

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "D" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER) AND
MS. KAVITHA RAJAGOPAL (JUDICIAL MEMBER)**

**ITA No. 4458/MUM/2017
Assessment Year: 2012-13**

DCIT, Cent. Cir-6(4),
R. No. 1925, 19th floor, Air India
Building, Nariman Point,
Mumbai-400021.

Appellant

Vs. Shri Rana Kapoor,
F-1/12, HauzKhas Enclave,
New Delhi.

**PAN No. AHIPK 0411 A
Respondent**

Revenue by : Mr. Ajay Kumar, CIT-DR
Assessee by : Dr. K. Shivaram, Sr. Adv. &
Mr. Rahul Hakani, AR

Date of Hearing : 10/03/2022
Date of pronouncement : 28/04/2022

ORDER

PER OM PRAKASH KANT, AM

This appeal by the Revenue is directed against order dated 30/03/2014 passed by the Ld. Commissioner of Income-tax (Appeals)-21, New Delhi [in short 'the Ld. CIT(A)'] for assessment year 2012-13, raising following grounds:

- (i) *"On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of ₹46,45,35,000/- on account of remuneration received from RABO Bank for*

exemplary efforts and services by the assessee contending that the employer of employee relationship is a pre-requisite for receipt remuneration and thus holding that the amount received does not constitute remuneration, whereas remuneration does not necessarily mean it should come out of employer employee relationship as it could be for any work or services

- (ii) *"On the facts and in circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of ₹46,45,35,000/- on account of remuneration received from RABO bank by ignoring the fact that the receipts received from RABO bank are in the nature of benefits as per the provisions u/s 25(iv) of the IT. Act and chargeable under the head income from profits and gains from business and profession as assessee was promoter Director of YES bank Ltd, and only on his no objection, RABO bank could have carried out banking business in India as per circular 2 of 2010 of the FIPB Act."*
- (iii) *"On the facts and in circumstances of the case and in law, the Ld. CIT(A) erred in deleting the disallowance of ₹17,00,00,000/- on account of loan waiver by the M/S RABO bank ignoring the fact that the loan waiver by RABO bank was for the contribution and services by the assessee to M/s RABO bank and also ignoring the fact that the confidential letter produced by the assessee itself states that the dollar loan agreement was between Rabo Bank, Morgan Credits Private Limited and yourself i.e. Assessee."*
- (iv) *"On the facts and in circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition made by AO when no material evidence which was in possession of the assessee as privy to the transactions was presented by the assessee except*

one correspondence from RABO Bank. Makeover, Hon'ble CIT(A) should have presumed that production of such evidence would have gone against the assessee.

2. Briefly stated facts of the case are that assessee during assessment year under consideration i.e. AY 2012-13, was Managing Director and Chief Executive Officer (CEO) of the Yes Bank Ltd. which was engaged in the business of banking and financial services. For the year under consideration, the assessee filed return of income on 30/08/2012 declaring total income of ₹49,37,00,762/-, which was subsequently revised to ₹2,90,40,062/- on 27/02/2013, on the ground that income of ₹46.45 crores shown in the original return was towards lump-sum payment received from 'Rabo bank', Netherlands on account of 'settlement of claims' between the Rabobank and the assessee, which was treated by the assessee as capital receipt not liable to tax. The return of income filed by the assessee, was selected for scrutiny and statutory notices under the Income-tax Act, 1961 (in short 'the Act') were issued and complied with. The Ld. Assessing Officer in assessment order dated 30/03/2015 made two additions to the returned income. The first addition is in respect of treating the lump-sum payment received by the assessee from Raboabnk as revenue receipt. The second addition is waiver of loan by Rabobank amounting to ₹17 crores advanced to M/s Morgan Credits P Ltd i.e.

a company held closely by the assessee and his family members. On further appeal, the Ld. CIT(A) deleted both the additions. Aggrieved, the Revenue is appeal before Income Tax Appellate Tribunal (in short 'the Tribunal) raising the grounds as reproduced above.

3. We have heard rival submission of the parties on the issue in dispute and perused the material on record including the paperbook filed by the parties.

4. The ground No. one and two of the appeal relate to deletion of addition in respect of payment of ₹46.45 crores from Rabobank. The facts in brief qua the issue in dispute are that during assessment proceeding, the assessee submitted that assessee and his family member concerns owned shares of "Yes Bank Ltd" (YBL) along with 'Rabobank'. The Yes Bank Ltd was engaged in the business of banking and finance. In view of relaxation for foreign direct investment by the Government of India in financial year 2009-10, the Rabobank desirous of entering into banking business on its own (independently) and as per then prevailing FDI policy, wherein a non-resident having an existing joint-venture in India desires to invest in equity in same field in which it has an existing joint-venture in India, then such new investment would be possible under the Government approval route through FIPB and as per the Government of India circulars in force at the time (i.e. Circular No. 2/2010 dated

30/09/2010 issued by the Govt. of India, Ministry of Commerce, Department of Industrial Policy and Promotion), the onus to provide the requisite justification that the new proposal would not jeopardize the existing joint-venture, would lie equally on the non-resident investor and the Indian partner. It was stated that the assessee together with his family members/concerns being the Indian partner of Rabobank in Yes Bank, were in a position to either consent or express objection to Rabobank in their proposal for an independent bank in India. It was submitted by the assessee that after a lot of deliberations, discussion and negotiation, he agreed to provide his consent and no objection, which ultimately enabled Rabobank to proceed with the proposal for having an independent bank in India and in consideration of such consent and no objection by the assessee, this amount of ₹46.45 crore was paid to him by the Rabo bank, Netherland, which was received on 19/01/2012.

5. The assessee justified that payment received from Raboabnk is in the nature of capital receipt being 'settlement of claims'. The Ld. CIT(A) has summarized said justification of the assessee, which is reproduced as under:

a That the buyer bank [Rabo bank) would sell its shareholding in Yes Bank and that Rabo bank which had 15% shareholding in Yes Bank sold out 11% stakes and was left with 4.9% of the shareholding.

- b That It is also contended that the Rabo bank was desirous of entering into banking business on its own in India in the year 200D1Q and as per provisions of FDI where a non-resident having existing Joint Venture (V) in India desirous to invest in the equity in the same field in which it has an existing JV in India then such new investment could be possible under the Government approval through FIPB and according to the Circular, in force at that time, issued by the Government of India, the onus to provide requisite justification that new proposal would not jeopardize the existing JV would lie equally both on non-resident investor and the Indian partner.*
- c In this regard, the appellant has stated that he together with his family members being the Indian partner of Rabo bank were in a position to either give their consent or express his rejection to Rabo bank in their proposal for an independent bank.*
- d In this regard, the appellant has contended that after prolonged negotiation with the Rabo bank, he agreed to issue consent expressing no-objection which ultimately would enable Rabo bank to proceed with their proposal for having an independent banking operation in India and in consideration of such consent/no-objection by the assessee, the impugned lump sum payment of Rs, 46.45 crores was made to him by Rabo bank. Netherlands which was received on 19/01/2012.*

6. The Ld. Assessing Officer however rejected the contention of the assessee and held that said sum is revenue receipt taxable under the head “income from other sources” observing as under:

- (i) The circular No. 2/2010 dated 30/09/2010, issued by the Government of India, nowhere provides that the foreign investors have to obtain consent from the existing joint-venture partners
- (ii) That it was within the power of the Foreign Investment Promotion Board (FIPB) to approve or reject the application of the Rabo bank to set up its own branch in India whether or without the consent of the assessee.
- (iii) The circular does not confer any enforceable legal right to the assessee
- (iv) The right to object is not a right and it was limited to the assessee himself and cannot be transferred or sold and therefore consideration received cannot be taken as capital receipt.
- (v) The letter dated 16/01/2012 written by the Rabobank to the assessee essentially states that payment in question was awarded to the assessee in lieu of his personal contribution and not for objecting to the issuance of license to RaboBank, and therefore it falls within the confines of income as per section 2(24) of the Act.
- (vi) The assessee in assessment year 2008-09 had also received similar compensation as an award for his services and contribution to Rabobank and the same was offered by the assessee for tax.

