

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO. 4022 OF 2008
WITH
INCOME TAX APPEAL (L) NO. 2884 OF 2008

The Commissioner of Income Tax ... Appellant
Versus
DBS Bank Ltd. ... Respondent

Mr. Parag Vyas for the Appellant.

Mr. B.D. Damodar i/by Kanga & Co. for Respondent.

CORAM: F.I. REBELLO, &
R.S. MOHITE, JJ.
DATED: JANUARY 20, 2009

P.C.

. Considering the view to be taken and the cause shown, Motion made absolute in terms of Prayer Clause (a). Office to register the appeal.

. The revenue has submitted the amended questions of law which reads as under :

1. Whether on the facts and in the circumstances of the case the ITAT was justified in allowing deduction of Expatriate salary u/s. 37 of the Act instead of treating it as part of head office expenditure covered u/s. 44C of the Act?

2. Whether on the facts and in the circumstances of the case the ITAT was justified in deleting the disallowance on account of other offshore expenses incurred by the Respondent?

3. Whether on the facts and in the circumstances of the case and in law the offshore expenses incurred by the Respondent were disallowable u/s. 40(a)(i) of the Act?

4. Whether on the facts and in the circumstances of the case the ITAT was justified in deleting the levy of interest u/s. 234B?

. The issue pertains to the Assessment Year

1996-1997. In so far as question No. 1 is concerned, in our opinion, as the expenditure was incurred in India and tax deducted in India, the issue is covered by the judgment of the Coordinate Bench of this court in C.I.T. Vs. Emirates Commercial Bank Ltd. 262 ITR 55. In the light of that question answered in the affirmative in favour of the assessee and against Revenue.

. In so far as Question Nos. 2 and 3 are concerned, we find that there is no material before us nor was the material before the tribunal below to record finding that has been recorded. In the light of that impugned orders of CIT and ITAT pertaining to these questions are set aside. The matter is restored to file of A.O. for passing fresh orders on the items set out in the order of ITAT at Paragraph 10 except the staff costs.

. In so far as question No. 4 is concerned, we find that finding has to be recorded as to the date of commencement of business. We find from the order of the ITAT that the matter has been restored for that purpose to the file of A.O. The discussion is found in Para 13 of the impugned order. In the light of that we do not propose to answer the issue and leave it open for consideration of the A.O.

. Appeal along with motion disposed of accordingly.

(R.S. MOHITE, J.)

(F.I. REBELLO, J.)