

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

**BEFORE SHRI SAKTIJIT DEY, VICE PRESIDENT AND  
SHRI PRABHASH SHANKAR, ACCOUNTANT MEMBER**

ITA No. 3487/Mum/2004  
(Assessment Year: 1999-2000)

DDIT(IT)-1(1) R. No. 117, Scindia House, Ballard Pier, N.M. Road, Mumbai-400 038	Vs.	M/s. American Express Bank Ltd. C/o. S.R. Batliboi & Co. 18 <sup>th</sup> Floor, Express Tower, Nairman Point, Mumbai-400 021
PAN/GIR No. AABCA 0588 K		
<b>(Appellant)</b>	:	<b>(Respondent)</b>

&

ITA No. 3508/Mum/2004  
(Assessment Year: 1999-2000)

Standard Chartered Holdings Inc. (Successor of American Express Bank Limited) C-38/39, G Block, Crescenzo, Bandra Kurla Complex, Bandra (E), Mumbai-400 051	Vs.	Assistant Commissioner of Income- tax, Circle 1(1) Kautilya Bhavan, Mumbai-400 051
PAN/GIR No. AABCA 0588 K		
<b>(Appellant)</b>	:	<b>(Respondent)</b>

<b>Appellant by</b>	:	Shri P. J. Pardiwala/Hiten Thakkar
<b>Respondent by</b>	:	Shri Satya Pal Kumar-CIT(DR)

<b>Date of Hearing</b>	:	13.04.2026
<b>Date of Pronouncement</b>	:	17.06.2026

O R D E R

Per Saktijit Dey, Vice President:

Captioned cross appeals arise out of order dated 31.12.2003 of learned Commissioner of Income Tax (Appeals), Mumbai ('ld.CIT(A) for short), pertaining to the assessment year (A.Y.) 1999-2000.

**ITA No. 3487/Mum/2004 (Appeal by the Revenue)**

2. Grounds raised in this appeal are as under:

1. *Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) has erred in directing the A.O. to allow the tax neutrality claimed by the assessee as regard interest on NOSTRO account paid to and received from its Head Office and Overseas branches amounting to Rs.38,23,04,460/- and not holding that interest received on NOSTRO account is the income of the assessee and interest paid to HO/Overseas branches without deduction of tax at source is an expense which is not allowed U/s 40(a)(i) of the I.T.Act, 1961.*

2. *Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) has erred in directing to allow sum of Rs.2,18,23,430/- towards the expenses incurred for Indian Branches by Head Office/Overseas branches of the assessee and holding that they are beyond the provision U/s 44C of the I.T.Act, 1961.*

3. *Whether on the facts and circumstances of the case and in law the Ld.CIT(A) has erred in deleting the addition of Rs.2,26,35,438/- on account of expenditure incurred in earning income exempt U/s 10(33) and 10(15) of the I.T.Act, 1961.*

4. *Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) has erred in directing to allow the broken period interest of Rs. 50,03,39,125/- without appreciating the fact that the said broken period interest forms cost of securities held by the assessee as investment."*

3. With reference to issue raised in ground no.1, relevant to the facts are, the assessee is a non-resident company, having its headquarters in United States of America (USA) and is engaged in banking business. The assessee has a branch in Mumbai, India, which happens to be its Permanent Establishment (PE). For the assessment year under dispute, the assessee filed its return of income on 31.12.1999, declaring income of Rs.46,08,690/-.

4. In course of assessment proceeding, the Assessing Officer (A.O. for short) noticed that during the year, the assessee had received interest amounting to Rs.38,52,04,851/- from its overseas head office and branches, whereas, the assessee had paid interest amounting to Rs.29,00,391/- to overseas head office and branches. While the assessee has not offered the interest received from overseas head office and branches as 'income', it has not claimed the interest paid to overseas head office and branches as 'expenditure'. When the A.O. called upon the assessee to explain the reason for not offering the interest income to tax, the assessee submitted that since the head office and branch cannot be considered

as separate entities under the domestic law, interest received and paid to self is not taxable, applying the test of mutuality. The A.O., however, was not convinced with the submissions of the assessee. Referring to the decision of the A.O. in assessee's case in A.Y. 1998-99 and the decision of ld. First appellate authority in case of another assessee, *Director of Income-tax (IT) vs. Credit Agricole Indosuez* [2016] 69 taxmann.com 285 (Bom), the A.O. held that the interest income received from overseas head office and branches are taxable in India. However, the A.O. allowed deduction towards interest paid by the assessee to the overseas head office and branches.

5. The assessee contested the aforesaid decision of the A.O. before ld. first appellate authority.

6. While deciding the issue, ld. First appellate authority held that interest received and paid from/to its overseas head office and branches being receipt/payment to self is not taxable. Therefore, he directed the A.O. to delete the addition of Rs.38,23,00,460/-. Further, he directed that the deduction of interest expenditure of Rs.29,00,391/- should also be withdrawn.

7. Being aggrieved of the aforesaid decision of ld. First appellate authority, the assessee is before us.

8. Before us, ld. Departmental Representative ('ld. DR' for short) relied upon the reasoning of the A.O., whereas, ld. Counsel appearing for the assessee submitted that in case of *Director of Income-tax (IT) vs. Credit Agricole Indosuez* (supra), the Hon'ble Jurisdictional High Court has in principle accepted assessee's contention that no person can make profit out of itself, hence, the interest income received from head office and

overseas branches are not taxable at the hands of the PE as per domestic law. He submitted, in assessee's case in A.Y. 1998-99, after following the decision of the ITAT, Special Bench in case of *ABN Amro Bank N. V. vs. Asstt. DIT* [2005] 91 ITD 89 (Kol.)(SB)(para 8), the co-ordinate bench has held that interest received from head office and overseas branches is not taxable as income of the PE. In this context, he also relied upon the decision of the Special Bench in case of *Sumitomo Mitsui Banking Corporation v/s DDIT* [2012] 19 taxmann.com 364 (Mum.).

