ÞkITEM NO.101 COURT NO.3 SECTION IIIA

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

CIVIL APPEAL NO.1524 OF 2006

COMMNR. OF INCOME TAX, BOMBAY Appellant (s)

VERSUS

CITI BANK N.A. Respondent(s)

[With office report]
WITH
CIVIL APPEAL NOS.2641/2004, 2642/2004, 2644/2004, 1544/2006, 1539/2006,1537/2006, 1549/2006, 1529/2006, 1527/2006, 1525/2006, 1531/2006, 1535/2006 [With office report];
CIVIL APPEAL NO.1533/2006
[With appln. for discharge and with office report],
CIVIL APPEAL NO.1542/2006, 5748/2007, 4513/2007 & 5822/2007
[With office report].

Date: 12/08/2008 These Appeals were called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE ASHOK BHAN
HON'BLE MR. JUSTICE V.S. SIRPURKAR

For Appellant (s) Mr. Parag Tripathi, ASG
Ms. Arti Gupta, Adv.
Mr. Naveen Prakash, Adv.
Mr. Rahul Kaushik, Adv.
Ms. Shilpa Singh, Adv.
Mr. K.C. Pandey, Adv.
Mr. Sunil Roy, Adv. for
Mr. B.V.Balaram Das, Adv./
Mr. B. Krishna Prasad, Adv.

For Respondent (s) Mr. J.D. Mistry, Adv. with
Mr. B.D. Damodar, Adv. and
Mr. Rustom B.Hathikhanawala, Adv.
Mr. Samir Parekh, Adv.
Mr. Sumil Goel, Adv.
Miss Divya Sinha, Adv.for
M/s. Parekh & Co.

C.A.No.1524/06 etc. .... (contd.)

Mr.N.Venkatraman, Sr. Adv.
Mr. V.N. Raghupathy, Adv.

UPON hearing counsel the Court made the following
ORDER

Civil Appeal Nos.1524/2006, 2641/2004, 2642/2004, 2644/2004, 1539/2006, 1537/2006, 1549/2006, 1529/2006, 1525/2006, 1531/2006, 1533/2006 are dismissed in terms of the nine signed orders which are placed on the file. Parties to bear their own costs.

Civil Appeal Nos.1544/2006, 1527/2006, 1535/2006, 1542/2006, 5748/2007, 4513/2007 and 5822/2007 be listed on Tuesday, the 26 th August, 2008 as part-heard.

(Subhash Chander) (Parveen Kr. Chawla) (Savita Sainani)
Court Master Court Master Court Master

[Nine Separate Signed Orders are placed on the File]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2644 OF 2004

Commissioner of Income Tax, Bombay ..Appellant

versus

Citibank N.A. ..Respondent

ORDER

The assessment years in question are the assessment years 1985-86 and 1986-87.

The present appeal has been filed by the revenue against the judgment and order dated 05th March, 2003 passed by the High Court of Judicature at Bombay in Income Tax Reference No.349 of 1995, whereby the High Court has answered the following question of law, viz.,

> "Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the interest earned by the Bank on sale of securities held by it is assessable to tax as "Income from Business" and not as "Interest on Securities"

in the affirmative i.e. in favour of the assessee and against the revenue by following its own decision in Income Tax Reference No.5 of 1994 decided on 05th March, 2003. In Income Tax Reference No.5 of 1994, the High Court relied upon its earlier decision in assessee's own case in Income Tax Reference No.197 of 1984 decided on 10 th June, 1998 whereby the High Court decided the question in favour of the assessee and against the revenue relying upon a judgment of the Bombay High Court in the case of British Bank of the Middle East vs. CIT 233 ITR 251 (Bom.).

Admittedly, against the aforesaid two decisions (i) in assessee's own case in ITR No.197 of 194; and (ii) British Bank of the Middle East (supra), no special leave petitions have been filed by the department, meaning thereby, the department has accepted the aforesaid two decisions.

