

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'B', NEW DELHI**

**BEFORE SH. H.S. SIDHU, JUDICIAL MEMBER
AND
SH. O.P. KANT, ACCOUNTANT MEMBER**

ITA No.387/Del/2009
Assessment Year: 2005-06

ADIT, Circle-1(1), International Taxation, New Delhi	Vs.	The Bank of Tokyo- Mitsubishi UFJ Ltd., Jeevan Vihar Building 3, Parliament Street, New Delhi
PAN :AABCT3880D		
(Appellant)		(Respondent)

Appellant by	Sh. G.K. Dhall, CIT(DR)
Respondent by	Sh. Percy Pardiwalla, Sr. Counsel

Date of hearing	26.11.2018
Date of pronouncement	28.11.2018

ORDER

PER O.P. KANT, AM:

This appeal has been preferred by the Revenue against the order dated 21.10.2008 passed by the Ld. Commissioner of Income Tax (Appeals)-XXIX, New Delhi [in short 'the Ld. CIT(A)'] for assessment year 2005-06, raising following grounds of the appeal:

1. *On the facts and circumstances of the case, the Ld. CIT(A) has erred in holding that the PE of the assessee and the HO are one taxable entity ignoring the Circular No. 740 dated 17/04//1996.*
2. *On the facts and circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of interest income of*

Rs.53,49,253/- in the hand of assessee as income of the Head Office.

3. *The order of the CIT(A) be set aside and that of AO be restored.*
4. *The appellant craves to add, amend, modify or alter grounds of appeal at the time or before the hearing of the appeal.*

2. At the outset, before us, the learned Counsel of the assessee submitted that in the assessment year involved, the appeal filed by the assessee has been disposed of by the Tribunal. In the decision, the Tribunal quashed the assessment order passed by the Assessing Officer on non-existent entity. The Ld. counsel submitted that the return of income was filed by the M/s. UFJ Bank Ltd., however, later on the said company amalgamated with Bank of Tokyo-Mitshubishi. This fact of amalgamation was duly communicated to the Assessing Officer. He submitted that the Tribunal in view of the above facts has quashed the assessment order and thus, no appeal could lie against the said order.

3. On the other hand, the learned DR fairly admitted that the assessment order has been quashed by the Tribunal.

4. We have heard the rival submissions and perused the relevant material on record, including the order of the Tribunal in ITA Nos. 3474/Del/2008; 63 & 64/Del/2009 for assessment year 203-04, 2004-5 & 2005-06 respectively. In the said decision, the Tribunal has observed as under:

14. We have carefully considered the rival contentions and also perused the orders of the lower authorities. In the present case it is undisputed that business of M/s. UFJ Bank has been taken over by Bank of Tokyo Mitsubishi ltd as a result of merger which has taken place in Japan. The requisite approval of the RBI has also been obtained and subsequently UFJ Bank has been deleted from the list of scheduled bank. Such intimation was also given to the Id Assessing Officer on 16.01.2006. Despite this fact, for all the three above assessment the Id AO has framed assessment in the name of 'M/s. UFJ Bank Ltd' and not in case of 'Bank of

Tokyo Mitsubishi UFJ Ltd'. In view of this the above issue is squarely covered in favour of the assessee by the decision of Hon'ble Delhi High Court in case of CIT Vs. Dimension Apparels Pvt. Ltd 370 ITR 288(Del), Spice Entertainment Ltd Vs. CIT (supra) and CIT Vs. Microns Steel Pvt. Ltd 376 ITR 386 wherein, it has been held that assessment on dissolved or amalgamated company is invalid. The High Court also considered in para No. 5 to 7 the applicability of section 170 of the Income Tax Act to such a situation. Further, with respect to applicability of section 292B was also considered and held that it can only cure 'technical defect' and 'not jurisdictional defect'. In view of this respectfully following the decision of Hon'ble Delhi High Court we hold that assessment order passed on amalgamated company for all these three years i.e. Assessment Year 2003-04, 2004-05 and 2005-06 are invalid and we reverse the finding of the Id CIT(A). Accordingly, on these jurisdictional ground we allow the appeal of the assessee for Assessment Year 2003-04 to 2004-05."

5. Since the Tribunal has already quashed, the assessment order for assessment year 2005-06, the appeal of the Revenue also cannot be sustained in view of the assessment order made on non-existent entity. Accordingly, the appeal filed by the Revenue for the year under consideration is also dismissed.

Order is pronounced in the open court on 28th November, 2018.

**Sd/-
H.S. SIDHU
JUDICIAL MEMBER**

**Sd/-
O.P. KANT
ACCOUNTANT MEMBER**

Dated: 28th November, 2018.

RK/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi