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

\+ ITA 585/2023, CM APPL. 54261/2023

COMMISSIONER OF INCOME TAX - INTERNATIONAL TAXATION -3 ..... Appellant

Through: Mr. Ruchir Bhatia, SSC with Ms. Deeksha Gupta, Adv.

versus

STANDARD CHARTERED GRINDLAYS PTY LTD. ..... Respondent

Through: Mr. Shashi Kapila, Mr. Pravesh Sharma, Mr. Sidharth Kapila, Mr. Sushil Kumar, Advs.

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\+ ITA 589/2023, CM APPL. 54436/2023

THE COMMISSIONER OF INCOME TAX - INTERNATIONAL TAXATION-3 ..... Appellant

Through: Mr. Ruchir Bhatia, SSC with Ms. Deeksha Gupta, Adv.

versus

STANDARD CHARTERED GRINDLAYS BANK LTD. ..... Respondent

Through: Mr. Shashi Kapila, Mr. Pravesh Sharma, Mr. Sidharth Kapila, Mr. Sushil Kumar, Advs.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

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O R D E R

% **2102.2024**

ITA 589/2023 & CM APPL. 54436/2023

1. The Commissioner of Income Tax – International Taxation -3 impugns the order of the Income Tax Appellate Tribunal ["**ITAT"**] dated 26 October 2020 and proposes the following questions for our consideration: -

> "2.1 Whether the Ld. ITAT erred in allowing the deduction claimed by the assessee in respect of the expenses incurred on soliciting and mobilization of foreign currency deposits from Non Resident Indians on the assessee's Indian business in the backdrop of Section 44C of the Act?
>
> 2.2 Whether the Ld. ITAT erred in allowing the appeal of the assessee by deleting the entire expenses attributable to exempt income u/s 10(15)(iv) of the Act on gross income basis by not correctly applying the ratio of the judgment of the Hon'ble Supreme Court in the case of Walfort Shares and Stock Brokers Pvt. Ltd (326 ITR1) wherein the basic principle of taxation has been laid down on net income basis?
>
> 2.3 Whether the Ld. ITAT erred in allowing the entire dividend income of the assessee as exempt on gross basis by not correctly applying the ratio of the judgment of the Hon'ble Supreme Court in the case of Walfort Shares and Stock Brokers Pvt. Ltd (326 ITR1) wherein the basic principle of taxation has been laid down on net income basis?
>
> 2.4 Whether the Id. ITAT erred in deleting the addition on account of commission earned by the foreign branches of the assessee on international credit cards issued and in regard to the transactions completed in India?
>
> 2.5 Whether the Ld. ITAT erred in allowing the expenses relating to technical services by not appreciating the fact that any deduction otherwise than by filing return/revised return is not allowable in view of the decision of the Hon'ble Supreme Court's decision in the case of Goetz(India) Ltd Vs CIT (2006) reported in 284 ITR 323 (SC)?
>
> 2.6 Whether on the facts and in the circumstances of the case, the Ld. ITAT was right in admitting additional evidences in respect of technical services without regard to settled position of law and Rules 29, 30 and 31 of Income Tax (Appellate Tribunal) Rules,

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> 1963?
>
> 2.7 Whether the Ld. ITAT erred in allowing the expenses relating to technical services claimed u/s 37(1) of the I.T. Act without appreciating the fact that on one hand by allowing deduction of such expenses in the hands of the payer (Indian branch/PE), the assessee payer reduces its tax liability @48% of the amount paid while the taxes collected in India by way withholding Tax is only @15% on such payments which in effect would result in net revenue loss for India and the same would be contrary to the matching principle of taxation as deduction is allowed on one hand while the income is not offered for taxation?"

2. We note that insofar as proposed questions 2.1 and 2.4 are concerned, the same have also been admitted for consideration in ITA 387/2019.

3. Insofar as questions 2.2 and 2.3 are concerned, we note that the ITAT has upheld the conclusion of the lower authorities that the Assessing Officer ["**AO**"] had failed to record any satisfaction and had observed the following:-

> "17. We find that the AO has disallowed the amount invoking the provisions of Section 14A. <u>While there is no dispute regarding the disallowance of expenditure incurred in relation to exempt income under both the heads, the Act prescribes proper procedure of computing such disallowance u/s 14A(2), We find that the revenue has not invoked the procedure as specified under the said section wherein the AO has to record his dissatisfaction as to the correctness of the claim with regard to the accounts of the assessee.</u> Owing to the procedural tumble, we hereby delete the disallowance made by the Assessing Officer."

In view of the aforesaid, we are of the considered opinion that no substantial question of law arises for the aforenoted issues.

4. Insofar as proposed questions 2.5 to 2.7 are concerned, we find that the ITAT has taken note of the following conclusions as rendered by the Commissioner of Income Tax (Appeals) **["CIT(A)"]**:-

> ***"Scope***

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We have audited the schedule of charges of Operations and Technology Support Services(Operation and Technology),**Credit Cards** Support Services (Credit Cards) and Access to and Use of The Commercial Banking System (CBS) for the Indian Branch of ANZ Grindlays Bank Limited (the Schedule) in respect of the services provided by the Australia and New Zealand Banking Group (the Company) for the period from 1 April 2000to 31 July 2000. The Company's management are responsible for the Schedule and have determined that the accounting policies used are appropriate to the needs of management. We have conducted an independent audit of the Schedule in order to express an opinion on management on its preparation and presentation. No opinion is expressed as to whether the accounting policies used are appropriate to the needs of the management.