A Judge Bench of this Court in a recent decision in the case of C.K.Gangadharan & Another vs. Commissioner of Income Tax, Cochin reported in 2008 (10) SCALE 426, has held that the revenue is not precluded from filing an appeal merely because no appeal was filed by the revenue against the earlier similar orders for justifiable reasons which have been spelt out in the judgment in paras 11 to 13, which are reproduced below:

> "11. The order of reference would go to show that same was necessary because of certain observations in Berger Paints India Ltd. v. Commissioner of Income Tax, Calcutta (2004 (12) SCC 42). The decision in Union of India and Ors. v. Kaumudini Narayan Dalal & Anr. (2001 (10) SCC 231) was explained in Himalatha Gargya v. Commissioner of Income Tax, A.P. and Anr. (2003 (9) SCC 510) at para 14. It has been stated in the said case that the fact that different High Courts have taken different views and some of the High Courts are in favour of the revenue constituted "just cause" for the revenue to prefer an appeal. This Court took the view that having not assailed the correctness of the order in one case, it would normally not be permissible to do so in another case on the logic that the revenue cannot pick and choose. There is also another aspect which is the certainty in law.
>
> 12. If the assessee takes the stand that the revenue acted mala fide in not preferring appeal in one case and filing the appeal in other case, it has to establish mala fides. As a matter of fact, as rightly contended by the learned counsel for the revenue, there may be certain cases where because of the small amount of revenue involved, no appeal is filed. Policy decisions have been taken not to prefer appeal where the revenue involved is below a certain amount. Similarly, where the effect of decision is revenue neutral there may not be any need for preferring the appeal. All these certainly provide the foundation for making a departure.
>
> 13. In answering the reference, we hold that merely because in some cases the revenue has not preferred appeal that does not operate as a bar for the revenue to prefer an appeal in another case where there is just cause for doing so or it is in public interest to do so or for a pronouncement by the higher court when divergent views are expressed by the Tribunals or the High Courts."

Learned Additional Solicitor General appearing for the revenue has neither raised nor pleaded any of the reasons spelt out by the three Judge Bench in the case of C.K.Gangadharan (supra). Even the point of "just cause" has not been made out.

In view of this, we dismiss this appeal by affirming the impugned

order of the High Court in answering the question in the affirmative i.e. in favour of the assessee and against the revenue. Parties to bear their own costs.

.....J.
[ASHOK BHAN]

NEW DELHI; .....J.
AUGUST 12, 2008 [V.S.SIRPURKAR]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.1533 OF 2006

Commissioner of Income Tax, Bombay ..Appellant

versus

Citi Bank N.A., Bombay ..Respondent

WITH

CIVIL APPEAL NO. 1537 of 2006

ORDER

This order shall dispose of C.A.Nos.1533 and 1537 of 2006. For the sake of brevity the facts are taken from C.A.No.1533 of 2006.

C.A.No.1533 of 2006 has been filed against judgment and order of the High Court of Bombay passed on 05th March 2003 in Income Tax Reference No.5 of 1994 titled, 'Citibank N.A. Bombay v. Commissioner of Income-tax, Bombay City-III, Bombay' 262 ITR 47 (Bom.). The assessment year in question is 1981-1982. Three questions of law which have been raised in this appeal are set out below :

> "(A) Whether in the facts and circumstances the, High Court was right in law in holding that the interest received by the assessee on the sale of securities held by it, was assessable to tax under the head 'interest on securities' and not under the head 'Income from Business'?
> (B) Whether on the facts and circumstances of the case, the High Court was right in law in holding that provisions of section 40A(5) of the I.T. Act, 1961 should be applied only on that part of the expenditure by way of salaries and perquisites etc., apportioned under the head 'profits and gains of business or profession' and not in respect of such expenditure apportioned under the head 'interest on securities'?

and

(C) Whether on the facts and circumstances of the case, the High Court was right in law in holding that while apportioning expenses deductible from interest on securities in case of banking companies u/s 20(1)(i) of the Income Tax Act, 1961, expenses admissible u/s 30, 31, 36, 37 are not subject to restrictions imposed u/s 40A(3), 40A(5) and 44C of the I.T. Act, 1961?"

Insofar as Question (A) is concerned, the High Court, in the impugned judgment, has relied upon its earlier judgment in the case of Citibank N.A. v. CIT (ITR No.197 of 1984 dated 10.06.1998) and decided the question in favour of the assessee and against the Revenue. The judgment, in turn, had relied upon another judgment of the Bombay High Court in the case of British Bank of the Middle East v. CIT 233 ITR 251 (Bom.).

