2025 INSC 1431

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 8291 OF 2015

DIRECTOR OF INCOME TAX (IT)-I, MUMBAI. ...APPELLANT

VERSUS

M/S. AMERICAN EXPRESS BANK LTD. ...RESPONDENT

WITH

CIVIL APPEAL NO. 4451 OF 2016

J U D G M E N T

J.B. PARDIWALA, J.

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1. Since the issues raised in the captioned appeals are the same, they were taken up for hearing analogously and are being disposed of by this common judgment.

2. The central issue involved in these appeals relates to the interpretation of Section 44C of the Income Tax Act, 1961 (hereinafter referred to as "**the Act, 1961**"), more particularly whether it merely covers 'common expenditure' incurred by the head office attributable to an assessee's business in India or would also include 'exclusive expenditure' incurred by the head office for the Indian branches.

A. Factual Matrix

(i) Civil Appeal No. 8291 of 2015

3. M/s American Express Bank, the respondent-assessee, is a non-resident banking company engaged in the business of providing banking-related services. The respondent filed its income tax return on 01.12.1997 for AY 1997-1998, declaring an income of INR 79,45,07,110. In the said return, the respondent claimed deductions for the following expenses under Section 37(1) of the Act, 1961: (i) INR 6,39,13,217 incurred for solicitation of deposits from Non-Resident Indians; and (ii) INR 13,50,87,275 incurred at the head office directly in relation to the Indian branches.

4. The respondent *vide* notice dated 21.10.1999, was asked to explain why the expenses in question should not be subjected to the ceiling specified in Section 44C of the Act, 1961, and thus be disallowed.

5. The respondent, in its reply to the notice referred to above, clarified that the expenses in question could not have been classified as head office expenditure for the reason that Section 44C of the Act, 1961 presupposes that at least a part of the expenditure is attributable to the business outside India. If this presumption does not hold true, and the entire expenditure is incurred solely for the business in India, then clause (c) does not apply. Consequently, Section 44C would not be applicable to such expenses.

6. The Assessing Officer, *vide* its Assessment Order dated 08.02.2000, limited the deduction to 5% of the gross total income by applying Section 44C of the Act, 1961, having regard to the view taken by the Income Tax Appellate Tribunal in the respondent's own case for AY 1987-88. The decision of the Assessing Officer was also based on the following reasons:

    a) Section 44C is a non-obstante provision that begins with the words "*notwithstanding anything to the contrary contained in Section 28 to 43A*," and therefore, the head office expenses allowable to the respondent assessee are subject to the limits set out under Section 44C.

    b) The purpose of inserting Section 44C was to address the difficulties encountered in scrutinising the books of account maintained outside India. Therefore, the assessee could not have claimed that the expenses incurred outside India should have been allowed beyond the ceiling prescribed under Section 44C. If such a plea were permitted, Section 44C would become redundant and otiose.

c) The definition of head office expenditure is clear and the same includes all kinds of expenses of any office outside India.

7. Aggrieved by the aforesaid order of the Assessing Officer, the respondent filed an appeal before the Commissioner of Income Tax (Appeals) VII, Mumbai. The Commissioner *vide* Order dated 26.09.2000 affirmed the decision of the Assessing Officer.

8. Thereafter, the respondent filed an appeal before the Income Tax Appellate Tribunal, Mumbai. The Income Tax Appellate Tribunal, Mumbai, *vide* Order dated 08.08.2012, allowed the appeal of the respondent by relying upon the Bombay High Court's decision in ***Commissioner of Income Tax v. Emirates Commercial Bank Ltd.***, reported in **2003 SCC OnLine Bom 1280.** The relevant observations made by the Tribunal are as follows:

> *"In principle, we are in full agreement with this contention that the judgment in the case of Emirates Commercial Bank Ltd. (supra) can operate for allowing deduction in full u/s 37(1) where the expenditure is exclusive. In a case of allocated expenses, the amount can be considered only u/s 44C. The Mumbai bench of the tribunal in the case of ADIT (I.T.) Vs. Bank of Bahrain & Kuwait (2011) 44 SOT 693 (Mum) has canvassed similar view by holding that the exclusive expenses incurred by the head office for Indian branch are outside the purview of sec. 44C and only common head office expenses are governed by this section. There can be no quarrel over this proposition of law. But the fact of the matter is that the expenses which are subject matter of ground nos: 1 and 2 are*
>
> *exclusive and not common. It is amply borne out from the assessment order, where the AO has reproduced the reply filed by the assessee stating that these expenses were exclusive. Relevant part of such contention advanced on behalf of the assessee has been extracted verbatim in para 2.1 of this order. The AO has no where controverted this submission. Thus, it follows that the assessee's contention of these amounts representing exclusive head office, expenses*

was accepted by the AO. Once the amount is found to be exclusive expenditure incurred by the head office towards the Indian branch, the same is required to be allowed in terms of section 37(1), without clubbing it with shared head office expenses as per sec. 44C. This, submission of the Revenue is jettisoned as shorn of merits. Accordingly, we hold that no adverse inference can be drawn against the assessee on this issue and such exclusive expenses incurred by the assessee are required to be allowed as deduction u/s 37(1) without any reference to section 44C. These two grounds are therefore, allowed."

(Emphasis Supplied)

9. The appellant challenged the order passed by the Tribunal referred to above before the Bombay High Court by way of Income Tax Appeal No. 1294 of 2013. However, before the High Court, the appellant's counsel conceded that the question regarding the application of Section 44C for the exclusive expenditure incurred by the head office for the Indian branches had been decided against the Revenue by a division bench of the High Court in ***Emirates Commercial Bank*** (supra). As a result, the High Court, by way of its impugned order dated 01.04.2015, dismissed the Revenue's appeal on the said issue.

10. In such circumstances referred to above, the appellant is before this Court with the present appeal.

(ii) Civil Appeal No. 4451 of 2016

11. M/s Oman International Bank, the respondent-assessee, filed its return of income for AY 2003-04 on 28.11.2003, declaring a loss of INR 71,79,69,260. In the return, the respondent claimed a deduction of INR 21,63,436 towards expenses specifically incurred

by the head office for the Indian branches. The respondent was asked to justify such a claim for deduction.

12. The respondent vide letter dated 16.03.2006 provided the following details with regard to the expenditure incurred by the head office specifically for the Indian branches:

S.No	Item	Amount (Rs)
1.	Travelling Expenses	21,14,096
2.	Certification Fees	49,340
	Total	**21,63,436**

13. The respondent claimed that the travelling expenses included travel fares, hotel charges, and other costs incurred by the head office for staff travelling to India for various purposes, such as local advisory board meetings, training, internal audits, staff meetings, etc. Additionally, the certification fees were for the charges paid to auditors for issuing certificates of expenses incurred by the head office chargeable to the Indian branches of the bank, for the year ending March 31, 2003.

14. The stance of the respondent was that since the expenses referred to above were incurred specifically for the Indian branches, they would fall outside the scope of Section 44C of the Act, 1962, and were allowable as deductions under Section 37 of the Act, 1961. It claimed that the deduction under Section 44C applies to common head office expenses attributable to Indian branches.

15. The Assessing Officer, *vide* its Order dated 20.03.2006, disagreed with the explanation offered by the respondent and held that both the above-mentioned expenses fell within the purview of Section 44C and thus are bound by the ceiling limit set thereunder.

16. Aggrieved by the Order of the Assessing Officer referred to above, the respondent appealed to the Commissioner of Income Tax (Appeals)-XXXIII, Mumbai. The Commissioner allowed the respondent's appeal by relying on its previous years' decisions for AY 2001-2002 and 2002-2003, respectively, where an identical question was decided in favour of the respondent, consistent with the Bombay High Court's decision in ***Emirates Commercial Bank*** (supra). Subsequently, the Revenue's appeal to the Income Tax Appellate Tribunal on the said issue also came to be dismissed based on the decision in ***Emirates Commercial Bank*** (supra).