9. We have considered rival submissions, in light of the decisions relied upon and perused the materials on record. It is evident, at the stage of assessment proceeding, the assessee had claimed that the interest received from the head office and overseas branches is not taxable in India under the domestic law as it is a receipt from self to self, hence, covered under the principles of mutuality. The assessee has also preferred to be covered under the domestic law and not under the provisions of India-USA Double Taxation Avoidance Agreement ('DTAA' for short). In case of *Sumitomo Mitsui Banking Corporation* (supra), a five-member Special Bench of ITAT has decided identical issue in favour of the assessee by holding that the interest received from and paid to head office and foreign branches is not taxable either at the hands of PE or at the hands of the head office or foreign branches, applying the principles of mutuality under the domestic law. In case of *Director of Income-tax (IT) vs. Credit Agricole Indosuez* (supra), the Hon'ble Bombay High Court has agreed with the ratio propounded by the ITAT(SB). In fact, in assessee's case in A.Y. 1998-99, the co-ordinate bench has decided an identical issue in similar lines. Thus, respectfully following the judicial precedents referred to above, we uphold the decision of Id. First appellate authority while dismissing the ground.

10. In ground no. 2, the department has contested the deletion of disallowance of Rs.2,18,23,430/-, being expenses incurred by the head office on behalf of the Indian branch, applying the provisions of section 44C of the Act.

11. Briefly the facts are, in course of assessment proceeding, the A.O. noticed that the assessee has debited the following expenditure to the profit and loss account:

- |   |                   |
|---|-------------------|
| a) Direct head office expenses attributable to the PE | Rs.11,06,92,634/- |
| b) Expenses for soliciting NRI deposits               | Rs.5,53,45,863/-  |

12. Noticing the above, the A.O. called upon the assessee to furnish the details of expenses along with the auditor's certificate and further to explain why these expenses should not be computed in terms with section 44C of the Act. In response, it was submitted by the assessee that since the expenses are not in the nature of general administrative expenses, as also were directly incurred for the business of the Indian Branch, they are allowable u/s. 37(1) of the Act and the provisions of section 44C of the Act are not applicable. The A.O. did not accept the claim of the assessee and proceeded to compute deduction applying the provisions of section 44C of the Act.

13. The assessee contested the aforesaid decision of the A.O. before Id. First appellate authority.

14. While deciding the issue, referring to the decision of Hon'ble Jurisdictional High Court in assessee's case and in case of another assessee, Id. First appellate authority observed that expenditure incurred specifically on salary, etc. of employees actually working in Indian branch cannot be considered to be falling within the scope of section 44C of the Act. Thereafter, while examining the nature of the expenditure, he observed that

the expenditure claimed by the assessee included an amount of USD 21,48,000 towards global system charges, which according to him, was in the nature of royalty. Hence, he was of the view that while making such payments, the assessee should have withhold tax u/s. 195 of the Act. The assessee having failed to do so, the said amount equivalent to Rs.8,88,69,204/- has to be disallowed u/s. 40(a)(i) of the Act. However, he held that the balance amount of Rs.2,18,23,430/-, being outside the scope of section 44C of the Act, is allowable u/s. 37(1) of the Act. Insofar as, the amount of Rs.5,53,45,862/- claimed to be in the nature of expenditure for soliciting NRI deposits, Id. First appellate authority held that since such expenditure was in relation to earning of exempt interest income, it has to be disallowed u/s. 14A of the Act.

15. Before us, Id. Departmental Representative ('Id. DR' for short) submitted that section 44C does not create any distinction between common and exclusive head office expenditure. In support of such contention, he relied upon the decision of Hon'ble Supreme Court in case of *Director of Income Tax (IT)-I, Mumbai vs. M/s. American Express Bank Ltd.* (in Civil Appeal No. 8291 of 2015, vide judgement dated 15.12.2025). He submitted, since, Id. First appellate authority has decided the issue in favour of the assessee by following the decision of the Hon'ble Bombay High Court in assessee's case in A.Y. 1997-98, which was subsequently reversed by Hon'ble Supreme Court. Hence, the decision of Id. First appellate authority should be reversed.

16. Per contra, Id. Counsel appearing for the assessee, though, fairly conceded that the Hon'ble Supreme Court has done away with the distinction between common and direct head office expenditure, however, it needs to be examined whether the expenditure claimed as 'deduction' would fall within the ambit of head office expenditure under *Explanation* to

section 44C of the Act. He submitted, if the expenditure claimed does not fall under the specific categories mentioned under *Explanation 2* to section 44C of the Act, the provisions of section 44C cannot be applied.

17. We have considered rival submissions and perused the materials available on record. From the observations of the A.O., it appears that direct head office expenses attributable to the PE are with regard to payments made on account of salary, travel and other employee related expenses and relocation expenses, etc.

18. Before the departmental authorities, the assessee had contended that since such expenses were directly incurred by the head office, in relation to the seconded employees, they will not come within the purview of section 44C of the Act. It is evident, the aforesaid line of reasoning of the assessee found favour with ld. first appellate authority. However, in assessee's case in A.Y. 1997-98, identical nature of dispute travelled to Hon'ble Supreme Court. While deciding the issue in decision referred to elsewhere in the order, the Hon'ble Supreme Court has held as under:

*70. The summary of the legal position emerging from the aforementioned analysis is as follows:*

*a) First, Section 44C would apply only when the two primary conditions are met: the assessee is a non-resident and has incurred expenditure in the nature of head office expenditure.*

*b) Secondly, the definition of 'head office expenditure' in the Explanation keeps in mind two factors: the nature of the expense (executive and general administration) and its geographic location (incurred outside India). It is entirely irrelevant whether such expenditure is common or exclusive.*

*c) Thirdly, clause (c) mandates computation on an actual basis, and the phrase "attributable to" as present in clause*

*(c) is wide enough to encompass both the shared expenses allocated to India branches and exclusive expenses incurred for India branches.*

*71. Thus, after examining the issue from all angles, we have no doubt that Section 44C does not create a distinction between common and exclusive head office expenditure. We, therefore, find no merit in the contention of the respondents that exclusive expenditure falls outside the purview of this section. Consequently, we hold that the view expressed by the Bombay High Court in Emirates Commercial Bank (supra) regarding the applicability of Section 44C is incorrect and does not declare the position of law correctly.*

72. Before we proceed further, we would like to address a brief ancillary issue. The appellant claims that the definition of 'head office expenditure' in the Explanation to Section 44C is inclusive and has a wide scope and illustratively includes rent, taxes, repairs or insurance of premises abroad; salaries and other emoluments of staff employed abroad; travel by such staff; and other matters connected with executive and general administration.