It is an admitted position before us that the Revenue has not filed any appeal against the aforesaid judgments. Since the Revenue has already accepted the judgment in the aforesaid cases, these appeals deserve to be dismissed. A three Judge Bench of this Court in a recent decision in the case of C.K.Gangadharan & Another vs. Commissioner of Income Tax, Cochin reported in 2008 (10) SCALE 426, has held that the revenue is not precluded from filing an appeal merely because no appeal was filed by the revenue against the earlier similar orders for justifiable reasons which have been spelt out in the judgment in paras 11 to 13, which are reproduced below:

"11. The order of reference would go to show that same was necessary because of certain observations in Berger Paints India Ltd. v. Commissioner of Income Tax, Calcutta (2004 (12) SCC 42). The decision in Union of India and Ors. v. Kaumudini Narayan Dalal & Anr. (2001 (10) SCC 231) was explained in Himalatha Gargya v. Commissioner of Income Tax, A.P. and Anr. (2003 (9) SCC 510) at para 14. It has been stated in the said case that the fact that different High Courts have taken different views and some of the High Courts are in favour of the revenue constituted "just cause" for the revenue to prefer an appeal. This Court took the view that having not assailed the correctness of the order in one case, it would normally not be permissible to do so in another case on the logic that the revenue cannot pick and choose. There is also another aspect which is the certainty in law.

12. If the assessee takes the stand that the revenue acted mala fide in not preferring appeal in one case and filing the appeal in other case, it has to establish mala fides. As a matter of fact, as rightly contended by the learned counsel for the revenue,

there may be certain cases where because of the small amount of revenue involved, no appeal is filed. Policy decisions have been taken not to prefer appeal where the revenue involved is below a certain amount. Similarly, where the effect of decision is revenue neutral there may not be any need for preferring the appeal. All these certainly provide the foundation for making a departure.

13. In answering the reference, we hold that merely because in some cases the revenue has not preferred appeal that does not operate as a bar for the revenue to prefer an appeal in another case where there is just cause for doing so or it is in public interest to do so or for a pronouncement by the higher court when divergent views are expressed by the Tribunals or the High Courts."

Learned Additional Solicitor General appearing for the revenue has neither raised nor pleaded any of the reasons spelt out by a three Judge Bench in the case of C.K.Gangadharan (supra). Even the point of "just cause" has not been made out.

Question (A) thus stands decided against the Revenue and in favour of the assessee.

As regards Questions (B) and (C) learned Judges of the High Court, after reproducing Section 20(1)(i) as was applicable in the assessment year 1981-82 and Section 40A(5) has recorded the following finding :

"We do not find any merit in the case of the Department. Section 40A refers to expenses/payments not deductible in certain circumstances. Section 40A(1) declares that the provisions of section 40A shall have effect, notwithstanding anything to the contrary in section 28 to section 44D (which includes sections 36 and 37). Therefore, the provisions of section 40A have an overriding effect over the provisions of any other section by providing that section 40A will have effect, notwithstanding anything to the contrary contained in any other provisions relating to computation of income under the head "Profits and gains of business". In view of section 40A having an overriding effect, and since section 40A deals with expenses not deductible under certain circumstances, and since section 40A(5) provides for disallowance of expenditure beyond a particular limit, that section operates as a complete code by itself and, therefore, it cannot be read into section 20(1)(i). The underlying idea behind the Department's case is to restrict the aggregate of expenses under the above formula. However, as stated above, section 40A(5) is a part of section 40A and section 40A has an overriding effect in the matter of computation of income under the head "Profits and gains of business". Therefore, section 40A cannot be read into section 20(1)(i) merely because section 20(1)(i) refers to apportionment of common expenditure allowable, inter alia, under sections 36 and 37."

We concur with the view taken by the High Court and, therefore,

confirm the finding of the High Court on Questions (B) and (C). Hence, these two questions are also decided in favour of the assessee and against the Revenue. Consequently, these appeals are dismissed leaving the parties to bear their own costs.

In view of the fact that in the final order, we have ordered that the parties will bear their own costs, the costs of Rs.30,000/- imposed by our order dated 11th March, 2008 stand waived. Counsel for the respondent also does not claim the costs.

.....J.
[ASHOK BHAN]

NEW DELHI; .....J.
AUGUST 12, 2008 [V.S.SIRPURKAR]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1524 OF 2006

Commissioner of Income Tax, Bombay ..Appellant

versus

Citi Bank N.A. Mumbai ..Respondent

WITH

CIVIL APPEAL NO.1531/2006

ORDER

The common question which arises in these appeals is as under :

> "(a) Whether on the facts and circumstances of the case, while apportioning the expenses deductible from interest on securities in the case of banking company under Section 20(1)(i), expenses admissible under Sections 30, 31, 36 and 37 are subject to the restrictions under Sections 40A(3), 40A(5) and 44C of the Income Tax Act, 1961?"

