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

INCOME TAX APPEAL NO.286 OF 2014

The Director of Income
Tax-Exemption, Piramal Chamber,
Lalbaug, Mumbai .. Appellant.

Vs.

Society for Applied Microwave
Electronic Engineering & Research
IIT Campus Hill Side, Powai, Mumbai .. Respondent.

Mr. A.R. Malhotra with Mr. N.A. Kazi for the appellant.
Mr. Sameer Dalal for the respondent.

CORAM : M. S. SANKLECHA &
A.K. MENON , JJ.

DATED : 2ND AUGUST, 2016

P.C. :

1. This Appeal under Section 260-A of the Income Tax Act, 1961 (the Act) challenges the order dated 5th June, 2013 passed by the Income Tax Appellate Tribunal (the Tribunal). The impugned order is in respect of Assessment Year 2008-09.

2. This appeal raises the following questions of law for our consideration :-

“(a) Whether, on the facts and in the circumstances of the case and in law, the Tribunal was right in upholding the order of the Commissioner of Income Tax (Appeals) [CIT(A)] whereby the CIT(A) allowed the claim of depreciation of Rs.7,60,79,804/-, relying on the decision of this Court in the case of CIT Vs. Institute of Banking Personal Services 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 ?

(b) Whether, on the facts and in the circumstances of the case and in law, the Tribunal was justified in upholding the decision of the CIT(A) to allow carry forward of deficit on account of excess expenditure 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) or as corpus donation under Section 11(1(d) in earlier years/current year and then as 'application' of income under Section 11(1)(a) in the subsequent years which is legally not permissible ?”

3. It is agreed position between the parties that the issue raised herein stands concluded against the appellant - revenue and in favour of the respondent – assessee that by decision of this Court in *CIT Vs. Institute of Banking Personnel Services 264 ITR 110.* In fact the impugned order of the Tribunal placed reliance upon the aforesaid decision of this Court to dismiss the revenue's appeal before it. In the above view as the impugned order has followed the binding decision of this Court, no substantial question of law arises for our consideration.

4. Accordingly, appeal is dismissed. No order as to costs.

(A.K. MENON,J.) **(M. S. SANKLECHA,J.)**