17. Finally, by the impugned order dated 28.07.2015, the Bombay High Court also ruled against the Revenue on the aforementioned issue. The pertinent extract from the impugned order states as follows:

> *"4.So far as question No.3 is concerned, it is agreed between the parties that the question as arising herein stands concluded in favour of the respondent-assessee and against the revenue. This is so, as identical question was raised in revenue's appeals in respect of Assessment Years 1998-99 and 1999-2000 in Income Tax Appeal Nos.1775 of 2013 and 1789 of 2013 to this Court and the same was not entertained by. an order dated 1 July 2015. This was by following the decision of this Court in C.I.T. v/s Emirates Commercial Bank Ltd., reported in 262 I.T.R. 55, which covers issue in favour of the respondent- assessee. Hence, question No.3. does not give rise to any substantial question of law and hence not entertained."*

18. In such circumstances referred to above, the appellant is before this Court with the captioned appeal. In the captioned appeal, the Revenue also raised an additional issue regarding interest received

from the head office. However, this issue was neither pressed nor argued before us in the captioned appeal. In such circumstances, we have addressed ourselves to the solitary issue of 'head office expenditure' under Section 44C of the Act, 1961.

B. <u>Relevant Provisions</u>

19. The relevant portion of Section 37 of the Act, 1961, reads as follows:

> *"**37. General.** (1) Any expenditure (not being expenditure of the nature described in Sections 30 to 36 and not being in the nature of capital expenditure or personal expenses of the assessee), laid out or expended wholly and exclusively for the purposes of the business or profession shall be allowed in computing the income chargeable under the head "Profits and gains of business or profession" [...]"*

20. The relevant portion of Section 44C of the Act, 1961, reads as follows:

> *"**44C. Deduction of head office expenditure in the case of non-residents.** Notwithstanding anything to the contrary contained in Sections 28 to 43-A, in the case of an assessee, being a non-resident, no allowance shall be made, in computing the income chargeable under the head "Profits and gains of business or profession", in respect of so much of the expenditure in the nature of head office expenditure as is in excess of the amount computed as hereunder, namely:*
>
> *(a) an amount equal to five per cent of the adjusted total income; or*
>
> *(b) [* * *]*
>
> *(c) the amount of so much of the expenditure in the nature of head office expenditure incurred by the assessee as is attributable to the business or profession of the assessee in India:*
>
> *whichever is the least:*
>
> *Provided that in a case where the adjusted total income of the assessee is a loss, the amount under*

clause (a) shall be computed at the rate of five per cent of the average adjusted total income of the assessee.

Explanation – For the purposes of this section,—

[…]

(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 execution and general administration as may be prescribed."

C. <u>Submissions on behalf of the appellant</u>

21. Mr Raghavendra P Shankar, the learned Additional Solicitor General appearing on behalf of the appellant, submitted the following:

<u>*Statutory Scheme and Rationale for introducing Section 44C*</u>

a) Section 44C applies when two conditions are satisfied: (i) the assessee is a non-resident, and (ii) the deduction claimed pertains to 'head office expenditure' a term defined broadly in the Explanation to Section 44C. Under Section 44C, the allowable deduction is strictly limited to the lower of two amounts: a fixed cap of 5% of the 'adjusted total income'

(clause a), or the actual expenditure specifically attributable to the Indian business (clause c). Essentially, clause (a) serves as an absolute ceiling on claims. While clause (c) assesses the actual expenditure incurred that is attributable to the Indian branches, it cannot exceed the statutory limit. Even if the verifiable expenditure is higher, the deduction is mandatorily restricted to the 5% cap.

b) The legislative intent behind Section 44C, as clarified by the Memorandum to the Finance Bill, 1976, and CBDT Circular No. 202, was to address a specific mischief concerning the taxation of non-resident entities. Parliament observed that foreign companies with branches in India often reduced their domestic tax liability by inflating claims for head office administrative expenses. Since the supporting books of account for these claims were maintained abroad, it was essentially impossible for Indian revenue authorities to scrutinise or verify them. Furthermore, Parliament also recognised that dividing a common pool of global expenses to determine what is attributable to India involves a significant degree of subjectivity, which is largely impossible to verify.

c) For example, if an executive is appointed to manage the affairs of the Asia-Pacific region of the Bank and receives a salary from the head office located outside India, it becomes necessary to make a normative assessment of how much of her time she spends solely in overseeing the operations of the Indian branches. Consequently, it needs to be determined what percentage of her salary can be claimed by the assessee as a head office expenditure deductible when calculating the taxable income under the Act, 1961. The

Parliament observed that these difficulties faced by the Revenue were being exploited by some assessees to submit inflated claims for deductions, which were often difficult for the Revenue to verify. In this context, the simplified mechanism under Section 44C was introduced.

d) To cure the mischief, Section 44C replaces the need for subjective, case-by-case verification with an objective statutory ceiling. Consequently, the amendment sets a mandatory limit: the deduction is capped at the lesser of the actual attributable expenditure (under clause c) or 5% of the adjusted total income (under clause a). This mechanism thus serves to reduce the evidentiary burden on the assessee and also prevents or curtails inflated deductions.

Applicability of Section 44C vis-à-vis Section 37

e) Section 44C begins with a non-obstante clause ("notwithstanding anything to the contrary…"), which explicitly provides it with overriding legal effect over Sections 28 to 43A, including Section 37. As a result, Section 44C functions as a special provision governing 'head office expenditure' for non-residents. Since Section 37(1) is a general provision, it only applies to head office expenditure not explicitly covered under Section 44C. Therefore, once an expense qualifies as 'head office expenditure' under the Explanation, it must be processed strictly under Section 44C. Otherwise, the section would be rendered meaningless. In the present appeals, the expenditure claimed by the respondents, incurred by the head offices located outside India, squarely falls within the said definition, being

executive and general administrative expenditure incurred outside India.

f) The primary contention of the respondents is that Section 44C is wholly inapplicable to expenditure incurred exclusively for Indian branches, thereby allowing them to claim such expenses in full under Section 37(1) without being subject to the restrictive monetary cap under Section 44C. This claim essentially requires that the definition of 'head office expenditure' be read down to be limited to expenditure incurred at the head office overseas for the global operations as a whole (as opposed to those expenses stated to be exclusively for or in connection with the Indian operations). However, this interpretation runs contrary to the plain language of the statute, which provides an inclusive and broad definition of 'head office expenditure' in the Explanation to Section 44C.

g) Even if the respondents' assertion was accepted, that the expenses were incurred *exclusively* for the Indian branch, it would still make no difference to the operation of the law. Since the nature of the expense squarely falls within the statutory definition of 'head office expenditure', the mere fact that it is exclusively attributable to the Indian business only serves to situate the claim within Section 44C(c). Any amount calculated under clause (c) is mandatorily subject to the overall ceiling provided in clause (a). Therefore, proving exclusivity does not liberate the expense from Section 44C.

h) Accepting the respondents' assertion would reintroduce the exact mischief Section 44C was designed to prevent. The

provision was enacted specifically to eliminate the difficult task of verifying foreign head office expenditure claims. Allowing the respondents to bypass the statutory cap by proving exclusivity would defeat this purpose and simply bring back the burden of verification. Section 44C mandates that even expenses incurred exclusively for Indian operations remain subject to the 5% ceiling. This cap would be rendered meaningless if unlimited deductions were permissible under Section 37.