For the reasons stated in our order of even date passed in Civil Appeal No.1533 of 2006, the question is answered in favour of the assessee and against the Revenue and consequently, these appeals fail and are dismissed leaving the parties to bear their own costs.

.....J.
[ASHOK BHAN]

NEW DELHI; .....J.
AUGUST 12, 2008 [V.S.SIRPURKAR]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.2642 of 2004

Commissioner of Incoem Tax, Bombay City ..Appellant

versus

Citi Bank N.A., Mumbai ..Respondent

ORDER

In this appeal, the following two questions have been posed before us for consideration :

"(a) Whether on the facts and in the circumstances of the case, the High Court was right in law in holding that Section 40A(5) should be applied only on that part of the expenditure by way of salaries, perquisites etc. apportioned under the head 'Profits and Gains of Business' and not in respect of expenditure apportioned under the head 'Interest on Securities'?

(b) Whether on the facts and in the circumstances of the case the High Court was right in law in holding that the interest received by the assessee bank on sale of securities held by it was assessable to tax as interest on securities and not as profits and gains from business?"

For the reasons stated in our order of even date in Civil Appeal No.1533 of 2006, both the questions are answered in favour of the assessee and against the Revenue. Consequently, the appeal is dismissed leaving the parties to bear their own costs.

.....J.
[ASHOK BHAN]

NEW DELHI; .....J.
AUGUST 12, 2008 [V.S.SIRPURKAR]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.1549 of 2006

Commissioner of Incoem Tax ..Appellant

versus

CitiBank N.A. ..Respondent

ORDER

The assessment year in question is 1978-79.

Aggrieved against the judgment and order of the High Court of Bombay dated 16th April, 2003 passed in ITR No.278 of 1997, revenue has filed this appeal. The following question of law has been posed before us for consideration:

> "Whether on the facts and in the circumstances of the case, the High Court was right in law in holding, that, the interest paid for broken period should not be considered as part of the purchase price, but should be allowed as revenue expenditure in the Year of purchase of securities."

The High Court in the impugned judgment in this appeal has answered the same in favour of the assessee and against the revenue following its earlier decision in the case of American Express vs. CIT, reported in 258 ITR 601 (Bom.). Against the said judgment, revenue preferred special leave petitions being SLP(C) Nos.....(CC 301-303/2004) in this Court which were dismissed on 27th January, 2004 on the ground of delay. On the same date, another special leave petition seeking to raise the same issue being SLP(C)No.3710/2004 arising from CC 345/2004 came up for consideration before another Bench, which was dismissed by this Court by passing the following order:

> "Delay condoned.
> We see no reason to interfere.
> The special leave petition is dismissed."

The same is now reported in 266 ITR 106 (St.). Thereafter a three Judge Bench of this Court, on the same issue, again dismissed a special leave petition filed by the revenue being SLP(C) No.3717 of 2004 after condoning the delay by its order dated 27th September, 2004.

According to the counsel appearing for the assessee, in view of the orders passed by this Court in SLP(C) Nos.3710 of 2004 and 3717 of

2004, referred to above, the point in issue is concluded against the revenue and in favour of the assessee.

Learned ASG appearing for the revenue, relying upon a judgment of this Court in the case of Vijaya Bank Ltd. vs. Additional Commissioner of Income Tax, Bangalore reported in 1991 Supp. (2) SCC 147, wherein this Court in paras 4 & 5 observed as under:

> "4. In IRC v. Pilcher (1949) 2 All ER 1097, Lord Justice Jenkins stated : (All ER p.1103)
>
> "It is a well settled principle that outlay on the purchase of an income-bearing asset is in the nature of capital outlay, and no part of the capital so laid out can, for income tax purposes, be set off as expenditure against income accruing from the asset in question."
>
> 5. In the instant case, the assessee purchased securities. It is contended that the price paid for the securities was determined with reference to their actual value as well as the interest which had accrued on them till the date of purchase. But the fact is, whatever was the consideration which prompted the assessee to purchase the securities, the price paid for them was in the nature of a capital outlay, and no part of it can be set off as expenditure against income accruing on those securities. Subsequently when these securities yielded income by way of interest, such income was attracted by Section 18."

contends that the point in issue is concluded in favour of the revenue and against the assessee.

