

**आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ 'के' मुंबई।**

**IN THE INCOME TAX APPELLATE TRIBUNAL "K" BENCH, MUMBAI**

**सर्व श्री राजेंद्र सिंह, लेखा सदस्य एवं श्री विजयपाल राव, न्या. स।**

**BEFORE SHRI RAJENDRA SINGH, AM & SHRI VIJAY PAL RAO, JM**

**आयकर अपील सं./I.T.A. No.7781/Mum/2010**

**(निर्धारण वर्ष / Assessment Year :2006-07)**

Bank of Bahrain & Kuwait B.S.C, Jolly Maker Chambers No. 2, 225, Nariman Point, Mumbai-400021	<b>बनाम/</b> <b>Vs.</b>	Deputy Director of Income Tax (International Taxation)- 3(2), Scindia House, Ballard Estate, N. M. Road, Mumbai
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. :AAACB2140F		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से / Appellant by :	Shri F. V. Irani
प्रत्यर्थी की ओर से/Respondent by :	Shri Narendra Singh & Shri Ajeet Kumar Jain
सुनवाई की तारीख / Date of Hearing :	24 <sup>th</sup> September 2013
घोषणा की तारीख/Date Of Pronouncement:	30 <sup>th</sup> September 2013

**आदेश / O R D E R**

**PER :** विजयपाल राव, न्या.स. / VIJAY PAL RAO, JM

This appeal by the assessee is directed against the assessment order dated 20.10.2010 passed u/s 143(3) r.w.s 144C(13) of the Income Tax Act in pursuant to the directions of DRP dated 16.9.2010 u/s 144C(5) of the Income Tax Act for the assessment year 2006-07.

2. The assessee has raised the following grounds in this appeal:

*"1.(a) The Dispute Resolution Panel [hereinafter referred to as "DRP"], has erred in confirming the adjustment to ALP, amounting to Rs. 16,251,987/-, in respect of reimbursement by the appellant, of the share of Head Office expenses and NRI Desk Expenses to an Associated Enterprise (AE) as proposed by the Transfer Pricing Officer (TPO) and the Assessing Officer (AO).*

*(b) The DRP has also erred in holding that deduction for the share of the HO expenses and NRI desk expenses has to be restricted to the limit prescribed under section 44C of the Income-tax Act, 1961 (Act).*

*(c) The appellant respectfully submits that the share in HO expenses and NRI Desk expenses represent the expenses directly attributable to and connected with the business of the Indian Branches. As such, they cannot be considered as "overheads" to which the provisions of Section 44C are applicable. The entire amount of share in HO expenses and NRI Desk are certified by an independent firm of Chartered Accountants as having been incurred by the Head Office for and on behalf of the Indian branches and the appellant. Therefore, no adjustment on account of ALP is justified.*

*(d) The appellant, therefore, prays that the unwarranted adjustment of Rs. 16,251,987/- to the ALP in respect of the reimbursement of NRI Desk Expenses by treating them as "overheads" be deleted."*

3. The only issue arises is regarding the adjustment to the Arm's Length Price in respect of reimbursement by the assessee to AE on account of the share Head Office expenses and NRI Desk expenses. We have heard the Ld. AR as well as Ld. DR and considered the relevant material on record. At the outset we note that an identical issue has been considered and decided by this Tribunal in assessee's own case for the assessment year 2002-03 in ITA No. 6731/M/2006 vide order dated 28.1.2011. For the assessment year 2002-03 the Tribunal has reproduced the details of the expenses in para 9 as under:

<i>Sr. No. (I)</i>	<i>Nature of Expenses (II)</i>	<i>Allocated by appellant (III)</i>	<i>Allocated by TPO (IV)</i>
1.	Direct staff costs	81,192	81,192
2.	Travel and communication	17,866	17,866
3. Allocated staff costs incurred by	a) Officer of the Head of OBD	13,307	Nil
	b) Financial control	5,320	5,320

<i>OBD and various other Head office support centers</i>	<i>c) Information technology</i>		
	<i>d) Human Resource</i>	<i>5,213</i>	<i>5,213</i>
	<i>e) Operations</i>		
	<i>f) Internal Audit</i>	<i>4,782</i>	<i>4,782</i>
		<i>4,762</i>	<i>4,762</i>
		<i>2,226</i>	<i>2,226</i>
<i>4. Allocated General and administration costs</i>	<i>a) Rent and maintenance</i>	<i>14,767</i>	<i>14,767</i>
	<i>b) Depreciation</i>	<i>9,719</i>	<i>9,719</i>
	<i>c) Advertising</i>	<i>3,390</i>	<i>Nil</i>
	<i>d) Other</i>	<i>6,641</i>	<i>Nil</i>
	<i>Total</i>	<i>1,69,185</i>	<i>1,45,848</i>

*(Figures in the above table are in BD. Rate of conversion of BD into Indian Rupees has been uncontrovertedly adopted by the TPO as 1 BD INR 129.44)*