Reliance on the decisions in Emirates Bank and Rupenjuli Tea is misplaced

i) The reliance on the judgment in ***Emirates Commercial Bank*** (supra) is completely misplaced. In ***Emirates Commercial Bank*** (supra), the decision was based on a concurrent finding that the head office had actually recovered the disputed expenditure from the Indian branch by issuing a specific debit note. As a result, the Court considered the expense as one effectively incurred by the Indian branch itself, thus excluding it from the scope of head office expenditure. In stark contrast, the present appeals involve no such financial recovery or debit note transaction. The expenditure continues to be incurred solely at the head office level. Therefore, the ratio of ***Emirates Commercial Bank*** (supra) is limited strictly to its particular facts and cannot be applied to the present case.

j) Even if ***Emirates Commercial Bank*** (supra) were to be applied, it does not establish good law as it introduces an artificial distinction between 'common' and 'exclusive' expenditure that is entirely absent from the plain language of Section 44C. The definition of 'head office expenditure'

encompasses both categories without exception. Moreover, such an interpretation renders the insertion of Section 44C a nullity, effectively reinstating the pre-amendment position where unlimited deductions could be claimed under Section 37.

k) Reliance on the Calcutta High Court's decision in ***Rupenjuli Tea Co. Ltd v. Commissioner Income Tax,*** reported in **1989 SCC OnLine Cal 410**, is also misplaced as that decision was based on very peculiar factual circumstances. In that case, although the assessee had a head office in London, its entire business operations were conducted solely in India. The Court reasoned that Section 44C contemplates allocating expenses between Indian and foreign businesses. Since the specific assessee had no business operations outside India, the concept of attribution or allocation was impossible, rendering the section inapplicable. In stark contrast, the respondents in the present appeals are global entities with branches across the world. Consequently, the logic of ***Rupenjuli Tea*** (supra) does not apply to the respondents.

22. In the circumstances referred to above, the learned counsel prayed that, there being merit in his appeals, they be allowed.

D. <u>Submissions on behalf of the respondents</u>

23. Mr. Percy Pardiwala and Mr. Aniruddha A. Joshi, the learned senior counsel appearing for the respondents, submitted the following:

a) Under Section 29 of the Act, 1961, the income chargeable under the head "Profits and gains from business or profession" is to be computed in accordance with the provisions contained in Sections 30 to 43D. None of the aforementioned sections require that, in order to qualify as an allowable deduction, the expenditure must be incurred in India. Respondents have claimed a deduction under Section 37(1) of the Act, 1961, which provides that any expenditure laid out or expended wholly and exclusively for the purposes of business or profession, not being in the nature of capital expenditure or personal expenditure, shall be allowed as a deduction in computing the income chargeable under the head "Profits and gains from business or profession". Therefore, it is clear that there is no restriction under Section 37(1) of the Act that, for an expenditure to be deductible under it, it must be incurred in India.

b) This position is further supported by paragraph 3 of Article 7 of the Double Taxation Avoidance Agreement between the Governments of India and the USA, which is applicable when dealing with respondent M/s American Express Bank, as it is an entity incorporated in the United States of America. Paragraph 3 of Article 7 requires that, in determining the profits of a permanent establishment, expenses incurred for the purposes of such an establishment shall be allowed as a deduction, whether incurred within the State where the establishment is situated or elsewhere. It further states that such expenditure must be allowed in accordance with, and subject to, the limitations provided under the local laws of

the country in which the permanent establishment is situated, which, in this case, is India. Therefore, even under the Double Taxation Avoidance Agreement, the expenditure incurred by the respondent M/s American Express Bank, for the purposes of its Indian branches, is an allowable deduction.

c) The reliance placed by the Revenue on Section 44C of the Act, 1961, to restrict the deduction that is otherwise allowable under Section 37(1) of the Act, 1961, is misplaced. Section 44C is not a provision which grants a deduction. The deduction must be allowed in accordance with Section 37 (1).

d) For Section 44C to apply two conditions need to be satisfied: (i) first, the expenditure in question must necessarily fall within the definition of the head office expenditure as defined in clause (iv) of the Explanation below Section 44C. and (ii) secondly, by virtue of clause (c), expenditure incurred by the assessee should be in the nature of a 'common' expenditure, and only a part of it should be attributable to the business of the assessee that is carried on in India.

e) In the present case, a part of the expenditure incurred by the respondents will not be in the nature of the head office expenditure but, even assuming the entirety of the expenditure falls within the definition of head office expenditure, the same is not attributable to the business of the assessee in India but, is in fact exclusively incurred for the business operations in India. It is this distinction between 'expenditure attributable to business in India' and

'expenditure exclusively incurred for business in India' that is crucial.

f) This distinction between 'attributable expenditure' and 'exclusive expenditure' has been recognised and applied by the Calcutta High Court in ***Rupenjuli Tea*** (supra) and the Bombay High Court in ***Emirates Commercial Bank*** (supra). Further, the distinction sought to be drawn by the appellant between the facts in the present appeals and the decisions in ***Rupenjuli Tea*** (supra) and ***Emirates Commercial Bank*** is without any basis.

g) The principle enunciated by the Calcutta High Court in ***Rupenjuli Tea*** (supra) was that if the expenditure is incurred exclusively for Indian operations, then, the provision of Section 44C could not be invoked to disallow a part of the expenditure so incurred. The fact that, in the case of the assessee therein, the business was carried on only in India, albeit the head office was situated in the UK, was not a distinguishing factor as sought to be made out. This is further supported by the Delhi High Court's decision in ***DIT vs. Ravva Oil (Singapore) Private Limited,*** reported in **2006 SCC OnLine Del 1742**.

h) The burden is on the Revenue to prove that the expenditure was not incurred solely for Indian operations, and therefore, the provisions of Section 44C apply. The authorities below have accepted that the expenditure incurred by the assessee was exclusively for Indian operations, and accordingly, it should be allowed in its entirety without being restricted by the limitations provided under Section 44C of the Act, 1961.

i) The Revenue proceeds based on the misconception that a deduction is allowable under Section 44C of the Act, 1961, the moment expenditure is incurred outside India by the head office, and therefore its allowability is subject to the limitations outlined in that section. This interpretation does not align with the language or the legislative intent behind the introduction of Section 44C. As per the Memorandum explaining the provisions of the Finance Bill, 1976, the scope of the provision is limited to expenditure that constitutes head office expenses, which are claimed on a proportionate basis, because the purpose was to address difficulties related to the deduction of such proportionate claims. Therefore, it must be understood that expenditure incurred outside India solely for Indian operations is not governed by the restrictions of Section 44C.

j) To illustrate the scope of Section 44C, consider a US corporation employing a General Counsel. If this counsel exclusively handles legal issues for the Indian branch, their entire salary is deductible under Section 37(1) without the limitations of Section 44C, as it is a direct expense for India. Conversely, if the counsel manages legal affairs globally, including the US office and other international branches, and only a portion of their cost is allocated to India, this expense falls under the 'executive and general administration' definition of Section 44C. In this latter scenario, because the counsel is managing 'any office outside India' rather than solely the Indian operations, the allocated cost is subject to the statutory cap.

k) The judgment of ***Emirates Commercial Bank*** (supra), relied upon by the Bombay High Court in the impugned orders, was the subject matter of further appeal to this Court in ***CIT vs. Emirates Commercial Bank Ltd.*** (*Civil Appeal No. 1527 of 2006*) and *vide* order dated 26.08.2008 the same was dismissed following the view taken by this Court in ***CIT vs. Deutsche Bank A.G***. (*Civil Appeal No. 1544 of 2006*) and ***DIT vs. Ravva Oil (Singapore) Pvt. Ltd***. (*Civil Appeal No.5822 of 2007*). Thus, 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 and consequently, the expenditure is allowable in its entirety without being subjected to the ceiling provided therein.

24. In the circumstances referred to above, the learned counsels prayed that, there being no merit in the appeals, they be dismissed.

