

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'G' BENCH,  
NEW DELHI

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND  
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER

ITA No. 766/DEL/2012  
[A.Y 2002-03]

Standard Chartered Grindlays Pty Ltd  
[Formerly known as Standard Chartered  
Grindlays Bank Ltd, First Floor,  
H-2, Connaught Circus, New Delhi

Vs. The D.D.I.T  
International Taxation  
New Delhi

PAN No: AAHCS 3880 Q

[Appellant]

[Respondent]

Date of Hearing : 08.08.2019  
Date of Pronouncement : 20.08.2019

Assessee by : Ms. Shashi M. Kapila, Adv  
Shri R.R. Marge, CA

Revenue by : Shri G.K. Dhall, CIT-DR

**ORDER**

**PER N.K. BILLAIYA, ACCOUNTANT MEMBER:**

With this appeal the assessee has challenged the correctness of the order of the CIT(A) -25, New Delhi dated 22.12.2011 pertaining to A.Y 2002-03.

2. The sum and substance of the grievance of the assessee is two-fold:

- firstly, the assessee is aggrieved by the disallowance of the deduction of Rs. 5,06,54,54,878/- being the loss/ expenditure/outgo from coffers of bank incurred by the assessee as a consequence of the full and final settlement arrived at with National Housing Bank [NHB] and,
- secondly, the assessee is aggrieved by the addition of Rs. 11,95,79,687/- being claim of expenses incurred outside India.

3. Representatives of both the sides were heard and case record carefully perused.

4. Facts on record show that during the period 23.03.1992 and 20.04.1992, the appellant [Earlier M/s ANZ Grindlays Bank] received nine cheques from NHB drawn on Reserve Bank of India [RBI]. All the cheques were crossed 'A/c payee only' and the appellant was the payee in all the cheques. The details of the cheques are as under:

Sl No.	Date	Cheques No.	Amount
1.	23.03.1992	212575	Rs. 2,68,00,000
2.	23.03.1992	212576	Rs. 14,10,00,000
3.	24.03.1992	212589	Rs. 69,08,30,348
4.	25.03.1992	212595	Rs. 15,00,00,000
5.	13.04.1992	212822	Rs. 78,90,44,657
6.	13.04.1992	212823	Rs. 73,34,72,054
7.	13.04.1992	212828	Rs. 99,77,50,000
8.	13.04.1992	212830	Rs. 53,55,00,000
9.	20.04.1992	212864	Rs. 100,09,52,054
TOTAL			Rs. 506,54,54,878

4. All the cheques were encashed by the assessee and proceeds were credited to the account of Shri Harshad Mehta.

5. In May 1992, when 'Securities Scam' came to light, a dispute arose between the appellant and the NHB with respect to the aforementioned cheques aggregating to Rs. 506.54 crores. NHB claimed a refund for the amount of cheques. However, the claim was denied by the appellant. The appellant stated that the cheques were for the benefit of Shri Harshad Mehta and, therefore, the bank is not liable to repay the amount.

6. Pursuant to the directive issued by the RBI, the appellant made a deposit of Rs. 506.54 crores with NHB with the condition that the amount shall be refunded upon the settlement of the dispute.

7. To settle the dispute, the appellant bank and NHB entered into an Arbitration Agreement by which both the parties agreed to refer the matter to the Board of Arbitrators. On 21.03.1995, the appellant filed a separate suit in the Special Court established under the Special Court [Trial of Offences Relating to Transactions in Securities] Act, 1992 at Mumbai against Shri Harshad Mehta for recovery of the sums.

8. In respect of the dispute between the appellant and NHB, the Arbitrators delivered an award rejecting NHB's claim and directed NHB to refund to the appellant bank the sum of Rs. 506.54 crores alongwith interest.

9. However, NHB filed a petition before the Special Court challenging the Arbitration Award and the Special Court, set aside the Arbitration Award and directed the appellant bank to repay to NHB the amount of Rs. 912.22 crores received by it pursuant to Arbitrary Award.

