IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.1314 OF 2013

Director of Income Tax (IT)-I, Mumbai ..Appellant.

V/s.

M/s. SocieteGenerale ..Respondent.

Mr.Tejveer Singh for the appellant.
Mr. K.Gopal with Jitendra Singh for the respondent.

CORAM : S.C.DHARMADHIKARI AND A.K. MENON, JJ.

DATED : 15TH APRIL, 2015

P.C. :-

1. This appeal by the revenue is pertaining to assessment year 2001-02 and challenges the order of the Income Tax Appellate Tribunal in Appeal Nos.936/Mum/2005 and 954/Mum/2005.

2. The Income Tax Appeal No.936 was filed by the asssessee before us. One of the grounds in that is pertaining to deletion of disallowance of ₹34,90,860/- by granting exemption under section 10(15) of the Income Tax Act on

gross basis. This ground is noted as emerging from the revenue's appeal and for the assessment year 2001-02 in Income Tax Appeal No.954/2005.

3. Having heard both sides, we find that the appeal cannot be admitted on all the questions of law proposed and suggested as substantial questions of law. These questions read as follows:-

(1) Whether on the facts and circumstances of the case and in law, the ITAT was justified in holding that interest received by the assessee, out of funds placed with its HO and other overseas branches, is not taxable in India ?

(2) Whether on the facts and circumstances of the case and in law, the ITAT was justified in holding that interest payable by the Indian branch / permanent establishment of the foreign bank to its head office and other overseas branches, is deductible in computing the total income ?

(3) Whether on the facts and circumstances of the case and in law, the ITAT was justified in holding that provisions of section 40(a)(i) are not applicable on interest payable by the Indian branch / permanent establishment of the foreign bank to its head office and other overseas branches, as it does not give rise to any income although as per the deeming provisions of article 7 of the

concerned DTAA the income of the branch is to be computed as a separate and a distinct identity from the main entity and for the computation of income the provisions of domestic law are applicable ?

(4) Whether on the facts and circumstances of the case and in law, the ITAT was right in not deciding the case on merits and setting aside the matter on the issue of addition on account of deferred guarantee commission to the assessing officer, to be decided in accordance with the ratio laid down in DCIT (IT) v. Bank of bahrain&kuwait [(2010) 132 TTJ (Mum)(SB) 505], even though the assessee was granted sufficient number of opportunities to substantiates its claim ?

(5) Whether on the facts and circumstances of the case and in law, the ITAT was justified in holding that no interest section 14A for earning of interest income on tax free bonds as the assessee has sufficient interest free funds available in not been able to establish any clear cut nexus between the interest free funds available with it and the investment made in tax free bonds ?

(6) Whether on the facts and circumstances of the case and in law, the ITAT was right in deciding the case on merits and setting aside the matter to the assessing officer on the issue of applicability of provisions of section 115JA to foreign companies even though the provisions of section 115JA clearly state that a “company”, which includes

both Indian as well as foreign companies, has to pay tax as per the provisions of section 115JA if the tax payable by it as determined as per the provisions of section 115JA if the tax payable by it as determined as per provisions of the Act is less than minimum prescribed in section 115JA ?

4. In so far as question Nos.1 to 3 are concerned, we are informed by both sides that these are entertained by this Court and are subject matter of pending appeals. On that basis and proceeding to hold that they are substantial questions of law, we admit this appeal on the questions 1 to 3 as above.

5. The wording of question No.4 itself would indicate and as Mr.Tejveer Singh would concede that this is not an adverse direction. If it is not a direction adverse to the interest of the revenue far from prejudicing it, then, we do not see how the question No.4 can be substantial question of law. The matter has been sent back to the authority, lower to the Tribunal for a decision on merits. Merely because a order passed in the case of Bank of Bahrain and Kuwait has been brought to the notice of the parties and the assessing officer, does not necessarily mean that the issue will not be decided

by him in accordance with law. We do not see any basis for entertaining this question. The appeal is, therefore, dismissed on question No.4.

