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

INCOME TAX APPEAL NO. 1561 OF 2016

Commissioner of Income Tax(IT)-2 .. Appellant

v/s.
M/s. Hongkong and Shanghai Banking Corporation Ltd. .. Respondent

Mr. Tejveer Singh for the appellant
Mr. Niraj Sheth a/w Mr. Bharat Damodar I/b Kanga & Co. for the respondent

CORAM : AKIL KURESHI &
M.S. SANKLECHA, J.J.

DATED : 6th FEBRUARY, 2019

P.C.

1. This appeal is filed to challenge the judgment of the Income Tax Appellate Tribunal ("the Tribunal" for short), raising following questions for our consideration :-

(i) Whether on the facts and circumstances of the case and in law, the Tribunal erred in concurring with the decision of CIT(A) while deleting the addition made by the AO on NRI Mobilization expenses of Rs.4,36,29,183/- on the basis of decision of Bombay High Court in the case of Emirates Commercial Bank Ltd, 262 ITR 55 ignoring that the facts of that case were entirely different from the present case, which have been ignored while deciding the issue. Tribunal failed to follow the ratio in the case of CIT Vs. Jansampark Advertising & Marketing Pvt. Ltd. 56 taxmann.com 286 (Delhi)

dated 11th March, 2015?

(ii) Whether on the facts and circumstances of the case and in law, the Tribunal erred in concurring with the decision of CIT(A) while deleting the addition made by the AO on account of replacement of shares by the assessee to EMGF amounting to Rs.3,50,00,000/- on the basis of decision in the case of CIT Vs. Nainital Bank (1966) 62 ITR 638 (SC) ignoring that the facts of that case were entirely different from the present case, which have been ignored while deciding the issue. Tribunal failed to follow the ratio in the case of CIT Vs. Janasampark Advertising & Marketing Pvt. Ltd. 56 taxmann.com 286 (Delhi) dated 11th March, 2015?

2. Question (i) arises in the following background. The respondent assessee is a bank. For Assessment Year 2000-01, the assessee had claimed expenditure of Rs.4.36 crores under the head "NRI Deposit Mobilization". According to the assessee to assist and facilitate the investments by NRIs, such a branch was set up. The said amount was expended towards administrative and other related expenses and the entire expenditure was for the purposes of head office and, therefore, no restrictions in terms of Section 44C of the Income Tax Act, 1961 should be imposed. The Tribunal accepted the view of the assessee relying upon the decision in the case of this very assessee for the earlier Assessment Years 1989-90 and 1990-91. The Tribunal also referred to

certain other decisions.

3. Learned Counsel for the Revenue submitted that the Tribunal has erred in not applying the provisions of Section 44C of the Act. On the other hand, learned Counsel for the assessee supported the view of the Tribunal and contended that in an identical situation for the earlier assessment years, the Revenue had not carried the matters in appeal before the High Court. We note that non-filing of the appeals by the Revenue could not have been on the ground of low tax effect. Under the circumstances, the decisions of the Revenue not to challenge the Tribunal's judgment in earlier years in respect of this very assessee, can be seemed as conscious decision of accepting the proposition involved. This question is, therefore, not entertained.

4. Question no.(ii) arises in following background. The respondent assessee had claimed a loss of Rs.3.50 crores. The assessee pointed out that as a mediator it holds securities, collect dividends, obtain deliveries, ensures transfer in the name of the client and delivers the securities when the same are sold by the clients. During the course of such business proceedings one client namely, Capital Emerging Growth Fund (“EMGF” for short) had purchased certain shares of Zee

Telefilms. These shares were registered in the name of EMGF. However, subsequently one Jas-One Diamonds Pvt. Ltd. (hereinafter referred to as "Jas-One") filed a suit in the Bombay High Court claiming that these shares were sent by the plaintiff for registration, which shares were subsequently stolen and circulated in the market. In view of such controversy, the assessee referred the case to the broker. The broker had taken a stand that the case has became time barred as a result of which, the arbitration proceedings would not yield any result. One Chase Manhattan Bank had acted as a Global Custodians for EMGF. On account of such events, Chase bank and EMGF had suffered a loss of Rs.3.5 crores. According to the assessee bank, in view of relations with the customers in question and to safeguard the bank's interest and reputation, the assessee bank agreed to pay a sum of Rs.3.50 crores by way of loss.

5. The Assessing Officer did not accept the claim, upon which the issue reached to the Tribunal. Tribunal by the impugned judgment upheld the assessee's contention placing reliance on the decision of the Supreme Court in case of ***Commissioner of Income Tax Vs. Nainital Bank Ltd. 62 ITR 638*** *inter alia* observing that the clients of the bank being repeated clients and to maintain dignity in the market, the

assessee had made such payment. Such loss had to be allowed as business expenditure.

6. Having heard learned Counsel for the parties on this issue as noted, strictly speaking, the assessee was not under the legal obligation to make the payment in absence of any specific contract or a Court order to maintain its reputation in the market and cordial business relations with the customers. The Supreme Court in case of Nainital Bank (supra) in similar circumstances, had held that such a claim was allowable under Section 10(2) (xv) of the Indian Income Tax Act,1922. In such case, large quantity of jewellery pledged with the respondent assessee bank by its constituents and currency notes were stolen by dacoits from the premises of the bank. In regard to the loss of jewellery, the bank settled the claim and claimed a loss as a business loss expenditure. The Supreme Court held that sole question to be judged is whether the bank in incurring the expenditure acted in the interest of and for the purpose of its business. It is also agreed that the credit of a banking business is very sensitive. It largely thrives upon the confidence which its constituents have in its management. To maintain such confidence, the management had to make concessions to preserve the goodwill and relations with its clients. Under such circumstances,

the expenditure was allowed. No question of law is, therefore, arises.

7. The tax appeal is dismissed.

(M.S. SANKLECHA, J.) **(AKIL KURESHI, J.)**