IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.06.2015

CORAM:

THE HONOURABLE MR.JUSTICE R.SUDHAKAR
and
THE HONOURABLE Ms.JUSTICE K.B.K.VASUKI

Tax Case (Appeal) No.804 of 2013

Commissioner of Income Tax
Trichy. .. Appellant

versus

The Karur Vysya Bank Ltd.,
Erode Road, Karur - 639 002.
.. Respondent

PRAYER: Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 as against the order dated 30.01.2013 made in I..T.A..No.900/Mds/2010 on the file of the Income Tax Appellate Tribunal, Madras 'A' Bench for the assessment year 2002-2003.

Against the Order dated 23.03.2010 made in ITA.No.310/07-08 on the file of the Office of the Commissioner of Income Tax(Appeals) Tiruchirapalli, which was preferred against the Order dated 31.12.2007 passed by the Assistant Commissioner of Income Tax, Company Circle -I, Tirchy for the Assessment Year 2002-03.

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

For Respondent : Mr.Quadir Hoseyn

J U D G M E N T

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

This Tax Case (Appeal) is filed by the Revenue as against the order of the Income Tax Appellate Tribunal raising the following substantial questions of law:

" Whether on the facts and in the circumstances of the case, the Tribunal was right in not considering the ground raised by the Revenue with respect to the issue of disallowance of brokerage paid?

Whether on the facts and in the circumstances of the case the Tribunal was right in not considering the ground raised by the Revenue with respect to the issue of disallowance of unclaimed balances?"

2. Learned Standing Counsel appearing for the Revenue submitted that the Tribunal had not considered the grounds raised by the Revenue and hence the order of the Tribunal has to be set aside.

3. Per contra, learned counsel appearing for the assessee submitted that the said grounds raised by the Revenue has been answered by the Tribunal in paragraph Nos.12 and 14 respectively.

4. Heard learned Standing Counsel appearing for the Revenue and the learned counsel appearing for the assessee and perused the materials placed before this Court.

5. Before the Tribunal, the Revenue had raised the following grounds in I.T.A.No.900/Mds/2010, which is the subject matter of present appeal :

"The C.I.T.(Appeals) failed to appreciate that RBI is a regulator of banks and can (nay, is required to) give directions to the banks with regard to SLR requirements, Cash Reserve Ratio and the manner in which the accounts are to be kept by the banks. Pursuant to the powers given by the Banking Regulations Act, the RBI had asked the banks to maintain the portfolio of the securities in three categories viz., Held to Maturity (HTM), Available For Sale (AFS) and Held For Trading (HFT). It implies that investment in HTM category of securities is to be treated as "investment" of capital nature. With a view to meet the legal requirement of SLR as per Banking Regulations Act, the RBI has directed the Banks that the securities held as HTM category are intended to be held as investment and shown in the books of accounts at cost; while the securities of HFT & AFS categories are treated as stock-in-trade.

2.1 The C.I.T. (Appeals) erred in deleting the disallowance of brokerage without appreciating that securities in the HTM category would be investment of capital nature. The C.I.T.(Appeals) ought to have restricted the relief for the brokerage paid in respect of AFS & HFT category of securities."

3....

3.1....

4. The C.I.T.(Appeals) erred in deleting the addition with regard to unclaimed balances. The C.I.T.(Appeals) failed to follow the ratio of decision of Apex Court in the case of T.V.Sundaram Iyengar & Sons 222 ITR 344 (SC). The balances lying unclaimed with the bank for more than 3 years ought to have been confirmed by the C.I.T.(Appeals) as these are to be treated as income in the light of the above referred decision."

6. It is seen from the order of the Tribunal that with regard to the first question of law raised herein, the Tribunal has considered the grounds raised by the Revenue and answered the same in paragraph No.12, which reads as follows:

"12. After considering the submissions of the Revenue, we notice that we have heard appeal (supra) filed by the Revenue above said on 19.12.2012 [which has been decided vide order dated 17.01.2013]. After perusing the same, we find that the Revenue had raised ground No.5 in the said appeal identical to ground No.2 and 2.1 in the instant case and we have restored it to the file of the Assessing Officer. The relevant findings are reproduced as under:

"45. We have heard rival contentions of both parties and also perused assessment order as well as order of the CIT(A) along with case law cited. It transpires that the assessing authority had held that assessee's claim of interest paid on securities as capital expenditure. In appeal before the CIT (A), the assessee relied on the order of the ITAT Chennai in preceding years as well as the judgment of the Hon'ble Madras High Court in assessee's own case. At the same time, we also find that the crucial factual aspect of the issue in question have nowhere been adverted to the CIT(A). In the operative part of the CIT(A) that it has been simply observed that in assessee's case the Hon'ble High Court as well as the Coordinate Benches of the ITAT have decided the issue in assessee's favour. This in our opinion, is nothing but sketchy finding of the CIT(A). At the same time, we cannot lose sight of the fact that we have remained ground No.III back to the Assessing Officer. In those circumstances, in order to avoid multiplicity of proceedings of same year before the Assessing Officer in assessee's appeal and CIT(A) in Revenue's appeal, we find it appropriate that the issue deserves to be redecided by the Assessing Officer by way of a detailed order in accordance with law after according opportunity of hearing to the assessee. We also make it clear that we have not expressed any opinion on merits of the issue. Therefore, the Assessing Officer would be at liberty to examine the issue afresh in the light of judgment of the Hon'ble Jurisdictional High Court above said as well as various orders of Coordinate Bench of ITAT, Chennai in earlier assessment years and the case law of CIT vs. ING Vysya Bank Ltd. (supra). The assessee would also be entitled to place reliance on any other case law, if so advised. The ground is therefore, restored back to the file of the Assessing Officer."

7. With regard to the second question of law, the Tribunal considered the said ground and answered the same in paragraph No.14, which reads as follows:

"14. So far as grounds No.4 and 7 of the Revenue are concerned, both the parties before us have been fair enough to clarify that issues qua unclaimed balances, unclaimed stale drafts and unclaimed surplus jewellery auctions are pari materia to those decided in I.T.A.No.899/Mds/2010 for the assessment year 2001-02 vide order dated 17.01.2013 (supra). While upholding CIT(A)'s order deleted the disallowance on account of surplus amount received from jewellery auction, we have held as under:

"63. Facts apropos are that in its profit and loss account, the assessee had raised a claim of Rs.1,62,971/- as expenses, which had been received from auction of jewellery. Its explanation before the Assessing Officer was that when any balance is left in auction, the same has to be paid to the borrowers concerned. The Assessing Officer did not agree to the assessee's contention; in whose opinion, if any borrower did not turn up to collect the surplus amount in question, the same had to be retained in suspense account being a liability. Accordingly, he followed assessment orders of earlier assessment years and made addition in assessee's total income."

8. In view of the above, we find no justification to accept the plea of the Department that the grounds raised were not considered by the Tribunal. The Department, if aggrieved should have file an appeal on merits. The questions of law raised does not merit consideration in view of the clear finding of the Tribunal.

9. Accordingly, this Tax Case (Appeal) stands dismissed. No costs.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

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To

1. The Income Tax Appellate Tribunal, Madras 'A' Bench.
2. The Commissioner of Income Tax (Appeals), Tiruchirapalli.
3. The Assistant Commissioner of Income Tax, Company Circle-I, Trichy.
4. The Director, Central Board of Direct Taxes, New Delhi.

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