आयकर अपीलीय अधिकरण, मुंबई "एल" खंडपीठ

Income-tax Appellate Tribunal "L"Bench Mumbai

सर्वश्री राजेन्द्र, लेखा सदस्य एवं रविश सूद, न्यायिक सदस्य

Before S/Sh. Rajendra,Accountant Member & Ravish Sood, Judicial Member

आयकर अपील सं./I.T.A./3325/Mum/2016, निर्धारण वर्ष /Assessment Year: 2010-11

Standard Chartered Masterband Licensing Limited (Formerly known as Standard Chartered Strategic Brand Management India Limited) C/o. Standard Chartered Bank Plot No.C-38 & 39, G-Block Bandra Kurla Complex, Bandra (E) Mumbai-400 051. **PAN:AANCS 2552 H**	Vs.	CIT (Intl Taxation)-4 Room No.1704, 17th Floor, Air India Building, Nariman Point Mumbai-400 021.

(अपीलार्थी **/Appellant**) (प्रत्यर्थी **/ Respondent**)

Revenue by: Shri Samuel Darse-DR

Assessee by: S/Shri Kanchun Kaushal/Dhanesh Bafna/Aliasger Rampurawala/Pratik Shah.

सुनवाई की तारीख **/ Date of Hearing: 07/09/2017**

घोषणा की तारीख **/ Date of Pronouncement: 03/11/2017**

आयकर अधिनियम,1961 की धारा 254(1)के अन्तर्गत आदेश

Order u/s.254(1)of the Income-tax Act,1961(Act)

<u>लेखा सदस्य राजेन्द्र के अनुसार /PER RAJENDRA, AM-</u>

Challenging the order dated 8th March, 2016 of CIT(-passed u/s. 263 of the Act) the assessee has filed the present appeal.Assessee,a non-resident company,filed its return of income on 07/10/2010,declaring income of Rs.130.37crores.The Assessing Officer(AO)completed the assessment on 28.03.14,u/s.143(3)of the Act,determining its income of Rs.1,30,37,44,094/-. The CIT,vide his notice dt.04/01/2016,informed the assessee that it had claimed relief of tax rate u/s.115 A(1)(b)@10.56% under sub-clause AA on royalties received.He further observed that the AO had wrongly allowed the tax rate,that the correct tax rate was 15% under the provisions of Double Taxation Avoidance Agreement (DTAA),that the order passed by AO was erroneous and prejudicial to the interest of the revenue within the meaning of section.263 of the Act.Vide its letter dated 28/01/2016 the assessee filed explanation with regard to revisionary proceedings,initiated by the CIT.

2.After considering available material,the CIT held that the assessee, in the notes along-with computation of income claimed that SCB-India (SCBI) was an Indian concern in view of Circular No.740 of the CBDT,that it had relied upon the order of the Tribunal in the case of Joint office liquidator of Bank of Credit and Commerce (Overses) Ltd.(6SOT319),wherein it had been held that for the purpose of section 115A (1)of the Act,the Indian Branches of non

residents would be treated as Indian concern.He reproduced 115A and held that Indian Branch of SCB could not be classified as an Indian concern,that the benefit of concessional taxation u/s. 115A was not available to assessee in respect of royalties received in respect of SCB, that the SCB was not an Indian concern as envisaged under provisions of section 115A(1)(b),that it was to be taxed at maximum marginal rate applicable to the foreign comp - anies,that the assessee was a tax resident of UK, that it was eligible for beneficial tax of 15% under India-UK DTAA.The CIT further held that the word Indian concern had not been defined under the Act or the DTAA.s,that the word had to be given natural meaning based on principles of nocitur sociis , that the meaning of the word had to be taken from the words accompanying the particular word and the context.

