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

INCOME TAX APPEAL NO. 371 OF 2015

The Commissioner of Income Tax-1 … Appellant
Versus
New India Co-op. Bank Ltd. … Respondent

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Mr. Suresh Kumar a/w Ms. Samiksha Kanani, for the Appellant.
Mr. Nitesh Joshi a/w Mr. P.C. Tripathi i/b Mr. Atul K. Jasani for the Respondent.

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CORAM : S. V. GANGAPURWALA AND
A. M. BADAR, JJ.

DATE : 25th JULY, 2017

P. C. :

1. The present matter pertains to the assessment year 2007-2008.

2. Mr. Suresh Kumar, learned Counsel for the appellant strenuously contends that the Tribunal was not justified in allowing ex-gratia payment as a deductible expense. The ex-gratia payment by its very nature of payment is a favour having no nexus with commercial consideration. According to the learned Counsel, the provisions of Section 63 of the Multi State Co-operative Societies Act, 2002 (for short 'the Act') are misread by the

Tribunal and thereby has came to the erroneous conclusion. Learned Counsel relies on the Judgment of the Division Bench of this Court in the Case of ***Commissioner of Income Tax Vs. Mafatlal Fine Spg. & Mfg. Co.Ltd***. Reported ***in [2004] 138 Taxman 143***.

3. Mr. Joshi, learned Counsel for the Respondent supports the order and submits that the resolution was passed and it is ratified in the Annual General meeting of the Bank dated 27th September, 2006, the same is covered under the provisions of Section 63 of the Act. It is submitted that the ex-gratia payment is made within the purview of Section 63 of the Act. The Tribunal has rightly considered the same.

4. We have considered the submissions.

5. Section 63 of the Act empowers the Board of Directors to approve payment of ex-gratia amount to its employees. It is also observed by the Tribunal that the assessee has been extending incentives to employees for the preceding years and the subsequent years also and the same is accepted by the Revenue. The Tribunal has also relied on the Judgment of this Court in the

cases of ***CIT Vs. Maina Ore Transport P. Ltd.***, reported in ***324 ITR 100*** and ***Shahzada Nand & Sons Vs. CIT***, reported in ***108 ITR 358***, wherein it has been held that ex-gratia payment made by the employer to its employees is on account of commercial expediency and hence allowable.

6. In the case of ***Mafatlal Fine Spg. & Mfg. Co.Ltd. (supra)*** relied by the Revenue, there was no evidence to show the agreement between the assessee and the employees and the earning of the assessee or to show that ex-gratia payment is reasonable or in accordance with the provisions at the relevant time. In the present case, the practice of ex-gratia payment is evident from the observations of the Tribunal. For the preceding year and the subsequent years the department has allowed deduction in respect of ex-gratia payment.

7. Considering the aforesaid conspectus of the matter, no substantial question of law is arises in the present Appeal. The Appeal is dismissed. No costs.

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