

A THE PRINCIPAL COMMISSIONER OF INCOME TAX-8

v.

M/S YES BANK LTD.

(Civil Appeal No. 3148 of 2019)

B MARCH 15, 2019

[ABHAY MANOHAR SAPRE AND
DINESH MAHESHWARI, JJ.]

C *Income Tax Act, 1961 – ss.35-D, 260-A and 263 – Issue was as to whether the respondent-Bank (assessee) is an industrial undertaking so as to entitle them to claim deduction u/s.35-D of the 1961 Act – After the Assessing Officer passed order, adverse order was passed by the Commissioner – Income Tax Appellate Tribunal (ITAT) allowed the appeal filed by the respondent – Appeal by the appellant-Revenue in the High Court u/s.260-A of the 1961 Act –*
D *Dismissed – On appeal, held: High Court did not frame any substantial question of law as is required to be framed u/s.260-A of the 1961 Act – High Court dismissed the appeal without deciding any issue arising in the case saying that it is not necessary – Main issue involved in this appeal, as rightly taken note of by the High*
E *Court, was with regard to the applicability of s.35-D of the 1961 Act to the respondent, it was however, not decided – Impugned order set aside – Issue with regard to applicability of s.35-D of the 1961 Act to the respondent is already pending consideration before the High Court at the instance of the respondent in another appeal*
F *– Accordingly, appeal remanded to the High Court for its decision on merits in accordance with law along with another appeal, if pending – No opinion expressed on the merits of the case.*

Allowing the appeal, the Court

G **HELD: 1.1 The High Court did not frame any substantial question of law as is required to be framed under Section 260-A of the Income Tax Act, 1961 though heard the appeal bipartite. In other words, the High Court did not dismiss the appeal in *limine* on the ground that the appeal does not involve any**

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substantial question of law. The High Court dismissed the appeal without deciding any issue arising in the case saying that it is not necessary. The main issue involved in this appeal, as rightly taken note of by the High Court in para 6, was with regard to the applicability of Section 35-D of the 1961 Act to the respondent-assessee (Bank). It was, however, not decided. [Paras 12, 13] [9-C-E]

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1.2 The High Court should have framed the substantial question of law on the applicability of Section 35-D of the 1961 Act in addition to other questions and then should have answered them in accordance with law rather than to leave the question(s) undecided. [Para 14] [9-E-F]

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1.3 The impugned order is set aside. It was brought to Court's notice that the issue with regard to applicability of Section 35-D of the 1961 Act to the respondent-Bank is already pending consideration before the High Court at the instance of the respondent in one appeal. The appeal is accordingly remanded to the High Court for its decision on merits in accordance with law along with another appeal, if pending, after framing proper substantial question(s) of law arising in the case. No opinion is expressed on the merits of the case having formed an opinion to remand the appeal to the High Court for its disposal on the merits afresh. The High Court will accordingly decide the appeal uninfluenced by any observations made in the impugned order and this order. [Paras 15, 17, 18] [9-F-H; 10-A-C]

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CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3148 of 2019

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From the Judgment and Order dated 01.08.2017 of the High Court of Judicature at Bombay in ITA No. 599 of 2015.

Vikramjit Banerjee, ASG, S. S. Roy, Ms. Seema Bengani, Anas Zaidi, Mrs. Anil Katiyar, Advs. for the Appellant.

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Kunal Cheema, Ajit Wagh, Advs. for the Respondent.

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A The Judgment of the Court was delivered by

ABHAY MANOHAR SAPRE, J. 1. Leave granted.

B 2. This appeal is filed against the final judgment and order dated 01.08.2017 passed by the High Court of Judicature at Bombay in ITA No.599/2015 whereby the High Court dismissed the appeal filed by the appellant herein.

3. This appeal involves a short point as would be clear from the facts stated *infra*.

C 4. The appellant is the Union of India (Income Tax Department) and the respondent-Bank is the assessee.

D 5. In the course of assessment proceedings of the respondent-assessee(Bank) for the Assessment Year 2007-2008, the question arose as to whether the respondent-assessee(Bank) was entitled to claim deduction under Section 35-D of the Income Tax Act, 1961 (for short, “the Act”) for the Assessment Year in question. In other words, the question arose as to whether the respondent-Bank is an industrial undertaking so as to entitle them to claim deduction under Section 35-D of the Act.

E 6. The case of the respondent was that they, being an industrial undertaking, are entitled to claim the deduction under Section 35-D of the Act. The Assessing Officer passed an order dated 31.10.2009 which gave rise to the proceedings before the Commissioner under Section 263 of the Act which resulted in passing of an adverse order dated 14.11.2011 by the Commissioner.

F 7. This gave rise to filing of the appeal by the respondent before the ITAT against the order of the Commissioner. By order dated 05.12.2014, the ITAT allowed the appeal which gave rise to filing of the appeal by the Revenue (Income Tax Department) in the High Court under Section 260-A of the Act.

G 8. By impugned order, the High Court dismissed the appeal after hearing both the parties giving rise to filing of this appeal by way of special leave in this Court.

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M/S YES BANK LTD. [ABHAY MANOHAR SAPRE, J.]

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9. So, the short question that arises for consideration in this appeal, is whether the High Court was justified in dismissing the appellant's appeal. A

10. Having heard the learned counsel for the parties and on perusal of the record of the case, we are constrained to allow the appeal, set aside the impugned order and remand the case to the High Court for deciding the appeal afresh on merits in accordance with law. B

11. In our view, the need to remand the case to the High Court is called for due to the following reasons.

12. First, the High Court did not frame any substantial question of law as is required to be framed under Section 260-A of the Act though heard the appeal bipartite. In other words, the High Court did not dismiss the appeal in *limine* on the ground that the appeal does not involve any substantial question of law; Second, the High Court dismissed the appeal without deciding any issue arising in the case saying that it is not necessary. (see para 6). C D

13. Third, the main issue involved in this appeal, as rightly taken note of by the High Court in para 6, was with regard to the applicability of Section 35-D of the Act to the respondent-assessee(Bank). It was, however, not decided. E

14. In our view, the High Court should have framed the substantial question of law on the applicability of Section 35-D of the Act in addition to other questions and then should have answered them in accordance with law rather than to leave the question(s) undecided. F

15. It was brought to our notice that the issue with regard to applicability of Section 35-D of the Act to the respondent-Bank is already pending consideration before the High Court at the instance of the respondent in one appeal. If that be so, both the appeals, in our view, should be decided together. G

16. It is for all these reasons, we are of the view that the impugned order is not legally sustainable.

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- A 17. In view of the foregoing discussion, the appeal succeeds and is accordingly allowed. The impugned order is set aside. The appeal is accordingly remanded to the High Court for its decision on merits in accordance with law along with another appeal, if pending, after framing proper substantial question(s) of law arising in the case.
- B 18. We have not expressed any opinion on the merits of the case having formed an opinion to remand the appeal to the High Court for its disposal on the merits afresh. The High Court will accordingly decide the appeal uninfluenced by any observations made in the impugned order and this order.

Divya Pandey

Appeal allowed.