(vii) The Assessing Officer relied on the decision of the Delhi Tribunal in the case of **Control and switchgear contractors Ltd (supra)** for the proposition that consent from the existing joint-venture partner is not a requirement for FIPB approval. The Assessing Officer distinguished the decision of the Hon'ble Bombay High Court in the case of **CIT Vs David Lopez Mennezes (supra)**.

7. On further appeal, the Ld. CIT(A) *vide* order dated 30/03/2017 deleted the addition. The Ld. CIT(A) held that said receipt was received for settlement of disputes and consent/no objection provided by the assessee. According to the Ld. CIT(A), the right to object accrues to assessee on account of his shareholding, which was a capital asset, therefore receipt of ₹46.45 crore was also a capital receipt. He held that it cannot be taxed as income from salary as there was no employer-employee relationship, it cannot be taxed as capital gain as right to object is the personal right which is nontransferable and cost cannot be determined. Further, it is not taxable under the 'Income from other sources' as it is not a revenue receipt. The detailed finding of Ld. CIT(A) on the issue in dispute are available on page 27 to 33 of the impugned order.

8. Before us the Ld. DR relied on the order of the Assessing Officer and submitted that despite being specifically asked, the assessee did not submit

Memorandum of Understanding (MOU) between the 'Rabo Bank' and the assessee or any correspondence regarding the payment of ₹46.45 crores except letter dated 16/01/2012 by the Rabobank. According to him, the Ld. CIT(A) has decided the issue without examining complete evidence in support of deliberations, discussion and negotiation held between the assessee and the Rabobank, and therefore issue might be restored back to the file of the Assessing Officer with the direction to the assessee to provide all the relevant correspondence exchanged between the assessee and the Rabobank with regard to the payment of ₹46.45 crores.

9. The Ld. counsel of the assessee on the other hand submitted, as under, as why the said receipt of ₹46.45 crore is not taxable in the hands of the assessee:

- a Said receipt is a capital receipt as same is received from RABO Bank for giving consent to open new independent branches and settlement of disputes.*
- b Said receipt is received as Assessee is holding a capital asset being shares of YBL. However, receipt cannot be taxed under the head capital gains as right to object is not transferrable and cost of acquisition is not determinable.*
- c Said receipt being capital receipt it will be includible under the head capital gains hence, it cannot be taxed under any other head of income including Income from other sources.*
- d The receipt is non-recurring receipt. It is not business of Assessee to give consents or raise objections. Thus, said receipt does-not even have the character of income but is a Capital receipt.*

9.1 The Ld. counsel further, submitted that the exit of Rabobank from the 'Yes bank Ltd.' could have serious ramification on the smooth functioning of the bank and the share prices of the Yes Bank Ltd. could substantially dip as the shares were to be sold in block, in the market. This would have also eroded the value of the investment of the assessee. The Ld. counsel submitted that after much deliberation it was agreed that if Rabobank had to exit from the Yes Bank Ltd., it would do so in toto and would not retain any equity, however, the Rabobank chose not to reduce its shareholding in Yes Bank Ltd. below 5% and continued to remain invested and also decided to open its branches in India. According to the Ld. counsel, the assessee was quite obviously at great disadvantage and the only way to prevent Rabobank from going ahead would be to object to the authorities concerned with the issuance of license to Rabobank for opening branches in India as the Rabobank was required to obtain FIPB approval for exiting the joint venture and opening branches in India and for such approval consent of the assessee was mandatory.

9.2 The Ld. counsel submitted that letter dated 16/01/2012 sent by the Rabobank, makes it clear that payment was made for settlement of disputes and towards consent and no objection. The word used in the letter are "partnership

settlement payment". The Assessing Officer misconstrued the said payment as for personal services.

