

**IN THE INCOME TAX APPELLATE TRIBUNAL
“L” BENCH: MUMBAI**

**BEFORE SHRI P.M. JAGTAP, ACCOUNTANT MEMBER
AND SHRI AMIT SHUKLA, JUDICIAL MEMBER**

ITA No.2022/Mum/2008

(Assessment Year: 2002-03)

ITA No.2023/Mum/2008

(Assessment Year: 2003-04)

BNP Paribas SA,
French Bank Building,
62, Homji Street,
Fort, Mumbai -400 001

..... Appellant

Vs

Deputy Director of Income-tax
(International Taxation)-3(2),
Scindia House, Ballard Estate,
Mumbai -400 001

..... Respondent

ITA No.2048/Mum/2008

(Assessment Year: 2002-03)

ITA No.2049/Mum/2008

(Assessment Year: 2003-04)

Asst. Director of Income-tax
(International Taxation)-3(2),
R.No.132, 1st Floor, N.M. Road,
Mumbai -400 038

..... Appellant

Vs

BNP Paribas SA,
C/o. BMR & Associates,
3F, Contractor Building,
41, R Kamani Marg,
Ballard Estate,
Mumbai
PAN : **AAACB 4868 Q**

..... Respondent

Appellant-assessee by: Shri Arvind Sonde
Respondent-revenue by: Shri Narendra Kumar
Date of hearing: 16.05.2012
Date of Pronouncement: 20.06.2012

ORDER

PER P.M. JAGTAP, AM:

These four appeals, two filed by the assessee and two filed by the revenue, are cross appeals for A.Y. 2002-03 and 2003-04 and since some common issues are involved therein, the same have been heard and are being disposed off by a single composite order for the sake of convenience.

2. First, we shall take-up the Cross appeals for the A.Y. 2002-03 being ITA 2022/M/2008 and ITA 2048/M/2008 which are directed against the order of the Ld. CIT (A)-33, Mumbai dated 31.12.2007.

3. The solitary issue involved in the appeal of the assessee for the A.Y. 2002-03 relates to the addition of ₹ 1,48,30,613/- made by the A.O. and confirmed by the Ld. CIT (A) on account of "interest" paid by the 'Indian Branches of the assessee bank to its head office and other overseas branches'.

4. The assessee, in the present case is a commercial bank having its Head Office in France. It carries on the normal banking activities including financing of foreign trade and foreign exchange transactions in India through its eight branches situated at Mumbai, New Delhi, Kolkata, Bangalore, Pune, Ahmedabad, Chennai and Hyderabad. During the previous year relevant to A.Y. 2002-03, the Indian Branches of the assessee bank have paid total interest of ₹ 1,48,30,613/- to its Head office and overseas branches and the same was claimed as a deduction while determining the profits attributable to Indian Branches, which was chargeable to tax in India. The said interest was treated by the A.O. as income of the assessee's Head office / overseas branches chargeable to tax in India. This decision of the A.O. was challenged by the assessee in the appeal filed before the Ld. CIT (A) and the contention raised before the Ld. CIT (A) in this regard was that the Head office of the assessee bank as well as all its branches being the same person and one taxable entity as per the Indian Income-tax Act, interest paid by Indian Branches to head office and other overseas Branches was payment to self, which did not give rise to any income as per the

Income-tax Act. In support of this contention, reliance was placed on behalf of the assessee on the decision of Hon'ble Supreme Court in the case of Sir Kikabhai Premchand vs. CIT (Central) 24 ITR 506 as well as the decision of Kolkata Special Bench of the ITAT in the case of ABN Amro Bank NV vs. Asst. Director of Income-tax 98 TTJ 295. The contention of the assessee, however, was not accepted by the Ld. CIT (A) and relying on the decision of Mumbai Bench of the ITAT in the case of Dresdner Bank AG vs. Addl. CIT 108 ITD 375, he held that the interest paid by the Indian branches of the assessee bank to its head office and overseas branches was chargeable to tax in India. Accordingly, the addition made by the A.O. on this issue was confirmed by the Ld. CIT (A).

5. We have heard the arguments of both the sides and perused the relevant material on record. As agreed by the Ld. Representatives of both the sides, the issue involved in this appeal of the assessee now stands squarely covered by the decision of Special Bench of the ITAT in the case of Sumitomo Banking Corp. Mumbai wherein it was held, after elaborately discussing the legal position emanating from the interpretation of relevant provisions of Indian Income-tax Act as well as treaty, that interest paid to the head office of the assessee bank as well as its overseas branches by the Indian branch cannot be taxed in India being payment to self which does not give rise to income that is taxable in India as per the domestic law or even as per the relevant 'tax treaty'. Respectfully following the said decision of Special Bench of the ITAT which is directly applicable in the present case, we delete the addition of ₹ 1,48,30,613/- made by the A.O. and confirmed by the Ld. CIT (A) on this issue and allow the appeal of the assessee.

6. In ground no.1 of its appeal for A.Y. 2002-03, the revenue has challenged the action of the Ld. CIT (A) in deleting the addition of ₹ 3,64,795/- made by the A.O. on account of expenditure incurred in earning 'exempt income'.

