



\$~44 to 59

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **ITA 563/2007**
DIRECTOR OF INCOME TAX NEW DELAppellant
Through: Mr. Sunil Agarwal, SSC with
Mr. Shivansh Pandya, Mr.
Utkarsh Tiwari, Advs.

versus

ANZ GRINDLAYS BANKRespondent
Through: Ms. Shashi Kapila, Mr.
Pravesh Sharma, Mr. Sushil
Kumar & Mr. Siddharth Kapila,
Advocates.

45
+ **ITA 566/2007**
DIRECTOR OF INCOME TAXAppellant
Through: Mr. Sunil Agarwal, SSC with
Mr. Shivansh Pandya, Mr.
Utkarsh Tiwari, Advs.

versus

ANZ GRINDLAYS BANKRespondent
Through: Ms. Shashi Kapila, Mr.
Pravesh Sharma, Mr. Sushil
Kumar & Mr. Siddharth Kapila,
Advocates.

46
+ **ITA 1296/2007**
COMMISSIONER OF INCOME TAXAppellant
Through: Mr. Sanjeev Menon, Mr. Rahul
Singh, JSCs & Mr. Anmol
Jagga, Adv for Mr. Indruj Rai,
SSC.

versus

ANZ GRINDLAYSRespondent
Through: Ms. Shashi Kapila, Mr.
Pravesh Sharma, Mr. Sushil
Kumar & Mr. Siddharth Kapila,



Advocates.

47

+

ITA 1297/2007

COMMISSIONER OF INCOME TAXAppellant

Through: Mr. Sanjeev Menon, Mr. Rahul
Singh, JSCs & Mr. Anmol
Jagga, Adv for Mr. Indruj Rai,
SSC.

versus

ANZ GRINDLAYS BANK LTD.Respondent

Through: Ms. Shashi Kapila, Mr.
Pravesh Sharma, Mr. Sushil
Kumar & Mr. Siddharth Kapila,
Advocates.

48

+

ITA 1300/2007

COMMISSIONER OF INCOME TAXAppellant

Through: Mr. Sanjeev Menon, Mr. Rahul
Singh, JSCs & Mr. Anmol
Jagga, Adv for Mr. Indruj Rai,
SSC.

versus

ANZ GRINDLAYS BANK LTD.Respondent

Through: Ms. Shashi Kapila, Mr.
Pravesh Sharma, Mr. Sushil
Kumar & Mr. Siddharth Kapila,
Advocates.

49

+

ITA 1344/2007

COMMISSIONER OF INCOME TAXAppellant

Through: Mr. Sanjeev Menon, Mr. Rahul
Singh, JSCs & Mr. Anmol
Jagga, Adv for Mr. Indruj Rai,
SSC.

versus

ANZ GRINDLAYS BANK LTD.Respondent

Through: Ms. Shashi Kapila, Mr.



Pravesh Sharma, Mr. Sushil
Kumar & Mr. Siddharth Kapila,
Advocates.

50

+

ITA 615/2009

DIRECTOR OF INCOME TAX

.....Appellant

Through: Mr. Sanjeev Menon, Mr. Rahul
Singh, JSCs & Mr. Anmol
Jagga, Adv for Mr. Indruj Rai,
SSC.

versus

STANDARD CHARTERED GRINDALYS BANK LTD.

.....Respondent

Through: Ms. Shashi Kapila, Mr.
Pravesh Sharma, Mr. Sushil
Kumar & Mr. Siddharth Kapila,
Advocates.

51

+

ITA 629/2009

DIRECTOR OF INCOME TAX

.....Appellant

Through: Mr. Sanjeev Menon, Mr. Rahul
Singh, JSCs & Mr. Anmol
Jagga, Adv for Mr. Indruj Rai,
SSC.

versus

STANDARD CHARTERED GRINDLAYS BANK LTD.

.....Respondent

Through: Ms. Shashi Kapila, Mr.
Pravesh Sharma, Mr. Sushil
Kumar & Mr. Siddharth Kapila,
Advocates.

52

+

ITA 496/2018

STANDARD CHARTERED GRINDLAYS BANK
LTD.

.....Appellant

Through: Mr. Sanjeev Menon, Mr. Rahul
Singh, JSCs & Mr. Anmol
Jagga, Adv for Mr. Indruj Rai,
SSC.

versus



DY. DIRECTOR OF INCOME TAX & ORS.Respondents

Through: Ms. Shashi Kapila, Mr.
Pravesh Sharma, Mr. Sushil
Kumar & Mr. Siddharth Kapila,
Advocates.

