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

INCOME TAX APPEAL NO. 1769 OF 2013

Director of Income Tax (IT)-II ..Appellant

Vs.

M/s Panasonic Avionics Corporation ..Respondent

....

Mr. Tejveer Singh, Advocate for Appellant.
Ms. Megha Sharma, Advocate i/b PAS Legal for Respondent.

....

CORAM : M.S. SANKLECHA &
G.S. KULKARNI, JJ.
DATED : 5 OCTOBER 2015

P.C.:

This appeal filed by the revenue under Section 260A of the Income Tax Act, 1961 (the 'Act') challenges the order dated 28 March 2013 passed by the Income Tax Appellate Tribunal (the 'Tribunal'). The Assessment Year involved is A.Y. 2007-08.

2. Mr. Tejveer Singh, the learned Counsel for the revenue urges following question of law for our consideration:

> "Whether on the facts and circumstances of the case and in law, the Tribunal was right in law in

> allowing the traveling expenses of Rs.1,19,26,793/- incurred on the employees of the head office on their visit to the branch office of the assessee in India, despite the fact that the assessee failed to establish exclusivity of expenditure for its Indian operations?"

3. The respondent-assessee is a company incorporated in USA and engaged in the business of maintenance of small TVs in Aircrafts. The Assessing Officer during the course of the assessment proceedings disallowed an amount of Rs.1.19 crores being traveling expenses incurred on employees of the assessee company from USA to India for undertaking repair activity of TV sets in aircrafts. The Assessing Officer by his order consequent to the directions of the Dispute Resolution Panel disallowed the expenditure as Head Office Expenditure under Section 44C of the Act. This on the ground that the respondent had failed to furnish the necessary evidence in support of the expenditure. The alternative contention of the respondent-assessee that in any view of the matter, the expenses ought to be allowed under Section 37(1) of the Act was also rejected by the Assessing Officer. Thus the amount of Rs.1.19

crores claimed as expenditure was disallowed and added to the respondent-assessee's income.

4. On appeal, the Tribunal held that the issue of expenditure incurred on account of travel to and in India of employees from USA would not fall within the meaning of Head Office Expenditure in Clause (iv) of explanation to Section 44C of the Act as held by the Tribunal in ***Addl. DIT (IT) Vs. Bank of Bahrain and Kuwait***[1]. Thus the impugned order allowed the respondent-assessee's appeal. The alternative contention of the expenditure being allowable under Section 37(1) of the Act was also granted. This after the Tribunal satisfied itself that complete details in respect of the traveling expenditure incurred in respect of it's employees from USA had been made available by the respondent-assessee and the revenue was unable to point out any flaw therein.

5. We find that on the issue of travel expenses incurred in India on employees from USA is concerned as the same does not fall within the meaning of Head Office Expenses, the same cannot be

1. (2011) 44 SOT 693

disallowed under Section 44C of the Act. Moreover, this court in it's order ***CIT Vs. Emirates Commercial Bank Ltd.***[2] has answered an identical issue in a Reference in favour of the respondent-assessee therein holding on similar facts that Section 44C of the Act will have no application. Thus on principle there is no dispute that the expenditure incurred on travel in India would not be covered by the definition of Head Office Expenses under Section 44C of the Act. On facts, the Tribunal has examined the evidence before it and has rendered a finding of fact that the expenditure had been incurred in respect of the travel within India and thus would not in the present facts be hit by Section 44C of the Act. Moreover, on the basis of factual satisfaction of the expenditure, no fault can be found with allowing the expenditure in the alternative under Section 37(1) of the Act. The finding of the Tribunal is essentially a finding of fact. This finding has not been shown to be perverse and/or arbitrary. In law, it is an undisputed position that in the present facts Section 44C of the Act would have no application as held by this Court in Emirates Commercial Bank Ltd. (supra). On facts the Tribunal was satisfied that the expenditure was in fact incurred in India.

2 262 ITR 55

Accordingly, the question as proposed does not give rise to any substantial question of law. Hence not entertained.

6. Accordingly, appeal dismissed. No order as to costs.

[G.S. KULKARNI, J] **[M.S. SANKLECHA, J.]**

CERTIFICATE

Certified to be true and correct copy of the original signed Order.