



आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ 'के' मुंबई

**IN THE INCOME TAX APPELLATE TRIBUNAL**

**"K" BENCH, MUMBAI**

श्री राजेंद्र, लेखा सदस्य एवं श्री शक्तिजीत दे, न्यायिक सदस्य के समक्ष

**BEFORE SHRI RAJENDRA, ACCOUNTANT MEMBER AND**

**SHRI SAKTIJIT DEY, JUDICIAL MEMBER**

आयकर अपील सं. / ITA no. 5417/Mum./2010

(निर्धारण वर्ष / Assessment Year : 2004-05)

Abu Dhabi Commercial Bank Ltd.  
75B, Rehmat Manzil  
Veer Nariman Road  
Mumbai 400 020  
PAN – AAACA4216B

..... अपीलार्थी /  
Appellant

v/s

Asstt. Director of Income Tax  
(International Taxation), Circle-I(1)  
117, Scindia House, Ballard Pier  
Mumbai 400 038

..... प्रत्यर्थी /  
Respondent

निर्धारिती की ओर से / Assessee by : Shri Dhanesh Bafna a/w  
Ms. Chandani Shah  
राजस्व की ओर से / Revenue by : Shri Sanjeev Jain

सुनवाई की तारीख /  
Date of Hearing – 28.09.2016

आदेश घोषणा की तारीख /  
Date of Order – 29.09.2016

**आदेश / ORDER**

**शक्तिजीत दे, न्यायिक सदस्य के द्वारा /**  
**PER SAKTIJIT DEY, J.M.**

Aforesaid appeal by the assessee is directed against the order dated 28<sup>th</sup> April 2010, passed by the learned Commissioner (Appeals)–

10, Mumbai, pertaining to assessment year 2004-05. Grounds raised by the assessee are reproduced hereunder:-

*"1) (a) The Commissioner of Income-tax (Appeals)-10, Mumbai [hereinafter referred to as the CIT(A)] ought to have held that the Assessing Officer (AO), while giving effect to the CIT(A)'s order dated 15<sup>th</sup> June, 2009, ought to have granted the deduction under section 44C of the Act.*

*(b) The CIT(A) erred in stating that in the order dated 15<sup>th</sup> June, 2009 it has been held that the head office administration and supervision expenditure ought to be disallowed under section 44C of the Act.*

*The CIT(A) ought to have appreciated the fact that in the order dated 15<sup>th</sup> June, 2009, it has been held that the head office administration and supervision expenditure is to be allowed to the extent of limit prescribed under section 44C of the Act.*

*2) The CIT(A) ought to have held that the no interest is chargeable under section 234D of the Act."*

2. The learned Authorised Representative did not press ground no.2, hence, this ground is dismissed as "*not pressed*".

3. The only surviving issue raised in ground no.1, relates to disallowance of deduction under section 44C of the Act.

4. Brief facts are, in the course of assessment proceedings, the Assessing Officer had disallowed all expenditure claimed under section 44C of the Income Tax Act, 1961 (for short "*the Act*"). The learned Commissioner (Appeals) also confirmed the disallowance. During the pendency of the appeal before the Tribunal, the Assessing Officer

passed an order giving effect to the direction of the learned Commissioner (Appeals) and, accordingly, disallowed assessee's claim of deduction under section 44C of the Act. Against the order passed by the Assessing Officer giving effect to the direction of the learned Commissioner (Appeals), assessee preferred appeal before the first appellate authority. The Learned Commissioner (Appeals) also in the impugned order confirmed the disallowance. Aggrieved, the assessee is in further appeal before the Tribunal.

5. Learned Authorised Representative brought to our notice that in the mean while the Tribunal while deciding assessee's appeal arising out of original order, has allowed assessee's claim of deduction under section 44C on account of head office expenses. He, therefore, submitted, the ground raised by the assessee on the issue has become infructuous.

6. The learned Departmental Representative also agreed with the aforesaid submissions of the learned Authorised Representative.

7. We have considered the submissions of the parties and perused the material available on record. Undisputedly, the only issue in dispute in the present appeal is disallowance of assessee's claim of deduction under section 44C. On a perusal of order dated 29<sup>th</sup> April 2016, passed by the co-ordinate bench in ITA no.4926 to 4928/Mum.

/2016, we have noted that the co-ordinate bench after considering the submissions of the assessee has allowed assessee's claim of deduction under section 44C on account of head office expenses. Thus, the Tribunal, having already granted relief to the assessee, the ground raised in the present appeal has become infructuous. Accordingly, the same is dismissed.

8. In the result, assessee's appeal having become infructuous is dismissed.

Order pronounced in the open Court on 29.09.2016

**Sd/-**  
**राजेंद्र,**  
**लेखा सदस्य**  
**RAJENDRA**  
**ACCOUNTANT MEMBER**

**MUMBAI, DATED: 30.09.2016**

**Sd/-**  
**शक्तिजीत दे,**  
**न्यायिक सदस्य**  
**SAKTIJIT DEY**  
**JUDICIAL MEMBER**

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The CIT(A);*
- (4) *The CIT, Mumbai City concerned;*
- (5) *The DR, ITAT, Mumbai;*
- (6) *Guard file.*

*Pradeep J. Chowdhury*  
*Sr. Private Secretary*

True Copy  
By Order

(Dy./Asstt. Registrar)  
ITAT, Mumbai