HIGH COURT OF JUDICATURE AT BOMBAY

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 1639 OF 2013

Director of Income Tax (IT)-I. ... Appellant

Vs

M/s. Sumitomo Mitsui Banking Corporation ... Respondent

Mr. Tejveer Singh for the Appellant.

Mr. Atul K. Jasani for the Respondent.

CORAM : S.C. DHARMADHIKARI &
A.K. MENON, JJ.

THURSDAY, 16TH APRIL, 2015

P.C. :

1. Having heard both sides, we are of the view that the appeal raises substantial questions of law and at least in part. It is, therefore, admitted on the following substantial questions of law :

> "(1) Whether on the facts and in the circumstances of the case and in law, the ITAT was justified in holding that interest payable by the Indian PE of a foreign bank to its HO and other

::: Uploaded on - 18/04/2015 ::: Downloaded on - 31/07/2020 16:21:20 :::

HIGH COURT OF JUDICATURE AT BOMBAY

overseas branches is deductible while computing the total income ?

(2) Whether on the facts and in the circumstances of the case and in law, the Hon'ble Tribunal has erred in holding that interest income payable by the Indian PE of a foreign bank to its HO and branch offices abroad cannot be taken into account for the purpose of computing the income of HO liable to be taxed in India ?

(3) Whether on the facts and in the circumstances of the case and in law, the Hon'ble Tribunal has erred in holding that inter office commission income payable by the Indian PE of a foreign bank to its HO and branch offices abroad cannot be taken into account for the purpose of computing the income of HO liable to be taxed in India ?”

::: Uploaded on - 18/04/2015 ::: Downloaded on - 31/07/2020 16:21:20 :::

HIGH COURT OF JUDICATURE AT BOMBAY

2. As far as question No.4 is concerned and at page 4 of the paper-book that is on levy of interest under section 234B of the Income Tax Act, 1961. There, the Tribunal has restored the matter to the file of the Commissioner of Income Tax (Appeals) and for a decision in accordance with the Division Bench of this in the case of *Director of Income Tax (International Taxation) vs. NGC Network Asia Ltd. (2009) 313 ITR 187*. Such a question can, therefore, never be entertained and by terming it as a substantial question of law. The appeal is, therefore, dismissed to that extent.

3. The Registrar (Judicial)/Registrar, High Court, Original Side, Bombay to ensure that the original record in relation to this Appeal is summoned from the Tribunal and offered for inspection of the parties. This paper book is treated sufficient for the purpose of admission of this Appeal. However, the Registry must further ensure preparation of complete paper book in accordance with the Rules. The Registry in the first instance must send intimation of admission of this Appeal enclosing therewith a copy of this order so as to enable the Tribunal to act accordingly.

::: Uploaded on - 18/04/2015 ::: Downloaded on - 31/07/2020 16:21:20 :::

HIGH COURT OF JUDICATURE AT BOMBAY

4. Mr. Jasani waives service on behalf of the respondent-assessee. The present appeal shall be heard along with Income Tax Appeal No.184 of 2013 and similar appeals.

A.K. MENON, J. ***S.C. DHARMADHIKARI , J.***

::: Uploaded on - 18/04/2015 ::: Downloaded on - 31/07/2020 16:21:20 :::