We may point out that in American Express (supra), the Bombay High Court distinguished the decision in Vijaya Bank Ltd.(supra) by observing thus:

> "Before going further we may mention at the very outset that the security in this case was of the face value of Rs.5 lakhs. It was bought for a lesser amount of Rs.4,92,000. The difference was of Rs.8,000. The assessee has revalued the security. The assessee offered the notional profit for taxation, as explained hereinabove, on accrual basis in the appropriate assessment year during which the assessee held the security. This difference could have been treated by the Department as interest on securities under section 18. However, in the instant case, the Department has assessed the said difference under section 28 under the head "Business" and not under the head "Interest on securities". Having treated the difference under the head "Business", the Assessing Officer disallowed the broken period interest payment, which gave rise to the dispute. It was open to the Department to assess the above difference under the head "Interest on securities" under section 18. However, they chose to assess the interest under the head "Business" and, while doing so, the Department taxed broken

period interest received, but disallowed broken period interest payment. It is in this light that one has to read the judgment of the Karnataka High Court and the Supreme Court in Vijaya Bank Ltd's case [1991] 187 ITR 541. In that case, the facts were as follows. During the assessment year under consideration, Vijaya Bank entered into an agreement with Jayalakshmi Bank Limited, whereby Vijaya Bank took over the liabilities of Jayalakshmi Bank. They also took over assets belonging to Jayalakshmi Bank. These assets consisted of two items, viz., Rs.58,568 and Rs.11,630.00. The said amount of Rs.58,568 represented interest, which accrued on securities taken over by Vijaya Bank from Jayalakshmi Bank and Rs.11,630 was the interest which accrued up to the date of purchase of securities by the assessee-bank from the open market. These two amounts were brought to tax by the Assessing Officer under section 18 of the Income-tax Act. The assessee-Bank claimed that these amounts were deductible under sections 19 and 20. This was on the footing that the Department had brought to tax, the aforestated two amounts as interest on securities under section 18. It is in the light of these facts that one has to read the judgment in Vijaya Bank Ltd.'s case [1991] 187 ITR 541 (SC). In the light of the above facts, it was held that the outlay on purchase of income-bearing asset was in the nature of capital outlay and no part of the capital outlay can be set off as expenditure against income accruing from the asset in question. In our case, the amount which the assessee received has been brought to tax under the head "Business" under section 28. The amount is not brought to tax under section 18 of the Income-tax Act. After bringing the amount to tax under the head "Business", the Department taxed the broken period interest received on sale, but at the same time, disallowed broken period interest payment at the time of purchase and this led to the dispute. Having assessed the amount received by the assessee under section 28, the only limited dispute was-whether the impugned adjustments in the method of accounting adopted by the assessee-bank should be discarded. Therefore, the judgment in Vijaya Bank Ltd.'s case [1991] 187 ITR 541 (SC) has no application to the facts of the present case. If the Department had brought to tax, the amounts received by the assessee-bank under section 18, then Vijaya Bank Ltd.'s case [1991] 187 ITR 541 (SC) was applicable. But, in the present case, the Department brought to tax such amounts under section 28 right from the inception. Therefore, the Tribunal was right in coming to the conclusion that the judgment in Vijaya Bank Ltd.'s case [1991] 187 ITR 541 (SC) did not apply to the facts of the present case. However, before us, it was argued on behalf of the Revenue, that in view of the judgment in Vijaya Bank Ltd.'s case [1991] 187 ITR 541 (SC), even if the securities were treated as part of the trading assets, the income therefrom had to be assessed under section 18 of the Act and not under section 28 of the Act as income from securities can only come within section 18 and not under section 28. We do not find any merit in this argument. Firstly, as stated above, Vijaya Bank Ltd.'s case [1991] 187 ITR 541 (SC) has no application to the facts of this case. Secondly, in the present case, the Tribunal has found that the securities were held as trading assets. Thirdly, it has been held by the Supreme Court in the subsequent decision reported in the case of CIT v. Cocanada Radhaswami Bank Ltd. [1965] 57 ITR 306, that income from securities can also come under section 28 as income from business. This judgment is very important. It analyses the judgment of the Supreme Court in United Commercial Bank Ltd.'s case [1957] 32 ITR 688, which has been followed by the Supreme Court in Vijaya Bank Ltd.'s case [1991] 187 ITR 541. It is true that once an income falls under section 18, it cannot come under section 28. However, as laid down by the Supreme Court in Cocanada Radhaswami Bank Ltd.'s case [1965] 57 ITR 306, income from securities treated as trading assets can come under section 28. In the present case, the Department has treated income from securities under section 28. Lastly, the facts in the case of United Commercial Bank Ltd. [1957] 32 ITR 688 (SC), also support our view in the present case. In United Commercial Bank Ltd.'s case [1957] 32 ITR 688 (SC), the assessee-bank claimed a set-off under

