IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INTEREST TAX APPEAL NO.1 OF 2014
WITH
INTEREST TAX APPEAL NO.2 OF 2014

The Commissioner of Income Tax
(Large Tax Payer Unit) ..Appellant
Versus
M/s. Union Bank of India ..Respondent

....
Mr. A. R. Malhotra a/w N. A. Kazi for the Appellant.
Ms. Nupur Awasthi i/b. M/s. Consulta Juris for the Respondent.
....

CORAM: M. S. SANKLECHA &
A. K. MENON, JJ.

DATE : 18th JULY, 2016

P.C.:

These two Appeals under Section 260-A of the Income Tax Act, 1961 (the Act) challenges the common impugned order dated 16th January, March, 2013 passed by the Income Tax Appellate Tribunal (the Tribunal). The common impugned order is in respect of Assessment Years 1996-97, 1997-98 and 1998-99. These two appeals relate to Assessment Year 196-97 and 1997-98.

2. The Revenue has also filed an appeal in respect of Assessment Year 1998-99, however the office objections with regard to it have not yet been removed. Therefore the appeal for Assessment Year 1998-99 would be considered only on it being allotted a regular number on removal of office

objections.

3. The Revenue being aggrieved, raise the following reframed question of law for our consideration:-

> *"Whether on the facts and in* the circumstances of the case and in law, the Tribunal was justified in dismissing the Revenue's appeal by following its order dated 27th February, 2007 in respect of A.Y. 1999-2000 when the same had been set aside on 29th November, 2011 by this Court in Revenue's appeal being Income Tax Appeal No.6458 of 2010?"

4. The appeal is admitted as it raises a substantial question of law.

5. As the dispute is within a very limited compass, at the request of the learned counsel for both the parties, the appeal itself is being disposed of at the stage of admission.

6. The impugned order of the Tribunal while dismissing the Revenue's appeal on the issue of whether interest tax collected has to be included as chargeable interest for the purposes of tax under the Interest Tax Act, 1974 solely placed reliance upon its order passed on 27th February, 2007 in respect of Interest Tax Appeal No.60/Mum/2004 relating to A.Y. 1999-2000. In fact it extensively quotes from the order dated 27th February, 2007. Mr. Abhishekh Kumar Singh, the Assessing Officer has filed an affidavit dated 24th June, 2016 bringing on record the fact that order dated 27th February, 2007 passed by the Tribunal for A.Y. 1999-2000 has

been set aside by this Court on 29th November, 2011 in Revenue's Appeal No.6458 of 2010 and restored to the Tribunal for final consideration. However, it appears that the counsel appearing for the parties had not brought it to the notice of the Tribunal that the order dated 27th February, 2007 which has been extensively quoted from was quashed and set aside by this Court by its order dated 29th November, 2011 and restored to the Tribunal for fresh consideration. Therefore, the impugned order of the Tribunal could not have placed reliance upon the observation/finding rendered by it in its order dated 27th February, 2007 when the same was not in existence when the impugned order was passed as the same had been set aside by this Court on 29th November, 2011.

7. In the above view, the question as reframed for our consideration is answered in the negative i.e. in favour of the Appellant-Revenue and against the Respondent-Assessee. However, in the peculiar facts of this case, the entire appeals are restored to the Tribunal for fresh disposal on merits.

8. Both Appeals are disposed of in the above terms. No order as to costs.

(A. K. MENON, J.) **(M. S. SANKLECHA, J.)**

wadhwa