Our audit has been conducted in accordance with Australian Auditing Standards. Our procedures included examination, on a test basis of evidence supporting the amounts and other disclosures in the Schedule. These procedures have been undertaken to form an opinion whether, in all material respects, the attached Schedule is prepared in accordance with generally accepted accounting principles, the charges relate to production support, recovery from system failures, troubleshooting, problem investigation, user assistance and right to use the system, and have been incurred on behalf of the Indian branch of ANZ Grindlays Bank Limited. The audit opinion expressed in this report has been formed on the above basis.

Audit opinion

In our opinion, the attached Schedule presents fairly, in accordance with the generally accepted accounting principles, charges which relate to production support, recovery from system failures, troubleshooting, problem investigation, user assistance, right to use the system software, and services provided in respect of Credit Cards, CBS and other Operation and Technology support, and have been incurred on behalf of the Indian branch of ANZ Grindlays Bank Limited for the period from 1st April 2000 to 31 July 2000.

Michelle Somerville
Partner
Place: Melbourne
Date:

Schedule of Charges for the Access and Use of the Commercial Banking System Allocated to the ANZ Grind lays Bank Limited - India Branch

For the four months ended 31 July 2000

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Charges for	**A($)**
-providing the access to and use of the CBS system banking operations for the four months to 31 July2000	1,962,000
-providing software maintenance and other technical support Service of use of the CBS system	1,551,000
Total	3,512,000

The local currency allocation amount to INR91,601,740.

Schedule of Operations and Technology Charges Allocated to the ANZ Grindlays Bank Limited -India Branch

For the four months ended 31 July 2000

Charges for	**A($)**
- providing Operation and Technology support and access to and use of 'IT Service Delivery: Mainframes'	(8,000)
-providing Operation and Technology support and access to and use of 'IT Service Delivery: AS400, Unix, etc'	454,000
- providing access to and use of 'Payment Services'	40,000
providing 'Telecommunications and International' communication services	143,000
- providing the services of the central operation technology & information technology planning team	41,000
-providing access to and use of ‘BTS: ANZLINK’	68,0000

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-providing the use of ANZIB: MIDANZ Support & Maintenance	0
-providing support to various ANZ software 'ANZIT Recon Support'	1,000
- Projects: Y2K	31,000
-providing Operation and Technology support and access to and use of 'IT Service Delivery: Mainframes-Project TEP'	(126,000)
-providing Operation and Technology support and access to and use of 'IT Service Delivery: Mainframes- Project Telephone Banking (excluding Capex)'	75,000
Total	745,000

The local currency allocation amount to INR19,431,463.
Schedule of Cards Charges Allocated to the ANZ Grindlays Bank Limited -India Branch
For the four months ended 31 July 2000

Charges for	
-IT Service Delivery: Mainframes	386,000
-providing consultancy and support services in connection with 'International Cards Operations'	344,000
- International Cards Marketing	464,000
-providing operations and technological support in connection to 'Partnership	24,000

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Relationship	
providing support services related to 'Vision Plus Project Development,' a **credit cards** software	270,000
- IT Software Solutions	456,000
-providing processing services through 'IT Service Delivery' in connection with the above mentioned softwares.	158,000
Total	2,102,000

The local currency allocation amount to INR54,825,415/-

29. On going through the above, we find that the expenses have been incurred for Indian Banking business.

30. Thus, on going through the Memorandum of agreement, tax report, notes to account and the details of the tax payment under Article 12 of the Indo-Australian Treaty and on going through the challans enclosed at 77to 84 of the paper book, we hereby hold that the fees for access and user technology related to services for Credit Cards Services is meant for the business of the assessee's in India and such expenses are allowable to be claimed by the assessee u/s 37(1).”

5. The conclusions of fact as ultimately recorded by the CIT(A) have not been shown to suffer from any legal or factual infirmity. We consequently find that the aforesaid questions raise no substantial issue which merit further consideration.

6. We accordingly admit the instant appeal on the following questions of law: -

“A. Whether the ITAT erred in allowing the deduction claimed by the assessee in respect of the expenses incurred on soliciting and mobilization of foreign currency deposits from Non Resident Indians on the

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assessee's Indian business in the backdrop of Section 44C of the Act?

B. Whether the ITAT erred in deleting the addition on account of commission earned by the foreign branches of the assessee on international credit cards issued and in regard to the transactions completed in India?

7. List along with ITA 387/2019 to be called on the date fixed.

<u>ITA 585/2023, CM APPL. 54261/2023</u>

8. The instant appeal impugns the order of the ITAT dated 11 August 2021 in relation to penalty and proposes the following questions for our consideration: -

> "2.1 Whether on the facts and in the circumstances of the case, the Ld. ITAT was right in deleting the penalty on account of allowing the appeal of the assessee in quantum appeal by admitting additional evidences in respect of technical service without regard to settled position of law and Rules 29,30 and 31 of Income Tax (Appellate Tribunal) Rules, 1963?
>
> 2.2 Whether the Ld. ITAT erred in deleting the penalty on account of allowing the appeal of the assessee in quantum appeal by allowing the expenses relating to technical service claimed u/s 37(1) of the I.T.Act without appreciating the fact that on one hand by allowing deduction of such expenses in the hands of the payer (Indian branch/PE), the assessee payer reduced its tax liability @ 48% of the amount paid while the taxes collected in India by way withholding tax is only @ 15% on such payments which in effect would result in net revenue loss for India and the same would be contrary to the matching principle of taxation as deduction is allowed on one hand while the income is not offered for taxation?"

9. While considering ITA 589/2023, we have already upheld the view taken by the ITAT in favour of the assessee with respect to expenses relating to technical services. In view of the aforesaid, the question of penalty on the said issue would not survive.

10. Consequently, there exists no justification to entertain this

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appeal. It shall consequently stand dismissed.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

FEBRUARY 21, 2024/*neha*

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