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

**BEFORE: SHRI M.BALAGANESH, ACCOUNTANT MEMBER**
**&**
**SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER**

**ITA No.2260/Mum/2022**
(**Assessment Year :2012-13**)

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| Deputy Commissioner of Income Tax (International Taxation)-2(1)(1)<br>Mumbai<br>Room No.1713, 17th Floor<br>Air India Building,<br>Nariman Point<br>Mumbai- 400 021 | Vs. | M/s. Cooperative Rabobank UA.<br>20th Floor, Tower A<br>Peninsula Business park<br>Senapati Bapat Marg<br>Lower Parel<br>Mumbai – 400 013 |
| **PAN/GIR No.AACCC1331M** | | |
| **(Appellant**) | .. | **(Respondent**) |

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| Assessee by | Shri Percy Pardiwala & Shri Nitesh Joshi |
| Revenue by | Shri Soumendu Kumar Dash |
| **Date of Hearing** | **06/03/2023** |
| **Date of Pronouncement** | **28/03/2023** |
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## आदेश / O R D E R

***PER M. BALAGANESH (A.M)*:**

This appeal in ITA No. 2260/Mum/2022 for A.Y.2012-13 arises out of the order by the ld. Commissioner of Income Tax (Appeals)-55, Mumbai in appeal No.CIT(A)-55, Mumbai/10319/2017-18 dated 24/06/2022 (ld. CIT(A) in short) against the order of assessment passed u/s. 143(3) r.w.s. 144C of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 29/04/2016 by the ld. Dy. Commissioner of Income Tax,

International Taxation – 4(1)(1), Mumbai (hereinafter referred to as ld. AO).

2. The revenue has raised the following grounds of appeal:-

> *"1. Whether on the facts and in the circumstances of the case and in law, the Ld CIT(A) has failed to appreciate that during the AY 2012-13, the assessee has operated through its branch Permanent Establishment unlike in previous years where the assessee was acting through subsidiary Indian company.*
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> *2. Whether on the facts and in the circumstances of the case and in law, the Ld CIT(A) has erred in deciding the appeal stating that the facts of the appeal for AY 2010-11 were similar to present appeal, while the facts of the case that in AY 2010-11, the assessee acted through Indian company M/s Rabo India Finance Private Limited( Rabo India), whereas in AY 2012-13, the facts of the case is that during assessment proceeding the assessee itself disclosed that it has a branch in India (PE).*
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> *3. Whether on the facts and in the circumstances of the case and in law, the Ld CIT(A) has failed to appreciate that the ECB loans provided to Indian clients were linked to the activities of branch (PE) of assessee in India and therefore the interest paid by Indian clients is liable to tax as its business Income at rate of 40%.*
>
> *4. Whether on the facts and in the circumstances of the case and in law, Ld CIT(A) has failed to hold the receipt of interest on ECB loan as business income of its PE where he has accepted that the main business of the assessee is finance and loan to its customers and the interest income is part of the income of the assessee and Indian clients have deducted TDS on it."*

3. We have heard the rival submissions and perused the materials available on record. We find that assessee is an Indian Branch of Cooperative Centrale Raiffeisen Boerenleen Bank B.A., Netherlands (Rabobank, Netherlands), a company incorporated in Netherlands. It received approval from Reserve Bank of India (RBI) to commence its branch banking activities in India in March 2011. The assessee branch filed return of income for the assessment year 2012-13 on 30/11/2012 declaring total income of Rs.24,03,58,720/-. The Ld. AO in the course of assessment proceedings observed from the ITS (Individual Transaction System from ITD) details of the assessee that assessee had an

