IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
In Appeal under Section 260A of the Income Tax Act, 1961

INCOME TAX APPEAL NO.443 OF 2018

Principal Commissioner of Income Tax,
Central-4, Mumbai .. Appellant
Vs.
Padamshree Dr. D.Y. Patil University,
Nerul, Navi Mumbai. .. Respondent

Mr. Suresh Kumar for the Appellant.
None for the Respondent.

CORAM : DHIRAJ SINGH THAKUR &
VALMIKI SA MENEZES, J.J.

DATE : 22ND JULY, 2022.

P.C. :

1. This is an appeal under Section 260A of the Income Tax Act, 1961, challenging the order dated 4th May 2017 passed by the Income Tax Appellate Tribunal, Mumbai for the Assessment Year 2010-11. The following substantial questions of law have been proposed for our consideration.

(i) Whether on the facts and circumstances of the case and in law, the Hon'ble ITAT was right in upholding the order of the Ld. CIT(A), whereby the Ld.CIT(A) allowed the claim of depreciation of Rs.10,75,86,879/- 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

SNEHA ABHAY DIXIT Digitally signed by SNEHA ABHAY DIXIT Date: 2022.07.22 16:26:57 +0530

held that double deduction cannot be presumed if the same is not specifically provided by law ?

(ii) *Whether on the facts and in the circumstances of the case and in law, the Hon'ble Tribunal was justified in upholding the decision of the Ld.CIT(A) to allow carry forward of excess application of Rs.60,99,44,512/- and directing the Assessing Officer to allow carry forward of excess application 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 is legally not permissible?*

(iii) *Whether on the facts and in the circumstances of the case and in law, the Hon'ble Tribunal was right in allowing the claim of the assessee for carry forward of the excess application ignoring the fact that there was no provision in the IT Act, 1961 permitting allowance of such claim ?*

2. However, learned counsel for the appellant fairly states that all the three questions proposed here-in-above are covered by the Apex Court's judgment in the case of *Commissioner of Income Tax-III, Pune Vs. Rajasthan & Gujarati Charitable Foundation, Poona, (2018) 89 SCC 127*.

3. In that view of the matter, the Appeal is disposed of.

[VALMIKI SA MENEZES, J.] **[DHIRAJ SINGH THAKUR, J.]**