

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES "A" : DELHI

BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER

AND

SHRI AMIT SHUKLA, JUDICIAL MEMBER

M.A.No.495/Del./2018

Arising out of

ITA.No.2151/Del./2008 - Assessment Year 2004-2005

**AND**

ITA.No.2151/Del./2008

Assessment Year 2004-2005

|   |     |  |
|---|-----|--|
| The Bank of Tokyo<br>Mitsubishi UFJ Ltd.,<br>[Now known as MUFG<br>Bank Ltd.,) 5 <sup>th</sup> Floor,<br>Worldmark-2, Asset-8,<br>Aerocity NH-8,<br>New Delhi – 110 037<br>PAN AABCT3880D | vs. | The Assistant Director of<br>Income Tax, International<br>Taxation, Circle-2(2),<br>New Delhi. |
| (Applicant)   |     | (Respondent)   |

|                |                               |
|----------------|-------------------------------|
| For Assessee : | Shri Hiten Chande, Advocate   |
| For Revenue :  | Shri Mrinal Kumar Das, Sr. DR |

|                         |            |
|-------------------------|------------|
| Date of Hearing :       | 04.03.2022 |
| Date of Pronouncement : | 11.03.2022 |

## **ORDER**

**PER ANIL CHATURVEDI, A.M. :**

This Miscellaneous Application (MA) has been filed by the assessee seeking rectification of the mistake apparent on record in ITA.No.2151/Del./2005 for the A.Y. 2004-05 in the consolidated order passed by the Tribunal in ITA.Nos.2150 & 2151/Del./2005 for the A.Ys. 2003-04 and 2004-05 and ITA.Nos.385 & 386/Del./2009 for the A.Y. 2003-04 and 2004-05, dated 30.01.2018. He submitted that the MA is pertaining to the non adjudication of ground No 6, 7 & 8.

2. The Learned A.R. submitted that Ground of appeal Nos.6 and 7 in ITA.No.2151/Del./2005 pertained to the taxability of interest received by Head Office (HO)/Overseas Branches of the assessee from Indian branches and the corresponding deduction for interest paid to Head Office/Overseas Branches. He submitted that Ground No.8 pertained to the rate of tax applicable to the assessee.

3. With respect to ground No 6 & 7 of ITA.No 2151/Del/2008 he submitted that the Hon'ble Tribunal while deciding the appeal of the assessee at Para-24 of the order observed those grounds to be consequential in nature and, therefore, it were dismissed as being not pressed.

3.1. He submitted that the aforesaid grounds pertains to addition made by the AO on account of alleged interest income received by HO/other overseas branches of the assessee. He submitted that the issues raised in those grounds were squarely covered in assessee's favour by the decision of Hon'ble Delhi High Court in its own case for AY 2007-08 and AY 2008-09 and the copy of which was placed before the Hon'ble Tribunal during the course of hearing. He therefore submitted that the grounds were not consequential in nature and therefore submitted in the interest of justice, the aforesaid error in the order passed by the Hon'ble Tribunal be rectified and the issue be decided in favour of the assessee.

4. With respect to ground No 8 that was raised by the Assessee, he pointed to the ground reproduced by Hon'ble ITAT at page 9 of the order which was about the applicable rate of tax attributable to its PE in India. He submitted that the aforesaid ground was not adjudicated by the Hon'ble ITAT but however he fairly submitted that the ground is covered against the assessee by the decision of Tribunal in Assessee's own case for earlier years. He, therefore, submitted that the aforesaid error crept in the order of the Tribunal be rectified and the issue be adjudicated.

5. The Ld. D.R. on the other hand did not seriously objected to the contentions raised by the Learned A.R.

6. We have heard the rival submissions and perused the material available on record. The issue raised in the present M.A. is that in the order that was passed by the Hon'ble ITAT in ITA.No.2151/Del./2005 ground Nos.6, 7 were held to be consequential in nature and ground No 8 raised therein was not adjudicated.

7. With respect to ground of appeal Nos.6 and 7 in ITA.No.2151/Del./2005 for the A.Y. 2004-05, we find force in the argument of the Ld AR that the aforesaid grounds were held to be consequential in nature but on the contrary the issue raised therein is covered in assessee's favour.

