

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

INCOME TAX APPEAL NO. 1481 OF 2012

State Bank of India	}	Appellant
versus		
The Deputy Commissioner of	}	
Income Tax, Circle 2(2), Mumbai	}	
and Anr.	}	Respondents

Mr. Atul K. Jasani for the Appellant.
Mr. P. C. Chhotaray for the Respondent.

**CORAM :- S.C.DHARMADHIKARI &
A.A.SAYED, JJ.**

DATED :- DECEMBER 17, 2014

P.C. :-

When this Appeal was placed before us earlier, in all fairness, our attention was invited to an order passed by the Income Tax Appellate Tribunal on 4th June, 2014 on Miscellaneous Application No.170/Mum/2013.

2) The present Appeal under section 260A of the Income Tax Act, 1961 (IT Act) at the instance of State Bank of India (SBI) challenges the earlier order of the Tribunal dated 6th June, 2012, disposing of Income Tax Appeal No. 3145/Mum/2009, for assessment year 2006-07.

3) During the pendency of this Appeal, the Tribunal has passed an order on the Miscellaneous Application and therefore, Mr. Jasani had sought time to take instructions as to whether the State Bank of India is ready and willing for disposal of the present Appeal in the light of the order passed by the Tribunal subsequently and on the above Miscellaneous Application.

4) However, Mr. Jasani submits that by the order dated 4th June, 2014, what the Tribunal has done is to revive the Income Tax Appeal No. 3145 of 2009 for hearing afresh on merits in relation to withdrawal of deduction under section 36(1)(vii) of the IT Act. That is in relation to the provisions on standard assets. Meaning thereby, the Tribunal has not allowed the SBI, the Assessee before us, to argue the revived Appeal on all points and grounds including invocability of section 263 of the IT Act by the Commissioner. In other words, the Tribunal will now hear the Appeal on merits and not allow the ground challenging the exercise of powers under section 263 of the IT Act by the Commissioner to be raised after revival of the Appeal.

5) In that regard, Mr. Chhotaray submits that there is no challenge to the order passed on the Miscellaneous Application. Further, in the Miscellaneous Application, the SBI did not seek revival of the Appeal so as to challenge the order passed by the Commissioner

under section 263 of the IT Act. In these circumstances, a limited order as passed by the Tribunal and further to this Appeal can safely be utilised to dispose of the present Appeal. That is rendered infructuous.

6) We have, with the assistance of Mr. Jasani and Mr.Chhotaray perused the order passed by the Tribunal on 4th June, 2014 on Miscellaneous Application No. 170/Mum/2013. Mr Jasani has been fair enough to place, a copy of the Application as also the order, on record and which we marked as 'X' for identification collectively. Both copies have been provided in advance to the Revenue's Advocate Mr.Chhotaray.

7) The Application was filed by the Assessee bringing to the notice of the Tribunal that the ground in respect of withdrawal of deduction under section 36(1)(vii) of the IT Act of Rs.405,17,20,944/- in relation to standard assets was raised in the Memo of Appeal. The Tribunal's attention was invited to para 3 of its earlier order dated 6th June, 2012, from which, this Miscellaneous Application arose. The Tribunal has merely followed its order for the preceding assessment year 2005-06 and upheld the order passed by the Commissioner of Income Tax, which is the complaint. However, what the Tribunal was called upon to consider in the Miscellaneous Application is that the Commissioner in assessment year 2005-06 has not decided the ground

on merits but directed the Assessing Officer to redo the assessment after giving sufficient opportunity of being heard to the Assessee. However, in the assessment year 2006-07, the Commissioner of Income Tax has decided the ground on merits. Hence, this part of the Tribunal's order is vitiated by an error of law apparent on the face of the record. We have seen that prayer in the Miscellaneous Application as well.

