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

WRIT PETITION NO.1027 OF 2021
(A.Y. 2005-06)

Cooperative Rabobank U A,
20th Floor, Tower A,
Peninsula Business Park,
Senapati Bapat Marg,
Lower Parel (West),
Mumbai – 400 013. ... Petitioner

Versus

1. Commissioner of Income Tax (IT),
Mumbai-2, having his office at
17th Floor, Air India Building,
Nariman Point, Mumbai – 400 021.

2. Union of India
Through the Secretary,
Department of Finance,
Ministry of Finance,
Government of India,
North Block, New Delhi-110. ... Respondents

Mr. Percy Pardiwala, Senior Counsel a/w Mr. Atul Jasani for Petitioner.
Mrs.S.V. Bharucha for Respondents.

CORAM : SUNIL P. DESHMUKH AND ABHAY AHUJA, JJ.

RESERVED ON : 20TH JULY, 2021.

PRONOUNCED ON : 26TH AUGUST, 2021.

(THROUGH VIDEO CONFERENCING)

PER COURT :-

1. We have today passed a detailed judgment in Writ Petition No.1025 of 2021. Since the facts in this Petition are similar to the facts in Writ Petition No.1025 of 2021, it would not be necessary for us to deal with them here again.

2. In view of the reasons detailed in our judgment dated 26th August, 2021 in Writ Petition No.1025 of 2021, we pass the following order:-

(i) pending Appeal ITA No.5056/Mum/2010 is a Revenue Appeal and the first proviso to Section 3 of the DTVSV Act would become applicable and, accordingly, the amount payable by Petitioner would be 50% of the amount, viz., 50% of the disputed tax,

(ii) there is no provision in the DTVSV Act which authorises recovery of interest paid earlier by the Department under Section 244A of the IT Act by adding the same to the amount of disputed tax in the manner sought to be done, thereby making the addition of Rs.1,40,86,466/- to disputed tax in Form-3 bad in law.

3. We, therefore, quash and set aside Form-3 dated 26th March, 2021 issued by Respondent No.1 for Assessment Year 2005-06 as being without jurisdiction, the Respondent No.1 Designated Authority having no power or authority to add/include this amount to the disputed tax under the provisions of the DTVSV Act. We direct Respondent No.1 to issue fresh Form-3 to Petitioner determining the amount of disputed tax in accordance with the above discussion within three weeks from the date of pronouncement of this order and thereafter Petitioner to make payment of the disputed tax so determined within a period of two weeks of the issuance of revised Form -3.

4. Petition is allowed in the above terms. There shall be no order as to costs.

(ABHAY AHUJA, J.) **(SUNIL P. DESHMUKH, J.)**