E. <u>Issue to be determined</u>

25. Having heard the learned counsels appearing for the parties and having gone through the materials on record, the following question falls for our consideration:

a) Whether expenditure incurred by the head office of a non-resident assessee exclusively for its Indian branches falls within the ambit of Section 44C of the Act, 1961, thereby

limiting the permissible deduction to the statutory ceiling specified therein?

F. Analysis

26. Having regard to the rival contentions canvassed on either side, it is evident that the core of the disagreement concerns the scope of Section 44C of the Act, 1961. The appellant seeks to interpret it more broadly, encompassing not only the expenditure incurred by the head office attributable to various foreign branches, i.e., 'common' expenditure, but also the 'exclusive' expenditure incurred specifically for the Indian branches. The respondents, however, aim to restrict the scope of Section 44C to include only 'common' expenditure. This is best illustrated by the example provided by the respondents. If a general counsel is appointed by the head office solely to handle Indian matters, it constitutes exclusive expenditure. However, if a general counsel is appointed by the head office to handle matters in branches across the globe (including India), it constitutes common expenditure. The appellant contends that Section 44C applies in both cases, whereas the respondents argue that it is only applicable in the latter scenario. In other words, the respondents argue that for exclusive expenditure, Section 44C is wholly inapplicable, and therefore, the deduction of the expenditure is not subject to the ceiling limit set out therein.

27. Before addressing the aforementioned issue, we consider it appropriate to first discuss certain principles that guide the interpretation of taxing statutes.

(i) Basic Principles of Interpretation

28. It is a well-established rule that taxing statutes have to be strictly construed. In ***Commissioner of Income Tax, Madras v. Kasturi & Sons Ltd***, reported in **(1999) 3 SCC 346,** this Court was determining the meaning of the word 'moneys' in the expression 'money's payable' under Section 41(2) of the Act, 1961. In that context, the Court referenced the following concerning the strict interpretation of taxation statutes:

> *"9. The principle that a taxing statute should be strictly construed is well settled. In Principles of Statutory Interpretation by Justice G.P. Singh, 6th Edn., 1996, the law is stated thus:*
>
> > *"The well-established rule in the familiar words of LORD WENSLEYDALE, reaffirmed by LORD HALSBURY and LORD SIMONDS, means: 'The subject is not to be taxed without clear words for that purpose; and also that every Act of Parliament must be read according to the natural construction of its words.' In a classic passage LORD CAIRNS stated the principle thus: 'If the person sought to be taxed comes within the letter of the law he must be taxed, however great the hardship may appear to the judicial mind to be. On the other hand, if the Crown seeking to recover the tax, cannot bring the subject within the letter of the law, the subject is free, however apparently within the spirit of law the case might otherwise appear to be. In other words, if there be admissible in any statute, what is called an equitable construction, certainly, such a construction is not admissible in a taxing statute where you can simply adhere to the words of the statute.' VISCOUNT SIMON quoted with approval a passage from ROWLATT, J. expressing the principle in the following words: 'In a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used.' Relying upon*

this passage LORD UPJOHN said: 'Fiscal measures are not built upon any theory of taxation.' ""

(Emphasis Supplied)

29. The principle outlined above has been articulated by this Court in similar terms in a plethora of cases. Thus, it is clear that when interpreting taxation statutes such as the Act, 1961, the following aspects must be strictly observed: (i) equitable considerations, presumptions, or assumptions should not be taken into account, and (ii) the statute should be interpreted according to what is clearly expressed. Thus, if the court is satisfied that a case falls strictly within the provisions of the law, the subject can be taxed, regardless of the consequences such a levy of tax might have [*See* ***A.V. Fernandez v. The State of Kerala***, reported in **1957 SCC OnLine SC 23** & ***Commissioner of Sales Tax, U.P v. Modi Sugar Mills Ltd***, reported in **1960 SCC OnLine SC 118**].

30. Another fundamental rule of statutory interpretation is that when the language of the statute is plain and unambiguous, allowing only one meaning, then no issue of statutory construction arises as the statute speaks for itself. The reasoning behind this principle is that when the words are clear and plain, the courts are obliged to accept the expressed intention of the Legislature [See ***State of Uttar Pradesh & Ors v. Dr. Vijay Anand Maharaj***, reported in **1962 SCC OnLine SC 12**, ***M.V. Joshi v. M.U. Shimpi & Anr***, reported in **1961 SCC OnLine SC 56** & ***Godrej and Boyce Manufacturing Company Limited v. Deputy Commissioner of Income Tax, Mumbai,*** reported in **(2017) 7 SCC 421**].

31. While, at first glance, the principle of plain meaning, as referred to above, may seem simple and self-contained, it is crucial to understand the nuances involved when applying it to disputes

surrounding statutory interpretation. The same has been lucidly spelt out in the *Principles of Statutory Interpretation by Justice G.P. Singh,* fourteenth edition (2016), and reads thus:

> *"It may look somewhat paradoxical that plain meaning rule is not plain and requires some explanation. The rule, that plain words require no construction, starts with the premise that the words are plain, which is itself a conclusion reached after construing the words. It is not possible to decide whether certain words are plain or ambiguous unless they are studied in their context and construed. The rule, therefore, in reality means that after you have construed the words and have come to the conclusion that they can bear only one meaning, your duty is to give effect to that meaning.*
>
> *The true import of the rule is well brought out in an American case where JUDGE PEARSON after reaching his conclusion as to the meaning of the statutory language said: "That seems to me a plain clear meaning of the statutory language in its context. Of course, in so concluding I have necessarily construed or interpreted the language It would obviously be impossible to decide that language is 'plain' (more accurately that a particular meaning seems plain) without first construing it. This involves far more than picking out dictionary definitions of words or expressions used. Consideration of the context and setting is indispensable properly to ascertain a meaning. In saying that a verbal expression is plain or unambiguous, we mean little more than that we are convinced that virtually anyone competent to understand it and desiring fairly and impartially to ascertain its significance would attribute to the expression in its context a meaning such as the one we derive, rather than any other; and would consider any different meaning by comparison, strained, or far-fetched, or unusual or unlikely"*
>
> *For a proper application of the rule to a given statute, it is necessary, therefore, to determine first whether the language used is plain or ambiguous. As pointed out by LORD BUCKMASTER, "by 'any ambiguity' is meant a phrase fairly and equally open to diverse meanings". "A provision is not ambiguous", says LORD REID, "merely because it contains a word which in different contexts is capable of different meanings". LORD REID, proceeds to add: "It would be hard to find anywhere a sentence of any length which does not*

> *contain such a word. A provision is, in my judgment, ambiguous only if it contains a word or phrase which in that particular context is capable of having more than one meaning". To decide, therefore, whether certain words are clear and unambiguous, they must be studied in their context [...] Unambiguous means 'unambiguous in context'. So ambiguity need not necessarily be grammatical ambiguity but one of appropriateness of the meaning in a particular context."*
>
> (Emphasis Supplied)

32. From the above extract, the following principles regarding statutory interpretation are evident: (i) first, deciding whether statutory language is 'plain' inherently involves a process of construction. One cannot simply declare words to be clear without first studying them, and (ii) secondly, true unambiguity depends on context, not just grammar. Words cannot be judged in isolation, as most words are capable of multiple meanings. A provision is seen as unambiguous only when, after being examined in its specific context, almost anyone competent would assign to it a single, appropriate meaning to the exclusion of others, i.e., the words are unambiguous in the context of the provision in question.