8) However, upon perusal of the order passed by the Tribunal, the argument of the Assessee's Advocate has been noted that in the earlier order passed under section 263 of the IT Act for assessment year 2005-06, the Commissioner set aside the assessment on all points raised by him and directed the Assessing Officer to redo it. The order of the Commissioner was confirmed by the Tribunal on 30th March, 2012 in Income Tax Appeal No. 4288/Mum/2010 on the ground that no inquiry or query was raised by the Assessing Officer on the issues raised by the Commissioner in its order dated 25th March, 2010 and therefore, the assessment order was erroneous insofar as it is prejudicial to the interest of the Revenue. The argument that the Tribunal has not gone into the merits was therefore noted in para 3. In para 4, the Departmental Representative's objection has been noted. Thereafter, from para 5 onwards, the Tribunal assigns reasons and in para 9, it specifically holds that the Counsel appearing for the Assessee contended

that the facts and circumstances in which the earlier order was rendered were no longer applicable for the reason that in this year the Commissioner has passed order after discussing merits and therefore, the earlier Tribunal's order will not apply in this year. The Tribunal proceeds to reject this argument and thereafter directs revival of the Appeal only for the purpose of raising the ground of withdrawal of deduction under section 36(1)(vii) of the IT Act.

9) We are not happy in the manner in which the Tribunal has decided the Miscellaneous Application. If the Tribunal was required to devote so much time for assigning reasons in more than five paragraphs in a lengthy eight page order on the Miscellaneous Application so as to correct an obvious mistake by exercising powers under section 254(2) of the IT Act, then, interest of justice would have been sub-served and better had the Tribunal revived the entire Appeal and not partially. It may be that the Tribunal does not find sufficient ground to uphold the objection raised by the Assessee to the exercise of powers under section 263 of the IT Act by the Commissioner, however, it was not necessary and in the given facts and circumstances to endorse the earlier conclusions. If there was a mistake and in this case with regard to claim of deduction running into Rs.405,17,20,944/-, then, we do not think that the tribunal was justified in directing partial revival of the Appeal.

10) Now, let the Appeal be heard on all grounds as were raised originally. The Tribunal should pass a fresh order not only in relation to the objection raised by the Assessee to the exercise of powers under section 263 of the IT Act, but on the merits of the claim as well. Merely because such an opportunity is given by us does not mean that the Tribunal is obliged to uphold any of the grounds. It is only the partial revival of the Appeal and in the manner done by the Tribunal which has forced us to take this unusual step. We do not think that interest of justice and equity is served by non consideration of vital materials by the last fact finding authority, namely the Income Tax Appellate Tribunal. That the Tribunal was required to recall its earlier orders and for the reasons which have been assigned by it would indicate that it failed to apply its mind at the initial stage to the grounds raised in the Appeal and in their entirety. It omitted from consideration crucial documentary material as well. In such circumstances, such partial revival of the Appeal would not meet the ends of justice.

11) We modify the order passed on the Miscellaneous Application and direct that the Appeal shall now be heard on its own merits and in accordance with law, permitting the Assessee to raise all grounds that are to be found in the Memo of Appeal. The Tribunal shall apply its mind afresh to the contentions raised by both sides and

uninfluenced by its prior observations and conclusions and dispose of the Appeal on its own merits and in accordance with law. This direction issued by us in the exercise of our further appellate and inherent powers should serve as a reminder to the Tribunal that the matters of vital importance affecting the interest of public should not be disposed of in a light hearted or casual manner. The record must be perused in its entirety and properly and minutely. That is the function and which the judicial body is required to perform and oblige to carry out as well. In these circumstances and the unsatisfactory and unhappy manner in which the Miscellaneous Application has been dealt with and decided that we have directed the revival of the Appeal. We express no opinion on the rival contentions and the Appeal shall be decided by the Tribunal on its own merits and in accordance with law, without being influenced by any observations. We further clarify that this order passed today does not oblige the Tribunal to either allow the Appeal in entirety or partially. All courses and open in law can be adopted by the Tribunal.

12) This Appeal is accordingly disposed of. No costs.

(A.A.SAYED, J.)

(S.C.DHARMADHIKARI, J.)