53

+

ITA 953/2018

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

.....Appellant

Through: Mr. Sanjeev Menon, Mr. Rahul
Singh, JSCs & Mr. Anmol
Jagga, Adv for Mr. Indruj Rai,
SSC.

versus

STANDARD CHARTERED GRINDLAYS LTD.

.....Respondent

Through: Ms. Shashi Kapila, Mr.
Pravesh Sharma, Mr. Sushil
Kumar & Mr. Siddharth Kapila,
Advocates.

54

+

ITA 1025/2018

THE COMMISSIONER OF INCOME TAX -
INTERNATIONAL TAXATION -3

.....Appellant

Through: Mr. Sanjeev Menon, Mr. Rahul
Singh, JSCs & Mr. Anmol
Jagga, Adv for Mr. Indruj Rai,
SSC.

versus

STANDARD CHARTERED GRINDLAYS BANK LTD.

.....Respondent

Through: Ms. Shashi Kapila, Mr.
Pravesh Sharma, Mr. Sushil
Kumar & Mr. Siddharth Kapila,
Advocates.

55

+

ITA 387/2019

THE COMMISSIONER OF INCOME TAX -



INTERNATIONAL TAXATION -3Appellant

Through: Mr. Sanjeev Menon, Mr. Rahul
Singh, JSCs & Mr. Anmol
Jagga, Adv for Mr. Indruj Rai,
SSC.

versus

STANDARD CHARTERED GRINDLAYS LTD .

.....Respondent

Through: Ms. Shashi Kapila, Mr.
Pravesh Sharma, Mr. Sushil
Kumar & Mr. Siddharth Kapila,
Advocates.

56

+

ITA 388/2019

THE COMMISSIONER OF INCOME TAX -

INTERNATIONAL TAXATION -3

.....Appellant

Through: Mr. Sanjeev Menon, Mr. Rahul
Singh, JSCs & Mr. Anmol
Jagga, Adv for Mr. Indruj Rai,
SSC.

versus

STANDARD CHARTERED GRINDLAYS LTD....Respondent

Through: Ms. Shashi Kapila, Mr.
Pravesh Sharma, Mr. Sushil
Kumar & Mr. Siddharth Kapila,
Advocates.

57

+

ITA 584/2023

COMMISSIONER OF INCOME TAX

(INTERNATIONAL TAXATION)-3

.....Appellant

Through: Mr. Aseem Chawla, SSC with
Ms. Nivedita, Ms. Priya Sarkar,
JSC.

versus

STANDARD CHARTERED GRINDLAYS BANK LTD

.....Respondent

Through: Ms. Shashi Kapila, Mr.
Pravesh Sharma, Mr. Sushil



Kumar & Mr. Siddharth Kapila,
Advocates.

58

+ ITA 587/2023
COMMISSIONER OF INCOME TAX
(INTERNATIONAL TAXATION)-3Appellant
Through: Mr. Aseem Chawla, SSC with
Ms. Nivedita, Ms. Priya Sarkar,
JSC.

versus

STANDARD CHARTERED GRINDLAYS BANK LTD
.....Respondent
Through: Ms. Shashi Kapila, Mr.
Pravesh Sharma, Mr. Sushil
Kumar & Mr. Siddharth Kapila,
Advocates.

59

+ ITA 589/2023
THE COMMISSIONER OF INCOME TAX -
INTERNATIONAL TAXATION-3Appellant
Through: Mr. Ruchir Bhatia, SSC with
Mr. Anant Mann, JSC.

versus

STANDARD CHARTERED GRINDLAYS BANK LTD.
.....Respondent
Through: Ms. Shashi Kapila, Mr.
Pravesh Sharma, Mr. Sushil
Kumar & Mr. Siddharth Kapila,
Advocates.

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

ORDER
19.09.2024

%

CM APL. 54260/2023 (400 days delay in re-filling) in ITA
584/2023

CM APL. 54354/2023 (400 days delay in re-filling) in ITA
587/2023



CM APL. 54436/2023 (400 days delay in re-filing) in ITA 589/2023

Bearing in mind the disclosures made, the delay of 400 days in re-filing the appeals is condoned.

All these applications shall stand disposed of.