73. To simplify the issue, we must view it through the lens of genus and species. The term 'executive and general administration' expenditure represents the broad genus. Within this broad category, the specific items enumerated in clauses (a), (b), and (c), as well as those prescribed under clause (d), constitute the distinct species. The appellant's argument is that the definition is wide and merely illustrative, and consequently, so long as an expenditure satisfies the broad test of the genus (i.e., it is administrative in nature), it should be covered. In essence, they argue that one needs to only satisfy that the expenditure falls under the genus of 'executive and general administration' expenditure, and not necessarily satisfy that within the broad genus they fall under the distinct species, specified or prescribed under clauses (a) to (d) of the Explanation.

74. Such an interpretation is impermissible as the appellant has failed to consider clause (d) of the Explanation in its entirety. Clause (d) to the Explanation reads as follows: "such other matters connected with executive and general administration as may be prescribed". Thus, clause (d) stands as a clear statutory indicator that the Explanation would cover 'executive and general administration' expenditure only of the kind mentioned in clause (a), (b) and (c) or of the kind prescribed under (d). If the Explanation were to be interpreted as broadly inclusive, covering all kinds of executive and general administration expenses without restriction, it would render the words "as may be prescribed" in clause (d) otiose and redundant.

75. In other words, for an expenditure to qualify as 'head office expenditure' within the meaning of the Explanation to Section 44C, the assessing officer has to be satisfied of the following three ingredients:

- a) First, the expenditure must be incurred outside India.
- b) Secondly, the expenditure must be in the nature of executive and general administration, i.e., a broad genus.
- c) Thirdly, the said executive and general administration expenditure must fall within the specific species enumerated in clauses (a), (b), and (c), or expressly prescribed under clause (d).

76. Such a restrictive interpretation of the term 'head office expenditure' is also supported on the basis of legislative intent. On this aspect, the Memorandum Regarding Delegated Legislation, which is part of the Notes on Clauses for Finance Bill, 1976, reads thus:

"Clause 10 of the Bill seeks, inter alia, to insert a new section 44C in the Income-tax Act. The new section provides for a ceiling limit in respect of deduction to be allowed on account of expenditure in the nature of head office expenditure in computing the profits and gains of a non-resident. Clause (iv) of the Explanation to the new section which defines the expression "head office expenditure"

empowers the Central Board of Direct Taxes to prescribe by rules the items of expenditure which may be deemed to be head office expenditure. The clause enumerates expressly, as far as practicable, all the items of head office expenditure. The power to specify other items of head office expenditure is being taken only by way of abundant caution to cover items of such expenditure which cannot be easily visualised now." (Emphasis Supplied)

(iii) Whether the principle of law barring exclusive expenditure under Section 44C is approved by this Court?

77. Lastly, it was argued on behalf of the respondents that the Bombay High Court's decision in *Emirates Commercial Bank (supra)* was challenged by way of appeal to this Court in *CIT vs. Emirates Commercial Bank Ltd.* (Civil Appeal No. 1527 of 2006) and this Court by its judgment dated 26.08.2008 had dismissed the appeal following the view taken by it in the case of *CIT vs. Deutsche Bank A.G.* (Civil Appeal No. 1544 of 2006). Consequently, the principle of law that stands approved by this Court is that if expenditure is incurred by the head office outside India, which is incurred exclusively for the Indian operations of a non-resident entity, then such expenditure

cannot be brought within the ambit of the term 'head office expenditure' provided in Section 44C of the Act.

78. In the case of *CIT vs. Deutsche Bank A.G.* (Civil Appeal No. 1544 of 2006), the decision of the Bombay High Court in *Deutsche Bank* (supra) was in appeal before this Court. This Court vide order dated 26.08.2008 dismissed the said appeal on the question of applicability of Section 44C on the following basis: (i) the decision of the High Court and the tribunal was based on the decision of the Calcutta High Court's decision in *Rupenjuli Tea* (supra), (ii) the Revenue had not filed any appeal against the Calcutta High Court's decision in *Rupenjuli Tea* (supra) nor any material was adduced to make good its case that its decision not to appeal was due to the fact that revenue involved in *Rupenjuli Tea* (supra) was meagre and (iii) therefore it was assumed that the Revenue had accepted the ratio in *Rupenjuli Tea* (supra) and accordingly the question of applicability of Section 44C was answered against the Revenue.

79. In *CIT vs. Emirates Commercial Bank Ltd.* (Civil Appeal No. 1527 of 2006), this Court, on the issue of applicability of Section 44C, had held as follows:  
*Question No.(4) stands concluded against the Revenue and in favour of the assessee in view of our order of even date in C.A.No.1544 of 2006 etc.*

80. From the above, it could be inferred that this Court's decision in *CIT vs. Emirates Commercial Bank Ltd.* (Civil Appeal No. 1527 of 2006) was also based on the reasoning that the Revenue had accepted the decision in *Rupenjuli Tea* (supra).

81. However, we have made ourselves very clear in the preceding paragraphs that the facts and reasoning governing the decisions in *Rupenjuli Tea* (supra) and *Emirates Commercial Bank* (supra), respectively, are starkly different. In fact, unlike in *Deutsche Bank* (supra), the Bombay High Court in *Emirates Commercial Bank* (supra) made no reference to the decision in *Rupenjuli Tea* (supra). Consequently, it could in no manner be stated that this Court had accepted the principle of law that exclusive expenditure cannot be brought within the ambit of the term 'head office expenditure' provided in Section 44C of the Act, 1961.

