

THE INCOME TAX APPELLATE TRIBUNAL  
“B” Bench, Mumbai  
Before Shri Shamim Yahya (AM) & Shri Ramlal Negi (JM)

I.T.A. No. 1222/Mum/2018 (Assessment Year 2014-15)  
I.T.A. No. 1221/Mum/2018 (Assessment Year 2015-16)

DCIT 2(1)(1) Aayakar Bhavan M.K. Road Mumbai-400 020.	Vs.	M/s. Bank of Baroda C-26, G-Block Baroda Corporate Centre Bandra Kurla Complex Bandra East Mumbai-400 051.
(Appellant)		(Respondent)

I.T.A. No. 1120/Mum/2018 (Assessment Year 2014-15)  
I.T.A. No. 1121/Mum/2018 (Assessment Year 2015-16)

M/s. Bank of Baroda C-26, G-Block Baroda Corporate Centre Bandra Kurla Complex Bandra East Mumbai-400 051.	Vs.	DCIT 2(1)(1) Aayakar Bhavan M.K. Road Mumbai-400 020.
(Appellant)		(Respondent)

Assessee by	Shri C. Naresh
Department by	Dr. Rajeev Harit
Date of Hearing	19.03.2019
Date of Pronouncement	22.05.2019

ORDER

Per Shamim Yahya (AM) :

These are cross appeals by the assessee and Revenue arising out of orders of learned CIT(A) for A.Y. 2014-15 and 2015-16 respectively. Since issues are common and connected and appeals were heard together, these are being consolidated and disposed of by this common order.

Assessee's appeal :-

2. One common issue raised in these appeals by the assessee is that learned CIT(A) erred in confirming disallowance u/s. 14A in as much as

exempt income has been earned on stock in trade to which provisions of section 14A does not apply.

3. Brief facts of the case are that the Assessing Officer made disallowance for A.Y. 2014-15 u/s. 14A by observing that provisions of section 14A are clearly applicable and that disallowance made by the assessee is relatable to exempt income is not satisfactory and hence disallowance u/s. 14A is made at the rate of 2.75% of exempt income as done in past.

4. For A.Y. 2015-16 the Assessing Officer observed that assessee's submission that assessee has sufficient interest free own funds are not acceptable in as much as he inter alia found that funds of the assessee are in a common pool and that where particular investment is made out of common pool, nexus of borrowed fund and investment cannot be ruled out. The Assessing Officer also drew adverse inference from computation by the assessee of interest expenses relatable funds deployed towards eligible business as per provisions of section 36(1)(viii) of the Act. Thereafter the Assessing Officer proceeded to computing disallowance as per Rule 8D and made impugned disallowance for A.Y. 2015-16.

5. In both assessment years learned CIT(A) upheld the action of the Assessing Officer following his earlier orders. Against these orders the assessee is in appeal before us.

6. Learned Counsel of the assessee has submitted that identical issue was decided in favour of the assessee by the ITAT Delhi Bench in the case of Punjab National Bank (ITA No. 5480/Del/2014).

7. Learned Counsel of the assessee further submitted that this issue was decided partly in favour of the assessee by the ITAT in assessee's own case for A.Y. 2011-12 in ITA no. 4505/Mum/2016 and others, wherein issue was remitted back to the Assessing Officer to consider various decisions.

8. Upon careful consideration, we note that ITAT in assessee's own case for A.Y. 2010-11, 2011-12 & 2013-14 by consolidated order dated 20.4.2018 has adjudicated this issue as under :-

*12. We have considered the submission of both the parties and have gone through the orders of authorities below. We have noted that the assessee has raised similar ground of appeal in appeal for assessment year 2009-10 in ITA No. 3081/M/2015. The co-ordinate bench of Tribunal in appeal for A.Y. 2009-10 has restored the similar issue to the file of Assessing Officer to pass the order afresh by following various decision with the following direction:*

*"We find that facts and circumstances of the case in the present year are similar except that learned counsel of the assessee has submitted that several more decisions have come which have upheld the view that disallowance under section 14A is not required when the investment is held as stock in trade. In our considered opinion we should follow the doctrine of stare decisis. Accordingly following the same directions as above we remit this issue to the file of the assessing officer. Assessing Officer is directed to consider the issue in light of the directions as above after giving the assessee adequate opportunity of being heard. Assessee is at liberty to canvas further case laws as it deems appropriate. "*