6. As far as question No.5 is concerned, we find the factual situation the backdrop of which this question is raised to be most unfortunate, disturbing and dangerous to say the least. The Tribunal as a matter of routine goes on consolidating appeals. Possibly the parties before the Tribunal feel that until there is a pile-up of the cases they need not be decided. Meaning thereby, if the same assessee and year after year raises the same questions and issues because of the findings of the assessing officer then, so long as there is no substantial prejudice to the interest of the revenue, these appeals need not been taken up periodically but can wait final outcome till some 8 or 9 appeals and for successive assessment years are lodged and registered. The Tribunal then can decide them and possibly by a common order. It is on such understanding of parties, their agreement and consent that the Tribunal keeps these appeals pending and that is how we have unfortunately and with great pain and anguish used the word “pile-up”. When they are eventually taken up for

decision, naturally by passage of time, it is not possible for the representatives of both sides to recite the factual background and matters by furnishing the precise details. Just as public memory is short, even in cases of this nature and when the representatives are flooded with matters and cases, they will not be in a position to remember the details. This results in either conflicting and confusing submissions and arguments. The result is utter chaos. For illustration, we would reproduce two paragraphs from a common order passed by the Tribunal and impugned in this appeal.

> *" 21. Ground no.3 is against the deletion of disallowance of Rs.43,65,360 on account of interest and other expenditure incurred for earning interest on tax free bonds and directing to allow exemption u/s 10(15)(iv) on gross basis. Here again both the sides are in agreement that the facts and circumstances of this ground are similar to ground no.4 for the assessment year 1998-99. Following the view taken hereinabove, we hold that the exemption u/s 10(15)(iv) is to be allowed on gross basis. Section 14A is applicable. However, in the light of the tabulated financial position showing investment in bonds at much lower level than the amount of capital and reserves, no disallowance of interest is called for u/s 14A. The A.O. is directed to compute disallowance u/s 14A in respect of other administrative and other*

expenses on some reasonable basis. This ground is partly allowed.

42. Ground no.3 is against the deletion of disallowance of Rs.34,90,860 by granting exemption u/s 10(15) on gross basis. Here also both the sides are in agreement that the facts and circumstances of this ground are similar to ground no.4 for assessment year 1998-99. Following the view taken hereinabove, we hold that the exemption be granted u/s 10(15) on gross basis. However disallowance u/s 14A is sustainable. No disallowance can be made u/s 14A in respect of interest expenditure because of the interest free funds exceeding the amount invested in the tax free bonds. However the A.O. is directed to compute the disallowance u/s 14A in respect of administrative and other expenses. "

7. We really fail to understand as to any finding and stated to be factual and rendered for which year has been applied and followed for the latter years. If by settled principles and sheer common sense latest must follow the former or earlier than which is latest or later and which is former and earlier is not clear from these two paragraphs. However, the revenue has clearly conceded the position before the Tribunal. It must, therefore, suffer for having

consented to the state of affairs and brought about by the Tribunal's orders and directions noted and reproduced above. We do not see the anxiety of the parties and the Tribunal in consolidating matters and appeals. The power to consolidate Appeals is a power implicit and inherent in a power to decide and adjudicate them. If you have to render a judgment repeatedly on similar issues and which must be clearly indicated in your decision, meaning thereby reasons and conclusions, then, to avoid conflicting directions and orders often cases and appeals are consolidated. If they involve common questions, common arguments, they can be conveniently disposed of by a common order. Then, we can understand a consolidation. If the matters are factual but similar or identical, then, as well we can understand the Court or Tribunal consolidating appeals. However, there is no justification for consolidating matters and by keeping the earlier case pending till further appeals accumulate for subsequent years raising the same issues and questions. In that event, it would be wiser to decide the earliest case and if the same applies on facts and there is nothing different or distinguishing brought on record in successive assessment years, then the earlier decision can be applied and followed.