82. The aforesaid orders of this Court could in no manner be said to lay down and operate as a binding precedent on the principle of law that exclusive expenditure cannot be brought within the ambit of Section 44C of the Act, 1961. The said orders, however, are indicative of one aspect only: the decision in *Rupenjuli Tea* (supra) stood finalised and accepted by the Revenue.  
(iv) Application to the facts at hand

83. The pivotal question involved in these appeals has been answered in favour of the Revenue. However, it remains to be seen whether, on merits, the entire expenditure that the respondents claim as deductible under Section 37 would fall within the ambit of Section 44C. There is no dispute that the respondents are non-residents and the expenditure was incurred outside India. However, there seems to be disagreement with regard to the fact whether or not certain expenditures could be of an 'executive and general' nature as specifically enumerated in the Explanation. In fact, the respondents have contended that a part of the expenditure incurred by them would not be in the nature of head office expenditure as described under Section 44C.

84. From a bare perusal of the orders of the lower authorities, it is not clear whether the nature of these expenditures was subjected to the rigorous scrutiny required to conclusively place them within the definition of 'head office expenditure' under the Explanation. Even when the nature of the expenditure was being discussed, the authorities proceeded on the notion that the definition was inclusive and its scope was broad. We have held above that such a reading of the Explanation is incorrect.

85. As established, for an expense to be categorized as 'head office expenditure', the Assessing Officer must be satisfied on three distinct fronts: (i) the expenditure must have been incurred outside India; (ii) it must be in the nature of 'executive and general administration' expenditure; and (iii) the said executive and general administration expenditure must fall within the specific categories enumerated in clauses (a), (b), or (c) respectively of the Explanation, or prescribed

*under clause (d). This Court, while exercising appellate jurisdiction, is not the appropriate forum to undertake this granular factual verification. Accordingly, we deem it appropriate to remand these matters to the Income Tax Appellate Tribunal, Mumbai, on this limited issue. The Tribunal is directed to examine the expenses afresh in light of the legal principles enunciated herein, more particularly to verify whether the disputed expenditures satisfy the tripartite test necessary to qualify as 'head office expenditure' under the Explanation to Section 44C. With respect to the expenditure which the respondents do not wish to dispute, the same would fall under the ambit of Section 44C, and thereby their deduction will be governed by the limits set out therein.*

#### *G. Conclusion*

*86. A conspectus of our legal discussion regarding Section 44C of the Act, 1961, is as under:*

*a) Section 44C is a special provision that exclusively governs the quantum of allowable deduction for any expenditure incurred by a non-resident assessee that qualifies as 'head office expenditure'.*

*b) For an expenditure to be brought within the ambit of Section 44C, two broad conditions must be satisfied: (i) The assessee claiming the deduction must be a non-resident; and (ii) The expenditure in question must strictly fall within the definition of 'head office expenditure' as provided in the Explanation to the Section.*

*c) The Explanation prescribes a tripartite test to determine if an expense qualifies as 'head office expenditure' - (i) The expenditure was incurred outside India; (ii) The expenditure is in the nature of 'executive and general administration' expenses; and (iii) The said executive and general administration expenditure is of the specific kind enumerated in clauses (a), (b), or (c) respectively of the Explanation, or is of the kind prescribed under clause (d).*

*d) Once the conditions in (b) referred to above are met, the operative part of Section 44C gets triggered. Consequently, the allowable deduction is restricted to the least of the following two amounts: (i) an amount equal to 5% of the adjusted total income; or (ii) the amount of head office expenditure specifically attributable to the business or profession of the assessee in India.*

*87. Based on the aforesaid discussion, it is manifest that the plain language of Section 44C, when viewed against the backdrop of the specific mischief it sought to curtail, is unambiguous. The statutory definition is broad and inclusive, containing no indication that 'exclusive expenditure' is to be excluded from its ambit. Furthermore, the term 'attributable' in Clause (c) does not create a statutory distinction between 'common' and 'exclusive' expenditure.*

*88. Thus, the question of law formulated by us is squarely answered in favour of the Revenue. We hold that Section 44C applies to 'head office expenditure' regardless of whether it is common expenditure or expenditure incurred exclusively for the Indian branches.*

*89. On the specific facts at hand in these appeals, a bare perusal of the records of the authority below reveals that the authorities have not satisfactorily dealt with the question whether the impugned expenditure actually constitutes 'head office expenditure' as defined in the statute. It also appears that the authorities below conceived the meaning of 'head office expenditure' in a broad and inclusive sense, which we have held is not a correct reading of the exhaustive definition provided in the Explanation. In other words, there is no factual finding on whether the expenses fulfil the three specific criteria we have elucidated in this judgment.*

*90. As an appellate court, we should not embark upon such a fact-finding exercise. Consequently, we remand the matters to the Income Tax Appellate Tribunal, Mumbai, for the limited purpose of verifying whether the disputed expenditures satisfy the tripartite test necessary to qualify as 'head office expenditure' under the Explanation to Section 44C of the Act, 1961.*

19. As could be seen from the aforesaid observation of Hon'ble Supreme Court, there cannot be any artificial distinction between common and exclusive head office expenditure.

Hence, the line of argument taken by the assessee that direct/exclusive head office

expenditure falls outside the purview of section 44C of the Act, is unacceptable. The Hon'ble Supreme Court has held that the essential conditions for applicability of section 44C of the Act are: firstly, the assessee must be a non-resident and, secondly, the expenditure incurred must be in the nature of head office expenditure. Further, as per the definition of head office expenditure under the explanation u/s. 44C of the Act, the determinative factors are, the expenditure must have been incurred for the purpose of executive and general administration and it must have been incurred outside India. Therefore, whether the expenses are common or exclusive, is irrelevant. Referring to clause (iv) under *Explanation 2* section 44C of the Act, the Hon'ble Supreme Court has observed that the phraseology used, is wide enough to encompass both the shared expenses allocated to India branch and exclusive expenses incurred for India branch. However, at the same time, the Hon'ble Apex Court has put a rider by observing that an item expenditure to qualify as 'head office expenditure' must satisfy the following three ingredients:

- a) expenditure must be incurred outside India.
- b) the expenditure must be in the nature of executive and general administration as a broad genus.
- c) such executive and general administration expenditure must fall within the specific species enumerated in clauses (a), (b), and (c), or expressly prescribed under clause (d) of *Explanation* u/s.44C of the Act.

20. Thus, keeping in view the aforesaid observations of Hon'ble Supreme Court, it needs to be examined whether the deduction claimed of Rs.11,06,92,634/- would fall within the meaning of 'head office expenditure' as explained under the *Explanation (iv)* to section 44C of the Act.

