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

+ **ITA 496/2018**

STANDARD CHARTERED GRINDLAYS BANK LTD.

.....Appellant

Through: Ms. Shashi M. Kapila, Mr.
Pravesh Sharma and Mr. Sushil
Kumar, Advs.

versus

DY. DIRECTOR OF INCOME TAX & ORS.Respondents

Through: Mr. Indruj Singh Rai, SSC and
Mr. Sanjeev Menon, Panel
Counsel with Mr. Rahul Singh,
JSCs, Mr. Anmol Jagga and
Mr. Gaurav Kumar, Advs. for
Revenue.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

**HON'BLE MR. JUSTICE HARISH VAIDYANATHAN
SHANKAR**

ORDER

16.01.2025

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1. The present appeal had come to be admitted on 25 April 2018
on the following questions of law:-

“(i) Did the Income Tax Appellate Tribunal (ITAT) fall into error
in respect of its findings regarding NRI expenses claimed by the
assessee?”

(ii) Did the ITAT err in law with respect to its interpretation that
Section 36(l)(viia) of the Income Tax Act, 1961 was only net of
debit & credit entries?

(iii) Did the ITAT fall into error in remanding the issue in respect
of the claim of rejection under Section 36(l)(viia) of the Act of the
provision made for bad and doubtful debts, in the facts and
circumstances of the case?”

2. Insofar as Question (i) is concerned and pertains to NRI
expenses, learned counsels for parties are *ad idem* that the said issue



would have to be answered in favour of the appellant /assessee in light of the order passed by us in **Director of Income Tax vs. ANZ Grindlays Bank**¹ and where we had while dealing with this question held as follows:-

“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

¹ ITA 563/2007 decided on 19 September 2024



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 Abu 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.”

3. That leaves us to examine the issue which is raised in the context of Section 36(l)(viiia) of the Income Tax Act, 1961. However, Ms. Kapila, learned counsel appearing for the appellant submits that since full relief has been accorded to the assessee by the Assessing Officer pursuant to the order of remit framed by the Income Tax Appellate Tribunal, the said questions may not be decided in these appeals and may be kept open for consideration in an appropriate case.

4. Consequently, this appeal shall stand disposed of with us answering Question (i) in the affirmative and in favour of the appellant/assessee.

5. Questions (ii) and (iii) be kept open to be examined in an appropriate case.

YASHWANT VARMA, J.

HARISH VAIDYANATHAN SHANKAR, J.

JANUARY 16, 2025/DR