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

% *Date of Decision: 01.09.2023*

+ **ITA 143/2023**

THE COMMISSIONER OF INCOME TAX - INTERNATIONAL
TAXATION -2 Appellant

Through: Mr Ruchir Bhatia, Sr Standing
Counsel with Ms Deeksha Gupta,
Adv.

versus

STANDARD CHARTERED GRINDLAYS
PTY LTD.

..... Respondent

Through: Ms Shashi M Kapila, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE GIRISH KATHPALIA

[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J.: (ORAL)

1. We had heard this matter briefly when the appeal came up for the first time, i.e., on 14.03.2023.
2. Mr Ruchir Bhatia, learned senior standing counsel who represents the respondents/revenue, made certain assertions whereupon, the following was recorded:

“1. This appeal concerns Assessment Year (AY) 2003-04.

2. Via this appeal, challenge is laid to the order dated 01.08.2022 passed by the Income Tax Appellate Tribunal [in short, “the Tribunal”].

3. The record shows that the Assessing Officer (AO) has disallowed the expenditure incurred by the respondent/assessee for the Indian business outside India.

4. The Tribunal has found, as a matter of fact, that the expenses in issue which were disallowed were attributable to the business in India.

5. The Commissioner of Income Tax (Appeals), however, sustained



the view taken by the AO, which as noticed above, was reversed by the Tribunal.

6. *It was the Tribunal's view, that the cost/expenses directly concerning the Indian business would not be subjected to the provisions of Section 44C of the Act. This finding of fact is recorded in paragraph 4 to 6 of the impugned order.*

7. *Mr Ruchir Bhatia, learned senior standing counsel who appears on behalf of the respondent/revenue, will place on record the certificate issued by KPMG which according to us, will shed light on the issue at hand.*

8. *Mr Bhatia seeks an accommodation, on the ground that he did not expect the matter to be listed today..."*

3. As would be evident upon a perusal of the above-captioned extract, we had stood over the matter to enable Mr Bhatia to place the certificate issued by KPMG on record; a vital document, considered by the Income Tax Appellate Tribunal [in short, "Tribunal"].

3.1 This document has, since then, been placed on record. The document's significance can be appreciated when one has regard to observations made by the Tribunal in paragraphs 4, 5, and 6 of the impugned order.

3.2 For the sake of convenience, the observations made by the Tribunal in the said paragraphs are set out hereafter:

"4. The Assessing Officer disallowed the expenses which were incurred only for the Indian business outside India on the grounds that these are general head office & administrative expenses which fall under section 44C of the Income Tax Act, 1961 and hence are subject to the ceiling under section 44C. (page 4 of AO.). However, the fact of the matter is that the amount of Rs. 5.14 Cr. or the costs directly attributable to the operations pertaining to India for the period 01.04.2002 to 31.08.2002. The expenses incurred by the assessee is on account of purchased Grindlays Bank from ANZ on 01.08.2000. As a consequence Grindlays Bank's software, hardware, and information Technology systems, computer structures, policies all needed to be aligned to Standard Chartered Banking system.

5. *The Id. CIT(A) confirmed the addition merely on the grounds that the assessee has not brought any evidence in support of the claim that the*



expense were incurred exclusively for the Indian business.

6. *We have gone through the certificate provided by the assessee of KPMG which has been accepted by the AO for Head Office General Charges but ignored the costs directly pertaining to Indian business. The costs directly pertaining to Indian business are not subjected to the provisions of Section 44C of the Act and hence, appeal of the assessee on this ground is allowed...*"

4. The certificate of KPMG, which we have perused, reveals the following:

"We have reviewed the Standard Chartered Grindlays Bank Limited ("the Bank") Expense Certificate ("the Certificate") for Standard Chartered Grindlays India Branches for the period 1 January 2002 to 31 December 2002. A copy of the Certificate and our independent review report, dated 23 June 2003, is attached to this letter.

We confirm that the Gross Receipts of Standard Chartered Grindlays India Branches ('India Branches') of USD 66,561 ('000), as stated in the attached Certificate, represent the Gross Receipts of India Branches for the period 1 January 2002 until 31 August 2002 inclusive.

Please contact myself on (02) 9335-7569 or Shaun Kendrigan on the above if you have any questions."

4.1 The statement of the auditor attached to the certificate shows that for the period ending on 31.12.2002, out of the gross receipts of USD 66,561,000/-, the cost directly attributable to India were advisory and business support costs and IT costs, amounting to USD 228,000/- and USD 1,469,000/- respectively. The total of these costs in USD would be 1697000.

4.2 Thus, the cost attributable to India, at the exchange rate of Rs. 48.50 per USD, would amount to Rs. 51,440,312/- for the relevant period.

5. This amount has been certified by KPMG.

6. As noted above, the expenses incurred by the respondent/assessee were solely for the Indian business.

7. Clearly, these expenses do not fall within the ambit of Section 44C, which relates to the deduction of head office expenses in case of non-



residents.

8. Therefore, in our view, no substantial question of law arises for consideration.

9. The appeal is, accordingly, closed.

RAJIV SHAKDHER, J

GIRISH KATHPALIA, J

SEPTEMBER 1, 2023/pmc