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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **ITA 128/2018**

ORIENTAL BANK OF COMMERCE Appellant
Through: Mr. Rajat Navet, Advocate.

versus

ADDITIONAL COMMISSIONER OF INCOME TAX Respondent
Through: Ms. Vibhooti Malhotra and Mr. Rahul
Chaudhary, Advocates.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE A. K. CHAWLA

ORDER
% **05.02.2018**

CM APPL. 4346/2018 (*for exemption*)

Allowed subject to just exceptions.

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The question of law sought to be urged in this case is:-

“(1) Whether the interest on overdue deposits could have been allowed as deduction in the circumstances of the case?”

Issue notice. Ms. Vibhuti Malhotra, Advocate accepts notice on behalf of the respondent. With the consent of the counsel for the parties, the appeal was heard finally.

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The Revenue had disallowed these amounts contending that the overdue interests were not ascertained liabilities.

It is brought to the notice of the Court that the issue sought to be urged by the assessee is covered by the recent decision of this Court in the case of *Oriental Bank of Commerce vs. Additional Commissioner of Income Tax*, ITA 57/2018 (dated 17.01.2018). The Court had, on that occasion in its judgment stated, as follows:-

“4. The assessee - a scheduled bank had in its return claimed an ascertained liability of Rs.17 crores towards the interest on overdue deposits. The AO was of the opinion that the liability was not in present time and had not crystallized or arisen and therefore, had to be disallowed. The CIT(A) allowed the appeal filed in the light of the previous year's observations which are extracted below :

"5.5.4 There is no dispute that interest is liable to be paid by the appellant to the depositors on these time deposits. Therefore, it is clear that above liabilities are definite liabilities. The appellant submitted that it has accounted for interest on overdue deposits at the rate of savings bank deposits and the balance overdue interest is accounted for at the time of renewal as per the RBI Circular.

Therefore, it is clear that the above liabilities at the rate of savings bank deposits are ascertained liabilities crystallized during the relevant previous year as on the closure of account on 31/03/2009. Actual interest on time deposits are much higher than savings account deposits. Therefore, the liability debited in the accounts at the rate of savings account deposits cannot be lower than the liability at the time of renewal.

5.5.5 The assessee is a nationalized bank and governed by Banking Regulations Act, 1974. The assessee is bound to act as per RBI Circular. The RBI Circular No. DBOD No. Leg. BC.34/09.07.005/2008-09 dated 22.08.2008 in Para 2 (xi) says:-

"(xi) Interest on savings bank accounts should be credited on regular basis whether the account is operative or not. If a Fixed Deposit Receipt matures and proceeds are unpaid, the amount left unclaimed with the bank will attract savings bank rate of interest."

Further, the above RBI circular is neither inconsistent nor contrary to the provisions of the Income Tax Act. There is no dispute that the appellant debited the liability on account of overdue deposits at the rate of savings bank deposits as per RBI Circular in a bonafide manner. It is also fact that there is no change in the method of accounting but only change in accounting policy as guided by the RBI.

5.5.6 Hon'ble Supreme Court of India in *Bharat Earth Movers Ltd. Vs CIT* [245 ITR 428] held that if a business liability has definitely arisen in the accounting year, the deduction should be allowed although the liability may have to be quantified and discharged at a future date. What should be certain is the incurring of the liability. It should also be capable of being estimated with reasonable certainty though the actual quantification may not be possible. If these requirements are satisfied, the liability is not a contingent one. The liability is in present though it will be discharged at a future date. It does not make any difference if the future date on which the liability shall have to be discharged is not certain. The above principle was

also followed by Hon'ble Supreme Court in Metal Box Co. of India Ltd. Vs Their workmen [73 ITR 53] and Calcutta Co. Ltd. Vs CIT [37 ITR 1]. In view of the above factual and legal position as the liability determined as per RBI Circular are definite and ascertained liability, therefore, allowable under the provisions of the Act. As such this ground is decided in favour of the appellant."

5. The ITAT, in the impugned judgment was of the opinion that the expenditure was unascertained and the liability, uncrystallized. The ITAT without recording its own conclusions on this aspect, remitted the matter to the AO. The assessee is therefore, aggrieved.

6. The assessee relies upon the decision of the Supreme Court in Bharat Earth Movers Ltd. Vs CIT, (2000) 245 ITR 428 (SC); Calcutta Co. Ltd. Vs CIT (1959) 37 ITR 1; and, Kedarnath Jute Mfg. Co. Ltd Vs Addl. Commissioner Of Income Tax, (1971) 82 ITR 363. It is submitted that an identical question was urged and the assessee's contention accepted by this court in Aggarwal and Modi Enterprise (Cinema Project) Co. (P) Ltd. Vs. CIT, (2016) 381 ITR 469 (Del.).

7. Ms. Vibhooti Malhotra, learned counsel for Revenue urges that order impugned is merely one of remission and in no case, acts prejudicially against the appellant. It is argued that besides circumstances that the assessee is aware of the likely liability and is able to crystallize, it per se would not mean that it is an ascertained one having regard to the fact that further payments would have to be made and the likelihood of the depositors renewing fixed deposits.

8. This Court is of the opinion that the questions urged in this case, need to be answered in favour of the assessee in the light of the decision in Aggarwal and Modi's case (supra).....”

In the light of the above discussion, the question of law deserves to be, and is accordingly, answered in favour of the assessee.

Consequently, the appeal succeeds and is allowed.

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

FEBRUARY 05, 2018

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