

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

INCOME TAX APPEAL NO. 532 OF 2016

The Pr. Commissioner of Income Tax-2 .. Appellant

v/s.

State Bank of Saurashtra ..Respondent

Mr. Suresh Kumar for the appellant
Mr. A.K. Jasani for the respondent

**CORAM : AKIL KURESHI &
M.S. SANKLECHA, J.J.**

DATED : 24th NOVEMBER, 2018.

P.C.

1. This Appeal under Section 260-A of the Income Tax Act, 1961 (the Act) challenges the order dated 25th March, 2015 passed by the Income Tax Appellate Tribunal (the Tribunal). This appeal relates to Assessment Year 2001-02.

2. The Revenue has urged only the following reframed question of law for our consideration :-

(i) Whether on the facts and circumstances of the case and in law, the Tribunal was correct in quashing the reopening proceedings, holding that there was no failure on the part of the assessee in making true and full disclosure of material facts necessary for assessment?

3. The undisputed facts are that for the Assessment Year 2001-02, the return of income was filed by the respondent. An scrutiny assessment under Section 143(3) of the Act was passed on 22nd March, 2004 determining the income @ Rs.80.99 crores.

4. Thereafter, on 5th February, 2018, the appellant Revenue sought to reopen the assessment for Assessment Year 2001-02 on the following reasons :-

“The assessee follows mercantile system of account and accordingly in its accounts, at the end of the year, takes credit for interest accrued but not due on its investment in securities. However, in the return of income such interest is not offered to tax and only the interest which has become due and receivable during the year is offered to tax. From the A.Ys. 2003-04 onwards, such interest, “Accrued but not due at the end of the year” was taxed by the Assessing Officer. Such additions have been confirmed and upheld by the CIT(A) in assessee bank's first appeal subject to the direction that the credit for similar amount of interest accrued but not due at the beginning of the year which was offered to tax should be allowed.

2. *The appellate order of the CIT(A) on this aspect has become final as the assessee bank has not been granted permission by the COD to pursue further litigation on the decision. Accordingly, the amount liable to be taxed at the assessee bank's income for A.Y. 2001-02 on this ground is worked out as under :-*

3. *Interest accrued but not due on investment is worked out as under:-*

<i>Interest accrued but not due as at end of assessment year</i>	<i>Rs.82,63,97,428/-</i>
<i>Less : Interest Accrued but not due as at beginning of assessment Year</i>	<i>Rs.66,20,14,992/-</i>
<i>Net Difference</i>	<i>Rs.16,43,82,436/-</i>

4. Amount of accrued interest during the year Rs.16,43,82,436/- which is to be added back and is taken as the income of the year and the same is required to be taxed accordingly. As a result of which income chargeable to tax has escaped assessment.

5. In view of the above, I have to reason to believe that income chargeable to tax has escaped assessment and the case is fit for issue of notice under Section 148 of the I.T. Act.”

5. The impugned order of the Tribunal concludes that there was true and full disclosure of all material facts necessary for assessment during the scrutiny assessment proceedings. The issue with regard to interest due and payable and interest due and accrued was disclosed during the assessment proceedings. The impugned order further records that even though the notice was beyond the period of 4 years from the end of the relevant assessment year in respect of the assessment completed under Section 143(3) of the Act, the reasons do not even allege any failure on the part of the assessee to disclose truly and fully all material facts necessary for the assessment. In the above view, the impugned order of the Tribunal allowed the respondent's appeal.

6. We note that admittedly the reopening notice has been issued beyond a period of four years from the end of the relevant assessment year i.e. 2001-02 in respect of regular assessment completed under Section 143(3) of the Act. The jurisdictional requirement to issue a reopening notice under the proviso to Section 147 of the Act, is a failure on the part of the assessee to truly and fully disclose all material facts necessary for assessment during the scrutiny proceedings. In fact, the reasons in support of the reopening notice even do not allege any failure to disclose truly and fully all material facts necessary for

assessment. Therefore, the jurisdictional requirement is not satisfied. Moreover, we find that the Tribunal has on facts found that there was a full and true disclosure on the part of the assessee during the regular assessment proceedings. This finding of fact has not been shown to be incorrect or perverse in any manner.

7. In the above view, the view taken by the Tribunal calls for no interference. Accordingly, the question as proposed does not give rise to any substantial question of law. Thus, not entertained.

8. The appeal is dismissed. No order as to costs.

(M.S. SANKLECHA, J.)

(AKIL KURESHI, J.)