4. The Ld. AR of the assessee has pointed out that the expenses regarding NRI Desk representing direct costs, indirect cost are similar in nature for the year under consideration. He has referred the details of the expenses in respect of allocation of direct staff cost, allocation of staff cost incurred by the Head Office/support centres and general expenses incurred by the Head Office and allocated to the assessee in India. The details of the expenses for the year under consideration as filed by the assessee are as under:

**Details of Allocation of Direct Staff Cost**

<i>Particulars</i>	<i>Amt. (BD)</i>
<i>NRI Desk Expenses</i>	
<i>Bahrain</i>	<i>34,805</i>
<i>Kuwait</i>	<i>29,818</i>
<i>Dubai</i>	<i>192</i>
<i>Sub-total</i>	<i>64,815</i>
<i>Travel Expenses incurred by HO visiting officials to the Branch</i>	<i>2,238</i>
<i>Total</i>	<i>67,053</i>

**Details of Allocated Staff Cost incurred by Head Office support centres**

<i>Particulars</i>	<i>Amt. (BD)</i>
<i>Office of the head of Overseas Business Division</i>	<i>11,250</i>
<i>Internal Audit</i>	<i>2,360</i>
<i>Financial Control</i>	<i>3,087</i>
<i>Information Technology</i>	<i>6,206</i>
<i>Human Resources</i>	<i>5,627</i>
<i>Operations</i>	<i>3,268</i>
<i>Total</i>	<i>31,798</i>

**Details of Allocated General Expenses incurred by Head Officer**

<i>Particulars</i>	<i>Amt (BD)</i>	<i>Amt (BD)</i>
<i>Depreciation</i>		<i>7,739</i>
<i>Advertising</i>		<i>4,991</i>
<i>Rent and Maintenance</i>	<i>9,863</i>	
<i>Less: Expenses Reclassified</i>	<i>(171)</i>	<i>9,692</i>
<i>Other</i>		
<i>Add: Expenses Reclassified</i>	<i>15,889</i>	
	<i>171</i>	<i>16,060</i>
<i>Sub-total</i>		<i>38,482</i>
<i>Add: Travel &amp; Entertainment not allocated</i>		<i>576</i>
<i>Total</i>		<i>39,058</i>

5. Thus, apparently the nature of the expenses are similar as in the assessment year 2002-03. This Tribunal for the assessment year 2002-03 after a detailed discussion and finding has arrived to the conclusion in para 24 as under:

*“24. To sum up, the Direct and exclusive NRI Desk expenses ('A'), being the items 1 and 2 of Table extracted above, incurred by the head office are not hit by section 44C and hence to be allowed in full as per general of the Act ; Allocated/shared/apportioned staff costs incurred by OBD and various other Head Office Support Centres to NRI Desk ('B'), being the items 3 and 4 of above Table, subject to verification item 3a) in terms of direction given in para 22 above and other common head office expenses other than those A and B above ('C'), are to be considered within the purview of section 44C only. The impugned order is set aside and the matter is restored to the*

*file of the AO for allowing deduction accordingly. It is made clear that the AO will work out the amount deductible u/s 44C afresh as per law by considering sum total of items ('B') and ('C') and shall not restrict himself only to the claim originally made by the assessee in the return. Such de novo determination of the amount deductible u/s 44C by the AO will also address to the assessee's grievance in this appeal."*

6. Respectfully following the order of this Tribunal the direct and exclusive NRI Desk expenses incurred by the Head Officer are allowed in full as the same are not hit by section 44C. The allocated expenses towards staff cost incurred by OBD and various other Head Officer support centres to NRI Desk are to be considered as per the provisions of section 44C only subject to the verification and correctness of the expenses mentioned in the tables above as per the directions of the Tribunal for the assessment year 2002-03. Similarly, the other common Head Officer expenses are also to be considered as per the provisions of section 44C only. Therefore, the AO has to work out the amount of deduction u/s 44C afresh as per law in respect of the common expenses covered u/s 44C. Accordingly, the orders of authorities below are modified.

7. The assessee has also filed additional ground as under:

*"a) The Dispute Resolution Panel has erred in invoking the provisions of Chapter X of the Income Tax Act, 1961 (Act) to NRI desk expenses and therefore, the application of Transfer Pricing provisions to the same is illegal, without any justification and bad in law."*

8. The Ld. AR of the assessee has submitted that if the main grounds of the assessee's appeal are decided as per the order of the Tribunal for the assessment year 2002-03 then the assessee would not press the

additional ground and the same may be dismissed. As we have decided the main ground of the assessee by following the earlier orders of this Tribunal therefore, the additional ground raised by the assessee is dismissed being not pressed.

9. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open Court on this 30<sup>th</sup> day of September 2013

Sd/- (राजेंद्र सिंह) लेखा सदस्य <b>(RAJENDRA SINGH)</b> Accountant Member	Sd/- (विजयपाल राव) न्यायिक सदस्य <b>(VIJAY PAL RAO)</b> Judicial Member
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Place: Mumbai : Dated: 30<sup>th</sup> September 2013

**Subodh**

Copy forwarded to:

1	Appellant
2	Respondent
3	CIT
4	CIT(A)
5	DR

/TRUE COPY/  
BY ORDER

Dy /AR, ITAT, Mumbai