3.Before us,the Authorised Representative(AR) argued that order of the AO was neither erroneous nor prejudicial to the interest of revenue,that the assessee had appended a note along with computation of income claiming the applicability of 115A,that it had relied upon Cir No.740 dt.17/04/96,that it had also referred to the case of Joint office liquidator of Bank of Credit and Commerce(overseas)Ltd.(supra),that AO had issued detailed questionnaire,that after due consideration and application of mind he had passed the order,that specific questions were raised about the issue and that he was satisfied with the reply filed by the it. He referred to Pg-36, 47, 48, 50 of the paper book and the CBDT Cir.740 of 17/4/ 1996 and contended that branch of foreign company was “Concern in India”, that the words used are “Concern in India” and not “Indian Concern”. He also referred to section 285A of the Act and Rule 114 of the Income tax Rules, 1962 and stated that the words used in such provisions was Indian Concern.He held that CIT had referred to the case of Hon'ble Madras High Court (110ITR730),that it dealt with Sur-tax for the AY.1963-64,that the decision was about super profit tax, that the CIT had wrongly relied upon the Explanation to Sec.263 of the Act,that the Circular No.740 of CBDT was clear on the issue.He referred to case of Nirav Modi (390 ITR 292).

The Departmental Representative(DR)stated that the AO had not examined the issue,that non-examination of the issue was the pre-condition for invoking provisions of sec.263 that the order passed by AO was erroneous,that CBDT Circular was not relevant to decide the issue in question, that the dispute was about TDS and not about royalty.In his rejoinder the AR stated that para -2 of Circular No. 742 talks about section 115A of the Act, that the CIT had doubted the order passed by ITAT in the case of Joint office liquidator of Bank of Credit and Commerce(overseas)Ltd.(supra).

4.We have heard the rival submissions and perused the material before us.We find that in the note No.2 (Pg-36 of the PB),the assessee had mentioned that as per provisions of section 115 A(1)(b)of the Act,royalty income earned by a foreign company from an Indian concern was taxable @10.56%.It had also relied upon the case of Joint office liquidator of Bank of Credit and Commerce(overseas)Ltd.(supra).Pg-47 of the PB is about receipt of brand royalty from associated enterprises.In the Note it has been mentioned that the payments by AE was subject to RBI approval,that the approval was first received in AY.2010-11 on the basis of which the right to receive royalty income was crystallised.We find that AO had issued notice u/s.142(1) of the Act on 23/10/2012 and directed the assessee to furnish copies of agreements entered into with other entities in regard to business in India,copy of computation of income,with audit report containing P&L account and balance sheet and to furnish reconciliation statement of the income returned with the income corresponding to credit of TDS as claimed as per the return of income.He also asked the it to furnish a detailed note on all sources of income and also produce evidence on the Indian element in the income,also details of amount received/ receivable by way of fees etc.from India/Indian concerns and also copy of relevant Tax Residency Certificate.In its reply to the 142(1)notice,the assessee furnished all the documents ,as required by the AO.The assessee,in pursuance of the notice issued by the AO,furnished all the necessary details.Question 3,4,7,8,11 and 12 raised by the AO directly deal with the issue.The CIT,while issuing notice did not consider questions 11 and 12 and their replies.It proves that there was no failure on part of the assessee in filing the requisite details called for.

In our opinion,once the assessee furnishes details as called by the AO,he cannot be held responsible for the alleged failure of the AO of not making inquiries.It is the prerogative of the AO to include or exclude certain items while passing the assessment order. He may or may not choose to mention as to which documents were produced before him and why did he accept the same.Even after making inquiry,he can decide not mention about such documents and evidences.Therefore,it cannot be presumed that he had not any inquiry.In the matter of Idea Cellular Ltd.(301 ITR 407),the Hon'ble Bombay High Court has held that if during assessment proceedings queries were raised and the assessee responded to the same,then even if an assessment order does not mention the same, it does not mean that the AO has not applied his mind to the issues,that it would be well nigh impossible for an AO to complete all assessments assigned to him u/s.143(3)of the Act,if he is required to deal with all issues which arose during the assessment proceedings,that the assessment order primarily deal with only those issues in respect of which the assessee has not been able to satisfy him and give

reasons for his conclusion,that it would enable the assessee to challenge the same,if aggrieve -ed.Hon'ble Gujarat High Court in Nirma Chemical Works Ltd. (309 ITR 67)has observed that if an assessment order were to incorporate the reasons for upholding the claim made by an assessee,the result would be an epic tome and not an assessment order.

In light of the above discussion,it can safely be held that it is only in cases where the evidence produced gives rise to suspicion about their veracity that further scrutiny is called for.If there is nothing on record to indicate that the evidences produced by the assessee were not reliable and that the AO was not satisfied with the same,then the CIT should not invoke the provisions of section 263 of the Act.

