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

INCOME TAX APPEAL NO.269 OF 2013

Commissioner of Income Tax-2 .. Appellant.
V/s.
State Bank of India,
Financial Reporting, Compliance &
Taxation Department .. Respondent.

Mr. Suresh Kumar, for the Appellant.

**CORAM: M.S.SANKLECHA, &**
**G.S.KULKARNI, JJ.**
**DATE : 4th FEBRUARY, 2015.**

**P.C:-**

This Appeal under Section 260-A of the Income Tax Act, 1961 (the Act), challenges the order dated 6th June, 2012 passed by the Income Tax Appellate Tribunal (the Tribunal) for the Assessment Year 2006-07.

2 The Revenue has formulated the following questions of law for our consideration:

> *"(1) Whether on the facts and in the circumstances of the case and in law, the ITAT was correct in allowing the deduction u/s. 36(1)(viii) of the I. T. Act, following the decision in the case of Union Bank of India v/s. ACIT [(2011) 16 Taxmann.com 304 ITAT (Mum)], ignoring the decision pf the Kerala High Court in the case of Federal Bank Ltd. v/s. ACIT (198 Taxmann 491) in which it is held that financial corporation are separate and distinct entities different from scheduled banks which are covered by the provisions of Banking Regulation Act?*

*(2) Whether on the facts and in the circumstances of the case and in law, the ITAT was correct in allowing the deduction u/s. 36(1)(viii) of the I. T. Act, for the A. Y. 2006-07, ignoring the decision of the Kerala High Court in the case of Federal Bank Ltd. v/s. ACIT, (198 Taxman 491) in which it is held that the provisions of Section 36(1)(viii) did not extend the benefits of deduction to banking companies until the section was amended by the Finance Act 2006 w.e.f. 01.04.2007 and the amendment has been held to be prospective, i.e. A. Y. 2007-08?"*

3 We find that the impugned order dated 6th June, 2012 has held that there was no occasion for the Commissioner of Income Tax to exercise its power of the revision under Section 263 of the Act on the question of deduction claimed under Section 36(1)(viii) of the Act. This conclusion was reached by following its decision in ***Union Bank of India v/s. ACIT (2011) 16 Taxmann.com 304*** holding that deduction under Section 36(1)(viii) of the Act is to be allowed to the Government Banks even for the years prior to Assessment Year 2007-08. The amendment in the Assessment Year 2007-08 includes the banking companies.

4 We were at the very outset fairly informed by Mr. Suresh Kumar, learned Counsel appearing for the Revenue that on the aforesaid issue, the decision of the Tribunal in Union Bank of India (supra) has been accepted by the Revenue. Mr. Suresh Kumar points out that although an appeal has been filed by the Revenue on the other issues, no appeal has been filed on this issue.

5 We have on an earlier occasion in the case of ***CIT v/s. Smt. Veena G.Shroff*** have observed in our order dated ***27th January, 2015*** that when Revenue challenges the order of the Tribunal which in turn relies upon another decision rendered by it on the same issue, then in cases

where the Revenue has accepted the order by not preferring any Appeal against the earlier order, the Revenue should not challenge the subsequent order on the same issue. In case an appeal is preferred from the subsequent order, then the Memo of appeal must indicate the reasons as to why an appeal is being preferred in later case when no appeal was preferred from the earlier order of the Tribunal which has merely been followed in the later case. In any case, the Officer concerned must atleast file an Affidavit before the matter comes up for admission, pointing out distinguishing features in the present case from the earlier case, warranting a different view in case the appeal is being pressed. The absence of this being indicative of non-application of mind, does undoubtedly give an opportunity to the Revenue to arbitrarily pick and chose the orders of the Tribunal which they would challenge in the Appeal before the this Court. Uniformity in treatment at the hands of law is a basic premise of Rule of Law. We trust that the Revenue would take appropriate steps to ensure that the aforesaid directions be implemented in all subsequent matters which are pending Admissions before this Court. If this exercise is done by the Officers of the Revenue, precious time of all concerned would be saved.

6 Counsel for the Revenue is directed to serve copy of this order to the Chief Commissioner of Income Tax for appropriate action.

7 Be that as it may, in the facts of the present case, there is no occasion for the CIT to exercise his powers under Section 263 of the Act as the view taken by the Assessing Officer granting deduction under Section 36(1)(viii) to the Respondent-Assesseee was a possible view. This possible view is further fortified by the decision of the Tribunal in Union Bank of India (supra) which has also been accepted by the Revenue.

8 Besides, even Explanation to Section 36(1)(viii) of the Act as existing at the relevant time, a Financial Corporation has been defined to include a Public Company and the Government Company.

9 We failed to understand how the Respondent-Assessee would not be covered by definition of '*Financial Corporation*' as stated in the Explanation to Section 36(1)(viii) of the Act.

10 In view of the above, we see no reason to entertain the present Appeal.

11 Accordingly, **Appeal dismissed**. No order as to costs.

**(G.S.KULKARNI,J.)** **(M.S.SANKLECHA,J.)**

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

**INCOME TAX APPEAL NO. 71 OF 2013**

Commissioner of Income Tax ..Appellant

Vs.

Smt. Veena Gope Shroff ..Respondent

....

Mr. Abhay Ahuja, Advocates for Appellant.
Mr. Subhash Shetty, Advocate for Respondent.

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**CORAM : M.S. SANKLECHA &**
**G.S. KULKARNI, JJ.**
**DATED : 27th JANUARY 2015**

**P.C.:**

1. This appeal by the Revenue challenges the order dated 4th July 2012 passed by the Income Tax Appellate Tribunal (the 'Tribunal). The impugned order has allowed the claim of the respondent-asessee for exemption under Section 54 of the Income Tax Act, 1961 (the 'Act') inrespect of exchange of old flat for a new constructed building. The impugned order of the tribunal has allowed relief by following its own decision in the case of J.K. Madan Vs. Income Tax Officer in ITA No. 6921/Mum/2010 on identical facts i.e. the same building and identical agreement as the respondent-asseessee with the builder.

2. On inquiry, Mr. Ahuja, learned Counsel for the Revenue informs us that no appeal has been filed in the case of J.K. Madan(supra) in view of the low tax effect. However on reading of the order passed in the case of J.K. Madan (supra), it appears that the amount in dispute therein was a capital gain computed at Rs.55.91 lakhs after deducting the indexed cost of acquisition from the sale consideration. Merely stating that the tax effect was low in an earlier order resulting in not filing of an appeal across the bar, without the same being specifically put in affidavit or in the appeal memo cannot be accepted. This manner of filing of appeals enables the revenue to pick and choose orders from which appeals are preferred and from which the appeals are not preferred rendering to a naught equal application of law on all. Thus unless in the appeal memo or in an affidavit filed before/at the hearing of the appeal for admission, the officer of Revenue should set out the reasons why the ratio of earlier orders is inapplicable in the present facts, the appeal itself will not be entertained. At this, Mr. Ahuja seeks four weeks time to take instructions and file an appropriate affidavit.

3. **S.O. to 24th February 2015.**

**[G.S. KULKARNI, J]** **[M.S. SANKLECHA, J.]**

S.S.DESHPANDE