

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "L", MUMBAI**

**BEFORE SHRI G.S. PANNU, ACCOUNTANT MEMBER AND  
SHRI PAWAN SINGH, JUDICIAL MEMBER**

**ITA NOS. 293 & 294/MUM/2017 : A.Ys : 2006-07 & 2011-12**

Citicorp Investment Bank  
(Singapore) Limited  
C/o Citibank NA,  
Securities and Fund Services,  
Citibank N.A FIFC, 11<sup>th</sup> floor,  
C-54 & C-55, G Block, BKC, Bandra  
(E), Mumbai 400 051 **PAN :**  
**AAACC5806F** (Appellant)

Vs. DCIT (IT)-2(1)(1),  
Mumbai (Respondent)

**ITA NOS. 349 TO 352/MUM/2017 : A.Ys : 2009-10, 2011-12, 2006-07  
& 2008-09**

DCIT (IT)-2(1)(1),  
Mumbai (Appellant)

Vs. Citicorp Investment Bank  
(Singapore) Limited  
C/o Citibank NA,  
Securities and Fund Services,  
Trent House, 3<sup>rd</sup> floor, G-60,  
BKC, Bandra (E), Mumbai 400 051  
**PAN : AAACC5806F** (Respondent)

**Assessee by : Shri Nitesh Joshi**  
**Revenue by : Shri Himanshu Sharma**

**Date of Hearing : 02/08/2018**

**Date of Pronouncement : 31/08/2018**

**ORDER**

**PER G.S. PANNU, AM :**

These are a group of six appeals pertaining to the same assessee for different years and involve common issues, therefore, they have been clubbed and heard together and a consolidated order is being passed for the sake of convenience and brevity.

2. We may first take up the appeal of the Revenue for Assessment Year 2006-07 which is directed against the order of CIT(A)-56, Mumbai dated 29.09.2016, which in turn has arisen from the order passed by the Assessing Officer, Mumbai dated 02.02.2011 under section 143(3) r.w.s. 147 & 144C(3) of the Income Tax Act, 1961 (in short 'the Act').

3. In this appeal, Revenue has raised the following Grounds of appeal :-

*"1. Whether on the facts and circumstances of the case and in law, the CIT(A) erred in holding that foreign exchange income on underlying forward foreign exchange contracts is not taxable under the head "Income from other sources" even when Forward Foreign Exchange contracts is neither a capital asset nor it is business of the assessee to enter into such contracts?"*

*2. Without prejudice to the above, whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in granting the relief of Article-13 of India-Singapore DTAA to the assessee for the Gains on cancellation of Forward Foreign Exchange Contracts as Capital Gains ignoring provisions of Article 24 of the Tax Treaty which provides for restriction of such relief only to the subject income has been remitted to Singapore, which has not been shown to have been complied with, in this case?"*

3. *Without prejudice to the above, whether on the facts and circumstances of the case and in law, the Ld. CIT(A) failed to give effect to all related provisions of Capital Gains, in this case being Article 24 of the DTAA which clearly states the conditions restricting relief under Article 13, when changing the head of income from "Income from Other Sources" to "Capital gains"?*

4. *Without prejudice to the above, whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in mechanically following ITAT's order in the case of Citicorp Banking Corporation, Bahrain, without appreciating that the Indo-Singapore Treaty contains benefit restricting Article of 24, which is clearly absent in the case of Citicorp Banking Corporation, Bahrain?*

5. *The Appellant prays that the order of the Ld. CIT(A) on the above grounds be set aside and that of the Assessing Officer restored."*

4. Although the Revenue has raised multiple Grounds of appeal, but the sum and substance of the dispute revolves around the characterisation of the gain arising to the assessee from early settlement of forward contract for foreign currency. At the time of hearing, it was a common point between the parties that the issue is covered by the decisions of the Tribunal in assessee's own case for earlier assessment years and that even the CIT(A) has followed such precedents in assessee's own case while deciding the issue in favour of the assessee. It was also a common point between the parties that the precedents by way of the respective orders of the Tribunal for various assessment years continue to hold the field as they have not been altered by any higher authority. In this background, in order to impart completeness to the order, the following discussion is relevant.

5. The respondent-assessee is a tax resident of Singapore and holds a valid Tax Residency Certificate issued by the Singapore tax authorities. It is registered with the SEBI as a Foreign Institutional Investor (FII). In the return

of income filed for Assessment Year 2006-07, assessee, *inter-alia*, disclosed Short Term Capital Gain on sale of debt securities as well as income earned on early settlement of forward contracts for foreign currency; both the aforesaid streams of income was claimed exempt. So far as Short Term Capital Gain on sale of debt securities was concerned, the exemption claimed by the assessee on the strength of Article 13(4) of the India-Singapore Double Taxation Avoidance Agreement (DTAA) was accepted by the Assessing Officer. However, with regard to the gain on cancellation or pre-determination of forward exchange contracts amounting to Rs.6,81,22,500/- was concerned, the Assessing Officer did not accept the claim of the assessee. The Assessing Officer treated such gain as taxable under the head 'Income from Other Sources' and accordingly, the same was subjected to tax @ 40%.

