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

INCOME TAX APPEAL NO. 710 OF 2014

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

v/s.

M/s. Credit Agricole Indosuez .. Respondent

Mr. Tejveer Singh for the appellant
Mr. Madhur Agarwal a/w Mr. Atul Jasani for the respondent

CORAM : M.S. SANKLECHA &
A.K. MENON, J.J.

DATED : 5th DECEMBER, 2016.

P.C.

1. This Appeal under Section 260-A of the Income Tax Act, 1961 (the Act) challenges the order dated 7th August, 2013 passed by the Income Tax Appellate Tribunal (the Tribunal). The impugned order is in respect of Assessment Year 2001-02.

2. Mr. Tejveer Singh, learned Counsel for the Revenue submits the following re-framed questions of law for our consideration :-

> *"(i) Whether on the facts and circumstances of the case and in law, the Tribunal was right in holding that the income chargeable at special rate u/s 10(15) would be on gross basis*

and not on net basis?

(ii) Whether on the facts and circumstances of the case and in law, the Tribunal has erred in holding that the expenses incurred at Head Office on behalf of Indian Branch of the assessee are deductible u/s 37(1) of the Act without any restrictions contained in Section 44C?

(iii) Whether on the facts and circumstances of the case and in law, the Tribunal has erred in directing the Assessing Officer to tax the interest received u/s 244A at the rate as prescribed in Article 12 of DTAA between India and France?

(iv) Whether on the facts and circumstances of the case and in law, the Tribunal was justified in holding that interest received by the Indian Permanent Establishment of the foreign bank from its HO and other overseas Branches, is not chargeable to tax computing the total income?

(v) Whether on the facts and circumstances of the case and in law, the Tribunal has erred in allowing deduction on account of interest paid by assessee disallowed by Assessing Officer as per the provisions of Section 40(a)(i)?

(vi) Whether on the facts and circumstances of the case and in law, the Tribunal has erred in holding that payment of Rs.91,03,072/- does not constitute Royalty as per Explanation 2 to Section 9(1)(vi) and hence dis-allowance under Section

40(a)(i) of the Act cannot be made?

3. <u>Regarding question nos. (i) to (iii) :-</u>

(a) Mr. Tejveer Singh, learned Counsel for the Revenue very fairly states that the question nos. (i) to (iii) raised by the Revenue were also the questions raised by the Revenue in Income Tax Appeal No. 1430 of 2013 (Director of Income Tax (IT))-I Vs. M/s. Credit Agricole Induosuez) filed in this Court. The above appeal was filed from the order of the Tribunal dated 12th September, 2012 for Assessment Year 1997-98. This Court by an order dated 17th June, 2015 did not entertain these three questions raised herein as it did not give rise to any substantial questions of law.

(b) Therefore, for the reasons indicated in our order dated 17th June, 2015 in Income Tax Appeal No. 1430 of 2013 in respect of the same respondent assessee for the Assessment Year 1997-98 the question nos. (i) to (iii) as proposed do not give rise to any substantial questions of law.

(c) Thus, not entertained.

4. <u>Regarding question no.(iv) :-</u>

(a) We are enable to understand how the Revenue is aggrieved by the impugned impugned order of the Tribunal. This for the reason that it holds that the interest income received from the Head Office and other overseas branches would be subjected to tax. In fact, the impugned order of the Tribunal upholds the view taken by the Assessing Officer which is approved by the Commissioner of Income Tax (Appeals) [CIT(A)]. It is the respondent assessee who had challenged the order of the CIT(A) to the extent it held that the interest received by the respondent assessee from its Head Office and other overseas branches were liable to tax. However, before the Tribunal the respondent assessee withdrew its grievance. In the above view, the Tribunal held that the amount of interest received from its Head Office and other overseas branches was taxable.

