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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ITA No. 737/2017

PRINCIPAL COMMISSIONER OF INCOME TAX-07 Appellant

Through: Mr. Rahul Chaudhary, Senior Standing
Counsel with Mr. Sanjay Kumar, Junior Standing
Counsel.

versus

PUNJAB & SIND BANK

..... Respondent

Through: Mr. Salil Kapoor with Mr. Sumit
Lalchandani and Ms. Ananya Kapoor and Ms.
Soumya Singh, Advocates.

**CORAM: JUSTICE S. MURALIDHAR
JUSTICE PRATHIBA M. SINGH**

ORDER
18.09.2017

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C.M. No. 31677/2017 (exemption)

1. Allowed, subject to all just exceptions.

C.M. No. 31676/2017 (delay)

2. For the reasons stated therein, the delay in filing the appeal is condoned.

3. The application is disposed of.

ITA No. 737/2017

4. There are four issues urged by the Revenue in this appeal directed against the order dated 20th January 2017 passed by the Income Tax Appellate Tribunal (ITAT) in ITA No. 4869/Del/2010 for Assessment Year (AY) 2007-08, which read as under:

“A. Whether on facts and in the circumstances of the case Ld. ITAT

was correct in law in deleting the addition of Rs. 35,20,25,056 made by the AO on account of disallowance of amortization of premium paid on securities?

B. Whether on facts and in the circumstances of the case Ld. ITAT was correct in law in deleting the addition of Rs. 27,16,60,199 made by the AO on account of disallowance of depreciation on securities including loss of Rs. 9,83,66,579 on shifting of securities from AFS to HTM category?

C. Whether on facts and in the circumstances of the case Ld. ITAT was correct in law in deleting the addition of Rs. 38,02,52,097 made by the AO on account of contribution made by the Assessee to Punjab & Sind Bank Employees Pensions Fund Trust?

D. Whether on facts and in the circumstances of the case Ld. ITAT was correct in law in deleting the additions to the Assessee's book profit computed u/s 115JB of the Income Tax Act, 1961 on following counts? :-

a. Rs.35,20,25,056 made by the AO on account of disallowance of amortization of premium paid on securities.

b. Rs. 27,16,60,199 made by the AO on account of disallowance of depreciation on securities including loss of Rs. 9,83,66,579/- on shifting of securities from AFS to HTM category.

c. Rs. 38,02,52,097 made by the AO on account of contribution made by the Assessee to Punjab & Sind Bank Employees Pensions Fund Trust.”

5. The first issue, concerning the deletion of addition of Rs. 35,20,25,056/- made by the AO on account of disallowance of amortization of premium paid on securities, stands covered in the favour of the Assessee and against the Revenue by the decision dated 12th September 2012 of this Court in the

Assessee's own case, i.e. ITA No. 634 of 2009 (***Punjab and Sind Bank v. Commissioner of Income Tax***) for the AY 1996-97. Consequently, the Court declines to frame any question on this issue.

6. The second issue, concerning the deletion of addition made by the AO on account of disallowance of depreciation on securities including loss on shifting of securities from AFS to HTM category, also stands covered against the Revenue by the aforementioned decision dated 12th September 2012 in ITA No. 634 of 2009.

7. The third issue pertains to the correctness of the order of the ITAT in deleting the addition of Rs. 38,02,52,097/- made by the AO on account of the contribution made by the Assessee to the Punjab & Sind Bank Employees Pensions Fund Trust. The ITAT, in deciding the issue in favour of the Assessee, relied upon the decision dated 6th March 2013 of the Bombay High Court in ITA No. 2232 of 2011 (***The Commissioner of Income Tax – 6, Mumbai v. M/s. Glaxo Smithkline Pharmaceuticals***). It is seen that the Bombay High Court has in the above order in turn relied on two orders passed by it dated 1st March 2013 in ITA No. 568 of 2012 (***CIT v. Suashish Diamonds Ltd.***) and ***Commissioner of Income Tax v. Western India Paper & Board Mills (P) Limited (1991) 189 ITR 309 (Bom)***. The Bombay High Court has, in its three orders, consistently held that, although contributions to the pension funds may not be allowable under Section 36 (1) (iv) of the Act, the same is allowable under Section 37 of the Act.

8. Learned counsel for the Revenue has been unable to point out to the Court any view contrary to the one taken by the Bombay High Court.

9. It appears that although no appeal was filed by the Revenue against the order of the Bombay High Court in *M/s. Glaxo Smithkline Pharmaceuticals (supra)*, the Revenue has filed Special Leave Petitions before the Supreme Court against the subsequent orders passed in 2013. However, no stay has been granted thereof. Consequently, the Court declines to frame a question on this issue.

10. On the fourth issue of deletion of the addition in the Assessee's book profit computed under Section 115JB of the Act, the order of the High Court dated 12th September 2012 for AY 1996-97 had remanded the issue to the AO for fresh consideration. It is pointed out that, on remand, the AO passed the order dated 17th October 2013 accepting the plea of the Assessee. Consequently, on this issue also, this Court also declines to frame a question.

11. The appeal is dismissed.

S. MURALIDHAR, J.

PRATHIBA M. SINGH, J.

SEPTEMBER 18, 2017/Rm