9.3 The Ld. counsel further submitted that Foreign Inward Remittance Certificate also state that payment is for "partnership settlement payment" and not remuneration as stated by the Assessing Officer.

9.4 The Ld. counsel submitted that as per the provision of the circular No.2/2010 dated 30/09/2010 issued by the FIPB, the onus to provide requisite justification that the new proposal would not jeopardize the existing joint-venture or technology transfer/trademark Partner, would lie equally on the non-resident investor/technology supplier and the Indian partner, therefore the observation of the Assessing Officer that onus was only on the Rabobank is totally baseless and incorrect.

9.5 The Ld. counsel submitted that it is the dominant intention of the document, which guide the construction of its contents. In support, the Ld. counsel relied on the decision of the Hon'ble Supreme Court in the case of **Subbegowda Thimmegowda AIR 2004 SC 2428**. The Ld. counsel also relied on the decision of the Hon'ble Calcutta High Court in the case of **CIT vs Arun Datta (1990) 186 ITR 494 (Cal)** wherein it is held that if the company and

employee had understood the agreement in a certain way and had acted upon the agreement, it is not open to the Income Tax Officer to give another interpretation and tax the assessee on a hypothetical amount.

9.6 The Ld. counsel submitted that right to give consent or no objection is available to the assessee in view of shareholding of the assessee in Yes Bank Limited. Such shareholding being capital asset, the right arising out of the same also in the capital field and therefore money received toward settlement of the dispute are also capital receipt. In support, the Ld. counsel relied on the decision of the Hon'ble Bombay High Court in the case of **CIT vs David Lopes Menezes 336 ITR 337 (Bom)**, wherein it is held that compensation paid to vote in AGM in a particular manner is a capital receipt. The Ld. counsel also relied on the decision of the Delhi Bench of Tribunal in the case of **Payal Kapoor Vs ACIT 98 ITD 19 (Delhi)**, wherein it is held that compensation received for not objecting for an investor to sell his shares where there was a lock in period/restriction to sell, is a capital receipt. The Ld. counsel also relied on the decision of the Tribunal Jaipur bench in the case of **Satyam Food Specialities Vs DCIT (2015) 68 SOT 449 (Jaipur-Trib)**, wherein it is held that compensation received by the appellant in lieu of the withdrawing the right to

sue against Coca Cola was a capital receipt being outside the purview of the Income Tax Act.

9.7 In view of the arguments made, the Ld. counsel submitted that order of the Ld. CIT(A) on the issue in dispute must be upheld.

10. Regarding the ground No. 3, the Ld. DR submitted that regarding the loan waiver of ₹17.00, crores the letter of Rabobank itself says that 'dollar loan agreement' was between the Rabo Bank, Morgan Credits Private Limited and the assessee and therefore the loan waiver, was due to the contribution and services by the assessee. The assessee is the ultimate beneficiary of the loan waiver therefore, it should be assessed on substantive basis in the case of the assessee.

11. The Ld. counsel on the other hand submitted facts qua the issue in dispute that the assessee along with his family members hold shares in Morgan Credits (P) Ltd (MCL) and the assessee is a minority shareholder holding 4.5% stake in MCL. The MCL is a promoter shareholder holding 15.9% equity shares of YBL. In financial year 2003-04, MCL had taken a loan from Rabobank of ₹17 crores to subscribe to the shares of YBL. During the relevant previous year, Rabobank agreed to waive the said loan liability, which was acknowledged by the

Rabbonak in the same letter it had written in respect of payment of settlement of amount of ₹46.45 crores to the assessee.

