

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

**BEFORE SHRI C.N. PRASAD, HON'BLE JUDICIAL MEMBER AND
SHRI MANOJ KUMAR AGGARWAL, HON'BLE ACCOUNTANT MEMBER**

**ITA Nos. 63 & 1882/MUM/2018
(A.Ys: 2012-13 & 2014-15)**

Abu Dhabi Commercial Bank PJSC 75B, Rehmat Manzil Veer Nariman Road Mumbai – 400 020 PAN: AAACA4216B	v.	Dy. CIT (International Taxation) – 1(1)(1) Scindia House, N.M. Road Ballard Estate, Mumbai – 400 038
(Appellant)		(Respondent)

**Assessee by : Shri Dhanesh Bafna &
Shri Nishant Shah**

Department by : Shri Avaneshtiwari

Date of Hearing : 05.11.2019

Date of Pronouncement : 10.01.2020

ORDER

PER C.N. PRASAD (JM)

1. These two appeals are filed by the assessee against different orders of the Ld. Commissioner of Income-tax (Appeals)–55, Mumbai [hereinafter for short "Ld. CIT(A)"] dated 07.11.2017 and 08.01.2018 for the A.Y. 2012-13 & 2014-15 respectively.

ITA No. 63/MUM/2018 (A.Y: 2012-13)

2. The only ground raised by the assessee in its appeal is as under:

“1. On the facts and in the circumstances of On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in confirming the addition of INR 23,872,384 (i.e. INK 10,845,948 for AY 2011-12 and INR 13,026,436 for AY 2012-13) made by the Learned Deputy Commissioner of Income-tax (International Taxation) - 1(1)(1), Mumbai pertaining to travelling expenditure specifically incurred by the head office for its India branch's operations under section 41(1) of the Act.”

3. At the outset, Ld. Counsel for the assessee submitted that identical ground has been decided in favour of the assessee in its own case for the A.Y. 2004-05 to 2006-07 in ITA No. 4926 to 4928/Mum/2009 dated 29.04.2016. Copy of the order is placed on record.

4. Ld. DR vehemently supported the orders of the authorities below.

5. We have heard the rival submissions and perused the orders of the authorities below and the order of the Tribunal for the A.Y. 2004-05. We find that identical issue has been decided in favour of the assessee by the Tribunal holding as under: -

“2. The first ground raised by the assessee is in respect of Transfer Pricing (i) in restriction the deduction for head office expenses by applying the provisions of Sec. 44C of the Act as against the assessee's claim that the entire expenses allocated to the Indian branches should be allowed as deduction as per the provision of Article 7(3) of the convention between the Government of U.A.E. and the Government of India and (2) Upholding the Assessing Officer's action of not allowing the claim of the assessee that the tax rate applicable to its business income is 35% and not

40% being the rate applicable to foreign companies for the year under appeal.

3. At the very outset, the Ld. Counsel for the assessee submits that this issue is decided in favour of the assessee in assessee's own case for assessment years 1995-96 to 2004-05. The Ld. Counsel submits that the decision of the Tribunal for assessment years 1995-96 to 2000-01 is reported in (150 TTJ 85) and for the assessment years 2001-02 & 2002-03 is reported in (60 SOT 71) and for the assessment years 2003-04 and 2004-05 he submits that the Coordinate Bench decided this issue in ITA Nos. 6530 of 2006 and 3463/M/2010 dated 3.8. 2012. Copies of the decisions are placed on record.

4. The Ld. Departmental Representative vehemently supports the orders of the lower authorities. In the alternative, the Ld. DR submits that the provisions of Sec. 41(1) will apply as these expenses are only payable and they are not rooted through balance-sheet. In reply, the Ld. Counsel for the assessee submits that the expenses were paid by head office and they are exempt as per treaty, therefore provisions of Sec. 41(1) are not applicable.

5. Heard both sides and perused the orders of the lower authorities. On going through the orders of the Co-ordinate Bench of this Tribunal in assessee's own case for the A. Yrs 1995-96 to 2000-01, we find that the issue is decided in favour of the assessee holding that income of the PE of the assessee should be computed as business income after allowing all the expenses attributable to its business in India including the head office expenses. This decision is reported in Abu-Dhabi Commercial Bank Ltd. Vs ADIT (International Taxation) (138 ITD 83). Respectfully following the said decision, we allow the ground raised by the assessee. We do not find much substance in the alternative contention raised by the Revenue in so far as the applicability of provisions of Sec. 41(1) of the Act. Thus, we dismiss the alternative contention of the Revenue."

6. Similarly, in ITA No. 4928/Mum/2009 dated 29.04.2016 for the A.Y.2006-07 the Tribunal held as under: -

"17. The first ground relates to the deduction for head office expenses by applying the provisions of Sec. 44C of the Act as against the assessee's claim that the entire expenses allocated to

the Indian branches should be allowed as deduction as per the provision of Article 7(3) of the convention between the Government of U.A.E. and the Government of India.

18. *This issue is identical with the issue in ground No. 1 in ITA No. 4926/M/09 for assessment year 2004-05, though quantum may differ. Therefore, on similar lines and for similar reasons, the ground raised by the assessee in ITA No. 4927/M/09 for assessment year 2005-2006 is dismissed.*

7. Facts being similar, respectfully following the said decisions, we allow the ground raised by the assessee.

ITA No. 1882/Mum/2018 (A.Y: 2014-15)

8. Assessee has raised following ground in its appeal: -

“1. On the facts and in the circumstances of On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in confirming the addition of INR 2,27,13,155 made by the Learned Deputy Commissioner of Income-tax (International Taxation) - 1(1)(1), Mumbai pertaining to travelling expenditure specifically incurred by the head office for its India branch's operations under section 41(1) of the Act. Further, the Ld.CIT(A) has followed the order of the Ld. AO without giving any specific reason for the same.

2. On the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in not granting the refund along with interest u/s. 244A of the Act is full.”

9. Ground No.1 is identical to Ground No.1 raised for the A.Y. 2012-13 and the decision rendered therein for the A.Ys. 2004-05, 2006-07 and 2012-13 applies mutatis mutandis for this assessment year also i.e. A.Y. 2014-15. We order accordingly.

10. Ground No. 2 is regarding non-granting refund along with interest u/s. 244A of the Act. This ground is restored to Assessing Officer to decide in accordance with law.

11. In the result, appeals of the assessee are allowed.

Order pronounced in the open court on the 10th January, 2020

Sd/-
(MANOJ KUMAR AGGARWAL)
ACCOUNTANT MEMBER

Mumbai / Dated 10/01/2020
Giridhar, Sr.PS

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

Copy of the Order forwarded to:

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

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mum