

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.10.2018

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

and

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Tax Case Appeal Nos.1868 and 1869 of 2008

M/s. Calibre Financial
Services Limited,
4, 17th Avenue,
Chetput,
Chennai 600 031.

.. Appellant

Vs.

The Income Tax Officer,
Company Ward I (1),
Chennai 600 034.

.. Respondent

* * *

Prayer : Tax Case Appeals filed under Section 260A of the Income Tax Act, 1961 are arising out of the order of the Income Tax Appellate Tribunal "A" Bench, Chennai, in ITA No.1275/MDS/2006 and CO.No.154/MDS/2006, dated 23.01.2008, for the assessment year 2001-02.

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For Appellant : Mr.A.S.Sriraman
for Mr.J.Balachander

For Respondent : Mrs.R.Hemalatha

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J U D G M E N T

[Judgment of the Court was delivered by T.S.Sivagnanam, J.]

These appeals filed by the Assessee under section 260A of the Income Tax Act, 1961 (in short, "the Act") are directed against the order of the Income Tax Appellate Tribunal "A" Bench, Chennai, in I.T.A.No.1275/MDS/2006 and C.O.No.154/MDS/2006, dated 23.01.2008, for the assessment year 2001-02.

2. Though they were two proceedings before the Tribunal, one at the instance of the Revenue, which was the substantive appeal and other proceeding was Cross-Objection by the assessee. However, no orders were passed in the Cross-Objection, since the Cross-Objection was filed only to sustain the order of Commissioner of Income Tax (Appeals) (CITA), which held in favour of the assessee. Therefore, though there are two tax case appeals, the issue is one and the same.

3. The above appeals have been admitted on the following Substantial questions of law:

(i). Whether the Appellate Tribunal is correct in law in concluding that the loss

incurred from the transactions relating to the mutual fund units as a 'capital loss' based on the treatment given in the books of account as against the claim of 'revenue loss' even though nomenclature in the books of account would not be decisive factor/test to ascertain the intention of the assessee?

(ii). Whether the Tribunal is correct in law in sustaining the stand of the respondent on the disallowance of loss suffered from the transactions relating to the mutual fund units even though similar transactions were accepted as a business proposition/activity for the immediately preceding and subsequent assessment years?

4. The assessee is a Company engaged in financial advisory and syndication services and the Memorandum of Association of the company authorises the company to deal in shares and stocks vide its main objects clause. For the Assessment Year under consideration (2001-02), the assessment was framed by the respondent on 05.03.2004 in terms of Section 143(3) of the Act

at a taxable total income of Rs.8,00,928/-. The Assessing Officer, while completing the assessment, treated the loss arising and accruing from the transaction of sale of mutual fund units as capital loss as against the claim of such loss of Rs.8,10,378/- debited to the Profit and Loss account of the previous year relating to the Assessment year under consideration as 'revenue loss' in the computation of taxable total income.

5. The assessee preferred an appeal before the CITA, who, by order dated 15.02.2006, allowed the appeal in favour of the assessee and held that it is a revenue loss. Aggrieved by the same, the revenue preferred an appeal before the Tribunal, which was allowed by the impugned order.

6. The short question would be whether there was evidence available on record to indicate that the intention of the assessee was to treat the holding as stock-in-trade. If such records were available and the intention was clear, then the assessee's case would be squarely covered by the decision of the Hon'ble Supreme Court in the case of ***Investment Limited Vs. Commissioner of Income-Tax [(1970) 77 ITR 533 (SC)]***. In the said case also, the facts were more or less similar and the Hon'ble Supreme Court

held as follows:

"As observed in paragraph 2 of the statement of case submitted by the Tribunal, the company was incorporated with the objects, amongst others, "to invest and deal with the moneys of the company, and in particular to subscribe for or otherwise to acquire and to hold and deal with the perpetual or redeemable debentures or debenture-stock or obligation or the shares, fully or partly paid, or stock of the company in India or elsewhere". The transactions in securities were within the competence of the company. In computing the taxable income of the company in assessment years 1952-53, 1954-55 and 1955-56, the Income-tax Officer held that the shares and securities were the stock-in-trade of the company, and the loss suffered in transactions relating thereto was a permissible allowance. It is true that an order made in assessing the income of one year regarding the nature of a transaction or the income received therefrom is not conclusive in another year. But that finding is good and cogent evidence of the nature of the transactions in shares and securities in the year of account 1953-54 and of the receipts therefrom. In the year of assessment 1952-53, the company received interest on securities, dividends from shares, interest on advances,

and income from building used as a cinematograph theatre and suffered a loss in transactions of securities. In that year the company was allowed a loss of Rs.63,938/- resulting from "redemption of securities". In the assessment year 1954-55 the company was allowed a loss of "Rs.26,078/- resulting from redemption of securities". In the assessment year 1955-56 the company was allowed a loss of Rs.2,675/- resulting from the sale of shares."