12. The Ld. counsel further submitted that MCL accounted for the waiver of the loan in subsequent financial year i.e. FY 2012-13 since Rabobank gave the confirmation of balance as on 23/10/2012 and therefore in financial year 2011-12, the said loan was shown as outstanding in the books of accounts of MCL. The said loan was written back by the MCL in its books of accounts only in financial year 2012-13. The Ld. counsel therefore submitted that notwithstanding the merit of the case, for the relevant assessment year under consideration, the issue of taxation of any income arising from any waiver of the loan cannot arise at all. He submitted that based on the said letter, the Assessing Officer is not justified in adding entire amount of loan so waved to the total income of the assessee holding that loan is for some purported contribution and services by the assessee to Rabobank and the said waiver indirectly benefited the assessee. The Ld. CIT(A) has deleted the addition holding that assessee and MCL are separate entities.

13. The Ld. counsel of the assessee submitted that loan waiver is not for any contribution and services by the assessee to the Rabobank. He submitted that in the letter, it is nowhere mentioned that said waiver is for any contribution of

services rendered by the assessee to the Rabobank, and therefore addition made is without any basis.

14. Ld. counsel further submitted that waiver of the loan was a transaction between the Rabobank and MCL and had nothing to do with the assessee. The assessee had not received any benefit directly or indirectly on account of loan waiver by the Rabobank to MCL.

15. The Ld. counsel also submitted that the issue of taxable to the loan waiver is relevant from the assessment of MCL and not of the assessee. There is no dispute on the fact that loan that has been waived was given to MCL. The entire transaction of the loan waiver has been recorded by the MCL in its books of accounts.

16. The Ld. counsel relied on the decision of the Hon'ble Supreme Court in the case of **Mrs. Bacha F Guzdar Vs CIT 27 ITR 1 (SC)** for the proposition that shareholder does not get right in the property of the investing company. He also relied on the decision of Hon'ble Supreme Court in the case of **Commissioner of Income-tax Vs Mahindra and Mahindra Ltd (2018) 93 taxmann.com 32 (SC)** wherein it is held that waiver of the loan cannot be taxed as perquisite under section 28(iv) as receipt in the end of the debtor/assessee in the form of

cash/money and it also cannot be taxed as remission of liability under section 41(1) as a waiver of the loan does not amount to cessation of trading liability.

17. In ground No. 4 (four) the Revenue has raised the issue that the Ld. CIT(A) is erred in deleting the additions made by the Assessing Officer when no material evidence, which was in the possession of the assessee is privy to the transaction was presented by the assessee except one letter of Rabobank.

18. The Ld. DR submitted that documentary evidence in support of deliberations discussions and negotiations held between the assessee and the Rabobank including the memorandum of understanding between the assessee and Rabobank were not produced before the Assessing Officer except a letter from the Rabobank. There is nothing on record in the form of binding agreement between the parties. The Rabobank cannot make payment of ₹46.45 crore merely on the basis of the letter sent to the assessee that same shall be deemed to constitute waiver of all claims by the assessee towards Rabobank. He submitted that assessee is not producing the vital documents in the name of privacy and confidentiality.

19. We have heard rival submission of the parties on the issue in dispute and perused the relevant material available on record including the paperbook in four volumes including case laws filed by the assessee.

19.1 The first issue in dispute is regarding the nature and character of the payment of ₹46.45 crore received by the assessee from Rabobank. It is undisputed that assessee is ex-employee of the Rabo Finance Pvt. Ltd. i.e. a NBFC setup by the assessee with the Rabobank International Holding BV (the Rabobank). The contention of the assessee is that in terms of Circular (supra) of FIPB, the assessee was having right to object for entry by the Rabobank at their own in Indian market for banking operations and the money received is in respect of consent or no objections given by the assessee, which being capital receipt not taxable in the hands of the assessee. Whereas, according to the Assessing Officer, on the basis of the letter dated 16/01/2012 of Rabobank which was presented by the assessee before the Assessing Officer during assessment proceeding, the payment was for rendering personal services to the Rabobank by the assessee, and therefore it was in the nature of remuneration for such services and hence taxable as revenue receipt.