section 24(2) of the Indian Income-tax Act, 1922 (section 71(1) of the present Act), against its income from interest on securities under section 8 of the 1922 Act (similar to section 18 of the present Act). It was held that United Commercial Bank was not entitled to such a set-off as the income from interest on securities came under section 8 of the 1922 Act. Therefore, even in United Commercial Bank Ltd.'s case [1957] 32 ITR 688 (SC), the Department had assessed income from interest on securities right from the inception under section 8 of the 1922 Act and, therefore, the set-off was not allowed under section 24(2) of the Act. Therefore, United Commercial Bank Ltd.'s case [1957] 32 ITR 688 (SC), has also no application to the facts of the present case in which the assessee's income from interest on securities is assessed under section 28 right from inception. In fact, in United Commercial Bank Ltd.'s case [1957] 32 ITR 688 (SC), the matter was remitted back as it was contended on behalf of United Commercial Bank that the securities in question were a part of the trading assets held by the assessee in the course of its business and the income by way of interest on such securities was assessable under section 10 of the Indian Income-tax Act, 1922 (similar to section 28 of the present Act). It is for this reason that in the subsequent judgment of the Supreme Court in the case of Cocanada Radhaswami Bank Ltd. [1965] 57 ITR 306, the Supreme Court has observed, after reading United Commercial Bank Ltd.'s case [1957] 32 ITR 688 (SC), that where securities were part of trading assets, income by way of interest on such securities could come under section 10 of the Indian Income-tax Act, 1922.

In the light of what we have discussed hereinabove, we find that the assessee's method of accounting does not result in loss of tax/revenue for the Department. That, there was no need to interfere with the method of accounting adopted by the assessee-bank. That, the judgment in the case of Vijaya Bank Ltd. [1991] 187 ITR 541 (SC), had no application to the facts of the case. That, having assessed income under section 28, the Department ought to have taxed interest for the broken period interest received and the Department ought to have allowed deduction for the broken period interest paid."

The facts in the present case are similar to the facts in American Express (supra). Agreeing with this view and accepting the distinction pointed out by the Bombay High Court, this Court dismissed the two special leave petitions filed by the revenue, one of which was dismissed by a three Judge Bench.

After going through the facts which are similar to the facts in American Express (supra), since the tax effect is neutral, the method of computation adopted by the assessee and accepted by the revenue cannot be interfered with. We agree with the view expressed by the Bombay High Court in American Express (supra) that on the facts of the present case, the judgment in Vijaya Bank Ltd. (supra) would have no application.

For the reasons given above, the question posed before us is answered in the affirmative i.e. in favour of the assessee and against the revenue.

The Appeal is dismissed accordingly. Parties to bear their own

costs.

.....J.
[ASHOK BHAN]

NEW DELHI; .....J.
AUGUST 12, 2008 [V.S.SIRPURKAR]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.1529 OF 2006

Commissioner of Income Tax, Bombay ..Appellant

versus

Standard Chartered Bank ..Respondent

ORDER

The assessment years in question are the assessment years 1985-86 and 1986-87.

The present appeal has been filed by the revenue challenging the impugned order of the High Court whereby the High Court has answered the reference in the affirmative i.e. in favour of the assessee and against the revenue. The following two questions were referred to the High Court:

> "1. Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that in spite of the Supreme Court decision in the case of State Bank of Travancore (158 ITR 102), the interest on bad and doubtful debt is not taxable in view of the CBDT circular dated 9/10/1984?"
>
> 2. Whether on the facts and in the circumstances of the case, the Tribunal was right in law in deleting the additions made on account of interest paid for the broken period of Government Securities held by the assessee?"

