

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 23RD DAY OF NOVEMBER 2020

PRESENT

THE HON'BLE MR. JUSTICE ALOK ARADHE

AND

THE HON'BLE MR. JUSTICE H.T.NARENDRA PRASAD

I.T.A. NO.427 OF 2015

BETWEEN:

1. THE COMMISSIONER OF INCOME-TAX
C.R.BUILDING, ATTAVARA
MANGALORE - 575 001.
2. THE ASST. COMMISSIONER OF INCOME-TAX
CIRCLE - 2(1), C.R.BUILDING
ATTAVARA, MANGALORE - 575 001.
... APPELLANTS
(BY SRI K.V. ARAVIND., ADV.,)

AND:

M/S. CORPORATION BANK
FINANCIAL MANAGEMENT DIVISION
H.O.P.B. NO.88
MANGLADEVI TEMPLE ROAD
PANDESHWAR, MANGALORE
PAN: AAA CC 7245E.
... RESPONDENT
(BY SRI. T. SURYANARAYANA, ADV., FOR
SRI. BALRAM R. RAO, ADV.,)

THIS ITA IS FILED UNDER SECTION 260-A OF I.T. ACT,
1961 ARISING OUT OF ORDER DATED 11.03.2015 PASSED IN ITA
NO.1264/BANG/2013 FOR THE ASSESSMENT YEAR 2011-12,
PRAYING TO:

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(I) FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW
STATED ABOVE.

(II) ALLOW THE APPEAL AND SET ASIDE THE ORDER
PASSED BY THE ITAT, BANGALORE IN ITA NO.1264/BANG/2013
DATED 11-03-2015 CONFIRMING THE ORDER OF THE APPELLATE
COMMISSIONER AND CONFIRM THE ORDER PASSED BY THE ASST.
COMMISSIONER OF INCOME TAX, CIRCLE-2(1), MANGALORE.

THIS ITA COMING ON FOR ADMISSION, THIS DAY,
ALOK ARADHE J., DELIVERED THE FOLLOWING:

JUDGMENT

This appeal under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as the Act for short) has been preferred by the revenue. The subject matter of the appeal pertains to the Assessment year 2011-12. The appeal is admitted on the following substantial questions of law:

(i) Whether on the facts and in the circumstances of the case, the tribunal was correct in holding that depreciation on valuation of investment portfolio is allowable by treating the investments held by the assessee bank as stock-in-trade once the RBI Master Circular read with CBDT Circular No.665 came into force?

(ii) Whether on the facts and in the circumstances of the case, the Tribunal erred in deleting the expenditure relating to earning of exempted income ignoring the provisions of Section 14A(1) of the Income Tax Act read with Rule 8D?

(iii) Whether on the facts and in the circumstances of the case, the Tribunal erred in holding that on the payment made towards the service charges rendered by M/s. NFS is neither commission nor brokerage which does not attract TDS under section 194H of the Income Tax Act?

2. Facts leading to filing of this appeal briefly stated are that the assessee is a Nationalized Bank. The assessee had filed the return of income on 28.09.2011 by which income of Rs.1412,98,50,750/- was declared. Thereafter, a revised return was filed on 23.12.2011 by which income of Rs.1366,54,08,250/- was declared. The revised return was processed under Section 143(1) of the Act o 15.06.2012 and a refund of Rs.133,39,33,970/- was granted. Subsequently, the assessee filed a second revised return on 11.01.2013 in which income of

Rs.1367,59,11,162/- was admitted. The Assessing Officer vide order dated 19.02.2013 made an addition on account of depreciation on investment portfolio, disallowance of expenses with reference to exempt income under Section 14A(1) of the Income Tax Act read with Rule 8D, disallowance under Section 36(1), disallowance under Section 40a(ia) and disallowance under Section 36(1)(vii) of the Act.

3. The assessee thereupon filed an appeal before the Commissioner of Income Tax (Appeals) who by an order dated 18.07.2013 partly allowed the appeal preferred by the assessee. The revenue thereupon filed an appeal before the Income Tax Appellate Tribunal (hereinafter referred to as 'the tribunal' for short). The tribunal by an order dated 11.03.2015 dismissed the appeal preferred by the revenue. In the aforesaid factual background, this appeal has been filed.

