IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH, KOLKATA

BEFORE SHRI RAJESH KUMAR, AM
AND
SHRI SONJOY SARMA, JM

ITA No.1364/KOL/2023
(Assessment Year:2021-22)

Nat West Markets Plc-India Branch 907, Regus, 9thFloor, PSArcadia,4A, Abandindra Nath Thakur Sarani, Kolkata-700016, West Bengal **(Appellant)**	**Vs.**	**ACIT (I.T)-1(2), Kolkata** Aaykar Bhavan Poorva, 2nd Floor, 110, Shanti Pally, Kolkata-700107, West Bengal **(Respondent)**

PAN No. AACCT8020E

Assessee by	:	Shri Percy Pardiwala, AR
Revenue by	:	Shri Gaurav Kanujia, DR

Date of hearing: 15.01.2025
Date of pronouncement : 31.01.2025

O R D E R

Per Rajesh Kumar, AM:

This is an appeal preferred by the assessee against the order of the ld. Dispute Resolution Panel (hereinafter referred to as the "Ld. DRP"] dated 26.09.2023 for the AY 2021-22.

02. The only issue raised in ground no.1 is against the order of ld. AO passed in pursuance to the direction of the ld. Dispute Resolution Panel adding the interest on income tax refund amounting to ₹62,12,73,000/- to the income of the assessee by ignoring the fact that the same is related to the erstwhile Indian Branches of The Royal Bank of Scotland NV, (RBS NV) acquired by the assessee under the

scheme of amalgamation under section 44A of the Banking Regulation Act, 1949 through the order of Reserve Bank of India (RBI).

03. The facts in brief are that The Royal Bank of Scotland NV, (RBS NV) was amalgamated with NWM Plc (the assessee) u/s 44A of the Banking Regulation Act, 1949 through the Reserve Bank of India (RBI) approved scheme of amalgamation. The effective date of amalgamation was 27.02.2017. As per the submission of the assessee in the computation of income it has deducted the interest on tax refund belonging to RBS NV amounting to ₹62,12,73,000/-from the gross total income. The said income has been assessed in the hands of the RBS NV as is apparent from the copy of acknowledgement of ITR return filed by the said entity, wherein it has shown income of ₹62,12,72,670/- and paid tax thereon at the rate of 10%. The said interest was taxed in accordance with the ld. Dispute Resolution Panel direction as contained in para 8.4 of the order which is extracted below:-

> *"(i) It is observed that post amalgamation, income tax refund has been accounted for by the assessee company in its books of accounts. In this background the onus was on the assessee company to prove its case, which it has failed to discharge. The issue of double taxation is a real issue which requires to be addressed by claiming credit in hands of the right concern, which in this case will be the parent Company rather than the branch which merged with another concern to become a new entity taking over all the assets and liabilities of the former entity because of the amalgamation process. This being the case, there is no infirmity found with the conclusion in the draft order as was also the finding of DRP for AY 2020-21. The Assessing Officer is directed to pass a well-reasoned speaking order in this regard."*

04. After hearing the rival contentions and perusing the materials available on record, we find that the issue is squarely covered by the decision of the co-ordinate Bench in assessee's own case in ITA No. 273/KOL/2023 for A.Y. 2020-21, vide order dated 27.11.2024, wherein similar issue has been decided in favour of the assessee. So far as the facts of the present case before us are concerned, we note

from the computation of the total income, a copy of which is available at page no.1 of the Paper Book, that the assessee has reduced interest on tax refund which was belonging to and offered to tax by RBS NV amounting to ₹62,12,73,011/-. We have also examined the copy of acknowledgement for A.Y. 2021-22 dated 09.02.2022, wherein the RBS NV has declared the interest on tax refund amounting to ₹62,12,72,670/- as income and paid taxes thereon and the ld. AO has not controverted the said fact. Therefore, the said income is not assessable in the hands of the assessee as it has been offered in the hands of the RBS NV in its return of income and if the same is allowed, it would amount to double taxation of the same income which is not permissible under the Act. For the sake of ready reference, we extract the operative part of the order in assessee's own case for A.Y. 2020-21 in ITA No. 273/KOL/2023 as under:-

