IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDITION

INCOME TAX APPEAL NO.1489 OF 2014

Dena Bank ... **Appellant**
V/s.
Asst. CIT-2(3) ... **Respondent**

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Mrs.A.Vissanji with Mr.Sudhir J.Mehta, Advocate for the Appellant.

Mr.Suresh Kumar with Ms.Samiksha, Advocate for the Respondent.

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CORAM : S.V.GANGAPURWALA & A.M.BADAR JJ.

DATED : 12th July 2017.

P.C.

1 The present Appeal pertains to the Assessment year 2005-06. The Appellant has filed the present Appeal on the following substantial questions :

1) Whether on the facts and circumstances of the case the Tribunal exceeded its jurisdiction in setting aside the entire claim of the Appellant for bad debts including the amount of Rs.265.32 crores that was allowed by the Respondent and was not in dispute ?

2) Whether on the facts and circumstances of the case and in law the Tribunal was correct in adjudicating upon the sum of Rs.265.32 crores which was not the subject matter of the appeal of the Respondent ?

3) Whether on the facts and circumstances of the case and in law the finding of the Tribunal in paragraph 3.4 (a) that the deduction under sec. 36(1)(vii) having been allowed for an earlier year on the basis of the provision being contrary to the facts on record is vitiated ?

4) Whether on the facts and circumstances of the case and in law and despite the categorical undisputed finding of the Respondent that the Appellant has written off Rs.318.85 crores by crediting the debtor's accounts and debiting the provision account and the bad debts written off are therefore allowable under sec. 36(1)(vii), the Tribunal was right in directing verification of what part of the provision is in effect written off ?”

2 The learned counsel for the Appellant submits that in fact the Assessing Officer had allowed the claim towards the bad

debts of Rs.265.32 crores, so also the Assessing Officer had accepted that the Appellant has written off an amount of 318.85 crores by crediting the debtor's account and debiting the provision account and bad debt are liable to be deducted under Section 36(1)(vii) of the Act. Still the Tribunal has exceeded its jurisdiction and passed a new order. There was no ground for Revenue even to file an Appeal regarding to that.

3 We have heard Mr.Suresh Kumar, the learned counsel for the Respondent. It appears from the Order of the Assessing Officer that the Assessing Officer had allowed the claim of the Appellant about the bad debts of Rs.265.32 crores and the same was not subject matter of Appeal. Same is the fact with regard to the amount of Rs.318.85 crores. The Tribunal ought to have considered the said aspect. It is submitted that even the appellant has filed Miscellaneous Application for rectification of the Order, but has an apprehension that the same may not be entertained on the ground that it would tantamount to review of the Order.

4 Considering above said aspects of the matter, we set aside the order of the Tribunal to the extent of the non-acceptance of the claim of the Appellant with regard to Rs.265.32 crores and Rs.318.85 crores.

5 The Tribunal shall reconsider the said aspect afresh

after hearing the parties. The parties shall appear before the Tribunal on 7th August 2017. After hearing the parties, the Tribunal shall decide the matter afresh with regard to the aforesaid aspect.

6 Appeal accordingly partly allowed.

7 It is made clear that we have not gone into the merits of case.

(A.M.BADAR J.) **(S.V.GANGAPURWALA J.)**