



\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

29/30/31

+ ✓ ITA NO 35/2005  
ITA No 1302/2006  
ITA No 1304/2006

**DIRECTOR OF INCOME TAX DELHI** ..... Appellant  
Through Mr. Sanjeev Sabharwal with  
Mr. Rajeev Awasthi, Advocate

versus

**RAVVA OIL (SINGAPORE) P.LTD.** ..... Respondent  
Through Mr. N.Venkataraman, Senior Advocate  
with Mr. Rajive R.Raj, Advocate

**CORAM:**  
**HON'BLE MR. JUSTICE VIKRAMAJIT SEN**  
**HON'BLE DR. JUSTICE S. MURALIDHAR**

**ORDER**  
**15.12.2006**

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1. The undisputed facts are that the assessee, a non-resident company, has its head office at Singapore and a sole branch office in India in connection with the exploration of oil. The finding returned by the CIT (A) and the Income Tax Appellate Tribunal ('ITAT') is that the expenses incurred by the assessee at its head office on account of account of administration, accounting and management services were wholly related to the Indian operations. It has accordingly been held that Section 44C of the Income Tax Act, 1961 ('Act') will not apply.

2. Before the Assessing Officer ('AO'), the assessee relied



upon the decision of the Hon'ble Calcutta High Court in *Rupenjuli Tea Co. Limited v. Commissioner of Income Tax* [1990] 186 ITR 301 and contended that since the assessee did not carry on any business outside the India, the entire head office expenses attributable to the business in India had to be allowed. In the said decision, it was held by the High Court at Calcutta that the Section 44C is applicable only if the assessee has branches in India as well as outside India. The question of apportioning the head office expenses 'attributable' to the business in India as contemplated by Section 44 C (c) of the Act would not arise where the assessee's operations are restricted only to India and no part of the expenses is allocable to operations outside India. Although the AO did not accept this contention, the CIT (Appeals) held in favour of the assessee. The further appeal by the Revenue has been dismissed by the ITAT by the impugned order.

3. Mr. Sanjeev Sabharwal, learned counsel for the appellant, contends that the restriction on the head office expenditure allowable to a non-resident assessee in terms of Section 44C would apply even where the situation contemplated under Section 44C (c) does not exist. In other words he contends that the quantification of the allowable expenditure as stipulated in



Section 44C (a), which is a percentage of the "adjusted total income", read with "Explanation" (i) would apply to the present case.

4. Mr. Venkataraman, learned Senior Counsel for the assessee submits that the facts of the present case are in pari materia with that obtaining in the decision in **Rupenjuli Tea Co. Limited** (supra). He also placed reliance upon the subsequent judgments of the Bombay High Court in *Commissioner of Income Tax v. Emirates Commercial Bank Limited* [2003] 262 ITR 55. He submits that the above settled position of law has held the field for nearly two decades, with the Revenue not having not successfully challenged either of these decisions.

5. We are of the view that the present appeals stand covered by the decisions of the Calcutta and Bombay High Courts referred to above. We find no reason to take a different view in the matter. The course to be adopted in matters such as these, where the law is well settled for a number of years, as explained by the Hon'ble Supreme Court in *Commissioner of Income Tax, Bombay v. Shapoorji Pallonji Mistry* [1962] Vol 44 ITR 891 and *Commissioner of Income Tax, West Bengal v. Balkrishan Malhotra* 1971 (2) SCC 547 commends itself to us.



The Hon'ble Supreme Court has, in the last mentioned decision, explained (SCC page 549). "Interpretation of a provision in a taxing statute rendered years back should not be easily departed from. It may be that another view of the law is possible but law is not a mere mental exercise. The courts while reconsidering the decisions rendered long time back particularly under taxing statutes cannot ignore the harm that is likely to happen by unsettling law that had been once settled."

6. In the circumstances, we are of the view that no substantial question of law arises in these appeals. These appeals are, accordingly, dismissed.

A handwritten signature in black ink, appearing to be 'Vikramajit Sen'.

**VIKRAMAJIT SEN, J**

A handwritten signature in black ink, appearing to be 'S. Muralidhar'.

**S. MURALIDHAR, J**

**DECEMBER 15, 2006**  
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