21. The meaning of 'head office expenditure' in clause (iv) of *Explanation* to section 44C of the Act is as under:

- (iv) "head office expenditure" means executive and general administration expenditure incurred by the assessee outside India, including expenditure incurred in respect of—*
- (a) rent, rates, taxes, repairs or insurance of any premises outside India used for the purposes of the business or profession;*
  - (b) salary, wages, annuity, pension, fees, bonus, commission, gratuity, perquisites or profits in lieu of or in addition to salary, whether paid or allowed to any employee or other person employed in, or managing the affairs of, any office outside India;*
  - (c) travelling by any employee or other person employed in, or managing the affairs of, any office outside India; and*
  - (d) such other matters connected with executive and general administration as may be prescribed.*

22. In case of *Director of Income Tax (IT)-I, Mumbai vs. M/s. American Express Bank Ltd.* (supra), the Hon'ble Supreme Court having regard to the meaning of 'head office expenditure' as provided under clause (iv) of *Explanation* to section 44C of the Act has observed that apart from the general conditions that the expenditure must be incurred outside India and it must be in the nature of executive and general administration, the expenditure must fall within the specific species enumerated in clauses (a), (b), and (c) or expressly prescribed under clause (d). It appears from the observations of the A.O. that the direct head office expenses of Rs.11,06,92,634/- is on account of salary, travel and other employee related expenses and relocation expenses, etc. Thus, from the aforesaid facts, it appears that if not all, but, some of the expenditures debited to the profit and loss account are covered under the definition of 'head office expenditure' as per clause (iv) of *Explanation* to section 44C of the Act. However, full facts relating to the nature of expenditure have either not been brought on record or have been properly dealt with by the departmental authorities. Therefore, keeping in view the ratio laid down by the Hon'ble Supreme Court in the decision referred to above, the nature and character of the expenditure has to be identified for determining whether they qualify as 'head office expenditure' in terms of clause (iv) of *Explanation* to section 44C of the Act. Since, such identification

requires detailed factual analysis of the expenditure incurred by the assessee which has not been done either at the stage of assessment or by Id. First appellate authority, as Id. First appellate authority has disallowed major part of the expenditure for non-withholding of tax at source. In our view, the issue requires fresh examination at the end of the A.O., after analyzing in detail the nature of expenditure.

23. In view of the aforesaid, we are inclined to restore the issue to the A.O. for *de novo* adjudication, keeping in view the ratio laid down by the Hon'ble Supreme Court in the decision referred to above. Needless to mention, before deciding the issue, the assessee must be provided reasonable opportunity of being heard. This ground is allowed for statistical purpose.

24. In ground no. 3, the department has challenged deletion of addition of Rs.2,26,35,438/- made u/s. 14A of the Act.

25. Briefly the facts are, in course of assessment proceeding the A.O. noticed that the assessee has earned exempt income by way of interest on tax free bonds and dividend aggregating to Rs.3,07,22,265/-, whereas, the assessee has not disallowed any expenditure attributable to earning such income. The A.O. observed that the assessee has incurred substantial interest expenditure. Thus, he opined that a part of the interest expenditure is attributable to earning of exempt income. Accordingly, he disallowed an amount of Rs.2,26,36,438/-.

26. The assessee contested the disallowance before Id. First appellate authority.

27. After considering the submissions of the assessee, in the context of the facts and materials on record, Id. First appellate authority found that interest free funds available with the assessee far exceeded the investments made for earning exempt income. Accordingly, he held that no disallowance of interest expenditure can be made.

28. We have considered rival submissions and perused the materials on record. On carefully going through the observations of Id. First appellate authority, it is noticed that he has taken into account the financial position of the assessee from 31.03.1993 to 31.03.2001 and found that the assessee had sufficient surplus interest free fund available with it in all the years. Thus, he had held that when the assessee had surplus interest free fund available with it, no part of the interest expenditure can be attributable to the earning of exempt income when the A.O. has not established a direct nexus between the interest bearing fund and the investment made in exempt income yielding assets.

29. Having considered rival submissions and perused the materials on record, we do not find any infirmity in the decision of the Id. First appellate authority as it is purely factual. Now, it is fairly well settled that when the assessee has kitty of mixed funds available with it comprised of both interest free and interest-bearing funds, the presumption would be the interest free funds have been utilized for investments in exempt in yielding assets. In case of *South Indian Bank Ltd. vs. Commissioner of Income Tax* [2021] 130 taxmann.com 178, the Hon'ble Supreme Court has approved the aforesaid line of reasoning. In view of the aforesaid, we uphold the decision of Id. First appellate authority.

30. In ground no. 4, the department has challenged the deletion of addition made on account of broken period interest amounting to Rs.50,03,39,125/-.

31. Briefly the facts are, as part of its business and as per Reserve Bank of India guidelines the assessee invests in interest bearing government securities. Interest on such securities is generally payable every six months. Further, the interest is paid to the person in whose name the securities are held as on the record date. As per the method of accounting followed by the assessee, although the entire amount of interest received is recognized as interest income in the books, however, the interest paid to the seller, i.e., the broken period interest is not treated as income on the basis it belongs to the seller. The interest paid to the seller is considered as 'revenue expenditure' and debited to the profit and loss account. In the year under consideration, such broken period interest amounted to Rs.50,03,39,125/-. While examining the issue, in course of assessment proceeding, the A.O. observed that the method adopted by the assessee is unacceptable. He further observed that the assessee did not provide the details of broken period interest paid on securities which were purchased and sold during the same period. Accordingly, he disallowed assessee's claim.

32. While examining the issue in course of appellate proceeding, Id. First appellate authority found that the issue is squarely covered by the ITAT (SB) in case of *American Express International Banking Corporation*, which was subsequently confirmed by the Hon'ble High Court in the decision rendered in *American Express International Banking Corporation vs. CIT 258 ITR 601*. Thus, following the aforesaid decision, Id. First appellate authority decided the issue in favour of the assessee.