19.2 We find from the assessment order that the Assessing Officer specifically asked the assessee to provide Memorandum of Understanding of the assessee

with the Rabobank and any other correspondence with regard to payment of amount of ₹46.45 crore. The Assessing Officer has noted that the assessee did not provide any MOU or correspondence except a letter dated 16/01/2012 written by him by the Rabo Bank. Thus both the parties are taking their position on the basis of said letter only. The contents of the letter have been reproduced by the Ld. CIT(A) on page 23 to 25 of the impugned order. The Ld. CIT(A) has also adjudicated the issue on the basis of the contents of said letter only.

19.3 The assessee submitted before the Assessing Officer as well as the Ld. CIT(A) that assessee after lot of deliberations, discussions and negotiation agreed to provide his consent and no objection for the entry of the Rabobank in India which was required under the circular (supra) issued by the FIPB. But neither such evidences containing any written correspondence regarding deliberations discussion and negotiation was produced by the assessee before the lower authorities nor before us.

19.4 Further, we find that as per the submission of the assessee before us, in March 2010, the Rabobank held around 15.95% stake in Yes Bank Limited whereas the assessee together with two family promoted private companies held around 14.48% stake in the Yes Bank Limited. The exact percentage of holding of the assessee and other two privately held companies is not available

on record. If the compensation is for giving no objection or consent by the Indian partner of the joint-venture (i.e. the Yes Bank Ltd) then the assessee is required to disclose entire holding of the Yesbank Ltd for ascertaining as to whether any other Indian joint-venture partner has also received any such compensation or it is received only by the assessee. No such information is available on record nor any such information has been asked by the Ld. CIT(A). The Hon'ble Delhi High Court in the case of **M/s Jansampark Advertising and Marketing (P.) Ltd. in ITA No. 525/2014 in order dated 03.11.2015** has held that it is true that *it is the obligation of the AO to conduct proper inquiry of the material, given the fact that two appellate authorities above are also forum for fact-finding and in the event of AO failing to discharge his functions properly, the obligation to conduct proper inquiry on facts would naturally shifts to the door of the said appellate authority.* In the present case, sufficient details were not filed before the AO, but the Ld. CIT(A) could have called for the complete details.

19.5 The Ld. counsel has before us submitted that exiting, the joint-venture by the Rabobank would have adversely affected the share value of the YBL and consequent adverse impact on the shareholding value held by other Indian joint-venture partner. He has further submitted that the Rabobank retained shareholding in Yes Bank Ltd below 5%, though it was agreed for entire exit.

Therefore, for giving consent for independent Indian operations of Rabobank, which was required under the FIPB Circular, the Rabobank agreed to pay compensation to the assessee. But we find that no such evidences containing copies of correspondence between the assessee and Rabobank except the said letter have been produced before the lower authorities. Thus, no evidence in support of demonstration that the interest of the joint-venture (i.e. The Yes Bank Ltd) would jeopardize by way of entry of Rabobank in India. There is nothing on record which could establish existence of a dispute between the joint-venture partner and settlement thereof except the letter under reference.

19.5.1 The letter of Rabobank under reference, states the fact of reduction of stake in the joint-venture (i.e. the Yes Bank Ltd) and consent and no objection by the assessee. However, simultaneously the said letter also says of awarding the assessee for personal contribution to success of partnership ventures including the Yes Bank Ltd. and Rabobank Finance (in which the assessee was earlier working as employee). The payment has been termed as one-time partnership settlement. For ready reference the contents of the said letter are reproduced as under :

"Private & Confidential
Mr. Rana Kapoor
427-428 SamudraMahal

*Dr. Annie Besant Road
Worli, Mumbai 400018
INDIA*

Date Utrecht, 16 January 2012

Dear Rana

Following the successful placement of 11% of our stake in June 2010 in order to grow our Rabo Bank activities in India through our own branches further to your consent and no objection, we have also resigned from the Board of YES Bank.

These developments mark a new phase in our relationship with you since ending our partnership with you which commenced in 1998 with Rabo Bank, and thereafter YES Bank. We wish to record our appreciation of your efforts during our past partnership in India, by awarding you a one-time "partnership settlement payment" to reflect your undoubted personal contribution to the success of our Partnership Ventures - Yes Bank, and Rabo Bank Finance previously, through which we also have generated sizeable capital gains.