At the very highest,if the case of the CIT was that it was a case of inadequate inquiry,even then it would not be case of "no enquiry." It is well settled that the jurisdiction u/s.263 of the Act can be exercised only when it is a case of lack of enquiry and not one of inadequate enquiry,as held in the matter of Vikas Polymers(341 ITR 537).Thus,this is not a case of no inquiry,warranting order under section 263 of the Act.The Delhi High Court in the matter of DG Housing Projects Ltd.(343 ITR 329) has held that the power of revision u/s.263 of the Act would normally be exercised in case of no enquiry and not in cases of inadequate enquiry.It further held as under:

> *"However, even in case of inadequate enquiry by the Assessing Officer, the order of the Assessing Officer could be erroneous in two classes of situation. The first class would be where orders passed by the Assessing Officer are ex facie erroneous, i.e., a decision rendered ignoring a binding decision in favour of the Revenue or where enquiry is per se mandated on the basis of the record available before the Assessing Officer and that is not done. In the second class of cases, where the order is not ex facie erroneous, then the Commissioner of Income-tax must himself conduct an enquiry and determine it to be so. The court held that it is not permissible to the Commissioner of Income-tax while exercising power under section 263 of the Act to remit the issue to the Assessing Officer to re-examine the same and find out whether earlier order of assessment is erroneous. It is the Commissioner of Income-tax who must hold that the order is erroneous, duly supported by reasons."*

In this case,the order passed by the AO,is not per se erroneous.In the present matter,the AO was satisfied,consequent to making an enquiry and examining the evidence produced before him.The satisfaction of the AO on the basis of the documents produced is not shown to be erroneous in the absence of making a further enquiry.This is a case where a view has been taken by the AO on enquiry.Even if this view,in the opinion of the CIT was not correct,it would not permit him to exercise power under section 263 of the Act.

Finally,the issue stands settled by the order of the Tribunal in the case of Joint office liquidator of Bank of Credit and Commerce(overseas)Ltd.(supra).The CIT has held that the order was 'debatable'.What does he mean by debatable is beyond our comprehension. If the matter was referred to special bench the issue could have been termed as having two different

opinions.But,if he meant that order was not as per law,he is not an authority to say so.Judicial discipline demands that the Cs.IT to follow the order of the Tribunal.It is only the Hon'ble jurisdictional High Court that can question the validity of the orders of the Tribunal.It was not brought to our notice that the Department had challenged the impugned order before the Hon'ble Bombay High Court.Until and unless the order of the Tribunal is reversed,same is to be followed by the officers of the department.Only,on this count the revisionary order could have been quashed.But,we have already discussed the merit of the case and found that there was no error in the order of the AO who had decided the issue of following the order of the jurisdictional Tribunal and who had made sufficient inquiries before passing the order.So, reversing the revisionary order of the CIT,we decide the effective ground of appeal in favour of the assessee.

As a result, appeal filed by the assessee stands allowed.
फलतः निर्धारिती द्वारा दाखिल की गई अपील मंजूर की जाती है.
Order pronounced in the open court on 03rd November, 2017.
आदेश की घोषणा खुले न्यायालय में दिनांक 03 नवंबर , 2017 को की गई ।

Sd/-	**Sd/-**
(रविश सूद /Ravish Sood)	**(राजेन्द्र / RAJENDRA)**
न्यायिक सदस्य / **JUDICIAL MEMBER**	**लेखा सदस्य / ACCOUNTANT MEMBER**

मुंबई Mumbai; दिनांक/Dated : 03.11.2017.
Jv.Sr.PS.

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1.Appellant /अपीलार्थी **2.** Respondent /प्रत्यर्थी
3.The concerned CIT(A)/संबद्ध अपीलीय आयकर आयुक्त, **4.**The concerned CIT /संबद्ध आयकर आयुक्त
5.DR " " Bench, ITAT, Mumbai /विभागीय प्रतिनिधि, खंडपीठ,आ.अधि.मुंबई
6.Guard File/गार्ड फाईल

सत्यापित प्रति //True Copy//

आदेशानुसार/ **BY ORDER,**
उप/सहायक पंजीकार **Dy./Asst. Registrar**
आयकर अपीलीय अधिकरण, मुंबई /**ITAT, Mumbai.**