

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.11.2016

C O R A M

THE HON'BLE MR. JUSTICE NOOTY.RAMAMOHANA RAO
AND
THE HON'BLE Dr. JUSTICE ANITA SUMANTH

Tax Case Appeal No.1422 of 2010

Commissioner of Income Tax III,
Chennai ... Appellant

Vs

M/s. Sriram City Union Finance Ltd.,
Mookambika Complex,
III Floor, No.4 Lady Desika Road,
Mylapore, Chennai 600 004 ... Respondent

Prayer:- Appeal filed under Section 260A of the Income Tax, 1961, against the Order of the Income Tax Appellate Tribunal, Chennai C Bench, dated 26.03.2010, in I.T.A.No.1613/Mds/2009 Assessment year 2005-2006. As against the order of the Commissioner of Income Tax (Appeals)-V in ITA 316/07-08 dated 24.12.2008 as against the Assessment order of the Additional Commissioner of Income Tax, Company Range-VI, Chennai-34 dated 27/12/2007 for the Assessment year 2005-2006.

For Appellant : Mr. J.Narayanasamy
For Respondent : Mr. R.Sivaraman

J U D G M E N T

(Judgment of the Court was delivered
by Nooty.Ramamohana Rao, J.,)

This Appeal is preferred by the Revenue under Section 260A of the Income Tax Act, 1961, calling in question the correctness of the order, dated 26.03.2010 passed by the Income Tax Appellate Tribunal, Chennai 'C' Bench, in I.T.A.No.1613/Mds/2009.

2. The following substantial questions of law have been raised for consideration, at the instance of the Revenue :-

"1. Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the assessee was

entitled to account for only the "additional finance charges" on a cash basis, while it was otherwise following the mercantile the system of accounting and also accounting for the very same transaction on a mercantile basis under the Company Law?

2. Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the assessee could be permitted to follow the mercantile system of accounting for the purpose of Company Law and a Hybrid system for the purposes of Income Tax?

3. Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that additional finance charges could be shown for Income Tax purposes on receipt basis, though the assessee has accounted for the same in the regular accounts on accrual basis and therefore were not includible in the taxable business income, ignoring the special provisions contained in Section 43 D of the Income Tax Act and Rules made thereunder, specifying the classes of assesseees and categories of bad and doubtful debts in respect of which such exclusion could be made?

4. Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the provision for the bad debts could not be added back while computing the book profits u/s 115JB in view of the retrospective amendment made by the Finance (2) Act, 2009 by the insertion of clause (1) in the explanation 1 to Section 115 JB?"

3. During the course of hearing of the Appeal, it has transpired that a Division Bench of this Court had an occasion to consider question Nos.1 and 2 framed herein, in Tax Case Appeal Nos.1222, 1225 to 1228 of 2007 and by judgment, rendered on 15.06.2015, following the earlier judgments of this Court, rendered in the cases of Commissioner of Income Tax v. Annamalai Finance Limited, (2005) 275 I.T.R. 451 and CIT v. Annamalai Finance Limited, (2009) 319 I.T.R. 196 (Mad.), it was held that overdue charges can be charged to tax only on cash receipt basis and not on accrual basis. Same view was subscribed to, in a judgment, dated 22.06.2015, rendered in Tax Case Appeal Nos.1230, 1232, 1234 of 2007 and 638, 969 and 970 of 2009. Hence, it is agreed on both sides that question Nos.1 and 2 be answered in favour of the assessee and against the Revenue.

4. So far as question No.4 is concerned, it is not in dispute that it is answered against the assessee by the Division Bench of this Court, in the judgment, dated 22.06.2015, rendered in Tax Case Appeal Nos.1230, 1232, 1234 of 2007 and 638, 969 and 970 of 2009.

5. Now, what remains to be considered is question No.3.

6. Question No.3 deals with charging additional finance charges to tax under Section 43D of the Income Tax Act, 1961. Section 43D of the said Act, if a close look is given, is attracted to cases of Public Financial Institutions, Scheduled Banks, State Financial Corporations, State Industrial Investment Corporations or Public Companies, which charge interest in relation to bad or doubtful debts. It is not in dispute that the assessee before us is not a Schedule Bank or the State Financial Corporation or State Industrial Investment Corporation nor viz., a Public Financial Institution, as defined clearly in Section 4A of the Indian Companies Act, 1956, as herein below:-

"Section 4A

PUBLIC FINANCIAL INSTITUTIONS.

(1) Each of the financial institutions specified in this sub-section shall be regarded, for the purposes of this Act, as a public financial institution, namely :-

(i) The Industrial Credit and Investment Corporation of India Limited, a company formed and registered under the Indian Companies Act, 1913 (7 of 1913);

(ii) The Industrial Finance Corporation of India, established under section 3 of the Industrial Finance Corporation Act, 1948 (15 of 1948);

(iii) The Industrial Development Bank of India, established under section 3 of the Industrial Development Bank of India Act, 1964 (18 of 1964);

(iv) The Life Insurance Corporation of India, established under section 3 of the Life Insurance Corporation Act, 1956 (31 of 1956);

(v) The Unit Trust of India, established under section 3 of the Unit Trust of India Act, 1963 (52 of 1963).

(vi) The Infrastructure Development Finance Company Limited, a company formed and registered under this Act.

(2) Subject to the provisions of sub-section (1), the Central Government may, by notification in the Official Gazette, specify such other institution as it may think fit to be a public financial institution;

Provided that no institution shall be so specified unless - (i) It has been established or constituted by or under any Central Act, or

(ii) Not less than fifty-one per cent of the paid-up share capital of such institution is held or controlled by the Central Government."

7. The assessee does not fall in any one of those categories specified. Consequently, the assessee's case does not fall within the sweep of clause (a) of Section 43D of the Income Tax Act, 1961.

8. So far as clause (b) is concerned, in case of a public company, the income by way of interest in relation to bad or doubtful debts, having regard to the guidelines issued by the National Housing Bank in relation to such debts shall be chargeable to tax. Though the assessee is a Public Company, the debts or doubtful debts are not the types, which have been considered to be regulated by the guidelines framed by the National Housing Bank. There is agreement on both sides on this factual count. As a result, even clause (b) of Section 43D of the Income Tax Act, 1961, is not attracted. Hence, there is no necessity for us to answer the third substantial question of law raised in the present appeal. Accordingly, the above Appeal stands dismissed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. Income Tax Appellate Tribunal,
Chennai 'C' Bench, Chennai.
2. Commissioner of Income Tax (Appeals)-V,
Chennai-34.
3. Additional Commissioner of Income Tax,
Company Range-VI, Chennai-34.

C.M.A.No.1422 of 2010

SS(CO)
EU 23/1/17