"8. The ld. AO thereafter passed the final assessment order u/s 143(3) read with section 144C(13) of the Act dated 27.01.2023, wherein the ld. AO reiterated the finding given by him in the draft assessment order, save and except that he held that interest of ₹6,18,50,000/- could not be added to the assessee's income u/s 68 of the Act but it should be added u/s 56 of the Act as income from other sources and thereafter, applied rate of 40% plus the educational cess and surcharge to bring the said amount under tax. Aggrieved assessee preferred the appeal before the Tribunal against he said final order.

9. The ld. AR vehemently submitted that having regard to the factual scenario as narrated hereinabove it is clear that no part of the interest granted under section 244A of the Act accrued to the assessee as the refund and interest was determined in the case of Netherlands Entity and not to the assessee. The ld. AR submitted that the assessee had taken over all assets and liabilities of the Indian branches that were in existence on 27.02.2017 and any amount which accrued thereafter to the Netherlands entity solely belonged to the Netherlands entity. The ld. AR submitted that the only reason why it was credited to the bank account and reflected in the books of account of the assessee was that because of Indian bank accounts of Netherlands entity that existed on 27.02.2017 vested in the assessee consequent to amalgamation and accordingly, as the said amount got credited to the profit and loss account. The ld. AR submitted that the said fact was neutralized by the assessee by reducing the same from the income of the assessee while filing the income tax return and copy of which is available in the paper book as stated hereinabove.The ld. AR placed reliance on the judgement of the Hon'ble Apex Court in Sutlej Cotton Mills Ltd. Vs. CIT 116 ITR 1 (SC) and Tuticorin Alkali Chemicals and Fertilizers Limited Vs. CIT 93 Taxmann502 (SC).

The ld. AR further contended that the said income have been assessed in the hands of the Netherlands Entity and no corresponding steps were taken to delete or set at naught the assessment so made on the Netherlands entity it is not open to the Revenue to assess the same income in the hands of two different persons and, therefore, for this reason also the addition needs to be deleted. The ld. AR also placed reliance to corroborate his contention on the decision of CIT vs. R Dalmia 135 ITR 346 (Delhi), wherein the court held that where the dividends which were received by the assessee were offered to tax and assessed for the assessment year 1959-60 and the AO intending to tax the same income for A.Y. 1960-61. The court held that the same was already assessed at 1959-60 and it could not be assessed at for A.Y. 1960-61. The ld. AR submitted that since the orders of the income tax authority for earlier year had become final and accordingly, the tax of the same item of income twice in the hands of the same person was not permissible in-law. Undoubtedly in this case the revenue is seeking to tax a different person but in respect of the same item of income. Even if a view is taken that income has to be assessed in the hands of the correct assessee and, hence, it would be open to the revenue to take steps to do so in spite of the fact that it has already assessed another assessee, nevertheless, in the present case the correct person to be assessed is the Netherlands entity as explained hereinbefore and, hence, the revenue should not be permitted to do so. Even if it is permitted to do so, then, this must be cast with an obligation to rectify the wrong and delete the income which already stands assessed. As the same has not been done it is submitted that the addition of the income in the hands of the appellant cannot be sustained. In the event the Tribunal is pleased to hold that the income has to be assessed in the hands of the Appellant, then, it is submitted that the same can only be assessed at the rate specified in article 12(3)(a) of the UK DTAA (i.e. 10%) and not by applying the rate of 40% as has been done by the Assessing Officer in the final assessment order. In this regard reliance is placed on the order of Special Bench of the Tribunal in CIT vs. Clough Engineering Limited 130 ITD 137 as well as the judgment of the Bombay High Court in DIT vs. Credit Agricole Indozuez 377 ITR 102. In both these decisions the Tribunal/Court has taken the view that the interest earned from the tax department has to be assessed in accordance with Article 11(2) of the relevant DTAA.

