

Interest paid by Indian branch to its foreign head office not taxable in India; no disallowance for TDS default

Summary – The Mumbai ITAT in a recent case of Antwerp Diamond Bank NV, (the Assessee) held that Interest paid by Indian branch to Belgian head office on subordinate debt and term borrowing, was not chargeable to tax in India; and, hence, question of disallowance under section 40(a)(i) for non-deduction of TDS did not arise.

Facts

- During the assessment proceedings, AO found that interest of Rs.8,56,15, 525 was paid by the assessee to Head Office on subordinate debts and term borrowing and it had claimed the interest as an expense of the branch. However, the said interest was offered for taxation in the hands of the Head Office as per the Article 11 of the Indo-Belgium DTTA. Relying on the decision of special bench of Kolkata delivered in the case of *ABN AMRO Bank NV v. Asstt. DIT (International Taxation)* [2005] 97 ITD 89, he disallowed the interest paid to the Head Office. On appeal the first appellate authority held that the stand taken by the AO, was to be follow, as such disallowances were upheld by his predecessor for the earlier assessment years and, further, the assessee himself has disallowed an amount of Rs. 43.68 lacs for failure to deduct tax at source under section 40(a)(i).
- On appeal to Tribunal:

Held

- The AO and the FAA had relied upon the order of the special Bench of Kolkata for disallowing the claim of the assessee ,but now the said order has been reversed. The issue in question has been dealt extensively in the case of *Sumitomo Mitsui Banking Corpn. v. Dy. DIT (IT)* [2012] 136 ITD 66/19 taxmann.com 364 (Mum.) (SB). While deciding the appeal filed before it the Tribunal has held that although interest paid to the head office of the assessee-bank by its Indian branch which constitutes its permanent establishment in India is not deductible as expenditure under the domestic law being payment to self, the same is deductible while determining the profit attributable to the permanent establishment which is taxable in India. The said interest, however, cannot be taxed in India in the hands of the assessee-bank, a foreign enterprise being payment to self which cannot give rise to income that is taxable in India as per the domestic law. This position applicable in the case of interest paid by Indian branch of a foreign bank to its head office equally holds good for the payment of interest made by the Indian branch of a foreign bank to its branch offices abroad as the same stands on the same footing as the payment of interest made to the head office.
- Thus the ITAT allowed the appeal in favour of assessee.