33. This aspect of interpreting the words of a statute in their specific context has also been affirmed by this Court. In ***Commissioner of Gift Tax, Madras v. N.S. Getty Chettiar***, reported in **(1971) 2 SCC 741**, this Court examined the meaning that should be given to words "disposition, conveyance, assignment, settlement, delivery, payment, and alienation" appearing in Section 2(xxiv) of the Gift Tax Act, 1958. The court observed that the true meaning of statutory language cannot be understood merely by holding the text in one hand and a dictionary in the other. Instead, the words must be interpreted by considering the context in which they are used and the purpose they are meant to serve. In ***Reserve Bank of***

India v. Peerless General Finance and Investment Co. Ltd. & Ors, reported in **(1987) 1 SCC 424**, this Court reiterated that interpretation depends on both the text and the context, where the text is the texture and the context provides the colour.

34. A natural extension of both the principles discussed earlier and a well-known principle of interpretation is that, if the language of the enactment is clear and unambiguous, it would be unjustifiable for the courts to add words on the ground that such additions would better enable carrying out the legislature's presumed intentions. This is because, in all ordinary cases, the language employed is the determinative factor for determining legislative intention [See ***Sri Ram Narain Medhi & Ors v. State of Bombay***, reported in **1958 SCC OnLine SC 53, *Dadi Jagannadham v. Jammulu Ramulu & Ors***, reported in **(2001) 7 SCC 71**]. Furthermore, this reluctance to give the courts the authority to add or read words into the statute is also based on the fact that it is not the court's duty to reframe the legislation, as the power to 'legislate' has not been granted to it [See ***Commissioner of Income Tax, Kerala v. Tara Agencies***, reported in **(2007) 6 SCC 429**].

35. However, this is not a hard and fast rule, and in certain exceptional circumstances, the court can add or read words into the statute. The circumstances which would allow for such a departure from the ordinary rule have been succinctly captured in *Principles of Statutory Interpretation by Justice G.P. Singh*, fourteenth edition (2016), as follows:

> *"As already noticed it is not allowable to read words in a statute which are not there, but "where the alternative lies between either supplying by implication words which appear to have been accidentally omitted, or adopting a construction which deprives certain existing words of all meaning, it is*

permissible to supply the words" A departure from the rule of literal construction may be legitimate so as to avoid any part of the statute becoming meaningless. Words may also be read to give effect to the intention of the Legislature, which is apparent from the Act read as a whole. Application of the mischief rule or purposive construction may also enable reading of words by implication when there is no doubt about the purpose which the Parliament intended to achieve. But before any words are read to repair an omission in the Act, it should be possible to state with certainty that these or similar words would have been inserted by the draftsman and approved by Parliament had their attention been drawn to the omission before the Bill passed into law."

36. If legislative intention is to be principally assessed based on the language of the enactment, then under what circumstances should the objects and purposes behind a legislation be taken into account? This Court in ***Shashikant Laxman Kale v. Union of India***, reported in **(1990) 4 SCC 366**, established a distinction between the purpose or object of an enactment and the legislative intent. It held that while the former is to provide a remedy for the malady, the latter relates to the meaning or exposition of the remedy as enacted. Thus, the object and purpose are elements that are taken into account more concretely when the court is applying the mischief rule of interpretation.

37. The mischief rule of interpretation, also known as Heydon's Rule, was established in England as far back as 1584. This rule states that for the sure and true interpretation of all statutes in general, four things are to be discerned and considered:

    (a) The Prior Law: What the law was before the new Act was passed?

    (b) The Problem (Mischief): The specific defect or issue that the old law failed to address.

(c) The Solution (Remedy): The new method Parliament introduced to fix that problem.

(d) The Reason: The underlying logic or purpose behind this new solution.

This rule was considered necessary to guide judges away from subtle inventions or loopholes that might allow the mischief to continue. The mischief rule has been widely adopted by this Court in various scenarios.[See ***Bengal Immunity Company Limited v. State of Bihar & Ors***, reported in **(1955) 1 SCC 763**] & ***Shashikant Laxman*** (*supra*)]

38. As noted above, in most circumstances, the legislative intention is to be discerned from the words used in the statute itself, and the mischief rule of interpretation should not be invoked in an unfettered manner. This Court has held that considering the object and purpose is relevant only when the words in question are ambiguous and reasonably capable of more than one meaning [See ***Commissioner of Income Tax, MP v. Shrimati Sodra Devi***, reported in **1957 SCC OnLine SC 33** & ***Kanai Lal Sur v. Paramnidhi Sadhukhan,*** reported in **1957 SCC OnLine SC 8**].

39. However, as recognised above, even determining the 'plain' meaning involves the contextual interpretation of a word, and the object and purpose of a relevant statute are elements that form part of that context. Yet, there is a vital distinction: while the object and purpose may help illuminate the context, they cannot override the text. Once the words are examined in their context, including considerations of object and purpose, and are found to be clear, unambiguous, and capable of only one meaning, then the plain meaning rule prevails, and considerations of object and purpose

cannot be invoked to alter, control, or distort the clear mandate of the statutory language.

40. A brief summary of the aforesaid discussion is as follows:

a) Taxation statutes require strict interpretation.

b) Where the words are plain and unambiguous, the court is bound to give effect to their plain meaning.

c) The determination of whether language is 'plain and unambiguous' is not a mechanical exercise, and it necessitates interpreting words within their specific context rather than in isolation.

d) The legislative intent is primarily to be gathered from the specific words used by the legislature. Reference to the object and purpose becomes crucial in those situations where the language is ambiguous and capable of multiple constructions.

e) Under ordinary circumstances, it is impermissible for the Court to add or read words into the statute, especially when the language is plain and unambiguous, on the notion that such words would appear to better serve the legislative object or purpose.

(ii) Interpreting Section 44C of the Act, 1961

41. With the foregoing principles of statutory interpretation as our guide, we now proceed to examine the specific language of Section 44C of the Act, 1961, to determine whether the provision, in its true

scope, contemplates a distinction between 'common' and 'exclusive' head office expenditure.

42. For our analysis, Section 44C of the Act, 1961 can be divided into two separate but interconnected parts. The first is the operative or substantive provision, which outlines the conditions for applying the section and details the computation mechanism. The second is the definitional provision in the Explanation, which clarifies the scope of the term 'head office expenditure'. The meaning given under the Explanation serves as the statutory trigger, as only when an expense falls within the ambit of this meaning does the operative framework of Section 44C come into effect.

43. Let us first examine the operative part of Section 44C. For clarity, the operative part of Section 44C can be divided into the following distinct components:

a) Section 44C applies specifically to non-resident assessees.

b) Section 44C governs the computation of income chargeable under the specific head "Profits and gains of business or profession".

c) Section 44C mandates that no allowance under the aforementioned head shall be made in respect of 'head office expenditure' to the extent that such expenditure is in excess of the lesser of the following two amounts: (a) an amount equal to five per cent of the adjusted total income; or (b) the amount of head office expenditure attributable to the business or profession of the assessee in India.

d) Section 44C is a non-obstante provision as it starts with a phrase: *notwithstanding anything to the contrary contained in Sections 28 to 43A*. Consequently, it has an overriding

effect on Sections 28 to 43A for the specific purpose of computing head office expenditure of a non-resident assessee.

44. We have no doubt that for an expense to be governed by the tenets of Section 44C of the Act, 1961, two conditions must be fulfilled: (i) the assessee should be a non-resident, and (ii) the expenditure should be a 'head office expenditure'. If both conditions are met, then Section 44C, being a non-obstante provision, will apply regardless of whether its principles contravene Sections 28 to 43A respectively.

45. The respondents may be correct in stating that for an expenditure to be deductible under Section 37(1), it does not necessarily have to have been incurred in India. Furthermore, they are also correct in stating that Section 44C only seeks to put a ceiling on the 'head office expenditure' that can be allowed as a deduction. However, their argument that Section 44C cannot restrict deductions that are otherwise allowable under Section 37(1) is misplaced. If the expenditures meet the above two conditions, Section 44C governs the quantum of allowable deduction. This means that even if such head office expenditure can be allowed as a deduction under Section 37(1), it would not be permitted if it exceeds the ceiling limit set under Section 44C. To decide otherwise would be to overlook the non-obstante nature of Section 44C.

