IN THE HIGH COURT OF JUDICATURE AT BOMBAY,

BENCH AT AURANGABAD

INCOME TAX APPEAL NO.56 OF 2014

The Commissioner of Income Tax ... APPELLANT

VERSUS

The Nanded Merchant Co-op. Bank Ltd. ... RESPONDENT

.....

Shri Alok M. Sharma, Standing Counsel for appellant
Shri S.V. Adwant, Advocate for respondent

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CORAM: S.V. GANGAPURWALA AND A.I.S. CHEEMA, JJ.

DATED: 23rd April, 2015.

ORAL ORDER :

1. Mr. Sharma, the learned counsel for the appellant strenuously contends that, provisions of Section 43D of the Income Tax Act, on which reliance is placed by the respondent and the Tribunal, is inapplicable as far as the present respondent - assessee is concerned. The learned counsel submits that, the respondent is a Co-operative Bank. The provisions of Section 43D of the Act are not applicable to the Co-operative Banks. The

provisions of Section 43D are limited to the Public Financial Institutions, Scheduled Banks, State Financial Corporation or a State Industrial Investment Corporation. As the respondent assessee does not come under the purview of any of such institutions or Banks, the respondent is not entitled for the benefit of Section 43D. As such, interest, though not received, however, having been accrued, is taxable. The learned counsel relies on Section 145 of the Income Tax Act. The learned counsel relies on the judgment of the learned Single Judge of this Court, in a case of Banque Nationale De Paris Vs. Commissioner of Income Tax, reported in (1999) 237 ITR 518 (Bom). According to the learned counsel, the Circular cannot tone down the rigours of the provisions of law. According to the learned counsel, the Tribunal committed an error in giving the benefits of Section 43D of the Income Tax Act to the present respondent also.

2. Mr. Adwant, learned counsel for the respondent assessee submits that, the Reserve Bank of India has issued directions under Section 35A of the Banking Regulation Act that the interest receivable on deposits payable by the Nanded District Central Cooperative Bank are to be kept in Suspense Account and not be shown in Profit & Loss Account. Learned

counsel submits that, income tax is chargeable for the income received. In the present case, the income is not received at all. As such, the amount of interest which is not received, cannot be shown in the Profit & Loss Account, interalia, cannot be taxable. The learned counsel submits that, Section 145 of the Income Tax Act will have to be read in consonance and in conjunction with Section 5 of the Income Tax Act. The learned counsel submits that, the directions issued by the Reserve Bank of India are statutory in nature and the same are applicable to the Cooperative Banks also. The learned counsel relies on the judgment of the Commissioner of Income Tax Vs. Shoorji reported in (1962) 46 ITR 144 so also the judgment of the Division Bench of the Karnataka High Court, dated 22.2.2012 bearing ITA No.799/2006 [The Commissioner of Income Tax & anr. Vs. M/s Canfin Homes Ltd.]. The learned counsel submits that, under Section 119 of the Income Tax Act, the C.B.D.T. Board has issued circular, which also prohibits debiting interest in the Profit & Loss Account. The said Circular is binding on the Department. The learned counsel relies on the judgment of the Apex Court in a case of UCO Bank, Calcutta Vs. Commissioner of Income Tax, W.B. reported in 1999(4) SCC 599.

3. We have considered the submissions canvassed by

the learned counsel for respective parties.

4. We are not entering into the rival contentions raised by the Advocates for the parties in regard to the applicability of the Statute. However, considering the circular dated 9.10.1984, which is referred to in the judgment of the Apex Court in a case of UCO Bank (referred supra), the respondent assessee would be entitled to benefit of the said Circular.

5. The said circular reads as under :

> "Interest in respect of doubtful debts credited to suspense account by the banking companies will be subjected to tax but interest charged in an account where there has been no recovery for three consecutive accounting years will not be subjected to tax in the fourth year and onwards. However, if there is any recovery in the fourth year or later the actual amount recovered only will be subjected to tax in the respective years. This procedure will apply to Assessment Year 1979-80 and onwards. The Board's Instruction No.1186 dated 20.6.1978 is modified to this extent."

6. Mr. Sharma, learned counsel for the appellant states that the said circular is not for the Cooperative Banks. The said circular does not make any distinction in respect of Cooperative Banks or otherwise. From the said circular, it does not appear

that distinction is made within the Cooperative Banks or otherwise.

7. Considering the said circular and the judgment of the Apex Court in the case of UCO Bank (referred supra), the respondent assessee would be entitled for the benefit of the same. Since 2007 there has been no recovery of the interest, as such, the same is not chargeable income. In light of the above, the Income Tax Appeal stands disposed of. No costs.

(A.I.S. CHEEMA, J.) (S.V. GANGAPURWALA, J.)

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