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

INCOME TAX APPEAL NO.2027 of 2013

The Commissioner of Income Tax-1 Pune ..Appellant
vs.
Bank of Maharashtra ..Respondent

with **INCOME TAX APPEAL NO.2102 OF 2013**

The Commissioner of Income Tax Pune .Appellant
vs
Bank of Maharashtra .. Respondent

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Mr.Suresh Kumar i/b Mr.Vipul Bajpayee
Advocate for Appellant.
Mr.J.D.Mistry Sr.Counsel a/w Mr.J.Desai and
Mr.A.Kakri i/b M/s Singhi & Co for Respondent.

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CORAM : M.S. SANKLECHA &
G.S. KULKARNI, JJ.
DATED : 7th DECEMBER, 2015

P.C.

1. Both these appeals under Section 260A of the Income Tax Act, 1961 (the 'Act') challenges the common order dated 31 October 2012 passed by the Income Tax Appellate Tribunal.

(Tribunal). The common impugned order disposes of the respondent's appeal for Assessment year 2005-06 and 2006-07.

2. The revenue has raised the following identical questions of law for our consideration:

> *" Whether on the facts and in the circumstances of the case and in law the Tribunal did not err in holding that in view of the decision in the case of Malabar Industrial Co Ltd vs CIT 243 ITR 83 (S) the order of the Assessing Officer on the issue of amortization of premium on HTM securities by treating the same as revenue expenditure could not be said to be erroneous within the meaning of section 263 of the Income Tax 1961?"*

3. It is an agreed position between the parties that the facts relating to both the Assessment years 2005-06 and 2006-07 except the dates are identical. Therefore, reference to the facts of any of the two assessment years would reflect the contours of the dispute for both the assessment years. Thus for convenience we refer to the facts for Assessment year 2005-06.

4. The respondent-assessee is a banking company. For the Assessment year 2005-06 a return of income was filed declaring a

loss of Rs.129.69 crores. The Assessing Officer by an order dated 29 November 2002 under Section 143 (3) of the Act assessed the respondent-assessee to an income of Rs.478. 42 crores.

5. On 3 March 2010 the Commissioner of Income Tax issued notice under Section 263 of the act seeking to revise the assessment orders dated 29 November 2007. This on the ground that it was erroneous and prejudicial to the interest of the revenue inter alia in having allowed amortization of premium paid on Securities – Held to maturity (HTM) as revenue expenditure when it is on capital account. The respondent-assessee responded to the notice. However, the Commissioner of Income Tax not being satisfied with the response, by order dated 29 March 2010 confirmed the notice under Section 263 of the Act. Therefore the Commissioner of Income Tax by order dated 29 March 2010 set aside the Assessment order dated 29 November 2007 and restored the issue to the Assessing Officer to pass a fresh order.

7. Being aggrieved by the order dated 29 March 2010 of the

Commissioner of Income Tax passed under Section 263 of the Act for Assessment year 2005-06 challenged it before the Tribunal. A similar order was also passed by the Commissioner of Income Tax in exercise of its powers under Section 263 of the Act for Assessment year 2006-07. This was challenged by the respondent-assessee before the Tribunal.

8. By a common impugned order the Tribunal allowed the respondent-assessee's appeal for Assessment years 2005-06 and 2006-07 on the ground that the view taken by the respondent-assessee on account of amortization of premium paid on purchase of Securities (HTM) was allowable expenditure as held in the decisions of the Tribunal in **CATHOLIC SYRIAN BANK LTD VS ACIT (2010) 38 SOT 553 (Cochin) and DY.CIT vs.HDFC BANK and vice versa 2011-TIOL-681-ITT-MUM.** Thus, the common impugned order holds that the view of the Assessing Officer was a possible view as evidenced by the decision of the Tribunal. It further holds that where the view of the Assessing Officer is a possible view then the jurisdiction to exercise powers of Revision under Section 263 of the

Act is not available. This is as held by the Apex Court in ***MALABAR INDUSTRIAL CO. LTD VS CIT (2000) ITR 83 (SC)***. In the above view the impugned order allow the appeals of the respondent-assessee for Assessment years, 2005-06 and 2006-07.

9. The grievance of the revenue as articulated by Mr.Suresh Kumar is that the Securities (HTM) are a capital asset and therefore amortization of premium paid thereon cannot be allowed as revenue expenses but has to be treated as capital expenditure. In support he places upon the decision of the Karnataka High Court in **COMMISSIONER OF INCOME TAX VS ING VYASA BANK LTD 356 ITR 532** and submits that decision of the Tribunal relied upon in the impugned order can have no application.

10. Mr.Mistry learned senior counsel for the respondent points out that the decision of the Tribunal in **HDFC BANK LTD**(supra) was a subject matter of challenge before this Court being **COMMISSIONER OF INCOME TAX -12 vs. HDFC BANK LTD 366 ITR 505 (Bom)**wherein the appeal of the revenue against the same

was not entertained by following its decision in **CIT vs LORD KRISHNA BANK 366 ITR 416** and upholding the view of the Tribunal. Mr.Suresh Kumar learned counsel for the revenue is unable to show why the decision of this Court in **HDFC BANK LTD** (supra) should not be applied to the present facts being the jurisdictional Court.Reliance placed upon the decision of the Karnataka High Court in **COMMISSIONER OF INCOME TAX vs.ING VYASA BANK LTD** (supra) prima facie does not deal specifically with the issue of Securities (HTM) with which we are concerned.

11. Be that as it may, the view taken by the Assessing Officer is a possible view as found in the decision of the Tribunal and of this Court referred to hereinabove. We are of the view that no fault can be found with the impugned order holding that in such a case no occasion to exercise powers of Revision under Section 263 of the Act can arise as held by the Supreme Court in **MALABAR INDUSTRIAL CO.LTD** (supra) .

12. In view of the above settled position of law in regard to

jurisdiction under Section 263 of the Act the impugned order of the Tribunal does not give rise to a substantial question of law.

13. Accordingly both appeals dismissed. No order as to costs.

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

CERTIFICATE

Certified to be true and correct copy of the original signed Judgment/order.