10. The ld. DR on the other hand relied heavily on the final assessment order by submitting that the income has been correctly assessed in the hands of the assessee on the basis of credit being given in the bank account of the assessee besides the income tax refund and corresponding entities being accounted in the books of accounts and also in the profit and loss account. The ld. DR submitted that when the interest has been credited in the bank account of the assessee it is obvious and apparent that same has to be assessed in the hands of the assessee and not in the hands of the Netherlands entity which owned and operated all the branches in India till 27.02.2017 when the Indian branches amalgamated with the assessee though the ld. DR could not duly explain that on the basis of the returns and computation filed a copies of which are available be in the Paper Book, the said income has been assessed in the hands of the Netherlands entity and there is no doubt as to that. The ld. DR finally submitted that the final assessment order may kindly be upheld.

11. After hearing the rival contentions and perusing the materials available on record, the undisputed facts are that the assessee was incorporated in United Kingdom and is a tax resident of the United Kingdom. During the previous year, relevant to A.Y. 2020-21, the assessee carried out its business activities through its

branches which had merged in a scheme of amalgamation sanctioned by the RBI. Prior to 27.02.2017, Indian Branches i.e. these branches were owned by R.B.S. N.V. The said foreign entity used to file its return of income in India qua the income that are attributable to the activities of the permanent establishment in India as well as in respect of its income which accrued or rose in India. While giving appeal effect for A.Y. 2014-15, the Revenue determines that the tax refund of ₹40,76,1390/- which is included in interest of ₹9,65,18,062/- u/s 244A of the Act of which tax at source of ₹96,51,807/- was directed by the revenue during the previous year relevant to A.Y. 2019-20. Similarly, pursuant to certain appeal effect orders passed for various assessment years, the revenue determined a refund of ₹28,21,23,127/-, which included interest of ₹5,21,98,081/- in terms of Sectio 244A on which tax at source was directed by the Revenue of ₹56,39,097/- in A.Y. 2020-21. We note that the Netherland entity had offered to tax the interest income u/s 244A of the Act in the previous year relevant to A.Y. 2019-20 and copy of acknowledgement of ITR is available at page no.143, wherein interest of ₹9,65,18,062/- offered to tax and in accordance with the Article 11(2) of the Double Taxation Aviance Agreement entering into between India and Netherland, tax liability was determined at ₹96,51,807/-. Similarly in A.Y. 2020-21 refund was actually received byRBS. N.V. Netherla nds entity and interest thereon of Rs. 5,21,98,080/- was offered to tax and tax was determined in accordance withthe above DTAA at ₹52,91,808/- and the copy is available at page no.144 of the Paper Book, where it is noted that both the returns of income were processed u/s 143(1) of the Act and accordingly, the assessment in respect of Netherland entity in both the assessment years has become final. Now, mere fact that the refund as well as interest was credited in the bank account of the assessee post amalgamation would not decide the nature of the receipt in the hands of the assessee . In our opinion, it is a unequivocal and settled position that the same income cannot be taxed twice first in the hands of the same assessee and secondly hands of some different assessee. In the present case, the income has been assessed in the hand of Netherlands entity and therefore it is not open to the Revenue to assess the same income in the hands of two different persons. Therefore, for this reason also the addition has to be deleted. The ld. AR also placed reliance to corroborate his contention on the decision of R Dalmia (supra) and similarly, in in Sutlej Cotton Mills Ltd. Vs. CIT 116 ITR 1 (SC) and Tuticorin Alkali Chemicals and Fertilizers Limited Vs. CIT 93 Taxmann502 (SC) Hon'ble Apex Court held that the entries in the books of accounts would not establish the taxability of the receipt. Considering the above fact, we are inclined to hold that the interest credited in the bank account of the assessee which is in respect of Indian branch which were belonging to Netherland Entity prior to 27.02.2017, is not taxable in the hands of assessee as the same has been assessed in the hands of Netherlands Entity by the department and the assessment has attained its finality. The appeal of the assessee is allowed.