7. The Tribunal came to the conclusion that there was no evidence available to indicate that the intention of the assessee was to treat the holding as stock-in-trade. To consider the same whether there was any factual evidence given by the assessee in this regard, we turn back to the assessment order dated 05.03.2004, where the Assessing Officer has extracted the written submission made by the assessee. On a perusal of the same, it is clear that the assessee has stated that they are a financial service company rendering financial advisory and syndication services. Apart from that, the assessee is also trading in shares, units of mutual funds, etc. The Memorandum of Association of the Company authorizes the Company to deal in shares and services vide its main objects clause. Further, it is stated that as authorized, the assessee had made mutual funds units during

the financial year 2000-01 and sold the units during the same year. The trading in such units was done in the ordinary course of its business and as such revenue in nature. It does not amount to capital asset to be attracting Capital Gain Tax. Further, the assessee stated that the company has treated the transaction as revenue transaction and debited the loss incurred to profit and loss account as revenue expenditure and more particularly, in the earlier financial year also i.e. 2000-01, transaction was treated as revenue expenditure and the same was allowed by the Assessing Officer.

8. In the light of the above factual positions, which remain uncontroverted, we find that the Tribunal erred in coming to a conclusion that there was no evidence available on record to indicate that the intention of the assessee was to treat the holding as stock-in-trade.

9. The Assessing Officer came to the conclusion that it is a capital investment, because, the assessee was a financial services company. However, the Memorandum of Association of the Company authorised to deal in shares and services. Furthermore, for all the previous assessment years and the subsequent assessment years, similar transactions have been held to be revenue in nature and for

the assessment year 2006-07, the Assessing Officer did not agree with the assessee. Consequently, an appeal was filed before the Commissioner of Income Tax(Appeals). The Commissioner of Income Tax(Appeals), after taking into consideration of the Memorandum of Association of the Company, held that the assessee had acquired equity shares, which it held as stock-in-trade and out of which, a portion was sold incurring a loss which was accounted for as business loss. Further, it held that the method of accounting and the principle of accounting for loss or gains from investments or stock-in-trade have been consistently and regularly followed by the assessee and accordingly, the claim of the assessee with regard to loss arising from trading in shares is to be allowed as a business loss as claimed by the assessee.

10. The learned counsel for the revenue referred to the decision in the case of **Commissioner of Income Tax Vs. NSS Investments (P) Ltd. [(2005) 277 ITR 0149]**. We find that, in the said case, the Tribunal found that the shares in question were never treated by the assessee as stock-in-trade and they were held for earning dividend only. This factual finding was affirmed by the Hon'ble Division Bench. Thus, the decision in the case of **NSS**

investment (P) Ltd. (cited supra) cannot in any manner advance the case of the revenue.

11. Thus, for the above reasons, we are of the considered view that the Tribunal fell in error in reversing the order passed by the CITA. In the result, the appeals filed by the assessee are allowed and the orders passed by the Tribunal, which are impugned herein, are set aside. Accordingly, the substantial questions of law framed for consideration are answered in favour of the Assessee and against the Revenue. No costs.

(T.S.S., J.)

(V.B.S., J.)

31.10.2018

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T.S.SIVAGNANAM, J.

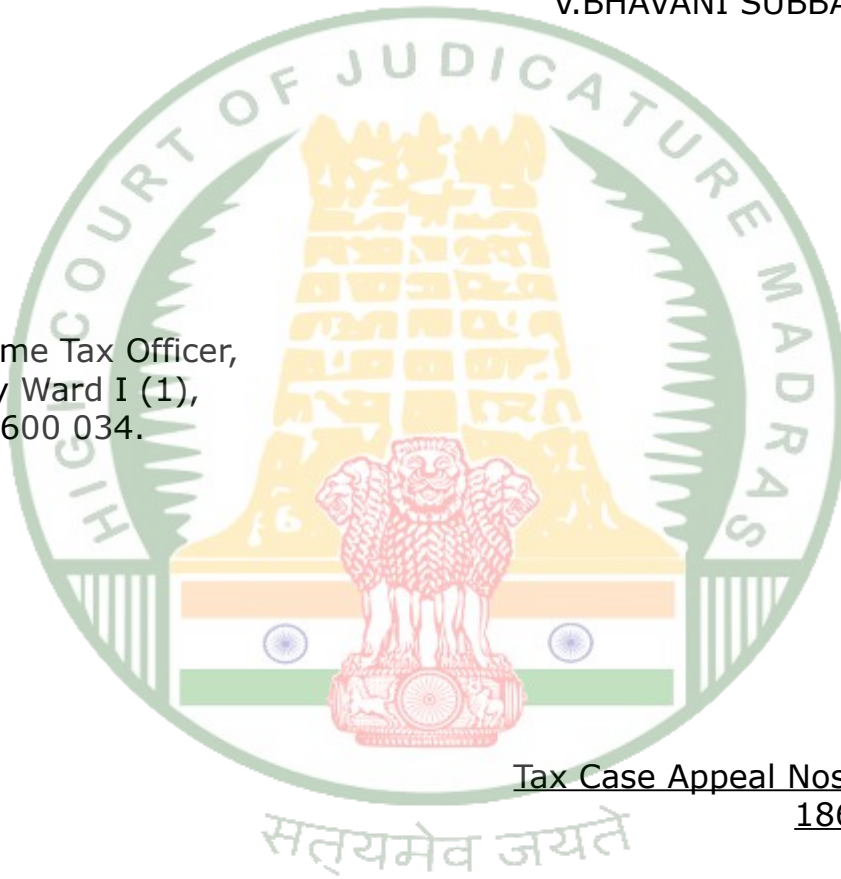
and

V.BHAVANI SUBBAROYAN, J.

vkrr/km

To

The Income Tax Officer,
Company Ward I (1),
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