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

INCOME TAX APPEAL NO.1293 OF 2012

The Commissioner of Income Tax-2
Mumbai ..Appellant
-*Versus*-
M/s. IndusInd Bank Ltd. ..Respondent

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Mr. Vimal Gupta, Senior Counsel, with Ms. Padma Divakar i/b. Vipul Bajpayee for the Appellant.
Mr. Sanjiv Shah for the Respondent.

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

DATE :- 24th SEPTEMBER, 2014

P.C.:

1] We have heard Mr. Vimal Gupta, learned Senior Counsel, appearing for the Revenue in support of this Appeal. We have heard Mr. Shah, learned counsel, appearing for the Respondent.

2] With their assistance, we have gone through the concurrent findings on the point of deletion of penalty. In para 5.2 of the order of the Commissioner of Income Tax (Appeals), it has been held that there is disallowance of depreciation made by the Assessing Officer in the assessment order for the assessment year in question, namely, 2001-02.

That is with reference to the lease transactions entered by the Assessee during the assessment year 1995-96. The claim that these are genuine transactions and made by the Assessee was not accepted by the Revenue. However, the Assessee persisted and claimed depreciation in the assessment year in question as well. The Commissioner as also the Tribunal found that there is no concealment of particulars of income nor furnishing of inaccurate particulars of income for the assessment year.

3] The argument of Mr. Vimal Gupta is that when such was the stand of the department, the Assessee approached the Settlement Commission during some assessment years and accepted the order of the Settlement Commission. However, in the present assessment year, it raises the very claim and, therefore, the Commissioner's findings could not have been endorsed by the Tribunal and this is a substantial question of law particularly when it failed to assign independent reasons of its own.

4] We do not find any merit in this contention because in the given facts the only conclusion that has been reached is that all particulars were available with the department/Revenue. There was no concealment nor the particulars have been termed as inaccurate and for the subject assessment year. It is on these findings that the penalty has been deleted. Pertinently, it has been deleted also Qua other claims but the Revenue raised deletion of penalty on lease transaction as the only substantial question of law. For all these reasons, we do not find that the Tribunal's order is either perverse or vitiated by any error of law apparent on the face of the record. There is no merit in the Appeal. It is, accordingly, dismissed. No costs.

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

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