High Court, by its impugned order, has answered question No.1 in the affirmative i.e. in favour of the assessee and against the revenue by following a judgment of this Court in the case of UCO Bank vs. Commissioner of Income Tax reported in 237 ITR 889. Since, question

No.1 has already been concluded against the revenue by a judgment of this Court in the case of UCO Bank (supra), we answer the same in the affirmative i.e. in favour of the assessee and against the revenue.

Insofar as question No.2 is concerned, for the reasons given in our order of even date in Civil Appeal No.1549 of 2006, we answer the same in the affirmative i.e. in favour of the assessee and against the revenue.

Accordingly, this appeal is dismissed. Parties to bear their own costs.

.....J.
[ASHOK BHAN]

NEW DELHI; .....J.
AUGUST 12, 2008 [V.S.SIRPURKAR]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.2641 OF 2004

Commissioner of Income Tax, Bombay ..Appellant

versus

Citi Bank N.A., Bombay ..Respondent

ORDER

The assessment year in question is 1982-83.

The present appeal has been filed by the revenue challenging the impugned order of the High Court dated 10 th April 2003 in Income Tax Reference No.191 of 1997, whereby the High Court has answered the reference in the affirmative i.e. in favour of the assessee and against the revenue. The following three questions have been posed before us for consideration:

> "1. Whether the High Court was right in law in holding that, while apportioning the deductible expenditure under Sec. 20(1)(i), under the head 'interest on securities' in the case of banking companies, expenses admissible under Sections 30, 31, 36 and 37 are not subject to restrictions imposed under sections 40A(3), 40A(5) and 44-C of the Income Tax Act, 1961?
>
> 2. Whether the High Court was right in law in

holding that interest paid to the sellers for the broken period on purchase of securities should not be considered as part of purchase price, but should be allowed as revenue expenditure in the year of purchase of securities?

3. Whether the High Court was right in law in holding that the interest on sticky advances credited to memorandum account was not taxable?"

High Court has answered all these questions in the affirmative i.e. in favour of the assessee and against the revenue.

Hence, revenue is before us in this appeal.

Question No.1 is concluded against the revenue and in favour of the assessee in view of our order of even date passed in Civil Appeal No. 1533 of 2006. Accordingly, this question is answered in the affirmative i.e. in favour of the assessee and against the revenue.

Insofar as Question No.2 is concerned, this question is concluded against the revenue and in favour of the assessee in view of our order of even date passed today in Civil Appeal No.1549 of 2006. Accordingly, this question is answered in the affirmative i.e. in favour of the assessee and against the revenue.

High Court has answered question No.3 in the affirmative i.e. in favour of the assessee and against the department by following a judgment of this Court in the case of UCO Bank vs. CIT, reported in 237 ITR 889. Since, question No.3 has already been concluded against the revenue by a judgment of this Court in the case of UCO Bank (supra), we answer the same in the affirmative i.e. in favour of the assessee and against the revenue.

Accordingly, this appeal is dismissed. Parties to bear their own costs.

.....J.
[ASHOK BHAN]

NEW DELHI; .....J.
AUGUST 12, 2008 [V.S.SIRPURKAR]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1539 OF 2006

Commissioner of Income Tax, Bombay City-III ..Appellant

versus

Bank of America ..Respondent

ORDER

The assessment year in question is the assessment year 1982-83.

Aggrieved against the judgment and order dated 22nd July, 2003 in ITR No.81 of 1994 passed by the Bombay High Court, Revenue has filed the present appeal. The High Court, by its impugned order, has answered the questions in the affirmative i.e. in favour of the assessee and against the revenue. The following three questions have been posed before us for our consideration:

> "1.Whether in the facts and circumstances, High Court was right in law in holding, that, salary and perquisites paid by the assessee bank to its employees be apportioned under Section 21 of the Income Tax Act and that provisions of Section 40A(5) be made applicable only in respect of that portion of the salary and perquisite as is considered under Section 28 of Income Tax Act.
>
> 2.Whether, on the facts and circumstances, the High Court was right in law in holding, that, the Tribunal was justified in directing the assessing officer to determine the interest includible in the total income on sticky loans on the basis of CBDT Circular?
>
> 3.Whether the High Court is correct in law and in facts of the case, while passing the impugned order?"

