wherein the Supreme Court has decided the issue in favour of the Assessee and against the Revenue.

7 In the light of the above, this Appeal is dismissed; however, there shall be no order as to costs.

Shalikram P. Borey
Digitally signed by Shalikram P. Borey
Date: 2020.03.03 13:40:04 +0530

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

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