ITA 563/2007, ITA 566/2007, ITA1296/2007, ITA 1297/2007, ITA 1300/2007, ITA 1344/2007, ITA 615/2009, ITA 629/2009, ITA 953/2018, ITA 1025/2018, ITA 387/2019, ITA 584/2023, ITA 587/2023 & ITA 589/2023

1. The instant appeals impugn the orders of the Income Tax Appellate Tribunal [**“Tribunal”**] and principally raise a question of allowability of expenses incurred by the respondent/assessee for garnering FCNR deposits which were to be maintained at its Indian branches. The second question which is raised is in respect of credit card commission and with those being in relation to cards which had been issued by the foreign branches of the respondent and used in India.

2. We take note of the common chart handed over by Ms. Kapila learned counsel appearing for the respondents where common questions of law regarding the allowability of NRI expenses with respect to Section 44C of the Income Tax Act [**“Act”**] and credit card commission arise. That chart is reproduced below:

ITA No.	Date of impugned order	Assessment Year (AY)	Issues/Questions of Law
ITA 563/2007	18.08.2006	1995-96	Allowability of NRI expenses
ITA 566/2007	18.08.2006	1994-95	Allowability of NRI expenses
ITA	12.01.2007	1992-93	Allowability of NRI



1296/2007			expenses
ITA 1297/2007	19.01.2007	1995-96	Allowability of NRI expenses
ITA 1300/2007	12.01.2007	1993-94	Allowability of NRI expenses
ITA 1344/2007	12.01.2007	1993-94	Allowability of NRI expenses
ITA 615/2007	24.10.2008	1996-97	NRI Expenses and credit card commission
ITA 629/2007	24.10.2008	1996-97	NRI credit cards
ITA 496/2018	18.08.2006	1997-98	Allowability of NRI Expenses, Deduction u/s 36(1)(viiia)
ITA 953/2018	23.02.2001	1998-99	NRI Expenses and credit card commission
ITA 1025/2018	22.12.2011	2002-03	NRI Expenses and credit card commission
ITA 387/2019	30.01.2006	1997-98	NRI Expenses and credit card commission
ITA 388/2019	30.01.2006	1997-98	NRI Expenses and Deduction of payment to approved pension fund
ITA 584/2023	26.04.2006	1999-20	NRI Expenses and credit card commission
ITA 587/2023	28.04.2006	2000-01	NRI Expenses and credit card commission
ITA 589/2023	11.07.2008	2001-02	NRI Expenses and credit card commission

3. Insofar, as the aspect of expenses incurred in garnering FCNR deposits is concerned, we note that the Tribunal has while dealing with this aspect held as follows: -

7.2 During the hearing the Ld. CIT (DR) stated that the CIT (Appeals) had erred in holding that the expenses incurred at places like Singapore, Hong-Kong etc could not be treated as a part of head office expenses and that the same were to be allowed after obtaining the exact details from assessee despite the fact that such



expenses were not even debited in the accounts of Indian Branch. In any case the AO had separately allowed a deduction at 5% under Sec. 44C on account of Head Office expenses and therefore no separate deduction was allowable for expenses incurred outside India.

7.3 The assessee's counsel explained that the Indian branches of the assessee bank had opened off-shore NRI counters outside India to obtain foreign currency deposits/funds from Non-Resident Indians (NRIs). The country was passing through a balance of payments crises and urgently needed foreign exchange into the country the RBI had issued circulars giving foreign currency deposits of NRI's a favourable rate of interest as against LIBOR rates of interest. Such expenses were incurred recently for marketing the Resurgent Bonds after the nuclear explosion in India to obtain the necessary foreign exchange. For that, counters were opened outside India for soliciting and mobilizing foreign currency deposits from NRI's and for advertising and explaining the RBI Circulars, the tenure of NRI Deposits / Interest Rates etc. This entire business was managed and controlled from India in accordance with RBI guidelines and was totally and entirely India -centric. Therefore, it was claimed that such expenses were legitimately allowable in the computation of Indian business income. These foreign currency deposits were then deployed in India at the various retail branches of the Bank across the country. The bank's deposit base in foreign currency deposits increased and this furthered its capacity to lend in foreign currency to borrowers within India. The interest income earned there from was offered for tax within India. Regarding the point that this expenditure was in the nature 'head office expenses', it was submitted that 'Head Office expenses' as defined in section 44C referred to 'executive and general administration expenditure. Special expenses for soliciting foreign currency deposits from NRI customers were not in the nature of "executive and administrative" expenses as contemplated under sec.44C of the Income Tax Act, 1961. It was further submitted that even if these expenses were treated as head office expenses, they were still fully allowable. The courts of law have held that no part of head office expenses which were exclusively India - centric were disallowable in law. For this Reliance was placed on the judgement of the Calcutta High Court in Rupenjuli Tea Company v. CIT [186 ITR 301] and Mumbai High Court in the case of CIT vs Ahu Dhabi Commercial bank reported in 262 ITR 55 where the court have categorically held that 'head office' expenses which are incurred exclusively and ONLY for the Indian business were fully deductible for determining the Indian business profits. No parts of such expenses were disallowable. Reliance was also placed on the decision of the Special Bench of the ITAT in the case of Inspecting Assistant Commissioner vs. Goodricke Group Ltd. reported in 12 ITD 1 (Calcutta). It was further submitted that the learned AO had relied



