$~68 to 72, 89 & 90

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

\+ ITA 342/2024 & CM APPL. 38547/2024 (Stay), CM APPL. 38548/2024 (Ex.) & CM APPL. 38549/2024 (Impleadment)

STATE BANK OF INDIA, CAG BRANCH .....Appellant

Through: Mr. Sanjeev Sagar, SC along with Ms. Nazia Parveen, Mr. Rishabh Malik, Mr. Vidyut Dwivedi and Mr. Nitin, Advs.

versus

ASSISTANT CIT, CIRCLE 77(1) & ANR. .....Respondents

Through: Mr. Debesh Panda, Ms. Zehra Khan, Mr. Vikram Aditya Singh, Mr. Ojaswa Pathak, Mr. Vineet Gupta and Ms. Anauntta Shankar, Advs. for R-1.
Mr. Gautam Narayan, Ms. Asmita Singh, Ms. K.V. Prasad and Mr. Anirudh Anand, Advs. for R-2.

69

\+ ITA 343/2024 & CM APPL. 38551/2024 (Stay), CM APPL. 38552/2024 (Ex.) & CM APPL. 38553/2024 (Impleadment)

STATE BANK OF INDIA, CAG BRANCH .....Appellant

Through: Mr. Sanjeev Sagar, SC along with Ms. Nazia Parveen, Mr. Rishabh Malik, Mr. Vidyut Dwivedi and Mr. Nitin, Advs.

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Through: Mr. Debesh Panda, Ms. Zehra Khan, Mr. Vikram Aditya Singh, Mr. Ojaswa Pathak, Mr.

Vineet Gupta and Ms. Anauntta Shankar, Advs. for R-1.
Mr. Gautam Narayan, Ms. Asmita Singh, Ms. K.V. Prasad and Mr. Anirudh Anand, Advs. for R-2.

70

\+ ITA 344/2024 & CM APPL. 38575/2024 (Stay), CM APPL. 38576/2024 (Ex.), CM APPL. 38577/2024 (Impleadment)

STATE BANK OF INDIA CAG BRANCH .....Appellant

Through: Mr. Sanjeev Sagar, SC along with Ms. Nazia Parveen, Mr. Rishabh Malik, Mr. Vidyut Dwivedi and Mr. Nitin, Advs.

versus

ASSISTANT CIT, CIRCLE 77(1) & ANR. .....Respondents

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Mr. Gautam Narayan, Ms. Asmita Singh, Ms. K.V. Prasad and Mr. Anirudh Anand, Advs. for R-2.

71

\+ ITA 345/2024 & CM APPL. 38579/2024 (Stay), CM APPL. 38580/2024 (Ex.), CM APPL. 38581/2024 (Impleadment)

STATE BANK OF INDIA .....Appellant

Through: Mr. Sanjeev Sagar, SC along with Ms. Nazia Parveen, Mr. Rishabh Malik, Mr. Vidyut Dwivedi and Mr. Nitin, Advs.

versus

ASSISTANT CIT, CIRCLE 77(1) & ANR. .....Respondents

Through: Mr. Debesh Panda, Ms. Zehra Khan, Mr. Vikram Aditya Singh, Mr. Ojaswa Pathak, Mr. Vineet Gupta and Ms. Anauntta Shankar, Advs. for R-1.
Mr. Gautam Narayan, Ms. Asmita Singh, Ms. K.V. Prasad and Mr. Anirudh Anand, Advs. for R-2.

72

\+ ITA 346/2024 & CM APPL. 38582/2024 (Stay), CM APPL. 38583/2024 (Ex.), CM APPL. 38584/2024 (Impleadment)

STATE BANK OF INDIA CAG BRANCH .....Appellant

Through: Mr. Sanjeev Sagar, SC along with Ms. Nazia Parveen, Mr. Rishabh Malik, Mr. Vidyut Dwivedi and Mr. Nitin, Advs.

versus

ASSISTANT CIT, CIRCLE 77(1) & ANR. .....Respondents

Through: Mr. Debesh Panda, Ms. Zehra Khan, Mr. Vikram Aditya Singh, Mr. Ojaswa Pathak, Mr. Vineet Gupta and Ms. Anauntta Shankar, Advs. for R-1.
Mr. Gautam Narayan, Ms. Asmita Singh, Ms. K.V. Prasad and Mr. Anirudh Anand, Advs. for R-2.

89

\+ ITA 347/2024 & CM APPL. 38673/2024 (Stay), CM APPL. 38674/2024 (Ex.), CM APPL. 38675/2024 (Impleadment)

STATE BANK OF INDIA CAG BRANCH .....Appellant

Through: Mr. Sanjeev Sagar, SC along with Ms. Nazia Parveen, Mr.

Rishabh Malik, Mr. Vidyut Dwivedi and Mr. Nitin, Advs.

versus

ASSISTANT CIT, CIRCLE 77(1) & ANR. .....Respondents

Through: Mr. Debesh Panda, Ms. Zehra Khan, Mr. Vikram Aditya Singh, Mr. Ojaswa Pathak, Mr. Vineet Gupta and Ms. Anauntta Shankar, Advs. for R-1.
Mr. Gautam Narayan, Ms. Asmita Singh, Ms. K.V. Prasad and Mr. Anirudh Anand, Advs. for R-2.