46. It is prudent to closely examine & understand the meaning attributed to the term 'head office expenditure' under Section 44C. This is because, in the context of the question before us today, if the meaning assigned to 'head office expenditure' under Section 44C is taken to suggest that it only includes common expenditure incurred by the head office, then the issue would stand resolved in

favour of the respondents. Consequently, as contended by the respondents, for exclusive expenditure incurred by the head office for the Indian branches, Section 44C would not apply, and a deduction could be claimed under other sections, including Section 37, without adhering to the ceiling limits set under Section 44C.

47. Upon close analysis of the meaning assigned to the words 'head office expenditure' under Section 44C of the Act, 1961, it does not appear that the legislature has limited the scope to cover only common expenditure incurred by the head office for the benefit of various branches, including those in India. In fact, the Explanation is unambiguous in stating that for an expenditure to be considered as head office expenditure, it must meet two conditions only: (i) it has to be incurred outside India by the assessee, (ii) it must be expenditure of a nature related to executive and general administrative expenses, including those specified in clauses (a) to (d), respectively, of the Explanation.

48. Thus, the Explanation focuses solely on two aspects: where the expense was incurred and the nature of that expense. It does not matter whether the expense was a common expense or an expense exclusively for the Indian branch, so long as the expense incurred is for the business or profession. The text provides no indication that the expenditure must be of a common or shared nature. Therefore, the meaning of the Explanation is clear, straightforward, and unambiguous. If we were to accept the respondents' contention, we would be forced to add words to the statute that simply do not exist. As noted above, adding words is generally not permissible, especially when the plain meaning of the statute is unambiguous. To illustrate, the table below depicts the words that

would need to be added to the Explanation if the respondents' contention were to be accepted:

Explanation as provided under Section 44C of the Act, 1961	**Explanation under Section 44C of the Act, 1961, as would be implied if the respondents' contention were to be accepted**
"head office expenditure" means executive and general administration expenditure incurred by the assessee outside India, [...]	*"head office expenditure" means* ***common and shared*** *executive and general administrative expenditure incurred outside India, [...]* OR *"head office expenditure" means executive and general administration expenditure incurred by the assessee outside India,* ***except where such expenditure is incurred exclusively for the Indian branch*** *[...]*

49. The necessary corollary of the aforesaid discussion is that, irrespective of whether the expenditure was 'common' or 'exclusive', the moment it is incurred by a non-resident assessee outside India and falls within the specific nature described in the Explanation, then Section 44C would come into play and become applicable. At

this juncture, it is essential to consider and evaluate the respondents' contention that an additional condition must be fulfilled for Section 44C to apply.

50. According to the respondents, by virtue of clause (c) of Section 44C of the Act, 1961, only when the expenditure is of a common nature, and not exclusive expenditure incurred for the Indian branches, would the section become applicable. They rely on the Calcutta High Court's decision in ***Rupenjuli Tea*** (supra) to support their argument.

51. In ***Rupenjuli Tea*** (supra), the assessee was a company with its head office in the United Kingdom. However, all of its business operations were conducted in India, with only statutory functions being performed from the head office in the United Kingdom. During the assessment year in question, the assessee incurred expenditure of INR 4,70,074 at its head office on account of secretarial remuneration, warehouse charges, brokerage, director's fees, and emoluments. The assessee claimed the entire amount as business expenditure in computing its total income chargeable to tax in India under the Act, 1961. However, the below authorities held that the allowance of the head office expenditure was subject to the limits prescribed under Section 44C and accordingly disallowed the sum of INR 21,441. Before the High Court, the assessee argued that Section 44C was inapplicable to the facts and circumstances of the case because the company had no business operations outside India, and its London head office was solely attending to statutory functions. Therefore, the expenses incurred at the head office were entirely connected with its business operations in India. The Calcutta High Court, after taking into

account the object and purpose behind inserting Section 44C, held as follows:

> *"On a combined reading of the said Explanatory Memorandum as well as the said circular issued by the Central Board of Direct Taxes, it is clear that this section is intended to be made applicable only in the cases of those non-residents who carry on businesses in India through their branches. It has been made very clear that the said section was introduced with a view to getting over difficulties in scrutinising and verifying claims in respect of general administrative expenses incurred by the foreign head offices in so far as such expenses can be related to their business or profession in India having regard to the fact that foreign companies operating through branches in India sometimes try to reduce the incidence of tax in India by inflating their claims in respect of head office expenses. The objective behind the aforesaid legislation is also clear from a bare perusal of the earlier portion of the said section which provides, inter alia, the manner in which the disallowable amount is to be computed. The expenditure to be disallowed is the difference between the expenditure in the nature of head office expenditure and the least of the following three computations:*
>
> *(a) an amount equal to 5 per cent. of the adjusted total income;*
> *(b) an amount equal to the average head office expenditure;*
>
> *(c) the amount of so much of the expenditure in the nature of head office expenditure incurred by the assessee as is attributable to the business or profession of the assessee in India.*
>
> *The language of clause (c) clearly postulates that the expenditure in question should be incurred not only in connection with the business in India, but also business outside India. In other words, a part of the expenditure at least must not be attributable to the business operations carried on in India. Where an assessee does not have any business overseas and the entire operations are carried out by it in this country only, the question of allocating a part of the expenditure in question to the business carried on in India cannot arise.*

In CIT v. B. C. Srinivasa Setty (1981] 128 ITR 294, the Supreme Court held that the charging section and the computation provisions together constitute an integrated code. When there is a case to which the computation provisions cannot apply at all, it is evident that such a case was not intended to fall within the charging section. Referring to section 48(ii), the Supreme Court further observed that this section contemplated an asset in the acquisition of which it was possible to envisage a cost. None of the provisions pertaining to the head "Capital gains" suggests that they include an asset in the acquisition of which no cost at all can be conceived. Further, the date of acquisition of the asset was a material factor in applying the computation provisions pertaining to capital gain; but, in the case of goodwill generated in a new business, it was not possible to determine the date when it came into existence. In view of these observations of the Supreme Court, we are inclined to hold that if any one or more of the base figures forming part of computations under clauses (a), (b) or (c) of section 44C are not conceivable in a particular case, it must be held that the non obstante provisions contemplating disallowance of "head office expenditure" under section 44C would not apply. On a fair reading of clause (c), it appears that the expression "so much of the expenditure ...as is attributable to business.... in India" contemplated that at least a part of the expenditure is referable to a business outside India. In the case before us, it is an admitted position that the assessee-company did not have any business operations outside India and the entire expenditure incurred at its London head office was wholly attributable to its business activities in this country. If that be so, it is clear that clause (c) cannot have any application in this case and, therefore, no disallowance can be made under section 44C in the facts and circumstances of this case.

That section 44C applies only when a foreign company operates through its branches in India is made clear even in the explanatory note appended to the Finance Bill, 1976. [...]

The difficulties of the nature as stated in the said memorandum as well as in the said circular of the Central Board of Direct Taxes cannot exist in a case where the entire head office expenditure is for the purpose of business in India. It is, therefore, clear that the provisions of section 44C

have been introduced to cover cases where a non-resident assessee was incurring expenditure abroad and the business activities of such non-resident assessee were not only confined to India but were also being carried on overseas.

In this view of the matter, we answer the question in the negative and in favour of the assessee."

