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

INCOME TAX APPEAL NO. 1311 OF 2013

The Director of Income Tax (Exemptions) ... Appellant

Vs

M/s. Gem & Jewellery Export Promotion Council ... Respondent

Mr. A.R. Malhotra with Mr. N.A. Kazi for the Appellant.

Mr. Kunal Vajani with Mr. Kunal Vaishnav i/b M/s. Wadia Ghandy & Co. for the Respondent.

CORAM : S.C. DHARMADHIKARI &
A.K. MENON, JJ.

WEDNESDAY, 1ST APRIL, 2015

P.C. :

1. This appeal of the Revenue challenges the order passed by the Income Tax Appellate Tribunal, Bench at Mumbai, dated 19th December, 2012 for the assessment year 2008-09.

2. The allowability of depreciation in respect of capital expenditure incurred by the assessee-trust and for the purpose of

section 11 of the Income Tax Act, 1961, was the issue before the Tribunal. It held that the difference between application of income for acquiring an asset and the claim for depreciation which is in relation to the use or application of the asset for achieving the stated object or purpose has to borne in mind. If it is borne in mind, then, there is no question of double deduction as is apprehended in such matters by the Revenue.

3. In reaching this conclusion, the Tribunal has followed the view taken by this Court in the case of *Commissioner of Income Tax vs. Institute of Banking Personnel Selection, (2003) 264 ITR 110*.

4. The Revenue's appeal has been dismissed following a Division Bench judgment.

5. A Division Bench of this Court had occasion to consider similar questions (ITXA No.797 of 2012 decided on 26th September, 2014, Bench comprising of S.C. Dharmadhikari & A.K. Menon, JJ. and later order of 20th November, 2014 in ITXA No.1305 of 2012 and 22 of

2013, Bench comprising of S.C. Dharmadhikari & A.A. Sayed, JJ). The Division Benches of this Court have consistently held that the Revenue's understanding of double deduction is without legal basis. In such circumstances, the questions of law at pages 3 and 4 of the paper-book cannot be entertained as they are covered by the decisions of this Court.

6. The appeal is, therefore, dismissed. There will be no order as to costs.

A.K. MENON, J. ***S.C. DHARMADHIKARI , J.***