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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX REFERENCE NO.499 OF 1997

The Commissioner of Income Tax
Bombay City-III, Bombay. ..Applicant
Versus
Deutsche Bank A.G. Bombay ..Respondent

....
Mr. Suresh Kumar a/w Ms. Samiksha Kanani for the Applicant.
Mr. B. D. Damodar i/b. Kanga & Co. for the Respondent.
....

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

DATE : 5th JULY, 2016

P.C.

1. This Reference under Section 256(1) of the Income Tax Act, 1961 (the Act) by the Income Tax Appellate Tribunal (the Tribunal) seeks our opinion on the following substantial questions of law:-

"(i) Whether on the facts and in the circumstances of the case, the Tribunal was right in allowing assessee's claim and holding that contribution to the Life Insurance fund by the employer is not perquisite to the employee for the purpose of Section 40A(5) of the Act?

(ii) Whether on the facts and in the circumstances of the case the Tribunal was right in law in holding that while making disallowance under Section 40A(5) of the Act expenses allocable

to income under the head 'Interest on Securities' should be deducted from the disallowance under that Section?

(iii) Whether on the facts and in the circumstances of the case the Tribunal was right in law in holding that the whole of the Head Office expenses of Rs.70 lakhs was admissible, as provision of Section 44C of the Act is not applicable for the year under consideration?"

Regarding Question No.1:-

2. Mr. Suresh Kumar, the learned counsel on behalf of the Revenue invites our attention to the order of the Tribunal dated 20th September, 1995 in respect of the subject assessment year. In particular, our attention is invited to paragraph 3 thereof wherein the Tribunal held that the contribution made by the Respondent-Assessee to the Life Insurance Fund is not a perquisite to the employee for the purposes of Section 40A(5) of the Act. The Tribunal has given no independent reason for the aforesaid conclusion but merely followed its order dated 30th November, 1992 in respect of the same Respondent-Assessee for A.Y. 1984-85.

3. Mr. Suresh Kumar, the learned counsel for the Revenue states that the order dated 30th November, 1982 passed in respect of the A.Y. 1984-85 is not available with the Revenue. In the above view, he is unable to address us on the reasons which weighed with the Tribunal in holding that the contribution made to the Life Insurance Fund by an employer is

not a perquisite of the employee for the purposes of Section 40A(5) of the Act.

4. Mr. Suresh Kumar further states that for the A.Y. 1984-85 no question with regard to the aforesaid issue has been raised by the Tribunal for consideration by this Court as is evident from the decision of this Court on the Reference ITR No.139 of 1997 now reported in ***284 ITR 463 (CIT v/s. Deutsche Bank A. G.***).

5. In the above view, question no.1 as raised for our opinion is returned unanswered.

<u>Regarding Question No.2 & 3:-</u>

6. It is an agreed position between the parties that both the aforesaid questions stand concluded against the Revenue and in favour of the Respondent-Assessee by the decision of this Court in Deutsche Bank A.G. (supra). In the above view, question nos.2 and 3 are answered in the affirmative i.e. in favour of the Respondent-Assessee and against the applicant-Revenue.

7. Reference is disposed of in above terms. No order as to costs.

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