upon the judgment of the Calcutta High Court in the case of UCO Bank Vs. CIT (200 ITR 68) for making this disallowance. That judgement had subsequently been reversed by the Supreme Court in 240 ITR 355(SC), Reliance was placed on Article 7 of the Indo-Australian Double Taxation Avoidance Treaty under which the Business Profits of Permanent Establishment (PE) in India were to be computed. Under Article 7 of the aforesaid Treaty the profits of a PE carrying on business in India were to be computed as if it were a distinct and separate enterprise. Therefore, these expenses which directly and exclusively related to the business in India, should be rightfully allowed as a deduction in the computation of the Indian "Business Income", since the profits of the Permanent Establishment were offered for tax in India.

7.4 We have carefully considered the rival submissions: The funds mobilized abroad were brought to India in foreign currency account and kept in India for the Indian business of the assessee bank. The benefits reaped by the India branch or Permanent Establishment in India have been accounted for as Indian income. We, therefore, see no reason as to why the deduction of expenditure should not be allowed. These expenses incurred for procurement of business cannot be understood as Head Office expenses and the learned Assessing Officer, therefore, erred in treating them as head Office expenses within the meaning of section 44C of the Act. We, therefore, direct the learned Assessing Officer to allow the assessee deduction of actual expenditure basis and for that purpose if necessary the learned Assessing Officer may withdraw corresponding deduction allowed, if any under the provisions of section 44C."

4. As has been noted by the Tribunal, the expenses were incurred for the purposes of inviting NRIs' to open deposits in the Indian branches of the respondent assessee. The aforesaid initiative was predicated upon the circular of the RBI itself which is dated 16 October 1991. Since this was expenditure which was incurred solely for the purpose of the business of the respondent assessee in India, we find no merits in the challenge which stands mounted to the order of the Tribunal in this respect.

5. Some of these appeals additionally raise a question with respect to the commission paid on credit cards. The Tribunal has while dealing with this aspect and while disposing of the appeals pertaining



to Assessment Year [“A.Y.”] 1996-97 observed thus: -

“48. We have considered the rival submissions. We are in agreement with the finding of the learned CIT(A). Where the foreign branch has issued credit card and even if the transaction takes place in India, the credit is given to the customer outside India and the debt has also arisen outside India. The merchant shipment in India may receive the payment but the merchant shipments do not incur any debt. They merely receive charges for the goods sold or services rendered. However, the charges are received by the foreign branch for providing credit to their card holders outside India. The amount payable by the card holders who have acquired the credit card from branches outside India incur the debt outside India. Therefore, the fees in respect of such transaction are not taxable in India. We, therefore, uphold the deletion of addition of Rs.10 crores.”

6. Undisputedly the credit cards had been issued by the foreign branches of the respondent. It was in the aforesaid backdrop that the Tribunal noted that the charges are received by the foreign branch for providing and extending a credit line to the account holder outside India. It has further been noted that the amount payable by those card holders would clearly be a debt incurred outside India. It is in the aforesaid conspectus of facts that it ultimately came to hold that the fee in respect of such transactions would not be taxable in India. We find no justification to take a contrary view.

7. In view of the aforesaid, these appeals shall stand dismissed.

ITA 496/2018 & ITA 388/2019

8. Having heard Mr. Rai, learned counsel appearing for the appellant and Ms. Kapila who appears for the respondent/assessee, we note that ITA Nos. 496/2018 and ITA 388/2019 raise questions in addition to those which were common to the batch of ITA 563/2007 and connected matters. Those questions themselves pertain to deduction in respect of payments made to an approved pension fund.



9. In view of the aforesaid, these two appeals shall stand de-tagged to be called again on 28.10.2024.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

SEPTEMBER 19, 2024/sk