IN THE HIGH COURT OF JUDICATURE AT BOMBAY BENCH AT AURANGABAD

INCOME TAX APPEAL NO. 44 OF 2014

THE COMMISSIONER OF INCOME TAX,AURANGABAD
VERSUS
THE VAIJAPUR MERCHANTS CO-OP. BANK LTD.
...
Advocate for Appellant : Mr. Alok Sharma
Advocate for Respondents : Mr. A.D.Kasliwal
...
CORAM : A.V. NIRGUDE & V.K. JADHAV, JJ.
Dated: January 09, 2015
...

ORAL ORDER :

1. The learned counsel for the appellant suggested that this appeal would give rise to substantial question of law as to whether Section 43-D of Income Tax Act is applicable to the present case.

2] According to him, the case pertains to year 2009-10, when the present provisions of Section 43-D, 36 and 80-P were not in the statute book as they appear now. In such situation, whether a financial institution is entitled to exemption on so-called income of interest accrued on non-performing assets, was still a question and such question was answered in various judgments which were delivered prior to 2006. One of such judgments is reported in **(1999) 4 Supreme Court Cases 599 in the case of Uco Bank, Calcutta Versus Commissioner of Income Tax, W.B.** This judgment is quite significant statement of law as it takes into account methods of accounts adopted by banks and financial institutions. The question before the Court was whether interest accrued but not recovered can be said to be income and can be taxed. The Supreme Court after careful consideration of the question held that in certain cases such accrued income is not taxable. There is one more question. Whether the respondent bank is a scheduled bank as understood by Section 43-C of Income Tax Act?. The answer is in affirmative. Schedule bank is a bank as per Section 5(C) of Banking Regulation Act is a banking company. We therefore, do not find it necessary to interfere in the judgment. We hold that no substantial question of law arises in this appeal.

3] The learned counsel for the revenue, placed reliance on judgment reported in **2010 (2) SCC 548 in the case of Southern Technologies Ltd. Versus Joint Commissioner of Income Tax, Coimbatore.** We are not relying on this judgment, mainly because this judgment pertains to non-banking financial companies, where similar question in respect of such non-banking financial companies was involved but this law would not affect our judgment and also the judgment of Supreme Court in the case of Uco Bank cited supra. Appeal is dismissed.

(V.K. JADHAV, J.) **(A.V. NIRGUDE, J.)**

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aaa/-