IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 11.10.2018

Coram

The Hon'ble Mr.Justice T.S.Sivagnanam
and
The Hon'ble Mrs.Justice V.Bhavani Subbaroyan

Tax Case Appeal No. 1077 of 2008

M/s.Lakshmi Vilas Bank Limited,
Salem Road, Kathaparai,
Karur. ...Appellant/Appellant

Vs.

The Assistant Commissioner of Income Tax,
Company Circle-I,
Tiruchirapalli. ...Respondent/Respondent

This Tax Case Appeal is filed under Section 260 - A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal Madras "D" Bench, Chennai, dated 31.01.2008 passed in I.T.A.No. 145/Mds/2006 for the assessment year 1993-94.

Against the order passed by the Assistant Commissioner of Income Tax, Company Circle-I, Tiruchirappalli made in PAN/GIR/AAAC74291P date of order 28.12.2006 for the Assessment Year 1993-94.

Against the order of Commissioner of Income Tax-II, Tiruchirappalli made in C.No.6143(3)/CIT-I/TRY/1997-98 dated 20.12.2005 for the Assessment Year 1997-98.

Against the order passed by Income Tax Appellate Tribunal, 'D' Bench, Chennai in ITA.764,765/Mds/2000, ITA.805 and 807/Mds/98 Assessment Year 1986-87,1991-92,1993-94 and 1994-95 dated 17.08.2005.

Against the order of Commissioner of Income Tax, Tiruchirappalli made in C.No.6143(3)/97-98 dated 30.03.1998 for the Assessment Year 1997-98.

Against the order passed by Deputy Commissioner of Income Tax Special Range, Tiruchirappalli made in PAN/GIR No.CQ0362 date of order 25.03.1996 for the Assessment Year 1993-94.

For Appellant : Mr.Vijaya Raghavan

For Respondent : Mrs.R.Hemalatha

ORDER

This appeal filed by the Revenue, under Section 260-A of Income Tax Act, 1961 (herein after "the Act" for brevity) is directed against the order passed by the Income Tax Appellate Tribunal 'D' Bench, Chennai in ITA No. 145/Mds/2006, dated 31.01.2008 for the assessment year 1993-94.

2.The appeal has been admitted, vide order dated 05.08.2008, on the following Substantial Questions of Law:

> "1. Whether on the facts and in the circumstances of the case, the Tribunal ought to have held that the Commissioner of Income Tax under Section 263 without establishing that the assessment order was erroneous and prejudicial to the interest of revenue had merely ordered roving enquiry?
>
> 2. Whether on the facts and circumstances of the case, the Tribunal failed to appreciate that when the assessing officer has taken one of the two possible views, the assessment order cannot be considered as erroneous and hence cannot be revised under Section 263 of the Act.?"

3.Heard Mr. Vijaya Raghavan, the learned counsel for the appellant/assessee and Mrs. R.Hemalatha, the learned Senior Standing Counsel for the Revenue.

4.There are four issues for consideration, viz.,

(i) Broken period interest
(ii) Income from tax free bonds
(iii) Income from intercorporate dividend under the provisions of Section 80-M; and

(iv) Taxing of interest on accrual basis.

4.On the first issue, the Tribunal remanded the matter to the Commissioner of Income Tax (Appeals) for verification of the statements of the assessee.

5.The learned counsel for the appellant submitted that the said issue is squarely covered by the decision of the Hon'ble Supreme Court in the case of CIT vs. Citi Bank NA [(2008)-TIOL-255-SC-IT], wherein, identical issue was considered as to whether the interest paid for broken period should not be considered as part of purchase price, but, should it be allowed as revenue expenditure in the year of purchase of securities. The Hon'ble Supreme Court held that where the securities were part of trading assets, the income, by way of interest on such securities could come under Section 10 of the Indian Income Tax Act, 1922. Further, it is pointed out that in the assessee's own case for the assessment year 1989-90 and 1990-91 and other years, the issue was decided in favour of the assessee in a case arising out of the re-opening proceedings under Section 147 of the Act, in the case of CIT vs. Lakshmi Vilas Bank Ltd., (2010) 78 CCH 0182 ChenHC. In our considered view, this decision can very well be placed before the CIT(Appeals), when the matter is being considered by the Appellate Authority in terms of the order of remand passed by the Tribunal. Therefore, we are not inclined to interfere with the order of remand of Tribunal, except the observations made by us with regard to the decisions relied on by the assessee.

6.So far as the income from tax free bonds is concerned, the assessee has succeeded before the Tribunal.

7.Regarding the income from intercorporate dividend under the provisions of Section 80-M of the Act, the Tribunal in paragraph 9 of the impugned order has remanded the matter by directing the Assessing Officer to disallow only such expenses in this regard which are clearly identified to have been spent towards earning the said income. The Assessing Officer was directed to keep in mind the decision of the Special Bench of the Tribunal in the case of Punjab State Industrial Development Corporation Ltd., Vs Deputy Commissioner of Income Tax (2006), 102 ITD 1 (CHD - SB). In the light of the specific directions issued by the Tribunal, we are of the view that the said directions need not be interfered with.

8.Likewise, with regard to taxing of income on accrual basis is concerned, since the assessee contended before the Tribunal that they had accounted income on accrual basis and submitted necessary working, the Assessing Officer was directed to verify the same and decide accordingly. The assessee cannot be stated to be aggrieved by such a direction.

9.In the light of the above, the directions issued by the Tribunal, calls for no interference. Accordingly, the appeal filed by the assessee is dismissed and the Substantial Questions of Law are answered against the assessee. The CIT(Appeals) shall take note of the directions issued by the Tribunal, while considering the matter on remand and also take note of the decisions, which were cited before us by the assessee referred supra. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

msk/mrm

To

1. Income Tax Appellate Tribunal Madras "D" Bench
   Chennai.

2. The Assistant Commissioner of Income Tax,
   Company Circle-I, Tiruchirappalli.

3. The Commissioner of Income Tax-II,
   Tiruchirappalli.

4. The Deputy Commissioner of Income Tax,
   Special Range, Tiruchirappalli.

5. The Section Officer,
   VR Section, High Court, Madras.

+1 cc to M/s.Subbaraya Aiyar Padmanabhan, Advocate Sr.No.71179
+1 cc to M/s.T.Ravikumar, Advocate Sr.No.70844

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AK(CO)
CSL/13.11.2018