(b) In the above view, we specifically asked of Mr. Tejveer Singh, learned Counsel for the Revenue how is the Revenue is aggrieved by the Tribunal holding that interest received from Head Office and other overseas branches is taxable. In response, we were told that the Revenue is aggrieved because no dis-allowance under Section 14-A of the Act has been done by the Tribunal on the interest income. This explanation for being aggrieved, we are unable to comprehend for the reason that once the Tribunal holds that interest income is taxable, no occasion would arise to disallow expenditure under Section 14A of the

Act. This indicates the casual manner of filing appeals without any application of mind.

(c) In the above view, question no.(iv) as formulated does not give rise to any substantial question of law. Thus, not entertained.

5. <u>Regarding question no. (v) :-</u>

(a) Before the Tribunal, the respondent assessee had challenged the order of the lower authorities bringing to tax the interest received by it from its Head Office and branch offices. However, at the hearing before the Tribunal, the respondent assessee gave up this challenge. Consequently, the orders of the lower authorities bringing to tax the interest income received from its Head Office and other overseas branches were held to be taxable. It is in that context that the impugned order of the Tribunal held that the interest paid by the assessee to its Head Office / overseas branches would also be deductible to bring to tax the net interest income i.e. interest received less interest paid.

(b) In the above view, question (v) as proposed by the Revenue does not give rise to any substantial question of law. Thus, not entertained.

6. **<u>Regarding question (vi) :-</u>**

(a) For the purposes of conducting its operation, the respondent assessee receives Information Technology support from its Asia Data Processing Centre (ADPC) at its Regional Head Office. This infrastructure facility to carry out the necessary exercise to provide necessary information technology support to the respondent assessee by way of data processing. The expenses incurred by the Regional Head office in running of the ADPC is allocated between different branches depending upon their respective users. The amount so apportioned as payable by the respondent assessee to the Regional Head Office is the amount claimed by the respondent assessee as a deduction.

(b) Both the Assessing Officer as well as the CIT(A) disallowed the same holding that the amount paid to the Regional Head Office was in the nature of royalty for the use of asset specified in Explanation 2 to Section 9(1)(vi) of the Act. This by placing reliance upon the decision of Delhi Bench of the Tribunal in ***Asia Satellite Telecommunications Co. Ltd. Hong Kong (ITA No.166/Del/2001)***, which in fact concerned itself with leasing of transponder and not with data processing.

(c) The Tribunal by the impugned order held that the amount paid for data processing services, cannot be considered to be payment of royalty being consideration for the use of asset. The impugned order holds that this expense would fall within the ambit of Head Office expenses to be examined on the touchstone of Section 44C of the Act. It was in the aforesaid circumstances that the Tribunal restored the issue to the Assessing Officer to consider the taxability or otherwise of the amount paid to the Regional Head Office by treating it as Head Office expenses in the context of Section 44C of the Act.

(d) The Revenue is aggrieved by the aforesaid findings of the Tribunal. Mr. Tejveer Singh, learned Counsel for the Revenue submits that the amount paid is in the nature of royalty as it is for the use of information technology facility.

(e) The impugned order of the Tribunal is a well reasoned order. It holds that mere taking assistance from ADPC at its Regional Head Office, cannot be held to be payment of Royalty for the use of assets. The decision of the Delhi bench Tribunal relied upon by both the Assessing Officer and also by the CIT(A) in the case of Asia Satellite Telecommunications Co. Ltd. (supra) has been reversed by the Delhi High Court as reported as ***Asia Satellite Telecommunications Co. Ltd. Vs. Director of Income Tax, 332 ITR 340***. The entire issue is now before the Assessing Officer to determine whether or not the amount paid for the information technology facility to the Regional Head Office is at all taxable or not within the parameters of Section 44C of the Act even if it is treated as Head Office expenses.

(f) In the above view, the question no.(vi) as proposed does not give rise to any substantial question of law. Thus, not entertained.

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

(A.K. MENON, J.) **(M.S. SANKLECHA, J.)**