Over the years we have occasionally had some difference between us, and through this final settlement gesture, we wish to recognize your exemplary efforts. We are pleased to award you this one-time partnership settlement payment of US\$ 9.25m.

Further, we are agreeable to forgiving the loan in the amount of INR 170,000,000 (USD 3,752,759.38) granted by Rabo Bank to Morgan Credits Put. Ltd. vide Loan Agreement dated November 5, 2003 As a consequence, following our joint signature of this letter the loan shall be deemed repaid and the Dollar Loan Agreement dated 5 November, 2003 between Rabo Bank International Holding B. V., Morgan Credits Private Limited and yourself shall be deemed terminated. To the extent necessary, your signature of this letter shall be deemed to be a signature and acceptance on behalf of Morgan Credits Private

Limited as well, for which you have been granted a specific authority supported by a Board Resolution.

Your acceptance of the payment of the partnership settlement together with the remission of the aforementioned loan shall be deemed to constitute your waiver of any and all claims so entitlements (if any) towards Rabo Bank (including any and all of Rabo Bank's group companies and affiliates) of whatever kind and on any ground whatsoever.

In order to process this payment, you are requested to countersign this letter confirming your agreement to receiving this payment on this basis, and to confirm to us that this agreement meets the requirements of the Reserve Bank of India and that no further governmental or other approvals or corporate resolutions (from Morgan Credit Private Limited or otherwise) are required. You will also be solely responsible for fulfilling the tax obligations relating to this transaction, Please also let us know where the net payment is to be forwarded.

With vest regards

Sd/- Sipko Schat

Member executive Board Rabo Bank Netherland"

There are no details available on record with reference "one-time partnership settlement". It is not clear to which partnership the Rabobank is referring, whether it is partnership of the assessee as "employee" of Rabobank Finance or reference is toward the Rabobank as shareholder of Yes Bank Ltd.

19.6 In the light of the above, we are of the opinion that no sufficient evidences are available on record to decide the nature and character of payment of ₹46.45 crores received by the assessee from the Rabobank and further to hold as how

the enforceable legal right arose to the assessee. There is also not sufficient evidence to hold that payment was for remuneration for merely personal services. The waiver of ₹17crore has been addressed to the assessee by way of the letter under reference wherein it is also mentioned that assessee was party to the loan agreement between MCL and Rabobank. No correspondence or evidence with respect to the loan transactions between the Rabobank and MCL have been produced before the lower authorities.

19.7 In the fact and circumstances of the case, we feel it appropriate to restore both the issues, firstly the issue of payment of ₹46.5 crore to the assessee and secondly, the loan waiver of ₹17.00 crores, back to the file of the Assessing Officer for deciding afresh, with the direction to the assessee to (i) produce all documents to substantiate the correspondence between the assessee and the Rabobank related to the payment of ₹ 46.45 crore to the assessee including memorandum of understanding entered into between the parties regarding the payment. (ii) all documents related to loan transactions including dollar loan agreement dated 5/11/2003 among the Rabobank, MCL and the assessee. The Assessing Officer may also carry out any inquiries which are deemed fit in facts and circumstances of the case. It is needless to mention, that assessee shall be afforded adequate opportunity of being heard. The ground No. 4 of the appeal

of the revenue is accordingly allowed. As the issue in dispute involved in ground No. 1 to 3 have already been restored back to the file of the Assessing Officer, the ground No. 1 to 3 also stands allowed for statistical purposes.

20. In the result, the appeal of the Revenue is allowed for statistical purposes.

Order pronounced in the open Court on 28/04/2022.

Sd/-
(KAVITHA RAJAGOPAL)
JUDICIAL MEMBER

Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Mumbai;

Dated: **28/04/2022**

Dragon Legal/Rahul Sharma, Sr. P.S.

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,

(Sr. Private Secretary)
ITAT, Mumbai