IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.2401 OF 2013

Director of Income Tax(IT)-I,
Mumbai 400 038 ... Appellant
v/s
Abu Dhabi Commercial Bank Ltd.,
Mumbai 400 020 ... Respondent

Mr Tejveer Singh for Appellant.
Mr P.S. Pardiwalla, Sr. Counsel with Mr Atul Jasani for Respondent.

CORAM : M.S. SANKLECHA AND B.P. COLABAWALLA JJ.

DATE : 22ND FEBRUARY, 2016

P.C.:-

1. At the request of the parties, the Appeal is taken up for final disposal.

2. This Appeal under Section 260A of the Income Tax Act, 1961("Act") challenges the order dated 10th July 2013 of the Income Tax Appellate Tribunal("Tribunal"). The Appeal relates to AY 2001-02.

3. Although multiple questions have been raised in the Memo of Appeal, Mr Tejveer Singh, learned counsel for the Revenue, urges only two following questions for our consideration :-

> “(1) Whether, on the facts and circumstances of the case and law, the Tribunal has erred in holding that the provisions of section 40(a)(i) were not applicable in the case as the assessee had failed to withhold taxes u/s 195 of the I.T. Act 1961 ?”
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> “(2) Whether on the facts and circumstances of the case and law, the Tribunal was right in holding that the income chargeable at special rate u/s 10(15) would e on gross basis and not on net basis ?”

4. So far as Question No.(1) is concerned, the Tribunal by the impugned order, dismissed the Revenue's Appeal by following its decision dated 22nd May 2013 in case of M/s Credit Lyonnais in ITA No.9596/Mum/2004 for AY 2001-02. We have today by a separate order dismissed the Revenue's Appeal arising from the above order of the Tribunal in case of M/s Credit Lyonnais being Income Tax Appeal No.2305 of 2013 from the order of the Tribunal dated 22nd May 2013 on the above issue. For the reasons indicated therein, the question of law as formulated herein would also not give rise to any substantial question of law. Thus, Question(1) is not entertained.

5. So far as Question No.(2) is concerned, the parties are agreed that the issue raised herein be restored to the Tribunal for

fresh consideration. This is in line with the earlier order passed by this Court in the case of same Respondent – assessee in Revenue's Appeal being Income Tax Appeal No.969 of 2010 decided on 19th March 2012. In view of the issue being restored to the Tribunal, we express no opinion on the same. All rights and contentions are kept open to be agitated before the Tribunal.

6. The Appeal is accordingly disposed of. No order as to costs.

(B.P.COLABAWALLA, J.) **(M.S. SANKLECHA, J.)**