10. The appellant bank approached the Hon'ble Supreme Court and the Hon'ble Supreme Court, directed the appellant to deposit the amount of Rs. 912.22 crores alongwith interest @ 18% in a Term

Deposit in the name of Registrar of the Hon'ble Supreme Court with State Bank of India.

11. Pursuant to the directions of the Hon'ble Supreme Court, the appellant bank deposited a sum of Rs. 1529.9 crores to NHB.

12. In the backdrop of the afore-stated facts, the appellant bank claimed loss of Rs. 506.54 crores, which has been shown as an "Extraordinary Item" in the bank's Profit and Loss Account for the year ended on 31.03.2002.

13. The Assessing Officer sought clarification from the assessee to explain as to on what account the loss has been claimed. In its reply, the assessee stated that the loss claimed by the assessee is with respect to the payments made by the assessee to NHB as per the terms of settlement dated 16.01.2002 and ratified by the Hon'ble Supreme Court on 17.01.2002. The liability to pay the subject sum to NHB fully and finally crystallised during the year under consideration.

14. This claim of loss was disallowed by the Assessing Officer for the following reasons:

i) The assessee has received nine account payee cheques in its name from NHB amounting to Rs. 506.54 crores and when the assessee received these cheques, it had no transactions with NHB, yet it encashed all the cheques and proceeds were credited in the account of Shri Harshad Mehta. Pursuant to the directions of the assessee RBI, the assessee repaid the amount of Rs. 506.54 crores to NHB. Therefore, there is no question of its being allowed as deduction, as loss, as claimed by the assessee.

ii) The Assessing Officer also dismissed the claim of loss of stock in trade stating that the amount received by NHB was not stock in trade of the assessee as there were no business transactions between the assessee and NHB.

iii) The Assessing Officer also denied the claim when there was no finding of any illegality attached to any action of the bank at any point of time before any proceedings before any forum. The Assessing Officer further observed that the bank has credited the entire proceeds of Rs. 506.54 cores in the account of Shri Harshad Mehta being advance given without taking any bank

guarantee/security and the assessee has tried to justify its action in the garb of marketing practice.

iv) The Assessing Officer further observed that the transaction of Rs. 506.54 cores related to F.Y. 1992-93 and the assessee did not make any entry in its books of account and it was only after the directions by the RBI that the assessee debited the account of NHB and credited the sum of Rs. 506.54 crores under the head 'Cash'. The Assessing Officer observed that no entry was made in the Profit and Loss account for the F.Y 1992-93. The Assessing Officer further observed that the assessee has not claimed the deduction of Rs. 506.54 crores on account of bad debt which clearly shows that the amount given to Shri Harshad Mehta was not a loan given in due course of business which is supported by the fact that no entry in this regard was made in the books of account of the assessee.

15. After considering various judicial decisions in the light of the facts of the case in hand, the Assessing Officer made an addition of Rs. 506,54,54,478/-.

16. The assessee carried the matter before the CIT(A) but without any success.

17. Before us, the ld. AR reiterated what has been stated before the lower authorities. It is the say of the ld. AR that pursuant to the final settlement which was ratified by the Hon'ble Supreme Court, liability crystallised during the year under consideration and being a legitimate business loss, the assessee is entitled for the same. The ld. AR, in support, placed reliance on the decision of the Hon'ble Madras High Court in the case of M.P. Venkatachalapathy Iyer 20 ITR 363, the Hon'ble Supreme Court decision in the case of Associated Banking, Corporation of India Ltd 56 ITR 1 and the Hon'ble Rangoon High Court in the case of A.K.A.R Family 9 ITR 347.

18. Per contra, the ld. DR strongly supported the findings of the Assessing Officer,.

19. We have given a thoughtful consideration to the orders of the authorities below. At the very outset, we have to state that the entire claim of loss has to be considered within the four walls of the Income tax Act. Therefore, in our considered opinion, what happened in the



arbitration proceedings or before the Special Court or before the Hon'ble Supreme Court may be relevant for the dispute but may not be relevant for the claim of loss under the Income tax Act.