7. During the previous year relevant to A.Y. 2002-03 the assessee had earned dividend income of ₹ 4,85,656/- from the investment made in the shares of Leela Venture Ltd. and the same was claimed to be exempt u/s.10(33). The claim of the assessee that the said investment was made from its own funds was not accepted by the A.O. and estimating the interest expenses incurred by the assessee in relation to exempt dividend income on pro-rata basis at ₹ 3,64,795/-, he made a disallowance to that extent by invoking the provisions of sec.14A. On appeal, the Ld. CIT (A) deleted the said disallowance made by the A.O. after having found that the investment in shares of Leela Venture Ltd. was made by the assessee in the previous year relevant to A.Y. 1999-2000 and in the appellate order passed for A.Y. 1999-2000, a finding was given by his predecessor that the 'said investment was made by the assessee out of its own funds'.

8. We have heard the arguments of both the sides on this issue and also perused the relevant material on record. It is observed that the investment in shares of Leela Venture Ltd. which fetched the exempt dividend income to the assessee, was made in the previous year relevant to A.Y. 1999-2000 and as found by the Ld. CIT (A), the said investment was made by the assessee out of its own funds. This finding of fact recorded by the Ld. CIT (A) while deleting the disallowance made by the A.O. u/s.14A has not been disputed or controverted by Ld. D.R. at the time of hearing before us and this being so, we find no justifiable reason to interfere with the impugned order of the Ld. CIT (A) giving relief to the assessee on this issue. The same is therefore upheld and ground no.1 of the revenue's appeal is dismissed.

9. In ground no.2 of this appeal for the A.Y. 2002-03, the revenue has challenged the action of the Ld. CIT (A) in deleting the addition of ₹ 67,63,204/- made by the A.O. on account of guarantee commission.

10. During the financial year 2000-01, the assessee received commission on guarantees provided to the clients amounting to ₹

4,25,41,914/- . The said commission to the extent attributable to the period ended 31st March, 2001 amounting to ₹ 3,57,78,710/- was offered by the assessee to tax in A.Y. 2001-02 on accrual basis and the balance amount of ₹ 67,63,204/- attributable to the financial year ended 31st March, 2002 was offered in A.Y. 2002-03. According to the assessee, the system of offering guarantee commission on accrual basis was being consistently followed by it. The A.O., however, did not accept the same and brought to tax the entire guarantee commission of ₹ 4,25,41,914/- in the hands of the assessee for the A.Y. 2001-02. He also reduced the amount of ₹ 67,63,204/- offered by the assessee in A.Y. 2002-03 from its income for that year. On appeal, the Ld. CIT (A) found that this issue was involved in A.Y. 2001-02 also wherein the method adopted by the assessee of declaring 'guarantee commission' 'on accrual basis' was accepted by the his predecessor. He, therefore, directed the A.O. not to disturb the system of accounting regularly followed by the assessee and accept the income as declared by the assessee following the same method.

11. We have heard the arguments of both the sides and also perused the relevant material on record. It is observed that this issue is squarely covered in favour of the assessee by the decision of Hon'ble Madras High Court in the case of CIT vs. Bank of Tokyo 71 Taxman 85 wherein it was held that 'income from deferred guarantee commission did not accrue or arise in the year in which guarantee agreements were entered'. It was held that such income should be spread over the period to which the guarantee commission related and should be assessed proportionately. Respectfully following the decision of Hon'ble Madras High Court in the case of Bank of Tokyo (supra), we uphold the impugned order of the Ld. CIT (A) directing the A.O. to accept the method followed by the assessee. Ground No.2 of the revenue's appeal is accordingly dismissed.

12. Now, we shall take the Cross Appeals for A.Y. 2003-04 being ITA No.2048/M/2008 and 2049/M/2008 which are directed against the order of the Ld. CIT (A)-33, Mumbai dated 31.12.2007.

13. As regards the appeal of the assessee, it is observed that the solitary issue involved therein relating to the addition of ₹ 1,81,78,299/- made by the A.O. and confirmed by the Ld. CIT (A) account of interest paid by the Indian Branch to Head Office / overseas branches is similar to one involved in the appeal of the assessee for the A.Y. 2002-03 which has been decided by us in Para No.5 of this order. Following the conclusion drawn in A.Y. 2002-03, we delete the addition made by the A.O. and confirmed by the Ld. CIT (A) on this issue and allow the appeal of the assessee.

14. As regards the appeal of the revenue for A.Y. 2003-04, it is observed that the solitary issue involved therein relating to 'taxability of guarantee commission' is similar to one involved in ground no.2 of the revenue's appeal for A.Y. 2002-03 which has been decided by us in Para No.11 of this order. Following our conclusion drawn in A.Y. 2002-03, we uphold the impugned order of the Ld. CIT (A) on this issue and dismiss the appeal of the revenue.

15. In the result, appeals of the assessee are allowed while appeals of the revenue are dismissed.

Order pronounced in the open court on this day of 20th June 2012.

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Sd/-
(P.M. JAGTAP)
ACCOUNTANT MEMBER

Mumbai, Date: **20th June 2012**

Copy to:-

- 1) The Appellant.
- 2) The Respondent.
- 3) The CIT (A) -33, Mumbai.
- 4) The CIT / DIT International Taxation __ concerned Mumbai.
- 5) The D.R. "L" Bench, Mumbai.

// True Copy //

By Order

Asstt. Registrar
I.T.A.T., Mumbai

*Chavan