IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 1.2.2017

C O R A M

THE HON'BLE MR. **JUSTICE HULUVADI G. RAMESH**
AND
THE HON'BLE Dr.**JUSTICE ANITA SUMANTH**

Tax Case (Appeal) Nos.826 to to 828 of 2008

The Commissioner of Income Tax,
Trichy. Appellant

Vs

The Lakshmi Vilas Bank Ltd.,
Salem Main Road,
Kathaparai, Karur. Respondent

Prayer:- Appeal filed under Section 260A of the Income Tax, 1961, against the Order of the Income Tax Appellate Tribunal, Chennai 'D' Bench, dated 13.10.2006, in I.T.A.Nos.1307/(Mds)/2005 and 1585 and 1596/(Mds)/2005.

For Appellant	:	Mr.J.Narayanasamy Standing Counsel
For Respondent	:	Mr.R.Venkatanarayanan for M/s.Subbaraya Aiyar

COMMON JUDGMENT

(Judgment of the Court was delivered by Dr.Anita Sumanth, J.,)

These three Tax Case (Appeals) come before us at the instance of the Revenue challenging the order of the Income Tax Appellate Tribunal, dated 13.10.2006 in respect of assessment years 1999-2000 and 2000-2001.

2. The following questions of law, have been framed for consideration, at the time of admission of the appeals:-

"(i) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is right in not following the judgment of the Supreme Court in the case of Vijaya Bank Ltd reported in 187 ITR page 541 wherein it was held that whatever was the consideration, which prompted the assessee to purchase the securities, the price paid for them was in the nature of capital outlet and no part of it could be set off as expenditure as income accruing on those securities?

(ii) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is right in holding that the depreciation of investments was allowable expenditure espcially when the Honourable Supreme Court of India in the case of Madhya Pradesh Cooperative Bank vs. Addl. CIT reported in 218 ITR page 438 held that the Government securities and the like nature are to be treated as stock in trade?

(iii) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is right in law on the materials placed without going into the question that the securities held by the bank are stock in trade when there was not even one single instance from the financial statements of the bank or the method of accounting of the bank to prove that the securities held by them are stock in

trade?"

3. Heard Mr.J.Narayanasamy, learned Standing Counsel appearing for the appellant and Mr.R.Venkatanarayanan, learned counsel appearing for the assessee.

4. Parties would agree that the issue stands considered and accepted by this court in respect of assessment years 1985-86 and 1986-87 in Tax Case (Appeal) Nos.94 and 95 of 2002, wherein, the facts and circumstances remain identical. In view of the submission, the substantial questions of law are answered in favour of the assessee and against the revenue.

5. The following question of law, though raised, has not been admitted:-

> *"Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is right, in law, in holding that the broken period interest is to be treated as revenue expenditure?"*

6. Both parties would agree that the question is a substantial question of law that merits consideration. Accordiongly, we admit the same. The finding of fact is to the effect that securities are held as stock-in-trade and that the income from sale therefrom is offered to tax as revenue. In the light of the admitted facts as seen from the order of the authorities, the expenditure incurred by the assessee towards broken

period is liable to be allowed as revenue expenditure. There is no infirmity in the order of the Tribunal in this regard.

7. The queston stands answered in favour of the assessee, following the judgment of the Bombay High Court in *American Express International Banking Corporation Vs. CIT* (258 ITR 601). The appeals are dismissed. No costs.

(H.G.R.,J) (A.S.M.,J)
1st February 2017

Index: Yes / no
Internet: Yes/no
ssk.

HULUVADI G. RAMESH, J.,
AND
DR.ANITA SUMANTH, J.,

ssk.

T.C.A.No.826 to 828 of 2008

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