Question No.1 is concluded against the revenue and in favour of the assessee by our order of even date passed in Civil Appeal No. 1533 of 2006. Accordingly, this question is answered in favour of the assessee and against the revenue.

Question No.2 has been decided by the High Court in favour of the assessee by following a judgment of this Court in UCO Bank vs. CIT, reported in 237 ITR 889. Since, question No.2 already stands concluded against the revenue by a judgment of this Court in the case of UCO Bank (supra), we answer the same in the affirmative i.e. in favour of the assessee and against the revenue.

Question No.3 is a general question which does not require any answer.

Accordingly, this appeal is dismissed. Parties to bear their own costs.

.....J.
[ASHOK BHAN]

NEW DELHI; .....J.
AUGUST 12, 2008 [V.S.SIRPURKAR]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.1525 OF 2006

Commissioner of Income Tax, Mumbai ..Appellant

versus

Citi Bank N.A., Mumbai ..Respondent

ORDER

The assessment years in question are the assessment years 1983-84, 1984-85 and 1987-88.

This appeal has been filed by the revenue against the judgment and order passed by the Bombay High Court dated 10th April, 2003 passed in ITR No.265 of 1997, whereby the High Court has answered all the questions referred before it in favour of the assessee and against the department.

The following questions have been posed before us for our consideration:

"A. Whether the High Court was right in law in holding that, while apportioning the deductible expenditure under Section 20(1)(i) under the head 'interest on securities' in the case of banking companies, expenses admissible under Section 30, 31, 36 and 37 are not subject to restrictions imposed under Sections 40A(3), 40A(5) and 44C of the Income Tax Act, 1961?

B. Whether the High Court was right in holding that the interest received by the Assessee Bank, at the time of sale of securities held by it, it was assessable to tax under the head 'interest on securities' and not under the head 'income from Business'?

C. Whether the High Court was right in holding that interest paid for the broken period in respect of securities bought which securities form part of stock-in-trade at the end of the accounting year, was not a

part of cost price of the securities bought?

D. Whether the High Court was right in holding that broken period interest paid on securities bought during the year which remained unsold at the end of the year be allowed as a deduction in computation of income of the year?

E. Whether the High Court was right in law in holding that expenses should be apportioned between the head "interest on securities" and "profits and gains of business", and Section 40A(5) should be applied only to such part of expenses which remain apportioned under the head "Profit & Gains of Business"?

F. Whether the High Court was right in holding that while computing business income, only that part of the Head Office expenses which remained after apportionment to interest on securities be added back before allowing the deduction under section 44C of the Income Tax Act, 1961?

G. Whether the High Court was right in holding that restrictions under Section 44C of the Income Tax Act, 1961 were applicable only to business income and not to interest on securities?"

The High Court in its impugned judgment has decided question Nos. A, E, F & G in favour of the assessee and against the revenue following its order in assessee's own case reported in 262 ITR 47(Bom.) which is the subject matter of Civil Appeal No. 1533 of 2006.

For the reasons stated in Civil Appeal No. 1533 of 2006 which has been disposed of by us by our order of even date, the aforesaid question Nos. A, E, F & G are answered in the affirmative i.e. in favour of the assessee and against the revenue.

The High Court has decided question Nos. C & D in favour of the assessee and against the revenue following its decision in the case of American Express International Banking Corporation vs. CIT 258 ITR 601 (Bom.), against which three special leave petitions have already been dismissed by this Court, one of which is by a Bench of three Hon'ble Judges. The High Court has distinguished the judgment of this Court in Vijaya Bank Ltd. v. CIT, 187 ITR 541 (SC).

For the reasons stated in Civil Appeal No. 1549 of 2006 which has been disposed of by us by our order of even date, the aforesaid question Nos. C & D are answered in the affirmative i.e. in favour of the assessee and against the revenue.

Insofar as question No. B is concerned, the High Court has

decided the same in favour of the assessee and against the revenue following the decision in assessee's own case reported in 262 ITR 47(Bom.). This question has been dealt with by us in detail in our order passed today in Civil Appeal No. 1533 of 2006. For the reasons stated in Civil Appeal No. 1533 of 2006, this question as well is answered in the affirmative i.e. in favour of the assessee and against the revenue.

The Appeal is dismissed accordingly. Parties to bear their own costs.

.....J.
[ASHOK BHAN]

NEW DELHI; .....J.
AUGUST 12, 2008 [V.S.SIRPURKAR]