IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 330 OF 2013

Director of Income Tax (IT)-I .. Appellant.
V/s.
Citibank N. A. .. Respondent.

Mr. Tejveer Singh, for the Appellant.
Mr. Percy Pardiwalla, Sr. Advocate with Mr. Bharat Damodar and Ms. Sneha Oak i/b. Kanga & Co., for the Respondent

CORAM: M.S.SANKLECHA, &
G.S.KULKARNI, JJ.
DATE : 11th MARCH, 2015.

P.C:-

This Appeal under Section 260-A of the Income Tax Act, 1961 (the Act), challenges the order dated 13th January, 2012 passed by the Income Tax Appellate Tribunal (the Tribunal) for the Assessment Year 1999-2000.

2 The Revenue has formulated the following questions of law for our consideration:

> *"(a) Whether on the facts and in the circumstances of the case and in law, the Tribunal is correct in allowing the Guest House Expenses when assessee has failed to furnish any evidence to warrant its allowability in term of the provisions of section 37(1) of the IT Act, 1961.*
>
> *(b) Whether on the facts and in the circumstances of the case and in law, the Tribunal is correct in holding that payment to Master Card International and Visa Card International without deduction of tax at source is not disallowable u/s. 40(a)(i) in*

view of the Article 26(3) of the Indo US DTAA, when the provisions of Article 26(3) were not attracted in the case, and especially for the year in question.

(c) Whether on the facts and in the circumstances of the case and in law, the Tribunal is correct in holding that notional loss arising from unmatured foreign exchange contracts is allowable when the loss is neither a definite liability nor a legal liability as mandated by the Supreme Court in the decisions in the cases of Bharat Earth Movers 112 Taxman 61 & Keshav Mills Ltd. 23 ITR 230 and in fact is expenditure contingent on happening of an event and therefore not allowable in view of the decision of Supreme Court in the case of Indian Molasses Co. P. Ltd. 37 ITR 66."

Re:- Question (a)

The Respondent-Assessee had claimed expenditure as deduction on account of guest house expenses. The Assessing Officer disallowed the expenditure of guest house expenses in view of the bar sub-section 4 of Section 37 of the Income Tax Act, 1961 (the Act). In appeal, the Commissioner of Income Tax (Appeals) [CIT(A)] deleted the disallowance on account of guest house expenses as sub-section (4) of Section 37 of the Act as the same was deleted w.e.f 1st April, 1988.

3 The Appeal by the Revenue to the Tribunal was dismissed in view of the fact that sub-section 4 of Section 37 of the Act was deleted from the Act w.e.f. 1st April, 1988. Thus, disallowance of guest house expenses for the Assessment Year 1999-2000 in the absence of Section 37(4) of the Act was not proper.

4 We find that in view of the clear and self evident position of law during the subject assessment year viz: absence of Section 37(4) of the Act, no fault can be found with the impugned order. Thus, no

substantial question of law arises. Accordingly, Question (a) dismissed.

Re:- Question (b)

The Respondent-Assessee during subject Assessment Year made payment through Master Card International and Visa Card International being assessment and equipment fees. The payments were made by the Respondent-Assessee without deducting tax at source. In view of the above, the Assessing Officer disallowed the entire amount of fees remitted, aggregating to Rs.82.33 lakhs in terms of Section 40(a)(i) of the Act.

5 In Appeal, the CIT(A) upheld the order of the Assessing Officer holding that Visa Card International and Master Card International have permanent establishment in India and, therefore, the income generated by them is taxable in India. Thus, the order of the Assessing Officer, disallowing the entire fees remitted for failure to deduct tax under Section 40(a)(i) of the Act was upheld.

6 On further Appeal by the Respondent-Assessee, the Tribunal by the impugned order allowed the Appeal of the Respondent-Assessee. In allowing its appeal, the Tribunal followed its decision in the case of ***Central Bank of India v/s. DCIT 42 SOT 450*** – wherein on similar facts,it was held that even if no TDS is deducted, the payments made to Visa Card International and Master Card International on account of fees could not be disallowed in view of Article 26(3) of Indo-US Double Taxation Avoidance Agreement (DTAA).

7 On reading of the decision of the Tribunal in Central Bank of India (supra) with the assistance of the Counsel, we find that the question

raised herein is covered by the order in Central Bank of India (supra) rendered in the context of similar/ identical facts and law.

8 Mr. Tejveer Singh, learned Counsel appearing for the Revenue in support of the Appeal states that no appeal has been preferred from the decision of the Tribunal in Central Bank of India (supra). We find that neither the memo of appeal nor any affidavit by the Revenue indicates any reason why this appeal from the impugned order is being preferred when the decision of the Tribunal on identical facts in Central Bank of India (supra) is accepted and merely followed by the impugned order.

9 We have repeatedly indicated (see CIT v/s. State Bank of India – Income Tax Appeal No. 269 of 2013 rendered on 4th February, 2015) that whenever the impugned order of the Tribunal merely follows its earlier orders and the Revenue has accepted the earlier order by not filing an appeal therefrom, should normally also apply in subsequent orders. This of course unless the Revenue brings on record the reasons which necessitated/ justified filing of an appeal from the impugned order when no appeal was filed from the earlier order which has been followed by the impugned order. However, there is nothing on record to indicate the reasons for filing an appeal from impugned order when no appeal is filed from the order of the Tribunal in Central Bank of India (supra).

10 Thus on the above ground alone, we see no reason to interfere with the impugned order of the Tribunal. Consistent application of law is an essential feature/ ingredient of Rule of Law. Accordingly, Question (b) is dismissed.

Re Question (c):-

11 The question as formulated by the Revenue has been allowed by the Tribunal in the impugned order by following the decision of its Special Bench in ***DCIT v/s. Bank of Baharain & Kuwait 132 TTJ/ (Mum)/505.*** Mr. Tejveer Singh, Counsel appearing for the Revenue states that the Revenue has not filed any Appeal against decision of the Special Bench in the case of Bank of Baharain and Kuwait (supra). However, there is no ground made out in the appeal memo or in any affidavit as to why the Revenue is preferring an Appeal against the impugned order on the above issue when an identical question decided by the Special Bench of the Tribunal in Bank of Baharain and Kuwait (supra) has been accepted by the Revenue. Therefore, for the reasons indicated while dealing with Question (b) above, the appeal need not be entertained.

12 In any case, the Counsel are agreed that an identical question of law as Question (c) above in the Income Tax Appeal No.1914 of 2011 and 5089 of 2010 by the Revenue, this Court by the orders dated 22nd March, 2013 and 1st February, 2013 repeatedly rejected the appeal on above issue as it stands covered against the Revenue and in favour of the Assessee by the decision of this Court in **CIT v/s. Bank of India 218 ITR 371.** Thus, Question (c) does not raise any substantial question of law. Question (c) dismissed.

13 Accordingly, **Appeal dismissed**. No order as to costs.

(G.S.KULKARNI,J.) **(M.S.SANKLECHA,J.)**