That is a better way of deciding cases rather than waiting for more appeals to be filed and after the assessing officer and the first appellate authority continue to either err or fail to correct themselves. Therefore, we have found that there is absolutely no reason given for consolidation of these appeals and for decision by a common order. When we invited the attention of particularly Mr.Gopal, appearing on behalf of the assessee to page 68 and the opening paragraph in the Tribunal's order, he could not tell us as to how the batch of 9 appeals involving assessment years 1998-99 to 2003-04 could be said to be involving the same issues. If they are consolidated and if both the revenue and the assessee are raising the same questions, then, that is not clear nor can it be discerned by such a cryptic opening remark. In this regard, we cannot do anything better then invite the attention of all concerned to the judgment of the Hon'ble Supreme Court rendered in the case of **M/s.Chitivalasa Jute Mills V/s. M/s. Jaypee Rewa Cement** reported in **A.I.R. 2004 Supreme Court, 1687**. In the context of power of consolidation of suits, the Hon'ble Court held as under :-

> *"9..... What is the cause of action alleged by one party as foundation for the relief prayed for and the decree sought for*

in one case is the ground of defence in the other case. The issues arising for decision would be substantially common. Almost the same set of oral and documentary evidence would be needed to be adduced for the purpose of determining the issues of facts and law arising for decision in the two suits before two different courts. Thus, there will be duplication of recording of evidence if separate trials are held. The two courts would be writing two judgments. The possibility that the two courts may record finding inconsistent with each other and conflicting decrees may come to be passed cannot be ruled out.

12. ..... The Trial Court may frame consolidated issues. The Code of Civil Procedure does not specifically speak of consolidation of suits but the same can be done under the inherent powers of the Court flowing from Section 151 of the CPC. Unless specifically prohibited, the Civil Court has inherent power to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court. Consolidation of suits is ordered for meeting the ends of justice as it saves the parties from multiplicity of proceedings, delay and expenses. Complete or even substantial and sufficient similarity of the issues arising for decision in two suits enables the two suits being consolidated for trial and decision. The parties are relieved of the need of adducing the same or similar documentary and oral evidence twice over in the two suits at two different trials. The evidence having been recorded, common arguments need be addressed followed by one common judgment. However, as the suits are two, the Court may, based on the common judgment, draw two different decrees or one common decree to be placed on the record of the two suits."

8. We find that despite all this, we cannot entertain this appeal on question No.5 because it is the revenue which is equally to be blamed for the state of affairs and prevailing in the Tribunal. On finding that the issue has been decided purely on facts and raising no substantial question of law, we dismiss this appeal on question No.5.

9. Thus, what holds good for consolidation of Suits would equally apply to appeals. We are not persuaded by the sincere efforts of Mr. Tejveer Singh in this case and the request made by him to still entertain this appeal so that once and for all the Tribunal can be guided by this Court. We think that our observations made above are enough to guide the Tribunal and we hope that such mistakes and elementary in nature are not committed in future. We also expect the Tribunal not to sign judgments and decisions unless their checked thoroughly by them after their transcription. It may be a boring task but it has to be performed by none other than the decision makers. In such circumstances, we do not think that the appeal should be entertained and to correct some errors noted above.

10. Similar is the situation in regard to question No.6. For the reasons that have persuaded us not to entertain question No.4, we dismiss the appeal on question No.6. It is, therefore, admitted only on the above three questions of law.

11. To be heard along with Income Tax Act (L) No.1878 of 2012.

12. Mr.Jitendra Singh waives service for the respondent.

13. The Registrar (Judicial) / Registrar, High Court, Original Side, Bombay to ensure that the original record in relation to this Appeal is summoned from the Tribunal and offered for inspection of the parties. This paper book is treated sufficient for the purpose of admission of this appeal. However, the Registry must further ensure preparation of complete paper book in accordance with the Rules. The Registry in the first instance must send intimation of admission of this appeal enclosing therewith a copy of this order so as to enable the Tribunal to act accordingly.

(A.K.MENON, J.) **(S.C.DHARMADHIKARI, J.)**