IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 25.11.2016

Pronounced on : 23. 12..2016

Coram:

The Hon'ble Mr.Justice NOOTY. RAMAMOHANA RAO

AND

The Hon'ble Dr. Justice ANITA SUMANTH

TAX CASE APPEAL No.621 of 2013

Commissioner of Income Tax,
Chennai. .. Appellant

Versus

M/s. Shriram Transport Finance
Company Limited,
Mookambika Complex,
3rd Floor, No.4, Lady Desika Road,
Mylapore, Chennai-600 004 .. Respondent

Appeals filed under Section 260A of the Income Tax Act, 1961 to reverse the order of the Income Tax Appellant Tribunal, Madras ‘A’ Bench, dated 16-12-2010 in ITA Number 725/Mds/2010.

For Appellant .. Mr.J.Narayanasamy
Senior Standing Counsel
For Respondent.. Mr.R.V.Eshwar

Senior Counsel for
Mr.R.Sivaraman

JUDGMENT

(Judgment of this Court was delivered by ANITA SUMANTH, J.)

1. This Tax Case Appeal is filed at the instance of the Income Tax Department raising the following two substantial questions of law:

a) Whether on facts and circumstances of the case, the Tribunal was right in holding that the claim for bad debts to the extent of Rs.13,57,58,000/- is allowable as a deduction in computing the income of the Assessee?

b) Whether on facts and circumstances of the case, the Tribunal was right in holding that the loss on sale of investments is allowable as a deduction in computing the business income of the Assessee?

2. The Respondent Assessee is a Domestic Company and a Non-Banking Financial Institution (in short, 'NBFC'). The Assessee maintains books of accounts in accordance with the provisions of Companies Act and the mandate of the Reserve Bank of India as applicable to an NBFC. Parallelly, it maintains books in

accordance with the provisions of the Income Tax Act 1961 (in short 'the Act') for the purpose of computation of income there under. Adverting to the first issue, the Assessee, in finalizing its corporate accounts made a provision in respect of debts advanced by it that were not realizable. For the purpose of Income Tax, the bad debts were written off in the Profit and Loss Account and claimed as a deduction in the computation of income in terms of section 36(1)(vii) of the Act. The claim was disallowed by the assessing officer vide order dated 30.12.2008, but allowed by the Commissioner of Income Tax (Appeal) (in short 'CIT(A)) by order dated 25.2.2010 and the Tribunal by its order dated 16-12-2010, against which the present appeal is filed.

3. Since the impugned order of the Tribunal has made reference to orders of the appellate authorities for previous assessment years, we refer to the history of assessments commencing AY 1995-96 onwards wherein the identical issue as in the present year arose for consideration. The Assessing Authority, in respect of assessment years commencing 1995-96, noted the

claim of bad debts in the regular computation of income and disallowed the same. The reasoning adduced was that a provision had been created for bad debts in the accounts prepared for the purpose of the Companies Act that, according to the assessing officer, militated against the claim u/s 36(1)(vii) of the Act. The disallowance was challenged at the instance of the Assessee, in some years, and Department, in others, upto the level of the Income tax Appellate Tribunal (in short ‘Tribunal’) till A Y 1997-98 when the issue was decided in favour of the assessee vide order dated 21.4.2006. The aforesaid order has been allowed to rest at the instance of the department. Thereafter, the CIT (Appeals), in respect of A Y’s 1999-2000 to 2002-03 followed the rationale of the aforesaid order of the Tribunal and the disallowance was challenged at the instance of the Department before the Tribunal which again, vide order dated 19.12.2007 held in favour of the Assessee. The order of the Tribunal has been accepted by the Department and has attained finality. In respect of A Y years 2003-04 to 2005-06, the Commissioner of Income Tax (Appeals) applied the aforesaid orders of the Tribunal in allowing the claim, and the said order has become final with the Department not choosing to agitate the same in appeal before the Tribunal. The issue has thus been carried in appeal for the first time by the Department before this Court for AY 2006-07.

4. We have heard Mr.J.Narayanasamy, learned Senior Standing Counsel on behalf of the Income Tax Department and Mr.R.V.Eshwar, learned Senior Counsel appearing for Mr.R.Sivaraman, learned counsel on behalf of the Assessee.

