IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 2412 OF 2013

The Commissioner of Income Tax 2,
Mumbai 400 020 … Appellant

v/s

Dena Bank, Mumbai 400 023 … Respondent

Mr Suresh Kumar for Appellant.

Ms A. Vissanji with Mr S.J. Mehta i/b M/s S.P. Mehta and Co. for Respondent.

CORAM : M.S. SANKLECHA AND B.P. COLABAWALLA JJ.

DATE : 07th JANUARY, 2016

P.C.:-

1. This Appeal arises out of an order dated 10th April 2013 passed by the Income Tax Appellate Tribunal (Tribunal), Mumbai under Section 263 of the Income Tax Act 1961. The impugned order is a common order passed for three Assessment Years viz. 2003-04, 2004-05 and 2006-07. The present Appeal relates to AY 2003-04.

2. The Revenue has pressed the following question of law for our consideration :-

> "Whether on facts and circumstances of the case, the Tribunal was correct in law in holding that order u/s 263 of the Income Tax Act, 1961 dated 28th March 2011 was barred by time limitation without appreciating that as per section 263(2) of the Income Tax Act the time limitation for revision of order u/s 250 of the Income Tax Act dated 17/11/2008 was upto 31st March 2011 ?"

3. Briefly, the admitted facts are as under :-

(a) On 16th March 2005, the Assessing Officer passed an order under Section 143(3) of the Act in respect of AY 2003-04 determining the book profits under Section 115JB of the Act at Rs.194 crores while the profits under the normal provisions of the Act was arrived at Rs.529/- crores. The Respondent - Assessee filed an Appeal to the Commissioner of Income Tax (Appeals) (CIT(A)) with regard to the income determined under the normal provisions of the Act. On 28th April 2008 the Appeal of the Respondent – Bank was allowed by the CIT(A) holding that there was a loss of Rs.21.16 crores under the normal provisions of the Act. Consequent to the above, on 17th November 2008, the Assessing Officer passed an order giving effect to the order dated 28th April 2008 of the CIT(A) determining a loss under the normal provisions of the Act. As the income as per normal provisions of the Act was less than the book profits arrived at under Section 115JB of the Act, the taxability was worked out on book profit.

(b). On 22nd February 2011, the Commissioner of Income Tax issued a notice under Section 263 of the Act seeking to set aside the order dated 17th November 2008 passed by the Assessing Officer giving effect to the order of the CIT(A). The basis of the notice was that the order dated 16th March 2005 passed under Section 143(3) of the Act while determining book profits under Section 115JB of the Act had not considered, the non-performing assets (NPA) of the Respondent – Assessee to the extent of Rs.2.69 crores resulting in non-reflection of correct book profits under Section 115JB of the Act. By order dated 28th March 2011, the Commissioner of Income Tax set aside the order dated 17th November 2008 as it was erroneous and prejudicial to the interest of the Revenue and restored it to the file of Assessing Officer for further determination.

(c) Being aggrieved, the Respondent – Assessee challenged the order dated 28th March 2011 passed by the Commissioner of Income Tax under Section 263 of the Act before the Tribunal. This on the ground that the same is time barred as it was passed beyond the expiry of two years from the end of the financial year in which the order sought to be revised was passed. The grievance of the Respondent – Assessee before the Tribunal was that the issue of computation of book profits under Section 115JB of the Act was a subject matter of consideration only in the order dated 16th March

2005. The book profit so determined had not been varied and / or interfered with by the CIT(A). Therefore, the Assessing Officer while giving effect to the order of the CIT(A) by his order dated 17th November 2007 has not touched upon the book profits. Consequently, the period of two years under Section 263(2) of the Act has to be computed from the end of the financial year of passing the order dated 16th March 2005 under Section 143(3) of the Act.

(d) The Tribunal, by the impugned order, accepted the Respondent – Assessee's Appeal while placing reliance upon the decision of Karnataka High Court in the case of CIT vs. Infosys Technologies Ltd., reported in (2012) 341 ITR 290 (Karn), wherein an order under Section 263 of the Act sought to revise an order passed by the Assessing Officer consequent to the order in appeal by CIT(A). This was an issue which was not a subject matter of appeal proceedings. Therefore, the Court held that the two years' period is to be computed from the date of the original order passed by the Assessing Officer. In the present facts, admittedly the issue of Section 115JB of the Act was a subject matter of consideration only in the order dated 16th March 2005 passed under Section 143(3) of the Act and was not subject matter of consideration either of the CIT(A) dated 28th April 2011 or of the consequent order dated 17th November 2011 passed by the Assessing Officer. Consequently, the impugned order of the Tribunal allowed the Respondent Assessee's Appeal.

4. We find that the issue raised by the Appellant is no longer res-integra as an identical issue has been subject matter of consideration before this Court in the case of CIT v/s ICICI Bank Ltd., reported in (2012) 343 ITR 74 (Bom) and in the case of CIT v/s Lark Chemicals Ltd., reported in (2015) 55 taxmann.com 446 (Bombay) wherein this Court has held that jurisdiction under Section 263 of the Act can be exercised only within the period of two years from the end of the financial year in which the order of the Assessing Officer was passed dealing with the issue which is being subjected to exercise of powers by Revenue under Section 263 of the Act.

5. In the above view, as the question framed is covered by the orders of this Court in ICICI Bank Ltd. (supra) and Lark Chemicals Ltd. (supra) the question of law as proposed does not give rise to any substantial question of law.

6. Accordingly, the Appeal is dismissed. No costs.

(B.P.COLABAWALLA, J.) **(M.S. SANKLECHA, J.)**

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