IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INCOME TAX APPEAL [L] NO.518 OF 2014

Commissioner of Income Tax-2,
Mumbai .... Appellant
Vs.
M/s. SBI Commercial & International
Bank Ltd. .... Respondent

Mr. Suresh Kumar for the Appellant.
Mr. Atul Jasani for the Respondent.

CORAM: M.S. SANKLECHA &
N.M. JAMDAR, JJ.

DATE : 17 JULY 2015

P.C:

1. After the notice of motion seeking condonation of delay was allowed, the learned counsel made a joint request that the appeal itself be taken up for admission.

2. The appeal challenges an order dated 18-1-2013, passed by the Income Tax Appellate Tribunal in respect of Assessment Year 2003-04. The questions framed by the revenue

for our consideration read as under:-

> "1. Whether on the facts and circumstances of the case, the Hon. Tribunal was right in law, in accepting the plea of the assessee that the interest income of Rs.2,23,17,656/- on the securities has to be taxed on the due basis only, instead of accrual basis as per the mercantile system of accounting followed by the assessee?
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> 2. Whether on facts and circumstances of the case, the Hon. Tribunal was right in law, in accepting the plea of the assessee that the interest income on the securities has to be taxed on the due basis only without appreciating that the interest accrues automatically on day-to-day basis under the mercantile system of accounting and that a vested right is created in the interest so accrued even before it becomes due for payment. Therefore the disallowance is in conformity with the decisions of the Hon. Apex Court in the case of Vijay Lakshmi Sugar Mills Ltd. vs. CIT (191 ITR 641)(SC), K.R.M.T.T. Thiagaraja Chetty & Co. (24 ITR 525) and Morvi Industries Ltd. vs. CIT (82 ITR 835)?."

3. By the impugned order, the Tribunal has allowed the assessee's appeal in respect of both the aforesaid issues by placing reliance upon the decision of this Court in **Commissioner of Income Tax v. Bank of Rajasthan Ltd.**, reported in (2010) 326 ITR 526 (Bom.) as well as the Special

Bench decision of the Tribunal in **Deputy Commissioner of Income Tax v. Bank of Bahrain & Kuwait BSC**. The Special Bench's decision of the Tribunal was the subject-matter of appeal by the revenue before this Court being Income Tax Appeal No.1738 of 2011. This Court by an order dated 5-2-2013 did not entertain the appeal as it was covered by the orders of this Court for earlier Assessment Years in respect of the Bank of Bahrain & Kuwait BSC and the appeal preferred from the order dated 5-2-2013 of this Court by the revenue to the Supreme Court was also dismissed on 2-11-2012.

4. In view of the above settled decisions, the questions raised do not give rise to any substantial question of law. Accordingly, the appeal is dismissed. No order as to costs.

(N.M. JAMDAR, J.) (M.S. SANKLECHA, J.)