8. We find that identical issue of interest paid to Head office and overseas branches of the banks arose in assessee's own case in ITA.No.5364/Del./2010 and ITA.No.5104/Del./2011 for the A.Ys. 2007-08 and 2008-09 respectively before the Coordinate Bench of the Tribunal. The Tribunal vide order dated 19.09.2014 decided the issue in favour of the assessee. Thereafter, against the order of the Tribunal, the matter was carried by the Revenue before the Hon'ble Delhi High Court and the Hon'ble Delhi High Court in the case of PCIT vs., Bank of Tokyo Mitsubishi UFJ Ltd., in ITA.Nos.604 & 605/2015 vide order dated 08.04.2016 has upheld the order of the Coordinate Bench of the Tribunal by observing as under :

*“Interest paid to the HO and interest received from Indian branches.*

12. *This issue appears to be covered against the Revenue by the decision of the Calcutta High Court dated 23<sup>rd</sup> December 2010 in ABN Amro Bank (2012) 343 ITR 81 (Cat). The ITAT has followed the above decision of the Calcutta High Court and decided the question in favour of the Assessee.*

13. *On this issue, the Court further finds that the order of the Calcutta High Court dated 17<sup>th</sup> November 2014 in ITA No. 175 of 2004 (Bank of Tokyo - Mitsubishi Ltd. v. Director of Income Tax, International Taxation, Mumbai) has also decided this issue in favour of the Assessee by following its judgment of ABN Amro Bank (supra). The two specific questions urged by the Assessee in that case were answered in its favour:*

*(i) Whether interest payment made by the Indian Branch of the appellant to its head office abroad*

*was to be allowed as a deduction in computing the profits of the appellant's branch in India ?*

*(ii) Whether making such payment to the head office, the appellant's said branch was required to deduct tax at source under section 195 of the Income Tax Act, 1961?*

*14. It is significant that in the aforementioned order, the Calcutta High Court noted the fact that the Special Leave Petition preferred by the Revenue against the judgment of the Calcutta High Court in ABN Amro Bank (supra) was dismissed by the Supreme Court on 3<sup>rd</sup> August 2012.*

*15. Accordingly, this Court declines to frame any question on this issue of interest paid to the HO as well as the interest received from the Indian branches.”*

8.1. In view of the aforesaid facts wherein the order of the Coordinate Bench of the Tribunal dated 19.09.2014 in assessee's own case for the A.Ys.2007-08 and 2008-09 has been upheld by H'ble Delhi Court, we are of the view that

the Grounds of appeal nos.6 and 7 raised in ITA.No.2151/Del./2005 for the A.Y. 2004-05 are covered in assessee's favour and there was apparent mistake as contemplated u/s 254(2) of the Act in the order of Tribunal in holding it to be consequential in nature. We accordingly rectify the aforesaid order by allowing ground no 6 & 7. Thus ground no 6 & 7 are allowed.

9. As far as ground no 8 is concerned, before us, Ld AR has fairly admitted though the ground was not adjudicated but the issue raised therein is covered against the assessee by earlier's order of Tribunal. In view of the aforesaid submissions of Ld AR, we are of the view that there was apparent mistake as contemplated u/s 254(2) of the Act in the order of Tribunal in notice deciding the ground. We accordingly rectify the aforesaid order by dismissing ground No 8. Thus ground no 8 is dismissed.

10. To sum-up, M.A.No.495/Del./2018 of the Assessee is allowed and ITA.No.2151/Del./2008 of the Assessee is partly allowed.

Order pronounced in the open Court on 11.03.2022.

Sd/-  
(AMIT SHUKLA)  
JUDICIAL MEMBER

Sd/-  
(ANIL CHATURVEDI)  
ACCOUNTANT MEMBER

Delhi, Dated 11<sup>th</sup> March, 2022

VBP/-

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|    |                            |
|----|----------------------------|
| 1. | The appellant              |
| 2. | The respondent             |
| 3. | CIT(A) concerned           |
| 4. | CIT concerned              |
| 5. | D.R. ITAT 'A' Bench, Delhi |
| 6. | Guard File.                |

// By Order //

Assistant Registrar : ITAT Delhi Benches :  
Delhi.