5. We are to decide whether the claim for bad debts by the Assessee is allowable as a deduction in the regular computation of its income in terms of section 36(1)(vii) of the Act. Mr.Narayanasamy would assail the order of the Tribunal on two main grounds. At the threshold, he questioned the maintenance of two sets of book, one for the purposes of the Companies Act and the other for the purposes of the Income Tax Act reflecting different treatment of bad debts. According to him, this difference amounts to an anamoly and results in distortion of the relevant facts and

figures. Secondly, he was of the view that the method of write off of a debt adopted by the Assessee was not in accordance with the prescription by the Supreme Court in the cases of *Southern Technologies vs. The Joint Commissioner of Income Tax, Coimbatore (187 TAXMAN 346)* and *Vijaya Bank vs. Commissioner of Income Tax (190 TAXMAN 257).* He would thus urge that the order of the Tribunal be reversed and the order of the Assessing Officer disallowing the claim of bad debts be restored.

6. In reply, Mr.Eshwar, learned Senior Counsel would submit that the maintenance of two sets of books is perfectly in order. In any event, this objection of the Department was not maintainable at this stage for the reason that the CIT(A) in order dated 25.02.2010 had specifically adjudicated upon this aspect of the matter, holding that the maintenance of two sets of financials, one in compliance of the Companies Act and the other in accordance with the provisions of the Income Tax Act, was in order, upholding the same. No ground had been raised before the Tribunal challenging this conclusion of the CIT(A) and the Department had

allowed it to become final. On merits, he would state that the bad debts, having been written off in the Profit and the Loss account, the methodology adopted was in accordance with accepted principles as discussed in the judgements of the Supreme Court (supra).

7. We have heard the learned Counsel and applied our mind to the facts and legal position involved. We are of the view that the maintenance of two separate sets of books, one for purposes of the Companies Act and the other for Income Tax, is perfectly in order and there is no embargo against the same. The books maintained for the purposes of the Companies Act duly approved by the Board of Directors and placed before the shareholders at the Annual General Body Meeting of the Company being contain inter alia the profit and loss account for the relevant previous year prepared in accordance with the provisions of Part II-III of Schedule VI to the Companies Act 1956 will form the basis of an assessment in terms of Chapter XII-B, Special Provisions relating to certain companies, that provide for an assessment of Minimum

Alternate Tax (MAT). The Income Tax Act requires for the assessee to follow a parellelly consistent method of accounting in accordance with section 145 thereof. The books maintained for the purposes of the Income Tax Act shall comply with the provisions of section 145 and shall form the basis for an assessment thereunder. The error in the order of assessment is the juxtaposition of the two books by the assessing officer. The creation of a provision for bad debts in the corporate accounts thus does not, in any way, impact the claim of bad debt u/s 36(1)(vii) of the Act in the regular computation of income. This submission of the department stands rejected.

8. What remains is to decide whether the methodology for write-off adopted is correct and in accordance with the methodology set out by the Supreme Court. The assessing office raised a query in this regard at the time of assessment in response to which the Assessee has submitted the following:

> '*With reference to your query regarding bad debts, we submit that the bad debts are debited to the Profit & Loss Account and corresponding credit is given to the*

individual account of the debtors. Thus the bad debts are actually written off in the accounts and they are not provisions. If there are any collections from those debtors at a later date, the amount is credited to the Bad debts Recovery account. During the year ended 31.03.06, there have been Bad Debts Recovery to the extent of Rs.1,90,75,851/-. This has been shown in Schedule 'J' of Profit & Loss Account – Income from operations – Bad Debts Recovery.'

9. Our attention has also been invited to the Profit and Loss account that substantiates the above methodology. Thus, it is clear that the claim of bad debts relates to debts actually written off and not a provision made in this regard. The Supreme Court in the case of Vijaya Bank (supra) explaining the methodology for proper write-off set out in accordance with the Judgment of the Supreme Court in Southern Technologies (supra) states as follows:

'*To understand the above dichotomy, one must understand 'how to write off'. If an assessee debits an amount of doubtful debt to the P&L Account and credits the asset account like sundry debtor's Account, it would constitute a write off of an actual debt. However, if an assesse debits 'provision for doubtful debt' to the P&L*

Account and makes a corresponding credit to the 'Current liabilities and provisions' on the Liabilities side of the balance sheet, then it would constitute a provision for doubtful debt. In the latter case, assesse would not be entitled to deduction after 1-4-1989.'

In view of the above, the Assessee has, in accordance with the provisions of Section 36 (1)(vii), written off the bad debt and the claim is allowable. Substantial Question No.1 is answered in favour of the assessee and against the Department.

