

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

INCOME TAX APPEAL NO. 1507 OF 2013

Director of Income Tax (IT) – I ..Appellant

Vs.

M/s American Express Bank Ltd. ..Respondent

....

Mr. Tejveer Singh, Advocate for Appellant.

Mr. Percy Pardiwalla, Senior Advocate a/w Megha Sharma,
Advocate i/b PDS Legal for Respondent.

....

**CORAM : M.S. SANKLECHA &
N.M. JAMDAR, JJ.**

DATED : 17 AUGUST 2015

P.C.:

This appeal by revenue challenges the order dated 10 August 2012 passed by the Income Tax Appellate Tribunal (the 'Tribunal'). The appeal relates to Assessment Year 1998-99.

2. Following questions of law have been urged for our consideration:

(A) Whether, on the facts and in the circumstances of the case and in law, the Tribunal was right in holding that the expenses incurred at

Head Office on behalf of the Indian Branch of the assessee are deductible u/s.37(1) of the Act without any restrictions contained in Section 44C?

(B) Whether, on the facts and in the circumstances of the case and in law, the Tribunal was right in deleting the disallowance made by AO Rs.75,03,911/- keeping in view provisions of Section 14A?

(C) Whether, on the facts and in the circumstances of the case and in law, the Tribunal was right in holding that the interest income earned on funds by HO, in Indian Branch be termed as interest to self?

(D) Whether, on the facts and in the circumstances of the case and in law, the Tribunal was right in holding that the interest on bad and doubtful debts is not chargeable to tax for this year u/s. 43D when assessee had not credited such interest to its P&L Account of this year?"

3. Regarding Question A:

Mr. Tejveer Singh, the learned Counsel for the revenue fairly states that the same is concluded against the appellant/revenue by order of this Court in an appeal filed by

revenue in respect of the same respondent relating to Assessment Year 1997-98 being Income Tax Appeal No. 1294/2013 dated 1 April 2015. In view of the above, Question (A) does not give rise to any substantial question of law.

4. Regarding Question B:

(a) Mr. Tejveer Singh, the learned Counsel for the revenue states that although the impugned order of the Tribunal has placed reliance upon its order in respect of the same respondent relating to Assessment Year 1997-98 and the appeal of revenue therefrom being Income Tax Appeal No. 1294/2013 decided on 1 April 2015 was also dismissed, the same should not be relied upon for the subject assessment year. This for the reason that in its appeal to this Court in respect of Assessment Year 1997-98, the question did not arise out of the order of the Assessing Officer and CIT(A) thus it was not entertained by this Court in Income Tax Appeal No. 1294/2013. However in this year, the issue arising in the impugned order of the Tribunal is an issue that arose in the order of the Assessing Officer and CIT(A). We find merit in the submission of

Mr.Singh. The order of the Tribunal for the Assessment Year 1997-98 on which reliance has been placed in the impugned order, specifically records that the issue which has been urged by the revenue did not arise from the order either of Assessing Officer or CIT(A). Therefore the order passed by the Tribunal for the Assessment Year 1997-98 on 17 June 2005 would not per se apply the subject assessment year. However we find that the order of the Tribunal for the Assessment Year 1997-98 after holding as above, proceeds to consider on merits and holds that the claim of the respondent-assessee is sustainable even on merits.

(b) The grievance of the revenue is that the dividend income and interest income are liable for tax under Section 115A(1) of the Act at a special rate which is lower than normal rate of tax. In the above view, it is contended by Mr. Tejveer Singh that the proportionate expenditure for earning the dividend and interest income chargeable to tax under Section 115(A) of the Act could not have been allowed as deduction against the other income chargeable to tax at normal rates of tax. The proportionate expenditure reduced from the income chargeable to tax under

Section 115A of the Act. In support of the same, reliance is placed upon Section 14A of the Act.

(c) We find that the impugned order of the Tribunal has placed reliance upon the decision of Supreme Court in ***Rajasthan State Warehousing Corporation Vs. CIT***¹ wherein the contention of the revenue that if part of the income which arise is exempt from tax and the business is one and indivisible, then no part of expenditure incurred to earn exempt income can be disallowed. The Parliament thereafter amended the statute and introduced Section 14A into the Act. This Section 14A of the Act specifically provides that expenditure incurred in relation to income which does not form part of total income under the Act shall not be allowed as deduction. Thus it excludes the allowing of deduction of expenditure incurred to earn the exempt income. It does not disturb the finding of Supreme Court in *Rajasthan State Warehousing* in respect of cases wherein the expenditure is incurred on earning income which is not exempt. In this case, income earned is not exempt but chargeable to tax albeit at a lower

¹ (2000) 242 ITR 450

rate. In the present facts it is not disputed that income earned on interest and dividends is chargeable to tax at a special rate under Section 115A of the Act. Consequently, there could be no occasion to invoke Section 14A of the Act to disallow expenditure which has admittedly been incurred in respect of income which is taxable.

(d) Accordingly, in view of the clear position of law, question of law as raised does not give rise to any substantial question of law. Thus not entertained.

5. Regarding Question C:

(a) The learned Counsel for the revenue fairly states that the same is concluded against the revenue by virtue of decision of this Court in Income Tax Appeal No. 1430/2013 (Director of Income Tax Vs. M/sCredit Agricole Indosuez) dated 17 June 2015. In the above case, an identical question as raised herein was raised therein and was not admitted. This on the ground that it is a settled position in law that one cannot make profit out of oneself. Question (C) does not give rise to any substantial question of law and not entertained.

