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

INCOME TAX APPEAL NO. 1650 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 question for our consideration :-

> *"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.4,56,28,770/- 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?"

2. This question arises in the following background. The respondent assessee is a bank. For Assessment Year 2000-01, the assessee had claimed expenditure of Rs.4.56 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. The tax appeal is dismissed.

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