IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1971 OF 1996

1. **Bank of Maharashtra Officers' Organisation, a Trade Union, having its Registered Office at 5, "Kasturi", 371-B Shaniwar Peth, Pune-411 030**

2. **Shri. Manohar Pundalikrao Mogal, member of the Petitioner No.1, and residing at Bldg. No. 89, Flat No.18, Vrindavan Society, Thane (West)-400 601** **..Petitioners**

Versus

1. **Union of India, through the office of the Central Government Advocate, at Aaykar Bhavan, Annexe Building, 3rd Floor, New Marine Lines, Bombay 400 020.**

2. **The Central Board of Direct Taxes, having its office on North Block, New Delhi-110 001.**

3. **The Chief Commissioner of Income Tax, Aaykar Bhavan New Marine Lines, Bombay-400 020.**

4. **Bank of Maharashtra, constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act,**

1970 and having its
Central Office at 'LOKMANGAL'
1501, Shivajinagar, Pune-422 005. ..Respondents

Mr. R. S. Apte, Senior Advocate for the Petitioners.

CORAM : A. S. OKA &
RIYAZ I. CHAGLA, JJ

DATE : 11th AUGUST, 2017

ORAL JUDGMENT (PER A. S. OKA J.)

1 Heard Learned Senior Counsel appearing for the Petitioners. The 1st Petitioner in this Petition under Article 226 of the Constitution of India is Bank of Maharashtra Officers' Organisation and the 2nd Petitioner is its member. The 4th Respondent Bank of Maharashtra is a Public Sector Bank. The 1st Petitioner is an association of officers of the 4th Respondent Bank.

2 Regulation 25 of the Bank of Maharashtra Officers' Service Regulations, 1979 (for short "the Regulations") provides that on and from 01.02.1984, no officer of the 4th Respondent Bank shall be entitled as of right to be provided with residential accommodation. However, it will be open to the Bank to provide residential accommodation on payment made by the officer of 10% of the pay in the first stage of the scale of pay in which he is placed or the standard rent of the accommodation,

whichever is less. It is also provided that the charges for electricity, water and gas as well as conservancy charges shall be borne by the officer.

3 Attention of the Court is invited to a circular issued by 4th Respondent stating that the standard rent recovered by the 4th Respondent for the accommodation allotted by it to the officers is not 'fair rental value' and hence, difference between 6% of initial basic grade pay of employee and 10% of present basic is required to be added as 'perquisite' for the period of occupation of accommodation in that particular financial year. It is pointed out that the said circular was challenged by the some of the employees of the 4th Respondent in the High Courts of Madhya Pradesh and Calcutta. It pointed out that notwithstanding the judgments delivered by the said High Courts, deduction of the tax at source was being made by treating the differential amount as 'perquisite'.

4 By this Petition under Article 226 of the Constitution of India, a Writ of Mandamus is prayed for not to take the differential value as a 'perquisite' within the meaning of Section 17(2) of the Income Tax Act, 1961 for the purpose of deduction of tax at source from the salary of the employees of the 4th Respondent. A prayer was also made for refund of the tax deducted on the differential amount.

5 Our attention is invited to a decision of the Apex Court in the case of ***Arunkumar and others Vs. Union of India and others***[1] In the said case, the challenge was to amendment made to the validity of Rule 3 of the Income Tax Rules, 1962 , as amended by the Income Tax Amendment Rules, 2001, by which method of computing valuation of perquisites under Section 17(2) of the Income Tax Act, 1961 was laid down. By the said decision, the validity of the amended Rule 3 was upheld. However, the Apex Court specifically observed that whether or not Parliament could have in the exercise of legislative power created a 'deeming fiction' as to concession in the matter of rent in certain circumstances, no such deeming provision is found in the Income Tax Act, 1961. The Apex Court, therefore, specifically held that it is open for the assessee to contend that there is no 'concession' in the matter of accommodation provided by the employer to the employees and the case is not covered by Section 17(2)(ii) of the Income Tax Act, 1961.

6 In view of the said pronouncement of law by the Apex Court, it is not necessary for us to grant a declaration or a Writ of Mandamus as claimed in the Petition.

7 Therefore, subject to what is observed above, the Petition

1 **2006(286)ITR 89(SC)**

stands disposed of. Rule is disposed of accordingly. There is no order as to costs.

[RIYAZ I. CHAGLA, J] **[A. S. OKA, J]**