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

INCOME TAX APPEAL NO. 339 OF 2018

CIT (Exemptions), Mumbai … Appellant

V/s.

Mandke Foundation ... Respondent

Ms. Mamta Omle for the Appellant

Mr. Niraj Sheth a/w. Mr. Balasaheb Yewale i/b. Rajesh Shah & Co. for the Respondent

CORAM : NITIN JAMDAR & N.R. BORKAR, JJ.

DATE: 10 JUNE 2022

P.C. :-

Heard the learned Counsel for the parties.

2. The Appellant – Revenue has filed this Appeal under Section 260-A of the Income Tax Appeal, 1961 challenging the order passed by the Income Tax Appellate Tribunal dated 7 March 2017 dismissing the Appeal filed by the Revenue. The Assessment Year is 2010-11.

3. The learned Counsel for the Appellant states that two questions of law arise in this Appeal. They are as follows :-

> "(i) Whether on the facts and in the circumstances of the case and in law, the Income Tax Appellate Tribunal was right in upholding the order of the CIT(A) whereby the CIT(A) allowed the claim of depreciation of Rs.58,85,13,644/- relying on the decision of the Hon'ble Bombay High Court in the case of CIT vs. Institute of Banking Personnel Services reported at 264 ITR 110(Bom) ignoring the ratio of Hon'ble Supreme Court judgments 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 Income Tax Appellate Tribunal was justified in upholding the decision of the CIT(A) to allow carry forward of deficit of Rs.85,28,33,450/-, 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 under Section 11(1)(a) of the Income Tax Act, 1961 or as corpus donation under Section 11(1)(d) of the Income Tax Act, 1961 in earlier years/current year and then as 'application' of income u/s. 11(1)(a) of the Income Tax Act, 1961 in the subsequent years which was legally not permissible ?"

4. The learned Counsel for the Appellant has fairly brought to our notice that the Tribunal on both the questions held against

the Appellant – Revenue in the assessee's own case in the year 2009-10, whereby the Tribunal had disposed of the Revenue's Appeal No.3937 of 2015 by order dated 29 February 2016. The learned Counsel for the Appellant states that the Appellant – Revenue has challenged the order in respect of Assessment Year 2009-10 by Income Tax Appeal No. 211 of 2017 which was dismissed by order dated 15 April 2019 and both the issues thus are covered by that order.

5. The learned Counsel for the Respondent submits that the question of double deduction on facts itself does not arise as there is no such double deduction and even assuming there is double deduction, the same is covered by the decision rendered by this Court in the Income Tax Appeal No. 211 of 2017. It is not necessary for us to go into this issue since even assuming there is double deduction, the same stands covered by the decision rendered in the Income Tax Appeal No. 211 of 2017.

6. Since the Appeal does not involve any substantial question of law, the same is dismissed.

N.R. BORKAR, J. ***NITIN JAMDAR, J.***