

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 25.01.2017

PRONOUNCED ON: 15.02.2017

CORAM

THE HONOURABLE MR. JUSTICE HULUVADI G. RAMESH

AND

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

T.C.A.No.2117 of 2006

Commissioner of Income Tax,

Chennai
Appellant

..

vs

The Tamilnadu Industrial Investment Corpn, Ltd.,

Chennai
Respondent

. ..

Prayer: Tax Case Appeal filed under section 260A of the Income Tax Act against the order of the Income Tax Appellate Tribunal Madras "A" Bench, dated 24.7.2002 in ITA.No.67/Mds/91 for the AY 1987-88.

For Appellant : Mr.M. Swaminathan

For Respondent: Mr. R.Vijayaraghavan

For M/s.Subbaraya Iyer

J U D G M E N T

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

The questions raised and admitted in this departmental appeal are as follows;

‘1. Whether in the facts and circumstances of the case, the Tribunal had enough material to hold and was right in holding that the loans to companies in liquidation had become bad debts and ought to be written off?’

2. Whether in the facts and circumstances of the case, the Tribunal was right in holding that the shares are the stock in trade of the assessee company?’

3. Whether in the facts and circumstances of the case, the Tribunal was right in allowing the re-valuation of only loss making shares at market value?’

2. The assessee is a State Government undertaking. In respect of assessment year 1887-88, two claims were made that were not accepted by the assessing officer. The claims related to write off of an amount of Rs.37.49 lakhs representing investment in shares of industrial companies and write off of a sum of Rs.33.82 lakhs, representing 90% of investments in companies under liquidation. In appeal before the Commissioner of Income Tax (Appeals), the order of assessment was confirmed holding both claims to be premature. An appeal was filed before the Income Tax Appellate Tribunal that allowed both claims vide order dated 24.7.2002 and the said order is assailed in appeal before us.

3. We have heard the submissions of Mr.S.Swaminathan for the Revenue and Mr.Vijayaraghavan for the assessee.

4. The assessee is a State Government Corporation engaged in the business of promoting industrial development in the State of Tamilnadu. The Memorandum and Articles of Association reveals the main objects to be financing of long or medium term loans to any concern engaged or proposed to be engaged in businesses/activities such as manufacturing, processing, refrigeration of goods, exploitation of mineral resources, generation or

distribution of electricity, shipping, transport or promotion of industrial growth etc. It also provides for the underwriting or subscription in shares, debentures or other securities of industrial concerns and the rendition of financial assistance by various modes including loans, guarantees and under writing subscription. The assessee was thus incorporated solely for the purpose of ensuring and facilitating growth and development of industries in the state of Tamilnadu. Investment by way of subscription to shares is solely on account of the under writing operations. Such being the position, the investments are of the nature of stock-in-trade and cannot be held to be otherwise. In fact, this aspect of the matter was decided by the Income Tax Appellate Tribunal in the assessee's own case in respect of assessment year 1970-71 wherein, by a well reasoned order dated 14.3.1975, the stand of the assessee that investment in companies would constitute represent stock in trade, was accepted. Question No.2 is thus answered in favour of the assessee and against the revenue.

5. Question Nos.1 and 3 challenge the conclusions of the tribunal relating to facts and would have to be tested on the touchstone of perversity. The tribunal has noted that valuation of the shares is effected in order to ensure a proper depiction of the value of the asset in the balance sheet. A note prepared for the consideration of the Board in TIIC B.No.13587-88 dated 21.7.1987 has been placed before us. A detailed analysis has been undertaken therein with respect to various items identified and sought to be written off in view of the doubtful character of recovery of loans and investments. Investments in the shares of six industrial companies were undertaken by way of underwriting of issue of shares. Upon finding that the net worth was negative, it was proposed to write off 100% of such investment in five cases. In the matter relating to one defaulter, M/s. Southern Brick Works Limited, the recommendation for write-off was only 50% of the investment, in view of a proposal for take over of the entity by M/sVinichem Private Limited.

6. The note also proposes the write-off of an amount of Rs.33.82 lakhs being 90% of the advances made to two companies, M/s.Upper India Bearings Limited and M/s. Nedumbalam Samiappa Annapoorani Mills Limited, where creditors had approached the High Court seeking their winding-up and receivers had been appointed.

7. The need for and criteria adopted for the valuation of the shares as well as the efforts taken and measures adopted by the assessee company for recovery of the advances have been duly noted by the tribunal. The erosion of capital leading to a fall in value of shares has been established. We are thus of the view that the conclusion of the tribunal in this regard are well founded and are not vitiated by perversity. Question Nos. 1 and 3 are

answered against the Department and in favour of the assessee.

8. The order of the tribunal is confirmed and the departmental appeal dismissed answering all Substantial Questions of Law in favour of the assessee and against the department. No costs.

[H.G.R.J.] [A.S.M.J.]

15.02.2017

msr

Index:Yes/No.

HULUVADI G. RAMESH, J.

and

DR.ANITA SUMANTH, J.

msr

Pre-delivery judgment in

T.C.A.No.2117 of 2006

15.02.2017

<http://www.judis.nic.in>