90

\+ ITA 348/2024 & CM APPL. 38680/2024 (Stay), CM APPL. 38681/2024 (Ex.), CM APPL. 38682/2024 (Impleadment)

STATE BANK OF INDIA CAG BRANCH .....Appellant

Through: Mr. Sanjeev Sagar, SC along with Ms. Nazia Parveen, Mr. Rishabh Malik, Mr. Vidyut Dwivedi and Mr. Nitin, Advs.

versus

ASSISTANT CIT, CIRCLE 77(1) & ANR. .....Respondents

Through: Mr. Debesh Panda, Ms. Zehra Khan, Mr. Vikram Aditya Singh, Mr. Ojaswa Pathak, Mr. Vineet Gupta and Ms. Anauntta Shankar, Advs. for R-1.
Mr. Gautam Narayan, Ms. Asmita Singh, Ms. K.V. Prasad and Mr. Anirudh Anand, Advs. for R-2.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE RAVINDER DUDEJA

ORDER

% **11.07.2024**

CM APPL. 38550/2024 (20 Days Delay) in ITA 342/2024
CM APPL. 38554/2024 (20 Days Delay) in ITA 343/2024
CM APPL. 38585/2024 (20 Days Delay) in ITA 346/2024

1. Bearing in the mind the disclosures made, the delay of 20 days in filing the appeals is condoned.

2. Applications shall stand disposed of.

ITA 342/2024 & CM APPL. 38547/2024 (Stay), CM APPL. 38548/2024 (Ex.) & CM APPL. 38549/2024 (Impleadment)

ITA 343/2024 & CM APPL. 38551/2024 (Stay), CM APPL. 38552/2024 (Ex.) & CM APPL. 38553/2024 (Impleadment)

ITA 344/2024 & CM APPL. 38575/2024 (Stay), CM APPL. 38576/2024 (Ex.), CM APPL. 38577/2024 (Impleadment)

ITA 345/2024 & CM APPL. 38579/2024 (Stay), CM APPL. 38580/2024 (Ex.), CM APPL. 38581/2024 (Impleadment)

ITA 346/2024 & CM APPL. 38582/2024 (Stay), CM APPL. 38583/2024 (Ex.), CM APPL. 38584/2024 (Impleadment)

ITA 347/2024 & CM APPL. 38673/2024 (Stay), CM APPL. 38674/2024 (Ex.), CM APPL. 38675/2024 (Impleadment)

ITA 348/2024 & CM APPL. 38680/2024 (Stay), CM APPL. 38681/2024 (Ex.), CM APPL. 38682/2024 (Impleadment)

3. The State Bank of India seeks to assail the order of the Income Tax Appellate Tribunal [‘**Tribunal**’] dated 25 January 2024 and poses the following questions of law for our consideration:

> “A. Whether the Ld. ITAT on facts failed to appreciate the judgment dated 25.04.2014 and 16.02.2015 in W.P. No. 11991/2014 and order dated 08.06.2023 in W.A No.1653/2022 all passed by Hon’ble Madras High Court and order dated 28.08.2023 passed by Hon’ble Apex Court in SLP (C) No.16734/2023 whereby the Hon’ble Apex court has directed the Appellant Bank to not make any recoveries from its employees in respect of tax on their LTC claims including TDS component?

B. Whether the Ld. ITAT erred in holding the Appellant Bank as an assessee in default in terms of section 201(1) of the Income Tax Act, for non-deduction of tax on the reimbursement of LTC/HTC claim of its employees, in view of the fact that any and all non-deduction of tax was in compliance of orders of the Hon'ble Madras High Court dated 25.04.2014 & 16.02.2015 passed in WP No. 11991/2014 and WANo.1653 & Supreme Court in SLP (C) 16734/2023 dated 28.08.2023?

C. Whether the Ld. ITAT has erred in law and fact in deeming the Appellant Bank as an assessee in default, particularly in view of the fact that a Special Leave Petition No. 16734/2023 on the issue of right of the employees of the Appellant Bank, to claim LTC to visit overseas countries is still pending adjudication and when an interim protection is awarded to employees of the Appellant from any recovery of tax in the said SLP?

D. Whether the demand of the respondent no.1 from the appellant for TDS claim (principal and interest) in respect of LTC/HTC claim of its employees is legal and justified post finalization of individual returns U/s 139 of the Income Tax Act, in view of the fact that where Income Tax was not deducted, the reason for the same was an order of Hon'ble Madras High Court and the said fact was reflected in Form No. 12BA (as enclosure to Form 16) of the employees? Whether the claim of such amount if any, is to be made from the employees or from the appellant Bank in view of the fact that the responsibility to pay tax on any income vests on the employees as the same was not deducted at source owing to order of Court of Law?

E. Whether the Ld. ITAT has erred by not deciding the matter on merits and simply relying on one of the judgment of the Hon'ble Apex Court in the case of " SBI Vs ACIT Civil Appeal No. 8181/2022" and ignoring the order of the Hon'ble Apex Court in another case i.e. SLP No. 16734/2023, thereby ignoring the fact that once again substantial issues qua the employees of the appellant in relation to LTC claim are pending in SLP no.16734/2023 before the Hon'ble Apex Court, wherein the respondents are party?

F. Whether on the facts and circumstances of the case, order passed by the Ld. ITAT was perverse and based on incorrect appreciation of facts and legal principles?

G. Whether the approach of the ACIT in ignoring the law on the subject and disregarding the merits and facts of the matter was correct?"

4. Undisputedly, the issue which is sought to be canvassed stands conclusively settled against the appellant in light of the judgment rendered by the Supreme Court in Civil Appeal No. 8181/2022.

5. Consequently, and in light of the aforesaid, the appeals along with pending applications, fail and shall stand dismissed.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

JULY 11, 2024/RW