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

INCOME TAX APPEAL NO.1630 OF 2012

Commissioner of Income Tax-2 ..Appellant
-*Versus*-
Bank of India ..Respondent

....

Mr. Suresh Kumar for the Appellant.
Mr. Sanjiv M. Shah for the Respondent.

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CORAM: S.C. DHARMADHIKARI
AND
S. P. DESHMUKH, JJ.

DATE :- 7th JANUARY, 2015.

P.C.:

This Appeal challenges the order passed by the Income Tax Appellate Tribunal, Bench at Mumbai, in Income Tax Appeal No.2781 of 2011. The assessment year in question is 2003-04.

2] Mr. Suresh Kumar, learned counsel, submits that this Appeal raises the substantial questions of law and particularly as formulated in the memo of Appeal by the Revenue. He would submit that the Tribunal committed an error in holding that the operations of the Respondent-Bank in foreign countries denotes it having a permanent establishment outside India. The income attributable to this branch cannot be taxed in India.

Mr. Suresh Kumar submits that this finding is rendered without adverting to the relevant factual materials and proof of payment of taxes in relation to the establishment abroad. Therefore, the Appeal deserves to be admitted.

3] On the other hand, Mr. Sanjiv Shah, learned counsel, appearing for the Respondent-Assessee brings to our notice series of orders passed by the Tribunal in identical circumstances and in case of this very Assessee. He submits that the Tribunal followed that orders when the identical circumstances were pointed out. The permanent establishments or branches outside India generated income and which was subjected to the law pertaining to tax on income abroad. Once the factual position is not disputed by the Revenue, then, the benefit of the Double Taxation Avoidance Agreement has been rightly extended. He relies upon the findings in the Tribunal's order impugned in this Appeal and particularly para 28 thereof.

4] With the assistance of Mr. Suresh Kumar and Sanjiv Shah, we have perused the memo of Appeal. The Assessing Officer was satisfied that the benefit of the Double Taxation Avoidance Agreement is admissible provided the proof is produced in relation to payment of taxes by the Assessee abroad. In other words, if the Assessee has permanent establishment abroad, then, the Assessee would have to produce evidence regarding payment of taxes pertaining to the income of these establishments abroad. On production of such evidence, the Assessee would be entitled to the benefit. That evidence was always available and as noted by the Commissioner of Income Tax (Appeals) and the Tribunal. In the circumstances, the authorities did nothing but follow their earlier orders based on identical facts and circumstances. The finding of fact, therefore, cannot be termed as perverse or vitiated by any error of law apparent on the face of the record. The Appeal does not raise any substantial question of law. It is devoid of merits and is, accordingly, dismissed. No costs.

(S. P. DESHMUKH, J.) **(S.C. DHARMADHIKARI, J.)**

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