6. When the matter reached the CIT(A), the orders of the Tribunal in assessee's own case for Assessment Years 1998-99 and 2005-06 vide ITA Nos. 2877/Mum/2003 and 910/Mum/2009 dated 08.06.2011 was relied upon whereby the income arising on early settlement of forward exchange contracts was held to be in the nature of 'Capital Gains'. The CIT(A) further noted that for Assessment Year 2007-08 also, the DRP had decided the issue in favour of the assessee, and which was subsequently affirmed by the Tribunal vide ITA No. 8763/Mum/2010 dated 22.06.2016. For the aforesaid reasons, CIT(A) upheld the plea of the assessee that the gain arising from early settlement of forward contracts of foreign currency was to be treated as 'Capital Gains' and not as 'Income from Other Sources'. In this background, Revenue is in appeal before us on the aforesaid Grounds of appeal.

7. At the time of hearing, the learned representative for the assessee pointed out that subsequent to the impugned order of the CIT(A), in Assessment Year 2010-11 also, the matter travelled to the Tribunal and the Tribunal, vide separate orders in the appeals filed by the assessee as well as the Revenue vide ITA Nos. 1133/Mum/2015 and 793/Mum/2015 dated 31.01.2017 and 24.03.2017 (read with Corrigendum dated 08.06.2017), had upheld the stand of the assessee. The said orders of the Tribunal continue to hold the field.

8. In this view of the matter, we find no reason to interfere with the decision of CIT(A), which is in line with the precedent in assessee's own case. Before parting, we may also refer to the specific plea raised by the Revenue in Ground of appeal nos. 3 & 4, which is based on Article 24 of the DTAA between India and Singapore. The learned representative for the assessee had pointed out that the aforesaid aspect of the matter was not specifically addressed by the Tribunal in Assessment Years 1998-99 and 2005-06, so however, in an appeal preferred by the assessee for Assessment Year 2010-11, vide order dated 24.03.2017, such an aspect has been specifically addressed against the Revenue. In this context, he referred to the specific Ground raised by the assessee, namely, Ground no. (ii) in the appeal for Assessment Year 2010-11, a copy of which has been placed in the Paper Book. The Tribunal after considering the relevant aspects of the matter, held that the benefits of Article 13(4) of the India-Singapore DTAA could not be denied on account of limitation prescribed under Article 24 of the DTAA. Therefore, in this view of the matter, the point raised by the Revenue in Ground of appeal nos. 3 & 4 also do not merit acceptance.

9. In view of the aforesaid discussion, the appeal of the Revenue for Assessment Year 2006-07 is hereby dismissed.

10. Insofar as the appeals of the Revenue for Assessment Years 2008-09, 2009-10 and 2011-12 are concerned, the facts and circumstances in the said appeals are *pari materia* to those considered by us in the appeal for Assessment Year 2006-07, therefore, our decision therein shall apply *mutatis mutandis* to the said appeals also.

11. Insofar as assessee's cross-appeal for Assessment Year 2006-07 is concerned, the solitary Ground raised reads as under :-

*"1. The learned Assessing Officer has erred in law and on facts in not accepting the gains amounting to Rs.24,122,500 on early settlement of forward contracts disclosed in the revised return of income electronically uploaded by your appellant on May 19, 2009 and physically filed the said return of income on May 29, 2009 pursuant to notice received under section 148 of the Act, instead the learned Assessing Officer has accepted the amount of gains arising on early settlement of forward contracts as disclosed in the original return filed under section 139(1) of the Act i.e. Rs.68,122,500.*

*Relief :*

*Your appellant therefore, respectfully prays that :*

*a) The Assessing Officer be directed to consider the amount of Rs.24,122,500 as gains on early settlement of forward contracts disclosed in the revised return of income filed by the appellant and not the amount of Rs.68,122,500 disclosed in the original return of income.*

*b) Other relief deemed necessary may please be granted."*

12. As a perusal of the aforesaid Ground reveals, the dispute revolves around quantification of the income declared on account of earlier settlement of forward exchange contracts as disclosed in the revised return of income vis-a-vis the amount disclosed in the original return of income.

13. At the time of hearing, the learned representative for the assessee pointed out that once the income in question is held to be exempt and not taxable, the aspect raised in this appeal pertaining to quantification of such income becomes academic in nature. Since we have upheld the order of the CIT(A) treating such income to be in the nature of Capital Gains and falling within the beneficial provisions of Article 13(4) of the India-Singapore DTAA, the dispute relating to quantification of such income is rendered infructuous and accordingly, the Ground raised by the assessee is dismissed as infructuous. In the result, appeal of the assessee is dismissed.

14. Insofar as the cross-appeal of the assessee for Assessment Year 2011-12 is concerned, the same assails the interest levied u/s 234C of the Act amounting to Rs.13,56,280/-.

15. On this aspect also, the learned representative for the assessee pointed out that once the decision of CIT(A) relating to assessability of gain on early settlement of forward exchange contract is affirmed, the said levy of interest u/s 234C of the Act would not arise. Since we have affirmed the decision of CIT(A) while dealing with the cross-appeal of the Revenue for instant assessment year in the earlier paras, the aforesaid Ground raised by the assessee is also treated as infructuous.

16. In the result, appeal of the assessee for Assessment Year 2011-12 is dismissed as infructuous.

17. Resultantly, the appeals of the Revenue as well as the assessee stand dismissed.

Order pronounced in the open court on 31<sup>st</sup> August, 2018.

Sd/-

**(PAWAN SINGH)**  
**JUDICIAL MEMBER**

Sd/-

**(G.S. PANNU)**  
**ACCOUNTANT MEMBER**

Mumbai, Date : 31<sup>st</sup> August, 2018

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Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT(A) concerned
- 4) The CIT concerned
- 5) The D.R, "L" Bench, Mumbai
- 6) Guard file

By Order

Dy./Asstt. Registrar  
I.T.A.T, Mumbai