33. We have considered rival submissions and perused the materials available on record. The issue is no more *res integra* in view of the decision of the Hon'ble Supreme Court, Hon'ble Jurisdictional High Court and the ITAT on identical issue, in case of *CIT vs. Citi Bank N.A.* (Civil Appeal No. 1549 of 2006 vide order dated 12.08.2008). The

Hon'ble Supreme Court while confirming the view expressed by the Hon'ble Bombay High Court in case of *American Express International Banking Corporation vs. CIT* (supra) has held that the broker period interest is allowed as deduction. Thus, respectfully, following the decisions of Hon'ble Jurisdictional High Court and Hon'ble Supreme Court, we uphold the decision of ld.first appellate authority on this issue.

34. In the result, the appeal is partly allowed for statistical purposes.

**ITA No. 3508/Mum/2004 (assessee's appeal)**

35. In ground no.1, the assessee has challenged the disallowance made u/s. 14A of the Act *qua* the interest expenditure amounting to Rs.75,22,55,418/- and administrative cost of Rs.5,53,45,862/-. As discussed earlier, the assessee during the year received an amount of Rs.38,52,04,851/- from the head office and overseas branches towards interest. The assessee claimed the interest received as not taxable since it is a payment by self to self. Further, it was found that the assessee had claimed expenses of Rs.5,53,45,863/- for soliciting NRI deposits, thought the expenditure was incurred overseas. While the A.O. treated the interest received from head office and overseas branches as taxable in India and also disallowed the expenditure of Rs.5,53,45,863/-. However, while deciding the issue in appeal, ld. First appellate authority accepted assessee's contention that the interest received from the head office and overseas branches on nostro account being a payment from self to self is not taxable at the hands of the assessee. However, he held that since the income is treated as exempt, the provisions of section 14A would be triggered, hence, interest expenditure incurred by the assessee on Nostro account and administrative cost has to be disallowed u/s. 14A of the Act. Accordingly, he directed the A.O. to disallow interest

expenditure amounting to Rs.75,22,55,418/- and the administrative cost of Rs.5,53,45,862/-.

36. Before us, ld. Counsel appearing for the assessee submitted that the interest received by the assessee from the head office and overseas branches cannot be treated to be in the nature of exempt income at all as the assessee cannot be expected to earn income from itself. Thus, he submitted, the interest received from head office and overseas branches will not enter the computation stream and has to be removed at the source. Therefore, there is no question of applicability of section 14A of the Act. In this context, he relied upon the decision of ITAT Special Bench in case of *M/s. J P Morgan Chase Bank, NA (Formerly known as The Chase Manhattan Bank)* (in ITA No. 9189/Mum/2004 & CO No. 139/Mum/2013 vide order dated 10.10.2025).

37. Ld. DR relied upon the observation of ld. First appellate authority.

38. Having considered rival submissions and perused the materials on record, we are in agreement with the submissions of the assessee that the issue is squarely covered by the decision of ITAT Special Bench in case of *M/s. J P Morgan Chase Bank, NA (Formerly known as the Chase Manhattan Bank)* (supra). In this context, we refer to the following observations of the Bench:

*10.10 The "doctrine of mutuality" relates to a notion that a person cannot make profit from himself. An amount received from oneself is not regarded as "income" and is therefore cannot be subjected to tax. Only such income that comes within the definition of sec. 2(24) of the Act is subject to tax. Based on the above discussion, in the present case, if the division bench takes the view that the interest received by the Indian Branch Office is covered by the "doctrine of mutuality", then by its very nature, such income will not fall within the scope of income' as defined in sections 2(24) and 4 of the Act, based on various Judicial precedents that consistently recognised this position.*

*10.11. Now coming to the applicability of section 14A, it is noted that section 14A, as explained in the legislative memorandum, was introduced only to deal with incomes which are exempt under specific provisions of the Act but are otherwise includable in total income as observed by Hon'ble Supreme Court in case of CIT vs M/s. Walfort Shares & Stock Brokers Pvt.Ltd., reported in (2010)*

*192 Taxman 211 vide paragraphs 12, 13 & 14. Similar observation has been well founded by Hon'ble Delhi High Court in case of Maxopp Investments Ltd vs. CIT reported in (2011) 15 taxmann.com 390 vide paragraphs 15, 16, 17, 24 & 25.*

*10.12. Receipts under the principle of mutuality are of a different character. They are not exempt income but are simply not income at all. It thus naturally follows that section 14A has no application to such receipts.*

*Thus the issue referred before this Special Bench is answered in negative.*

39. Thus, respectfully following the decision of ITAT, Special Bench as noted above, we direct the A.O. to delete the disallowance.

40. In ground no. 2, the assessee has challenged the disallowance of software expenses, amounting to Rs.2,89,80,015/-.

41. Briefly the facts are, in course of assessment proceedings, the A.O. noticed that the assessee has debited an amount of Rs.2,89,80,015/- towards software expenses. After calling for necessary details and examining them, he found that the softwares are in the nature of commercial application software and out of the amount claimed as deduction, amount of Rs.1,26,50,100/- relates to ATM software. Stating that by incurring the expenditure the assessee has acquired asset having enduring benefit and the assessee having capitalized such expenditure, it cannot be allowed as revenue expenditure. Accordingly, he disallowed assessee's claim.

42. In appeal, Id. First appellate authority held that cost of acquisition of technical know how is capital expenditure. Hence, the expenditure incurred for acquiring computer software is capital expenditure. In this regard, he relied upon the decision of Hon'ble Rajasthan High Court in case of *CIT vs. Arawali Constructions Co. (P) Ltd.* [2003] 259 ITR 30 (Rajasthan).

43. Before us, Id. Counsel appearing for the assessee submitted that the software purchased by the assessee are required for operation of ATMs and essentially for banking activities, therefore, has to be treated as revenue expenditure. In support of such contention, Id. Counsel relied upon the following decisions:

- a) *CIT Vs. Raychem RPG Ltd.* reported in [2012] 21 Taxmann.com 507
- b) *CIT vs. ING Vysya Bank Ltd.* (150 taxmann.com. 80)

44. Whereas, Id. DR relied upon the observations of the departmental authorities.

45. Having considered rival submissions and applied our mind to the facts on record, as also the judicial precedents cited before us, we find that there is no dispute to the fact that the software purchased by the assessee are for operating the ATMs, which constitutes essential part of assessee's business. In other words, the software purchased by the assessee enables it to conduct its banking business more efficiently. Therefore, it is allowable as 'revenue expenditure'. The judicial precedents cited before us by the Id. Counsel for the assessee supports this view. In any case of the matter, the assessee is otherwise entitled to claim depreciation on the software at the special rate of 60%. Thus, if at all, there is only a timing difference in the claim made by the assessee. In view of the aforesaid, we delete the disallowance made by the A.O.