10. Before parting there is yet another aspect of the matter. We posed a query to the Department as to what the trigger was for pursuing this issue before the High Court, having accepted the same for eleven prior assessment years. The learned Standing counsel would produce instructions via e-mail from the CIT stating as follows:

'*In the combined order of ITAT for A.Y.1995-96 to 2002-03 dated 21.04.2006, Tribunal in para, 33 stated that after going through the copies of balance sheet and P&L a/c for these A. Ys., they find that the debts have been really written off. Considering the amendment to* *sec. 36(1)(vii) w.e.f. 01.04.1989 wherein the only condition to claim deduction is actual writing off of debts, Tribunal allowed the claim of asseessee. Since such interpretation was in tune with the intention of amendment which was brought out in the Explanatory Memorandum to the Direct Tax Laws (Amendment) Act, 1987, the decision of Tribunal was accepted by Department for the above mentioned A.Ys.*

However the crucial fact of assesse not writing off (shown only as provision) such debts in the books of account maintained in the ordinary course of its business on the basis of which P&L a/c Balance sheet and other financial statements which form part of printed Annual Accounts were prepared and was placed before the Directors for approval and finally submitted before Registrar of Companies, was unearthed only during the course of assessment for A.Y. 2006-07. At that time it was found that assesse produced another set of books of account prepared for Income Tax purposes in which such debts were written off and claimed as deduction u/s 36(1)(vii).

Thus this issue arose from A.Y. 2006-07 onwards and hence the appeal by Department for such A.Ys. The earlier orders of CIT(A) and ITAT, which were accepted by Department, were passed ignoring such crucial fact. In *fact, AO also failed to take cognizance of such fact and bring it on record. Hence the question raised in the impugned appeals ie. Whether an assesse can prepare different set of books of account for the same accounting period one for company purpose and the other for I.T. purpose, is relevant and was not considered by any authorities in the preceding A.Y's.'*

11. It is a settled principle of law that having accepted an issue for several years, the Department, if it wishes to later agitate the same, should provide proper justification for the change in view. Both the order of assessment dated 30.12.2008 as well as the memorandum of tax case (appeal) filed in 2013 are silent as to why the issue has been suddenly raked up at a distance of more than a decade and the contents of the e-mail in response to a communication by Standing Counsel on 21.11.2016, certainly cannot supplement either. (*Chief Election Commissioner Vs. Mohinder Singh Gill (1978 AIR SC 851).* That apart, the justification set out in the e-mail is in itself, factually incorrect. The fact that the Assessee maintains two sets of books, one for the purpose of Companies Act and other for the purpose of the

Income Tax Act and the differing treatment of bad debts in both was well within the knowledge of the assessing officer from 1994 when the issue was first raised as would be apparent from the orders of the Tribunal for earlier years. To say that these facts were unearthed only in the course of assessment in 2006-07 is thus factually incorrect.

12. As would be apparent from the orders of the Tribunal dated 16.12.2010 and 21.4.2006 the Assessee has been consistent in the methodology followed both in respect of maintenance of books as well as the treatment of bad debts. The Supreme Court, in the case of *Commissioner of Income Tax Vs Excel Industries (358 ITR 295)* reiterates the proposition that an issue consistently decided in the assesse's favour for several years should not be disturbed unless there are very convincing reasons for doing so.

13.It is also relevant to refer to the findings of the privy counsel in the case of *Hoystead v. Commissioner of Taxation, (1926 AC 155 (PC))* as extracted below;

"*parties are not permitted to begin fresh litigation* *because of new views they may entertain of the law of the case, or new versions which they present as to what should be a proper apprehension by the court of the legal result either of the construction of the documents or the weight of certain circumstances. If this were permitted, litigation would have no end, except when legal ingenuity is exhausted. It is a principle of law that this cannot be permitted and there is abundant authority reiterating that principle. <u>Thirdly, the same principle, namely, that of setting to rest rights of litigants, applies to the case where a point, fundamental to the decision, taken or assumed by the plaintiff and traversable by the defendant, has not been traversed. In that case also a defendant is bound by the judgment, although it may be true enough that subsequent light or ingenuity might suggest some traverse which had not been taken."</u>*

(Emphasis supplied)

All the more in a case such as this, when the Department has accepted the assessee's stand for over a decade. In the present case, there are no reasons, much less convincing reasons in this regard. The above discussion supplements the reasoning advanced by us above in deciding substantial question of law no.1 in favour of the assessee.

14. Substantial Question No.2 has been considered by us in Tax Case Appeal Nos. 1420 and 1421 of 2010 following the view taken in those appeals, the same is answered against the Department and in favour of the Assessee. In all, the Department Appeal stands dismissed. No Costs.

(N.R.R.,J) (A.S.M.,J)
23 .12.2016

Index: Yes/No
Vga/msr

NOOTY. RAMAMOHANA RAO, J
AND
Dr.ANITA SUMANTH,J

PRE DELIVERY JUDGMENT IN
TAX CASE APPEAL No.621 of 2013

23.12.2016