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

INCOME TAX APPEAL NO.2176 OF 2010

The Commissioner of Income Tax – 3, Mumbai

..Appellant.

Versus

Ambuja Cements Limited, Mumbai

..Respondent.

Mr.Suresh Kumar for the appellant.

Mr.Niraj Seth with Mr.Atul K Jasani for the respondent.

**CORAM : J.P. Devadhar &
M.S. Sanklecha, JJ.**

DATE : 22nd October 2012

P.C. :

1. Following questions of law are raised by the Revenue in this appeal.

- a) Whether on the facts and in the circumstances of the case and in law the Tribunal is right in holding that consultancy charges paid to Shri S.K. Seksaria of Rs.7,80,000/- for civil construction are not capital expenses ?
- b) Whether on the facts and in the circumstances of the case and in law the Tribunal is right in holding that Rs.1,34,128/- service charges paid to Shri Hirani for civil constreuction are not capital expenses ?
- c) Whether on the facts and in the circumstances of the case and in law the Tribunal is right in holding that while computing income under Section 115JA, deduction under Section 80IA has to be computed on the basis of book profits and not on the basis of profits under normal provisions and also that brought forward losses cannot be reduced from profits ?

- d) Whether on the facts and in the circumstances of the case and in law the Tribunal is right in holding that Rs.1,03,12,544/- claimed as community development expenses are allowed under Section 37(1) ?
- e) Whether on the facts and in the circumstances of the case and in law the Tribunal is right in holding that mining prospecting expenses of Rs. 17,74,937/- are not capital expenses ?
- f) Whether on the facts and in the circumstances of the case and in law the Tribunal is right in holding that while computing income under Section 115JA, deduction under Section 80HHC has to be computed on the basis of book profits and not on the basis of profits under normal provisions ?

2. As regards questions (a), (b) and (E) are concerned, counsel for the Revenue fairly states that similar questions raised by the Revenue in the assessee's own case being Income Tax Appeal No.6195 of 2010 have not been entertained by this Court. Hence, questions (a), (b) and (e) cannot be entertained.

3. Counsel for the Revenue further states that questions (c) and (f) are covered against the Revenue by the decision of the Apex Court in the case of *Commissioner of Income Tax V/s. Bhari Information Technology Systems (P)Limited* reported in *(2012) 340 ITR 593 (S.C.)*. Accordingly, questions (c) and (f) cannot be entertained.

4. The appeal is admitted on question (d).

(M.S. Sanklecha, J.)

(J.P. Devadhar, J.)