46. In ground no. 3, the assessee has challenged the disallowance of head office expenses directly incurred on behalf of the branch. As discussed elsewhere in the order, while dealing with the aforesaid issue, the A.O. held that the head office expenses has to be covered u/s. 44C of the Act and accordingly allowed deduction in terms with section 44C of the Act. While deciding the issue in appeal, Id. First appellate authority observed

that out of the expenditure claimed, an amount of Rs.8,88,69,204/- is in relation to the payment made towards global system charges. Relying upon the decision of the ITAT in case of *Asia Satellite Telecommunications Company Ltd. v. Deputy CIT* (in ITA No. 166/Del/2001 vide order dated 1.11.2002), he observed that the payment is in the nature of royalty, hence, subject to deduction of tax at source. Since, the assessee had not deducted tax at source, he held that the amount has to be disallowed u/s. 40(a)(i) of the Act.

47. Before us, ld. Counsel appearing for the assessee submitted that the provisions of section 40(a)(i) of the Act are not applicable for the payment of global system charges as the payment is made to head office which is not a separate legal entity. Hence, applying the principle of mutuality, it is not in the nature of income at the hands of head office. Without prejudice, it was submitted that payment made towards use of the system is not in the nature of royalty either u/s. 9(1)(vi) of the Act or under Article 12 of India-US DTAA. He submitted, the decision of ITAT in case of *Asia Satellite Telecommunications Company Ltd.* (supra) relied upon by the ld. First appellate authority has been reversed by the Hon'ble High Court in case of *CIT Vs Sarvodaya Ilakkiya Pannai* 343 ITR 300 (Mad.) which has been followed subsequently in case of *Director of Income Tax v. New Skies Satellite BV* 382 ITR 114 (Del). Thus, he submitted, disallowance made should be deleted.

48. Ld. DR relied upon the observations of A.O. and ld. Commissioner (Appeals).

49. We have considered rival submissions and perused the materials available on record. As could be seen from the observations of the A.O., the amount in dispute was claimed as expenditure incurred by the head office on behalf of the Indian branch on account of salary, travel, other employee related expense and relocation expenses, etc.

Hence, he held that the provisions of section 44C of the Act would apply. Whereas, Id. First appellate authority has gone in a different tangent by treating the payment as royalty and has disallowed a major part of the expenditure on the ground that the assessee failed to deduct tax at source on such expenditure. While dealing with ground no. 2 in Revenue's appeal (supra), we have held that at the first instance, the nature and character of expense, whether falls within the meaning of head office expenses in terms with clause (iv) under *Explanation* to section 44C of the Act has to be determined, keeping in view the decision of the Hon'ble Supreme Court referred to therein. In case, it is found that the expenditure does not fall within the ambit of head office expenses, as defined u/s. 44C of the Act, then only the issue, whether the payment made is in the nature of royalty or not can be examined. Since, we have directed the A.O. to determine the nature and character of the expenditure, whether head office expenditure or not, the issue whether a part of such expenditure is in the nature of royalty or not also has to be examined by the A.O.. This is so because, the assessee has claimed the entire amount of Rs.11,06,92,634/- as direct head office expenses attributable to the PE. Accordingly, we restore the issue to the A.O. for fresh examination.

50. In ground no. 4, the assessee has challenged disallowance of Rs.65,30,309/-, being expenditure relating to interest earned on foreign currency loan, taxable u/s. 115A of the Act.

51. Briefly stated, in course of assessment proceeding, the A.O. noticed that income which is to be taxed under the provisions of section 115A(1) of the Act has to be taxed on gross basis and expenditure incurred in relation to such income would not be allowable as deduction. He observed that identical view expressed in A.Ys. 1997-98 and 1998-99 has been upheld by Id. First appellate authority. Accordingly, he proceeded to disallow the

amount of Rs.65,30,309/-. Though, the assessee contested the disallowance before Id. First appellate authority, however, the disallowance was sustained.

52. Before us, Id. Counsel appearing for the assessee submitted that the issue is squarely covered by the decision of the ITAT in assessee's case in A.Y. 1998-99 and Hon'ble Bombay High Court. He further submitted that in case of *The Bank of Nova Scotia* (in ITA No.4941/Mum/2007 and others vide order dated 29.01.2024) similar view has been expressed by the Tribunal.

53 The Id. DR relied upon the observations of the A.O. and Id. First appellate authority.

54. Having considered rival submissions and perused the materials on record, we find that while deciding identical issue in case of assessee in A.Y. 1998-99, the co-ordinate bench in order dated 10.08.2012 in ITA No. 5374/Mum/2001 has held as under:

5.2 *The factual matrix apropos this ground is that the assessee earned gross dividend income of Rs. 43,39,409 and also gross interest on foreign currency deposits given to Indian enterprises amounting to Rs. 46,61,509, both eligible for tax at lower rate u/s 115A(1). This got Indian iteration on gross basis for the purposes of applying the special rate of tax. The Assessing Officer computed proportionate expenditure incurred for earning these items of income liable to tax s 115 at Rs. 40,51,189 and Rs. 43,47,247 respectively in the body of the order and also expressed opinion there itself that such proportionate expenditure at Rs. 83.90 lakh could not be allowed as deduction against the regular income, but shall slice away the amount chargeable to tax at lower rate. That is how, he applied lower rate of tax on the net income amounting to Rs. 6.12 lacs. However, while computing total income of the assessee at the end of the assessment order, he started with the gross total income as per the return of income. Then, he made certain disallowances, but omitted to disallow the proportionate expenditure of Rs. 83.90 lacs against the income chargeable to tax at the normal rate. Thereafter, he computed income chargeable to tax at lower rate u/s 115A on net basis at Rs. 6.12 lac. In this way he committed an error by allowing deduction of Rs. 83.90 lacs twice, firstly, by not adding it to the total income and then by specifically computing income u/s 115A on net basis. [15:15, 10/06/2026] Roshani Gajakosh: the AO on net basis, before the the CIT action, the arst appellate authority decided venue has accepteder's Unaware of the overall effect of the AO's action, the assessee challenged the comped tints issue in aede by favour by holding that the provisions of section 115A apply on gross income. The Revens of applyinted the finding of the Id. CIT(A) on the question of taxability of the gross amount for the purposes of applying lower rate of taxation. It is evident from the language of the ground reproduced above and also the arguments put forth by the Id. DR that the Revenue now wants of the expenses of Rs. 83.90 lacs should not be allowed as deduction against the income chargeable to tax at the normal rate. In view of the above discussion it is discernible that the issue of not allowing deduction of such expenses against the income chargeable to tax at the normal rate does not emanate from the order of the authorities below. The AO, though discussed the issue in the body of the order and also computed the amount*