4. Learned counsel for the assessee submitted that the first and second substantial questions of law involved in this appeal have been answered in favour of the assessee by division bench decision of this court in 'KARANTAKA BANK LTD. VS. ASSISTANT COMMISSIONER OF INCOME-TAX', CIRCLE-2(1), (2013) 34 TAXMANN.COM 150 (KAR), decision of the Supreme Court in 'MAXOPP INVESTMENT LTD. VS. COMMISSIONER OF INCOME TAX, NEW DELHI', (2018) 19 TAXMANN.COM 154 (SC) and judgment dated 17.01.2020 passed by this court in I.T.A.No.97/2010 respectively. The aforesaid assertion made by learned counsel for the assessee could not be disputed by learned counsel for the revenue. For the reasons assigned in the aforesaid judgments, the first and second substantial questions of law are answered against the revenue and in favour of the assessee. The third substantial question of law survives for consideration.

5. Learned counsel for the revenue while inviting the attention of this court to Section 194H of the Act submitted that a third party viz., National Financial Switch and Cash Tree has been acting as an agent and has been collecting charges from the assessee and there is no relationship between principal to principal basis and therefore, the provisions of Section 194H apply to the case of the assessee and the third substantial question of law deserves to be answered in favour of the revenue. On the other hand, learned counsel for the assessee while placing reliance on decision of 'COMMISSIONER OF COMMERCIAL TAX-II VS. JDS APPARELS (P) LTD.', (2015) 53 TAXMANN.COM 139 submitted that in view of the aforesaid decision, the third substantial question of law also deserves to be answered against the revenue. In rebuttal, learned counsel for the revenue submitted that the aforesaid decision has no application to the obtaining factual matrix of the case.

6. We have considered the submissions made by learned counsel for the parties and have perused the record. Before proceeding further, it is apposite to take note of Section 194H, which reads as under:

194H. 1 Commission, brokerage, etc. 2 (1) Any person, not being an individual or a Hindu undivided family, who is responsible for paying, on or after the 1st day of October, 1991 , 3 but before the 1st day of June, 1992] to a resident, any income by way of commission (not being insurance commission referred to in section 194D) or brokerage, shall, at the time of credit of

such income to the account of the payee or at the time of payment of such income in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, deduct income- tax thereon at the rate of ten per cent.

(2) The provisions of sub-section (1) shall not apply-

(a) to such persons or class or classes of persons as the Central Government may, having regard to the extent of inconvenience caused or likely to be caused to them and being satisfied that it will not be prejudicial to the interests of the revenue, by notification in the Official Gazette 4, specify in this behalf;

(b) where the amount of such income or, as the case may be, the aggregate of the amounts of such income credited or paid or likely to be credited or paid during the financial year by the person referred to in sub- section (1) to the account of, or to, the payee, does not exceed two thousand five hundred rupees.

Explanation.- For the purposes of this section,-

(i) " commission or brokerage" includes any payment received or receivable, directly or indirectly, by a person acting on behalf of another person for services rendered (not being professional services) or for any services in the course of buying or selling of goods or in relation to any transaction relating to any asset, valuable article or thing;

(ii) " professional services" means services rendered by a person in the course of carrying on a legal, medical, engineering or architectural profession or the profession of accountancy or technical consultancy or interior decoration or such other profession as is notified by the Board for the purposes of section 44AA;

(iii) where any income is credited to any account, whether called" Suspense Account" or by any other name, in the books of account of the person liable to pay such income, such crediting shall be deemed to be credit of such income to the account of the payee and the provisions of this section shall apply accordingly.

Thus, from perusal of Section 194H it is evident that the provision would apply if the payment was received or is receivable directly or indirectly by a person acting on behalf of another person for services rendered not being professional and for any services in the course of buying and selling of goods or in relation to any transaction relating to an asset, valuable article or thing.

7. Now we may advert to the facts of the case in hand. In case the credit card issued by the assessee was used on the swiping machine of another bank, the customer whose credit card was used got access to internet gateway of acquiring bank resulting in realization of the payment. Subsequently, the acquiring bank realize and recover the payment from the bank, which had issued the credit card. The relationship between the assessee and any other bank is not of an agency but that of two independent basis on principal- principal basis. Even assuming that the transaction was being routed to National Financial Switch and Cash Tree, then also it is pertinent to mention here that the same is a consortium of banks and no commission or brokerage is paid to it. It does not act as an agent for collecting charges. Therefore, we concur with the view taken by the High court of Delhi in JDS APPARELS supra and hold that provisions

of Section 194H of the Act are not attracted to the fact situation of the case. In the result, the third substantial question of law is also answered against the revenue and in favour of the assessee. In the result, we do not find any merit in this appeal, the same fails and is hereby dismissed.

Sd/-

JUDGE Sd/-

JUDGE ss