*13. We have further noted that recently the Hon'ble Apex Court in Maxopp Investment Ltd. Vs Commissioner of Income-tax [2018] 91 taxmann.com 154 (SC) has held that in cases, where shares are held as stock-in-trade, main purpose is to trade in those shares and earn profits therefrom, in the process, certain dividend is also earned, though incidentally, which is also an income. This triggers applicability of section 14A which is based on theory of apportionment of expenditure between taxable and non-taxable income. Therefore, to that extent, expenditure incurred in acquiring those shares will have to be apportioned. Thus, considering the decision of Hon'ble Apex Court and the decision of co-ordinate bench in assessee's own case for earlier years i.e. 2009-10 this ground of appeal is restored to the file of Assessing Officer for deciding the issue afresh after considering the decision of Hon'ble Apex Court in Maxopp Investment Ltd. (supra) and the other decisions and pass the order in accordance with laws. Needless to say that Assessing Officer shall grant adequate opportunity to the assessee before passing the order.*

9. Upon hearing both counsel and perused the record, we deem it appropriate to remit this issue to the file of the Assessing Officer with same direction as above.

10. Another common issue raised in assessee's appeals is that learned CIT(A) ought to have allowed assessee's claim in respect of exclusion of income of foreign branches situated in countries where there is double tax avoidance agreement based on Article 7 of the respective agreements which provides that business profits is to be taxed in respective countries. It has further been submitted that learned CIT(A) failed to note that Notification No. 91 of 2008 relied upon by ITAT does not apply to business profit but only to other sources of income.

11. On this issue learned Counsel of the assessee fairly conceded that the issue has been decided against the assessee by the ITAT in assessee's own case for A.Y. 2011-12 in ITA No. 4504/Mum/2016 vide para 19 of the said order.

12. Accordingly following the precedent as above, we uphold the order of learned CIT(A) on this issue.

#### Revenue's appeal

13. One common issue raised relates to broken period interest.

14. On this issue consequent upon Assessing Officer's disallowance, learned CIT(A) has decided the issue in favour of the assessee by referring to earlier years appellate order in assessee's own case where Hon'ble Supreme Court decision in the case of Citibank and Hon'ble Bombay High Court decision in the case of American Express were followed.

15. Now Revenue is in appeal before us.

16. We have heard both the counsel and perused the records. We find that identical issue has been decided in favour of the assessee by Hon'ble Supreme Court in the case of Citibank (Civil Appeal No. 1549 of 2006) and Hon'ble Bombay High Court in the case of HDFC Bank Ltd. (366 ITR 505) following these decisions ITAT in assessee's own case for A.Y. 2011-12 (in ITA no.

4355/Mum/2016) allowed the claim of the assessee and dismissed the Departmental appeal vide para 6 to 8 of the said order.

17. Accordingly, respectfully following the precedent as above, we uphold the order of learned CIT(A) and dismiss the ground raised by the Revenue.

18. Another common issue raised relates to foreign income to be taxed in India.

19. On this issue learned Counsel of the assessee fairly conceded that this issue has been decided against the assessee by the ITAT in assessee's own case for A.Y. 2011-12 in ITA no. 4355/Mum/2016 vide para 3 to 5 of the said order.

20. Upon careful consideration we find that ITAT in assessee's own case has decided the issue in favour of the Revenue as under :-

*4. We have considered the submission of ld. representative of the parties and perused the order of authorities below. The Assessing Officer while relying upon the Notification No. S 2123(e) dated 28.08.2008 treated the income of foreign branches as taxable in India. The ld. CIT(A) on the basis of decision of Tribunal in assessee's own case for Assessment Year 2005-06 to 2007-08 in ITA No. 2927, 2928, 5735/Mum/2011 dated 25.07.2014 held that as per the Notification, the income which is to be included in the total income is such income of foreign branch that was taxed in the foreign country, the relief of tax will be allowed based on the tax paid in the foreign country and thereby granted part relief to the assessee. We have noted that similar ground of appeal was raised by Revenue in appeal for A.Y. 2009-10 and the coordinate bench of the Tribunal in ITA No. 2480/Mum/2015 dated 17.02.2017 passed the following order:*

*24. We have carefully considered the submission and perused the record we find that the ITAT in the aforesaid decision has duly considered the said notification referred by the Ld. Counsel of the assessee. We may carefully refer to the contents of the said notification as under;*

*"In exercise of the powers conferred by sub-section (3) of section 90 of the Income-Tax Act, 1961 (43 of 1961), the Central Government hereby notifies that where an*

*agreement entered into by the Central Government with the Government of any country outside India for granting relief to tax, or as the case may be, avoidance of double taxation, provides that any income of a resident of India "may be taxed" in the other country, such income shall be included in his total income chargeable to tax in India in accordance with the provisions of the Income-Tax Act, 1961 (43 of 1961), and relief shall be granted in accordance with the method for elimination or avoidance of double taxation provided in such agreement."*

25. We find that after taking into account the aforesaid notification the Tribunal in the aforesaid order has concluded as under.

