In the High Court of Judicature at Madras

Dated: 29.06.2015

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The Honourable **Mr.JUSTICE R.SUDHAKAR**
and
The Honourable **Ms.JUSTICE K.B.K.VASUKI**

Tax Case (Appeal) Nos.1236, 1239, 1240, 1241 and 1243 of 2007

Commissioner of Income Tax
Chennai
.... Appellant in the above T.C.(A)s

Vs.

M/s.Shriram City Union Finance Ltd.
Mookambika Complex
4 Lady Desika Road, Mylapore
Chennai - 600 004.
.... Respondent in the above T.C.(A)s

APPEALs under Section 260A of the Income Tax Act against the orders dated 21.04.2006 in I.T.A.Nos.13/Mds/2001, 326/Mds/2002, 2334/Mds/2003, 711/Mds/2004 and 468/Mds/2005 respectively on the file of the Income Tax Appellate Tribunal Madras 'B', Chennai for the assessment years 1997-98, 1998-99, 2000-2001, 1999-2000 and 20001-2002.

For Appellant : Mr.J.Narayanasamy
Standing Counsel for Income Tax
For Respondent: Mr.R.Sivaraman

COMMON JUDGMENT

(Judgment of the Court was delivered by R.SUDHAKAR,J.)

All the above Tax Case (Appeals) are filed by the Revenue as against the order of the Income Tax Appellate Tribunal raising a common issue.

2. At the time of hearing, learned Standing Counsel appearing for the Revenue submits that the key issue that needs to be decided in the above appeals is the manner in which the Additional Finance Charges (AFC) also known as Overdue Charges (ODC) has to be taxed in the light of Section 145 of the Income Tax Act, which provides the method of accounting.

3. It is also submitted by both the learned Standing Counsel appearing for the Revenue and the learned counsel appearing for the assessee that the issue with regard to Additional Finance Charges involved in the above appeals is covered by a decision of this Court dated 15.07.2015 in T.C.(A)No.1222 and 1225 to 1228 of 2007, wherein the issue has been answered in favour of the assessee and

against the Revenue.

4. In the decision dated 15.7.2015 in T.C.(A)No.1222 and 1225 to 1228 of 2007, while dealing with the issue with regard to the Additional Finance Charges, this Court followed the earlier decision of this Court, in the case of ***Commissioner of Income Tax V. M/s.Annamalai Finance Ltd.*** reported in ***[2005] 275 ITR 451,*** wherein, this Court held as follows:

> " *The change of method of accounting of overdue charges from the mercantile basis to cash system, method of accounting, as followed by an assessee, does not create any income; but the method of accounting only recognizes income. Therefore, either to apply the accrual system or cash system, recognition of income is a paramount factor. In the present case, the disputed amount is the overdue charges receivable `by the assessee from various parties on the basis of hire-purchase and lease agreements. As per the terms of the agreements, overdue charges are payable by the parties concerned to the assessee when they make defaults in paying the instalments as per the schedule of payments.* ***<u>When the instalment itself is overdue, is not collected, there is no basis for making out a case that the additional overdue charges payable by the parties would be</u>***

collectible with certainty. The terms of the agreements which enable the assessee-company to demand overdue charges is only an enabling provision and that enabling provision does not guarantee the collection of overdue charges. It only gives a cause of action to the assessee. In such cases it is very difficult to recognize income against overdue charges.

We are, therefore, of the considered opinion that the Tribunal has rightly deleted the additions made towards overdue charges, acknowledging the change of method of accounting of overdue interest alone on cash basis."

(emphasis supplied)

5. Following the above-said decision, this Court in T.C.(A)No.1222 and 1225 to 1228 of 2007 observed as follows:

"23. We find that what has been decided by this Court in the earlier decision is the manner in which the AFC charges should be treated for the purpose of income tax. We have extracted in the earlier portion of this order that it has been held that in respect of AFC, there is an element of uncertainty and therefore, it has to be treated as income only on receipt. There is no departure on the part of the assessee from the mercantile system of accounting insofar as the income that arises from EMI. Once the issue has been resolved by this Court that AFC or ODC partakes the

> *character of uncertain income, it cannot be brought within the purview of taxable income, unless and until it comes to the hands of the assessee. The department has accepted that proposition of law in the above cited case. No appeal is also filed as conceded by the learned Standing Counsel for the revenue."*

6. In the light of the above, following the decision of this Court reported in ***[2005] 275 ITR 451 (CIT V. Annamalai Finance Ltd.)*** and the decision of this Court ***dated 15.6.2015 in T.C.(A)No.1222 and 1225 to 1228 of 2007***, we hold that the terms of the agreements, which enable the assessee to demand overdue charges is only an enabling provision and the recovery of overdue charges is not certain. We, therefore, of the considered opinion that the Tribunal has rightly upheld the order of the Commissioner of Income Tax (Appeals) deleting the additions made towards Additional Finance Charges, also known as Overdue charges.

In the result, the issue is answered in favour of the assessee and against the Revenue. Consequently, the above Tax Case (Appeals) are dismissed. No costs.

Index :Yes/No (R.S.,J) (K.B.K.V.,J)
Internet :Yes/No 29.06.2015
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R.SUDHAKAR,J.
AND
K.B.K.VASUKI,J.
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To

The Income Tax Appellate Tribunal Madras 'B' Bench, Chennai.

The Income Tax Appellate Tribunal Madras 'D' Bench, Chennai.

Tax Case (Appeal) Nos.1236, 1239,
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