(Emphasis Supplied)

52. Based on the extracts above, it is evident that the Calcutta High Court's decision was primarily based on the following:

a) Section 44C applies when non-residents conduct business in India through their branches, but not when the entire business activity is carried out in India with the head office outside India, merely performing statutory functions.

b) In situations where the entire business operation is in India and the head office outside India does not undertake any business operations itself, clause (c) would not be applicable. This is because clause (c) envisages that a portion of the expenditure is attributable to the business or profession of the assessee outside India. The phrase "*so much of the expenditure ... as is attributable to business.... in India"* in clause (c) clearly indicates this. If there are no business operations outside India, then there is no question of attribution or allocation.

c) Whenever clause (c) becomes inapplicable to a specific expenditure, Section 44C as a whole will also not apply. Consequently, such expenditure will no longer fall under Section 44C.

53. The Bombay High Court, in ***Commissioner of Income Tax v. Deutsche Bank A.G.***, reported in **2003 SCC OnLine Bom 1286**, had the occasion to address a similar issue. The question before the court was if one of the three parameters listed in clauses (a), (b), and (c) of Section 44C, respectively, fails, then whether the Revenue can ignore the said parameter and grant an allowance based solely on the remaining two parameters. In this case, clause (b) was not fulfilled, and thus, the department considered clauses (a) and (c) of Section 44C, respectively, limiting the deduction to the least of the two. The Bombay High Court concurred with the decision of the Calcutta High Court in ***Rupenjuli Tea*** (supra) and held that, if one of the three parameters is inapplicable, the entire section becomes non-operational and must be ruled out. The relevant observation made by the court is as follows:

> *"6. [...] Now, in the present case, Explanation (iii) which defines average head office expenditure is not applicable because under clause (b) read with Explanation (iii), as it stood at the relevant time, deduction in respect of head office expenses was limited to the annual average of head office expenditure allowed during a base period of three previous years relevant to the assessment years 1974-75, 1975-76 and 1976-77. In the present case, the assessee commenced its business operations only in October 1980. Therefore, clause (b) of section 44C was not attracted. This position is not disputed by the Department. The only argument advanced on behalf of the Department was that since clause (b) was not attracted, it may be ignored and the least of the deductions under clauses (a) and (c) of section 44C be granted. We do not find any merit in the arguments advanced on behalf of the Department. As stated above, section 44C begins with a non obstante clause. It restricts deduction to the least of the three parameters mentioned in clauses (a), (b) and (c) of section 44C. Section 44C begins by a non obstante clause which states that notwithstanding anything to the contrary contained in sections 28 to 43A, deduction in respect of head office expenditure shall be restricted to the least of the three deductions mentioned in clauses (a), (b) and (c).*

Therefore, section 44C overrides the provisions of sections 29 to 37 of the Income-tax Act. Section 44C is not conferring deductions on the assessee. It is restricting the deduction under section 37(1) of the Act by virtue of the overriding provisions contemplated by section 44C. Therefore, when the working of section 44C fails, the entire section 44C becomes non-workable and consequently, the assessee would become entitled to the full deduction under section 37(1) of the Act. Section 44C restricts the head office expenditure. Section 44C provides for three parameters in the matter of computing deduction for head office expenditure incurred by a non-resident. Section 44C specifically states that deduction for the head office expenditure should be restricted to the least of the three parameters. The expression used in section 44C is "whichever is the least". This expression shows that the least of the three parameters should be taken into account for computing allowance under section 44C for head office expenditure incurred by the non-resident. Therefore, in the absence of one of the parameters out of the three parameters, the entire section becomes non-workable. Hence, the entire section 44C stands ruled out. This is the ratio of the judgment of the Calcutta High Court also in the case reported in Rupenjuli Tea Co. Ltd. v. CIT [1990] 186 ITR 301 with which we respectfully agree. [...]"

(Emphasis Supplied)

54. It should be noted that in both ***Rupenjuli Tea*** (supra) and ***Deutsche Bank*** (supra), respectively, the courts applied the unamended Section 44C, which contained three parameters: clauses (a), (b), and (c). However, through the Finance Act, 1993, clause (b) was omitted. Nonetheless, the removal of clause (b) does not affect the principle established in ***Rupenjuli Tea*** (supra) and ***Deutsche Bank*** (supra), and the same principles remain relevant in relation to clauses (a) and (c) of Section 44C.

55. In ***Ravva Oil*** (supra), the Delhi High Court addressed a case similar to ***Rupenjuli Tea*** (supra), where the assessee did not conduct any business outside India. Accordingly, the Delhi High Court relied on the decisions in ***Rupenjuli Tea*** (supra) and ***Emirates Commercial***

Bank (supra) and concluded that, since these decisions had settled the matter, no substantial question of law was involved in the appeals, and accordingly dismissed them.

56. The respondents have also relied on the Bombay High Court's decision in ***Emirates Commercial Bank*** (supra). In this case, the Bombay High Court examined whether the travelling expenses incurred by the staff members of the head office on their visit to the assessee's branch office in India are deductible under Section 44C. The Court held as follows:

> *"Section 44C is applicable only in the cases of those non-residents, who carry on business in India through their branches. The said section was introduced to get over difficulties in scrutinising claims in respect of general administrative expenses incurred by the foreign head office in so far as such expenses stand related to their business or profession in India having regard to the fact that foreign companies operating through branches in India sometimes try to reduce incidence of tax in India by inflating their claims in respect of the head office expenses. In other words, section 44C seeks to impose a ceiling/ restriction on head office expenses. However, section 44C contemplates allocation of expenses amongst various entities. That, the expenditure which is covered by section 44C is of a common nature, which is incurred for the various branches or which is incurred for the head office and the branch. However, in this case, we are concerned with the expenditure exclusively incurred for the branch. In this case, there is a concurrent finding of fact recorded by the Commissioner (Appeals) as well as the Tribunal stating that the officers came from the head office at Abu Dhabi to Bombay to attend to the work of the Bombay branch and, in connection with that work, the expense was incurred. That, the expense was initially incurred by the head office which was recovered by the head office from the branch in India by raising a debit note. Therefore, the expense was incurred for the branch office in India. These are concurrent findings of fact. We do not wish to interfere with those findings. Hence, section 44C has no application."*
>
> (Emphasis Supplied)

57. A close examination of the rulings in ***Rupenjuli Tea*** (supra) and ***Emirates Commercial Bank*** (supra), respectively, reveal that, while both held that Section 44C was not applicable to their facts, their reasoning differed significantly. For the Calcutta High Court in ***Rupenjuli Tea*** (supra), the decisive factor was the absence of any business operations outside India by the non-resident assessee, including at its head office in London. On the other hand, the Bombay High Court in ***Emirates Commercial Bank*** (supra) proceeded on the premise that Section 44C covers only common expenditure and not expenditure incurred exclusively for the Indian branches.

58. The decision in ***Rupenjuli Tea*** (supra) does not support the contention raised by the respondents in any way. The respondents' argument is that clause (c) only covers common expenditure and not expenditure exclusively incurred for Indian branches. Consequently, they contend that clause (c) does not come into play with respect to such expenditure, Section 44C as a whole would also not apply, and thereby, the deduction of such expenditure would not be governed by the ceiling limits set under Section 44C. However, in ***Rupenjuli Tea*** (supra), clause (c) and subsequently Section 44C as a whole were held to be inapplicable, not because the expenditure was exclusively for Indian operations, but because the business operations were confined to India. In other words, the deciding factor with respect to non-application of clause (c) was rooted not in the nature of expenditure, but rather in the nature of business operations of the assessee. However, the observation made by the Bombay High Court in ***Emirates Commercial Bank*** (supra) does create a distinction between common and exclusive expenditure. Thus, it could be argued that it paves way for accepting the respondents' contention.