12. In the result the appeal of the assessee is allowed."

05. We therefore respectfully following the above decision of the coordinate bench in assessee's own case set aside the order of ld. Dispute Resolution Panel/ AO and direct the ld. AO to delete the said addition.

06. The issue raised in ground no.2 is against the order of ld. AO passed in accordance with the direction of the ld. Dispute Resolution Panel, disallowing the payment of long service award amounting to ₹10,84,000/-, whereas the issue in ground no.3 is against the disallowance of deferred bonus provisions of ₹2,58,03,000/- in accordance of the provisions of Section 43B of the Act.

07. The facts in brief are that the provisions created on account of long service award and bonus in the earlier years were disallowed and added back at the time of filing of the return under provisions of Section 43B of the Act as these were not paid on or before the due date of filing of return of income. The said fact was corroborated by the tax audit report for the A.Y. 2020-21, a copy of which is available at page nos. 220 to 235 and in particular page no.228 of Para no.26(i)(A)(b), which relates to any sum referred to any clause (a) to (g) of section 43B and it is mentioned in serial no.9 that provisions for long service award were amounting to ₹10,83,680/-. Therefore, these provisions were already disallowed, whereas as per report, Willis towers Wason, in respect of long service award scheme under AS 15 (revised in 2005), which is an actuary valuation for the year ending 31st March, 2021, it was stated at page no.194 that under table 4 titled as " Change in Obligation and Assets over the period ended 31 March, 2021", in item no.9 that benefit payments were ₹32,41,57,000/- during the year. Thereafter in page no. 179 of the Paper Book, the assessee also replied to the ld. AO vide letter dated 26.12.2022, submitting in Para 1 that during the year under consideration, the assessee has claimed deduction of the aforesaid amount of ₹10,84,000/- on account of payment of long service awards and of ₹2,58,03,000/- in respect of payment of deferred award bonus u/s 43B of the Act on the payment basis. It was also stated that the

aforesaid amount were disallowed by the bank in the earlier assessment years when the provisions were created and not paid and upon payment/ reversal of the said provisions, the bank has claimed deduction u/s 43B of the Act.

08. On 28th December, 2022, the assessee submitted before the ld. AO substantiating the payments based on the actuarial valuation report issued by third party evidencing the payment of ₹32,41,570/-. In the assessment order the ld. AO noted that the assessee has not submitted the details of payment of ₹32,41,570/- comprising payment of ₹10,84,000/- in respect of long service award and therefore, same was not allowed. Similarly, in Para no.5.9, the assessee has not submitted the bifurcation of payment of ₹2,91,51,550/-under the head benefits payment which according to the assessee included 2,58,03,000/- on account of bonus payment. After taking into account the aforesaid facts the tax audit report and actuarial valuation report issued by the third party as referred above, we note that these provisions were credited in the earlier assessment years and claimed during the current assessment year as deduction on payment. The assessee has also closed down its operation and accordingly, these grounds of the assessee are academic in nature and has no effect in the subsequent assessment years as the assessee's business stood closed down and the loss resulting during the current year could not be claimed against the subsequent income. However, these are argued for the reason that the ld. AO initiated the penalty proceeding and whatever the document/ records were available have been furnished before the ld. Assessing Officer. Considering the nature and the facts filed by the assessee such as the tax audit report, actuarial valuation report, replies to the ld. AO, we are of the view that the assessee has substantially established its bonafide that these

provisions created in the earlier assessment years were discharged during the current year and rightly claimed u/s 43B of the Act. Accordingly, we direct the ld. AO to delete the addition in respect of long service award and bonus. Ground no.2 and 3 are allowed.

09. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 31.01.2025.

Sd/-	Sd/-
(PRADIP KUMAR CHOUBEY)	(RAJESH KUMAR)
(JUDICIAL MEMBER)	(ACCOUNTANT MEMBER)

Kolkata, Dated: 31.01.2025
Sudip Sarkar, Sr.PS
Copy of the Order forwarded to :

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

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Kolkata