undisclosed TDS credit amounting to Rs.6,96,33,878/-. Accordingly, the assessee was directed to explain the reasons for difference in income appearing in Form 26AS vis-a-vis the Profit & Loss Account and the return of income filed. The assessee vide letter dated 29/03/2016 submitted that in its Form 26AS, tax credit of Rs.11,47,62,334/- is reflected, out of which assessee has claimed tax credit of Rs.4,96,90,703/- in the return of income. Further out of the aforesaid total tax credit claimed by the assessee, payment of Rs.48,35,26,691/- was made to assessee as a reimbursement of expenses incurred by assessee on behalf of the head office and other group company (i.e. Rabo India Finance Ltd) (RIF). It was submitted that such recovery of expenses by assessee is pure cost recoveries from the head office / RIF without any mark up on the same. Accordingly, it was submitted that the said cost is not chargeable to tax in India and credit for taxes deducted at source amounting to Rs.4,83,52,670/- has been claimed in the return of income. With regard to tax credit of Rs.6,50,71,634/- not claimed by assessee in the return, it was submitted that assessee has various branches around the world which operate independently and that these branches have separate businesses; hence conducting, inter alia, lending and other business activities. Hence it was practically difficult for assessee to comprehensively collate the details of income earned in India from the transactions undertaken by various personnel of these branches. The assessee also furnished the details of balance amount of taxes deducted at source which were not claimed by it in the return which are tabulated on pages 3 to 5 of the assessment order. It was also submitted that taxes were deducted at source at the rate prescribed in terms of specific Article for Interest provided in the Indo Netherlands Tax Treaty. The assessee also on without prejudice basis submitted, that the difference in income could be brought to tax representing interest on external commercial borrowing amounts in the hands of the assessee at the tax

rates prescribed under the Indo Netherlands Tax Treaty by specifically applying Article 11 thereon and correspondingly grant TDS credit on the same. The Ld. AO, however, brought to tax the difference of undisclosed gross receipts as per Form 26AS and the return of income in the sum of Rs.63,27,60,316/- as an addition while framing the assessment. This addition represents interest income on external commercial borrowings. The Ld. AO, however, sought to tax the said interest income as normal business receipts taxable @40% as applicable to a foreign company instead of applying the tax rate provided in Article 11 of Indo Netherlands Tax Treaty. The assessee carried the matter to the Ld.CIT(A). The Ld.CIT(A) placed reliance on the decision of his predecessor for Assessment Year 2010-11 vide order dated 14/11/2014 wherein in view of provisions of section 115A(i)(a)(ii) of the Act held that interest income earned by the assessee would be chargeable to tax @20% in A.Y. 2010-11. The Ld.CIT(A) in A.Y. 2010-11 has further directed the ld. AO to apply the tax rate prescribed in Indo Netherlands Tax Treaty. The very same direction was followed by the Ld.CIT(A) in the impugned year directing the Ld. AO to apply the tax rate prescribed in the Indo Netherlands Tax Treaty. Aggrieved, the Revenue is in appeal before us.

3.1. At the outset, there is absolutely no dispute that the Indian branch operations is a Permanent Establishment in India. We find that the taxability of interest income in the hands of the assessee is also not disputed by the Ld.AR. The only dispute that requires to be adjudicated in the instant appeal is with regard to the tax rate to be applied as per Indo Netherlands Tax Treaty. The Ld.DR vehemently argued that the said interest income would become business profit of the Indian branch and hence to be taxed in terms of Article 7 of the Indo Netherlands Tax Treaty and accordingly he argued that the Ld. AO was justified in taxing the same @40%. We are unable to comprehend ourselves to accept to

this argument of the Ld.DR in view of the fact that Article 7(6) of Indo Netherlands Tax Treaty specifically provides as under:-

> *7(6) Where profits include items of income which are dealt with separately in other articles of this convention, then the provisions of those articles shall not be affected by the provisions of this article."*

3.2. We find from the perusal of Indo Netherlands Tax Treaty that there is a separate Article provided for taxability of Interest vide Article 11 thereon. There is no dispute that the nature of income that is sought to be taxed is interest income in the instant case. Hence, it would be just and fair to apply the Article 11(2) for the purpose of determining the taxability of the said interest income which reads as under:-

> "*11(2). However, such interest may also be taxed in the contracting state in which it arises and according to laws of that state, but if the recipient is the beneficial owner of the interest, the tax so charged shall not exceed 10% of gross amount of the interest."*

3.3. Hence, in view of Article 11(2), we direct the Ld. AO to bring to tax interest income @10%. Accordingly, the grounds raised by the Revenue are dismissed.

**4. In the result, the appeal of the Revenue is dismissed.**

Order pronounced on 28/03/2023 by way of proper mentioning in the notice board.

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| **Sd/-** | **Sd/-** |
| **(SANDEEP SINGH KARHAIL)** | **(M.BALAGANESH)** |
| **JUDICIAL MEMBER** | **ACCOUNTANT MEMBER** |

Mumbai; Dated 28/03/2023
KARUNA, *sr.ps*

**Copy of the Order forwarded to :**

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

//True Copy//

BY ORDER,

(Asstt. Registrar)
**ITAT, Mumbai**