20. After analysing the facts mentioned elsewhere, we failed to persuade ourselves to find the answer to :

(a) why NHB gave nine account payee cheques to the appellant bank amounting to Rs. 506.54 crores when it had no business dealings with the appellant bank? and

(b) when cheques were account payee cheques only, why the proceeds were credited in the account of Shri Harshad Mehta.

21. Facts clearly show that the transactions were peculiar and were not transacted in the ordinary course of business. The bare fact is that for some reasons best know to NHB and the appellant bank, the assessee received Rs. 506.54 crores from NHB and for obvious reasons, it had to repay the said amount to NHB. For some reason best known to the appellant bank, proceeds were credited in the account of Shri

Harshad Mehta and subsequently, the entire transaction was burnt in the fire of Security Scam.

22. We once again failed to persuade ourselves to consider the entire transaction done in the ordinary course of business. In our considered opinion, the repayment of Rs. 506.54 cores even if it enured loss to the appellant bank, by any stretch of imagination, cannot be considered as deductible business loss.

23. Reliance placed on the decision of the Hon'ble Madras High Court in the case of M.P. Venkatachalapathy Iyer [supra] is clearly distinguishable on facts as in that case there was embezzlement by the employee clerk entrusted with several duties and the sums embezzled were allowed as business expenditure/business loss. However, the facts of the case in hand as discussed hereinabove clearly show that there is no parity in the two cases. Similar is the fact with the decision of the Hon'ble Supreme Court in the case of Associated Banking Corporation of India [supra] wherein also the Hon'ble Supreme Court considered the loss claimed on account of embezzlement. We do not find it necessary to consider the decision of the Hon'ble Rangoon High Court as it is totally misplaced on the facts

of the case in hand. Considering the facts of the case in hand as discussed herein above, we do not find any merit in the claim of deduction of Rs. 506.54 crores. Therefore, no interference is called for. Ground No. 1 is, accordingly, dismissed.

24. Second grievance relates to the disallowance of Rs. 11.95 crores.

25. Facts relating to this claim of deduction are that the assessee claimed these expenses under the head "Expenses incurred outside India". The Assessing Officer found that the assessee has not made any such claim of deduction in the return of income for expenses incurred outside India for Income tax cost and business support cost. Since no such claims were made in the return of income, the Assessing Officer denied the claim and denial was confirmed by the CIT(A).

26. Before us, the ld. AR vehemently stated that these expenses were incurred for updating the software and technology pursuant to the takeover of the appellant bank by Standard Chartered Bank. It is the say of the ld. AR that though the expenses were incurred outside India, but are not attributable to the Head Office expenses and, therefore, such expenses should be allowed as deduction. The ld. AR

further stated that neither the Assessing Officer nor the CIT(A) has examined the certificates of the Chartered Accountant in this respect.

27. Per contra, the ld. DR strongly supported the findings of the lower authorities.

28. We have given a thoughtful consideration to the orders of the authorities below. There is no dispute that no such claim was made in the return of income. There is also no dispute that all the claims of expense has already been allowed by the Assessing Officer u/s 44C of the Act. It is equally true that neither the Assessing Officer nor the first appellate authority have examined the claim in the light of certificates in this respect. In the interest of justice and fair play, we deem it fit to restore this issue to the file of the Assessing Officer. The assessee is directed to demonstrate its claim of expenditure with supporting evidences and the Assessing Officer is directed to examine the same and decide the issue afresh as per provisions of law after giving reasonable and sufficient opportunity of being heard to the assessee.

29. In the result, the appeal filed by the assessee in ITA No. 766/DEL/2012 is partly allowed for statistical purposes.

**The order is pronounced in the open court on 20.08.2019.**

**Sd/-**

**Sd/-/-**

**[SUDHANSHU SRIVASTAVA]  
JUDICIAL MEMBER**

**[N.K. BILLAIYA]  
ACCOUNTANT MEMBER**

Dated: 20<sup>th</sup> August, 2019

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar  
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	