disallowable at Rs. 83.90 lac but committed a mistake by not disallowing such amount in the final computation of total income chargeable to tax at the normal rate. Then, the Id. CIT(A) also never held that such expenses are deductible against the other income. He was called upon to decide the question of gross or net amount eligible for taxation at special rate, which he decided in assessee's favour, which finding has been accepted by the Revenue.

5.3 It is therefore, palpable that the grouse of the Department through this ground in requiring us to hold that such expenses should not be allowed as deduction against the other income chargeable to tax at normal rate, does not emanate from the impugned or the assessment order. It is axiomatic that the tribunal is not a forum for rectifying such mistakes committed by the AO. For that purpose, there are other provisions, such as, revision u/s 263 and rectification u/s 154. On this very short point, this ground is liable to be dismissed.

5.4 We find that it is recurring issue in other years as well. Further, the Id. AR has not argued on this line of reasoning. Rather both the sides have made submissions on merits, for or against the deductibility of such expenses against the income chargeable to tax at normal rate. As such, we are proceeding to dispose of this issue on merits by considering the arguments put forth by the rival parties.

5.5 The learned Departmental Representative vehemently contended that the proportionate expenditure incurred for earning dividend and interest income liable for tax at special rate u/s 115A, could not have been allowed as deduction against the other incomes chargeable to tax at the normal rate. It was submitted that if a lower rate of tax is applied to a particular income and the expenditure incurred on earning such income is allowed to be set off against other incomes, it amounts to undue benefit to the assessee, contrary to the intent of the statute. He submitted that the action of the Id. CIT(A) has unduly favoured the assessee, firstly, by the application of the reduced rate of taxation u/s 115A on such income and secondly, by allowing the deduction of expenditure incurred for earning income liable to tax at lower rate, against the income liable for tax at regular rates.

5.6 We are not convinced with the submissions made on behalf of the Revenue. It is undisputed that the Revenue is aggrieved against the allowability of expenditure incurred in respect of earning dividend and interest income liable to tax at special rate u/s 115A, against the income chargeable to tax at normal rate. It is not a case and cannot be that such dividend and interest income are not at all chargeable to tax. The contention which has been made is that the expenses incurred by the assessee in respect of income liable to tax at special rate u/s 115A should not be allowed as deduction against the income chargeable to tax at normal rate. This contention, in our considered opinion, is devoid of merits. The judgment of the Hon'ble Supreme Court in Rajasthan State Warehousing Corporation (supra) is authority for the proposition that if an assessee is carrying an indivisible business then the entire expenditure including that which was incurred for earning the tax free income would be a permissible deduction. The legislature introduced section 14A with an intention to set at naught the ratio of this and such other judgments by providing that expenditure incurred in relation to 'income which does not form part of total income under this Act' shall not be allowed as deduction. In other words, the deductibility of expenses incurred for earning exempt income has been inhibited. But for that, the ratio of these judgments is intact. To put it simply, the decision of allowing entire expenditure incurred by the assessee in an indivisible business against the taxable income has been statutorily altered by forbidding the allowability of expenses incurred in relation to exempt income.

If the income is not exempt but chargeable to tax at a lower rate, then two consequences follow. Firstly, the provisions of section 14A shall cease to apply and secondly, the position will stand covered by the judgment in the case of Rajasthan State Warehousing Corporation (supra) for allowing the expenses in full without any apportionment. Section 14A does not provide that if income is liable to tax at a lower rate then also the proportionate expenditure should not be allowed as deduction against the other business income. As the assessee in the instant case is carrying on

*one composite business earning incomes, which are either not at all chargeable to tax, or chargeable tax at the lower rate or chargeable to tax at regular rate, what has been inhibited by section 14A is the deduction of expenses incurred by the assessee in relation to income not at all chargeable to tax and not the income chargeable to tax at lower rate of tax. We, therefore, do not find any force in this submission advanced by the Id. DR. Ex consequenti, it is held that the assessee is entitled to deduction of Rs. 83.90 lac against the income chargeable to tax at the regular rate of tax, which has, in fact, been inadvertently allowed by the AO. This ground is dismissed on merits as per law and on facts as having become academic.*

*Accordingly these grounds of the assessee are allowed.*

55. The aforesaid decision of the co-ordinate bench has been upheld by the Hon'ble Jurisdictional High Court in ITA No. 1507 of 2013 decided on 17.08.2015. Even, identical view has been expressed by the co-ordinate in case of *The Bank of Nova Scotia* (supra). Thus, respectfully following the judicial precedents referred to above, we direct the A.O. to delete the disallowance.

56. In the result, the appeal is partly allowed.

57. To sum up, Revenue's appeal is partly allowed for statistical purpose and assessee's appeal is partly allowed.

*Order pronounced in the open court on 17.06.2026*

Sd/-  
(Prabhash Shankar)  
Accountant Member

Sd/-  
(Saktijit Dey)  
Vice President

Mumbai; Dated : 17.06.2026

Roshani, Sr. PS

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT - concerned
5. DR, ITAT, Mumbai
6. Guard File

BY ORDER,

(Dy./Asstt. Registrar)  
ITAT, Mumbai