59. The Bombay High Court in ***Emirates Commercial Bank*** (supra) provides no basis whatsoever as to how it concluded that the expenditure which is covered by Section 44C is of a common nature, incurred for the various branches or for the head office and the branch. As discussed above, this conclusion is not supported by the meaning attached to the term 'head office expenditure' under the Explanation in Section 44C. Is it the case that the language employed in clause (c) indicates that there is a distinction between 'common' and 'exclusive' expenditure?

60. Clause (c) of Section 44C allows for the computation of head office expenditure on an actual basis, wherein all the head office expenditure that is attributable to the business in India is taken into account. A plain reading of the clause in no way indicates that the legislature envisaged taking into account only 'common' head office expenditure while excluding 'exclusive' head office expenditure under the clause. The text of the provision is broad and unqualified. It employs the phrase "*head office expenditure incurred by the assessee as is attributable to the business or profession of the assessee in India,*" without carving out any exception for expenses incurred exclusively for Indian branches.

61. The respondents' contention proceeds on a misplaced understanding that there is a stark conceptual difference between 'attributable' expenditure and 'exclusive' expenditure. Such a contention is, however, not sustainable. 'Attributability' is a genus of which 'exclusivity' is merely a species. Expenditure that is incurred *exclusively* for the business in India is, by its very nature, *attributable* to the business in India. In fact, exclusive expenditure represents the strongest form of attribution, as there is a direct and undivided nexus between the expense and the Indian operations.

Therefore, exclusive expenditure, without contrary legislative intent, which is absent in clause (c), must necessarily be treated as part of attributable expenditure. When the statute uses the term 'attributable', it brings into its fold all things concerned with the Indian business, whether they are common expenses allocated to India or expenses incurred exclusively for India.

62. In income tax disputes, this Court has often been called upon to interpret the phrase 'attributable to', particularly in contradistinction to the narrower phrase 'derived from'. This Court has consistently held that the expression 'attributable to' is of a much wider import than the expression 'derived from'. While 'derived from' envisages a direct nexus, 'attributable to' also covers an indirect nexus. Thus, there is no doubt that the words 'attributable to' in the context of clause (c) would include both common and exclusive expenditure. [See ***Commissioner of Income Tax v. Meghalaya Steels Limited***, reported in **(2016) 6 SCC 747**]

63. Further, if the Parliament had intended to restrict the scope of clause (c) only to common or shared expenses, it would have employed specific language to that effect. In the absence of such words of limitation, if we accept the respondents' contention, it would tantamount to reading a qualification into clause (c) and thereby rewriting the statute.

64. Both parties have resorted to the legislative history and background to support their contentions. The legislative history and background behind Section 44C were set forth by the parties *vide* the Memorandum explaining the provisions in the Finance Bill, 1976 and the CBDT Circular No. 202 dated 05.07.1976. It is important to note that these materials cannot be used to determine the meaning of the provision, but merely to look at what mischief

was sought to be remedied. Furthermore, based on the principles discussed above, it is essential to determine whether the meaning of Section 44C is plain and unambiguous, even when read in the context of its legislative object and purpose.

65. Section 44C was inserted into the Act, 1961, by the Finance Bill, 1976. The relevant portion from the Memorandum explaining the provisions in the Finance Bill, 1976, is as follows:

> *"In the case of foreign companies operating in India through branches, a proportion of the general administrative expenses incurred by the foreign head office is claimed as a deduction in the computation of taxable profits. It is extremely difficult to scrutinise and verify such claims, particularly in the absence of account books of the head office which are kept outside India. Foreign companies operating through branches in India sometimes try to reduce the incidence of tax in India by inflating their claims in respect of head office expenses. With a view to getting over these difficulties, it is proposed to lay down certain ceiling limits for the deduction of head office expenses in computing the taxable profits in the case of non-resident taxpayers.[...]"*

66. The relevant portions of CBDT Circular No. 202 dated 5.7.1976 read thus:

> *"Ceiling expenses in respect of head office case of non-residents-New section 44C.*
> *25.1 Non-residents carrying on any business or profession in India through their branches are entitled to a deduction, in computing the taxable profits, in respect of general administrative expenses incurred by the foreign head offices in so far as such expenses can be related to their business or profession in India. It is extremely difficult to scrutinise and verify claims in respect of such expenses, particularly in the absence of account books of the head office which are kept outside India. Foreign companies operating through branches in India sometimes try to reduce the incidence of tax in India by inflating their claims in respect of head office expenses. With a view to getting over these difficulties, the Finance Act has inserted a new section 44C in the Income-tax Act laying down certain ceiling limits*

for the, deduction of head office expenses in computing the taxable profits in the case of non-resident taxpayers. [...]"

(Emphasis Supplied)

67. The respondents have relied on the phrase "*a proportion of the general administrative expenses*" used in the memorandum to argue that the legislative intent was to cover only head office expenses that are claimed on a proportionate basis, and therefore, it must be inferred that 'exclusive expenditure' is not subject to Section 44C. However, we disagree with the respondents' contention as the word 'proportion' in the memorandum was only used in the context of describing the quantum attributed to the Indian branches out of the total expenditure of the head office. It was not employed to exclude 'exclusive' expenditure, but to highlight the mischief that foreign entities sometimes were arbitrarily inflating the 'proportion' or share of head office expenses attributed to India, whether such expenses were common expenses or expenses exclusively incurred for the Indian branches.

68. Having regard to the memorandum and circular referred to above, it is by no means evident that the primary legislative object was to enact Section 44C solely for 'common' expenditure. In fact, the specific nature of the expenditure does not appear to be the focal point of the legislative concern. Rather, the concern was mainly with respect to the 'inflating' of expenses by some foreign companies, who attributed excessive expenditure to their Indian branches, and the inherent difficulty faced by the Revenue in scrutinising and verifying such claims. In such a scenario, the legislative history does not further the respondents' contention in the slightest. On the contrary, it merely reinforces the conclusion that the plain and unambiguous meaning of Section 44C must be

given full effect to remedy the very mischief the legislature sought to address.

69. Respondent M/s American Bank Express has also placed reliance on paragraph 3 of Article 7 of the Double Taxation Avoidance Agreement between the Governments of India and the USA. Paragraph 3 of Article 7 reads as follows:

> *"3. In the determination of the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the business of the permanent establishment, including a reasonable allocation of executive and general administrative expenses, research and development expenses, interest, and other expenses incurred for the purposes of the enterprise as a whole (or the part thereof which includes the permanent establishment), whether incurred in the State in which the permanent establishment is situated or elsewhere, in accordance with the provisions of and subject to the limitations of the taxation laws of that State. However, no such deduction shall be allowed in respect of amounts, if any, paid (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents, know-how or other rights, or by way of commission or other charges for specific services performed or for management, or, except in the case of a banking enterprises, by way of interest on moneys lent to the permanent establishment. Likewise, no account shall be taken, in the determination of the profits of a permanent establishment, for amounts charged (otherwise than toward reimbursement of actual expenses), by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents, know-how or other rights, or by way of commission or other charges for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the head office of the enterprise or any of its other offices."*
>
> (Emphasis Supplied)

On perusal of paragraph 3 of Article 7, it is evident that, while deductions are allowed for expenses incurred for the purposes of

the permanent establishment in India, irrespective of whether they are incurred within or outside India, the same are subject to the limitations of the taxation laws of India. That invariably leads to the conclusion that, under the said agreement, the deduction for head office expenditure of the permanent establishment is to be governed by the limits set out under Section 44C. Thus, the reliance placed on paragraph 3 of Article 7 does not further the case of the respondents in any manner.

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.

91. For all the foregoing reasons, the appeals succeed and are hereby allowed.

..... J.
(J.B. PARDIWALA)

..... J.
(K.V.VISWANATHAN)

NEW DELHI;
DECEMBER 15, 2025.