*"In view of the aforesaid findings/conclusion, we hold that the income of the branches of the assessee shall also taxable in India i.e., it would be included in the return of income filed by the assessee in India and whatever taxed have been paid by the Branches in the other contracting States i.e., the source country, credit of such taxes shall be given."*

26. A reading of the above makes it clear the Tribunal had held that the income of the foreign branches of the assessee shall also be taxable in India, that is, it would be included in the return income filed by the assessee in India and whatever taxes have been paid by the branches in the other countries credit of such taxes shall be given. We find that the Tribunal as above has not held that it is only that income of the foreign branches which was taxed in that foreign country which is to be included in the return of income filed by the assessee. Hence, we are in agreement with the revenue plea that Ld. CIT-A has not properly followed the Tribunal decision as referred by him. A reading of the notification canvassed by the Ld. Counsel by the assessee also does not help the case of assessee. The notification also does not support the direction of Ld. CIT-A. The doctrine of stare decisis mandates that we follow the coordinate bench decision as above and hold that the income of the branches of assessee situated abroad shall also be taxable in India and whatever tax have been paid by the branches in the foreign country, credit of such taxed shall be given. Accordingly, we allow the ground raised by the revenue.

5. Considering the decision of co-ordinate bench in assessee's own case, the ground of appeal raised by Revenue is allowed mutatis mutandis as per order dated 17.02.2017 for A.Y. 2009-10. In the result, Ground No.2

*of appeal of the Revenue is allowed. Since the notification issued by the Government does not differentiate between dividend income and business income, we are unable to agree with the interpretation given by Ld A.R on the notification issued by the Government.*

Accordingly, we set aside the order of learned CIT(A).

21. Another common issue raised relates to disallowance of provisions of wages arrear.

22. On this issue learned Counsel of the assessee stated that this issue has been decided in favour of the assessee by the ITAT in assessee's own case for A.Y. 2010-11 (ITA No. 5020/Mum/2019) vide para 46 to 47 of the said order as under :

*46. Ground No.1 relates disallowance of provision for wage arrears. The ld. AR for the assessee submits that this ground of appeal is covered in favour of the assessee by the decision of Tribunal in assessee's own case for assessment year 2009-10 in ITA. No. 2480/M/2015. The ld. DR for the revenue fairly conceded the submissions of the ld. AR for the assessee.*

*47. We have considered the submissions of the ld. representatives of the parties and perused the record. We have noted that the assessee raised the identical ground of appeal in assessment year 2009-10 and the Tribunal vide order dated 17.02.2017 in ITA 2480/M/2015 deleted the similar disallowance. The coordinate bench deleted the similar disallowance by following the decision in earlier year in ITA No. 4619 and 4873/M/2012. Thus, considering the consistent view taken by the Tribunal, the ground of appeal raised by the assessee is allowed.*

23. Respectfully following the above, we uphold the order of learned CIT(A) on this issue.

24. One issue raised in ITA no. 1221/Mum/2018 for A.Y.2015-16 relates to amortization of investment.

25. In this regard the Revenue has submitted that learned CIT(A) has erred in admitting and allowing the issue regarding claim of amortization of

investment whereas there was no addition or discussion in said assessment order in this regard.

26. We find that submission of the Department is correct. Learned Counsel of the assessee also accepted this. However, we further note that in this regard the assessee has file cross objection which reads as under :-

*1. In the grounds of appeal filed by the department Ground Number 3 states that the learned CIT (A) wrongly decided on the issue of amortisation of Investment when there was no such issue in the assessment order.*

*2. The respondent is respectfully submit that ground before CIT (A) related to allowability of lease premium paid in respect of various lease hold properties aggregating to Rs. 3,88,54,000/- by treating the same as revenue expenditure, which was by mistake decided treating the same as amortisation of Investments.*

*3. It is therefore respectfully submitted that the learned CIT (A) should be directed to decide on allowability of amortization of lease premium paid in respect of various lease hold properties aggregating to Rs. 3,88,54,000/-.*

*4. The respondent presently seeks leave of the Hon'ble ITAT to persue the following grounds which were a part of appeal before learned CIT(A) to support the claim of the Respondent as per Rule 27 of Income-Tax (Appellate Tribunal) Rules, 1963.*

*5. The Id. CIT(A) ought to have decided on the issue of allowability of amortisation of lease premium as prayed for in grounds of appeal before Id CIT (A).*

27. Upon careful consideration we find considerable cogency in the above prayer. In the interest of justice we remit this issue to the file of learned CIT(A) to consider the same afresh and pass a speaking order.

28. In the result, these appeals are partly allowed.

Order has been pronounced in the Court on 22.5.2019.

SD/-  
(RAMLAL NEGI)  
JUDICIAL MEMBER

SD/-  
(SHAMIM YAHYA)  
ACCOUNTANT MEMBER

Mumbai; Dated : 22/5/2019

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)  
ITAT, Mumbai

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