(b) At this stage, Mr. Tejveer Singh, the learned Counsel for the revenue interjects in the midst of dictation after we heard the parties on all the questions to withdraw his earlier submission and now states that decision in *M/s Credit Agricole Indosuez*, will not apply to the present facts. We do not appreciate this. Be that as it may, we stopped out dictation and heard him in support of his above proposition. According to Mr. Tejveer Singh, the decision in *M/s Credit Agricole Indosuez* will not apply for the reason that the respondent-assessee had in its return of income originally filed on 30 November 1998 had claimed the benefit of DTAA entered into between the United States and India. Mr. Tejveer Singh submits that in view of the decision of Special Bench in ***Sumitomo Mutsui Banking Corporation Vs. Deputy Director of Income Tax***², the Tribunal ought to have followed the same. Moreover, the issue arising in *Sumitomo Mutsui Banking Corporation* has been admitted by this Court at the instance of the assessee and is awaiting consideration. In the above view, it is submitted that this question requires admission.

2 (2012) 19 Taxmann 364

(c) We find that in the original return of income, the respondent-assessee had claimed the benefit of DTAA. However on 29 March 2000, the respondent-assessee had filed revised return of income wherein it has specifically pleaded that the interest received from branches outside India cannot be considered as taxable income as one cannot earn income out of itself. The Assessing Officer by the impugned order held that the respondent-assessee's interest income is taxable under the normal provisions of the Act as well as DTAA. On further appeal, the Commissioner of Income Tax (Appeals) (the 'CIT(A)') by the order in appeal holds that the interest income is chargeable to tax under normal provision of the Act i.e. Section 9(1)(v)(c) of the Act. On further appeal, the Tribunal held that no occasion to tax such interest income received from its Head Office can arise nor deduction is to be allowed in case of interest paid by the respondent-assessee to its Head Office.

(d) We find that no specific ground as urged before us by Mr. Tejveer Singh has been taken in memo of appeal filed in this Court. Be that as it may, we find that respondent-assessee had claimed benefit under the DTAA in its return of income but the same was

effectively withdrawn by virtue of filing a revised return of income on 29 March 2000. Although the Assessing Officer held that the respondent-assessee is liable to pay tax in respect of interest earned from its Head Office both under the normal provision of Act as well as DTAA, both CIT(A) as well as the Tribunal have proceeded on the basis of the claim of the respondent-assessee being under the normal provisions of the Act. We find that in case of *Sumitomo Mutsui Banking Corporation*, the assessee therein was seeking deduction of the interest payable to the head office. It was in that context, that the claim of the assessee for deduction was being claimed by invoking the provision of DTAA wherein this deduction was specifically provided for. In the present facts, the issue arising for consideration is not the deduction on account of interest paid to the Head Office but the non exigibility to tax on account of interest received from its Head Office on the ground that no person can make profit out of itself as held by the Apex Court in the case of *Sir Kikabhai Premchand Vs. Commissioner of Income Tax (Central), Bombay*³. In any view of the matter, Section 90(2) of the Act itself provides that the assessee has an option to either invoke DTAA or

³ 24 ITR 506

normal provisions of tax to the extent which of the two is more beneficial to it. In this case, by filing the revised return of income the claim to be subjected to tax under the DTAA stood withdrawn. In the above view, we see no substantial question of law arising for our consideration. Accordingly, Question (C) as formulated by the revenue, does not give rise to any substantial question of law.

6. Regarding Question D:

(a) The respondent-assessee had in the subject assessment year, in terms of Reserve Bank of India guidelines, had declared interest on loans remaining unpaid for more than 90 days then such loans are declared as non-accrual loans. The interest on such non-accrual loans is credited to Reserve for Doubtful Interest (RFDI) Account. The interest accounts are only credited to RFDI and not to Profit and Loss Account of the respondent-assessee. Only on receipt of interest is the same credited to the Profit and Loss Account. However the Assessing Officer held that such non-accrual of interest on being credited to the RFDI Account would be chargeable to tax under Section 43D of the Act. In appeal, the CIT(A) upheld the

finding of the Assessing Officer. On further appeal, by the impugned order, the Tribunal holds that Section 43D of the Act will not apply to interest which is credited to RFDI Account only. The impugned order holds that Section 43D of the Act will apply only when the amounts of interest has been credited to Profit and Loss Account which is admittedly not the case in the present facts.

(b) The grievance of the revenue is that as the crediting of interest to the RFDI account would by itself be sufficient to bring the amounts to tax under Section 43D of the Act.

(c) We find that Section 43D of the Act clearly provides that only such interest on bad and doubtful debts which are received or is credited to the Profit and Loss Account for the year under consideration, would the same be taxable. In the present facts, the amount of interest attributable to bad and doubtful debts has not been received. Further the interest has not been credited to Profit and Loss Account but to a reserve amount called RFDI account maintained in terms of Reserve Bank of India's guidelines. Besides,

this Court in *CIT Vs. Citi Bank*⁴ had recorded the practice of banks to effectively control its problem loans and its recoveries by keeping/maintaining a memorandum record of interest due on such accounts. This is an usual banking practice to keep a tab/check on the problem loans and interest thereon. The provision under Section 43D of the Act are very clear and unequivocal that the interest receivable on bad and doubtful debts are chargeable to tax only when it is credited to the Profit and Loss Account and/or when they are actually received. Clearly, in the present case, the interest accrued on the bad and doubtful loans has not been credited to Profit and Loss Account nor has the amounts of such interest been received by the respondent. Therefore in view of the self evident position as noticed in Section 43D of the Act, no substantial question of law arises. Accordingly, Question (D) as formulated is also not entertained.

7. Hence appeal is dismissed. No order as to costs.

[N.M. JAMDAR, J]

[M.S. SANKLECHA, J.]

⁴ 208 ITR 930