

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.11.2018

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Tax Case (Appeal) No.272 of 2009

Commissioner of Income Tax,
Chennai.

.... Appellant

-VS-

M/s Tamilnadu Industrial Investment
Corporation Ltd.,
473, New No.692, Anna Salai,
Chennai-600 035.

... Respondent

Tax Case (Appeal) filed under Section 260-A of the Income Tax Act, 1961 against the order of the Income-tax Appellate Tribunal, "C" Bench, Chennai, dated 12.09.2008 in I.T.A.No.1167/Mds/2007 for the assessment year 2003-04.

For Appellant

:

Mr.M.Swaminathan

Senior Standing Counsel
and M/s.S.Premalatha,
Junior Standing Counsel

For Respondent

:

Mr.Vijayaraghavan
and Mr.R.Venkata Narayanan,
for M/s.Subbaraya Aiyar
Padmanaban

JUDGMENT

(Delivered by T.S.Sivagnanam, J.)

This appeal by the appellant/Revenue under Section 260A of the Income-tax Act, 1961 (hereinafter referred to as "the Act"), is directed against the order passed by the Income-tax Appellate Tribunal "C" Bench, Chennai dated 12.09.2008, for the assessment year 2003-04.

2.The appeal was admitted on 27.04.2009, on the following substantial question of law:-

"Whether on the facts and circumstances of the case, the Tribunal was right in holding that the assessee is entitled to deduction of provision made in respect of doubtful and loss assets under Section 36(1)(vii)(c) in terms of the proviso to that section, even though the assessee did not have any positive profits to set it off from?"

3.Heard Mr.M.Swaminathan, learned Senior Standing Counsel for the appellant/Revenue and Mr.Vijayaraghavan, learned counsel for the respondent/assessee.

4.The assessee is a wholly owned Government of Tamil Nadu company. For the assessment year under consideration, viz., 2003-04, the assessee filed return of income declaring a loss of Rs.27,52,31,850/-, which was subsequently revised declaring a net loss of Rs.54,68,55,640/-. During the course of assessment proceedings, the Assessing Officer noticed that the assessee has claimed deduction under proviso to Section 36(1)(viia)(c) to the extent of Rs.28,39,31,639/-. The Assessing Officer opined that the said deduction is allowable only if the assessee has got any positive income before allowing any deduction under the said Clause and under chapter VIA of the Act. He further opined that the assessee had returned a loss in the original as well as in the revised return and therefore, deduction under Section 36(1)(viia)(c) is not allowable.

5.The assessee filed appeal before the Commissioner of Income-tax (Appeals)-III ("the CIT(A)" for brevity). The Commissioner, by order dated 02.02.2007, accepted the case of the assessee and allowed the appeal. Challenging the same, the Revenue preferred appeal to the Tribunal, which concurred the finding rendered by the CIT(A) and dismissed the Revenue's appeal. Aggrieved by the same, the Revenue is before us by way of this appeal.

6.It is the submission of Mr.M.Swaminathan, learned Senior Standing Counsel that the proviso to sub-Clause (c) in Section 36(1)(viia), which was inserted by Finance Act, 2002 with effect from 01.04.2003 is dependent upon sub-Clause (c) and in sub-Clause (c), it has been clearly stated that a public financial institution or a State financial corporation like the assessee is entitled to make provision for bad and doubtful debts by an amount not exceeding 5% of the total income computed before making any deduction under the said Clause or under Chapter VI-A.

7.It is the further submission of the learned counsel that unless there is a positive income, the question of applying sub-Clause (c) in Section 36(1)(viia) does not arise and the proviso cannot be read independently.

8.We are unable to accept the stand taken by the Revenue for the reason that the proviso to sub-Clause (c) in Section 36(1)(viia) uses the word "at its option". The proviso provided that a public financial institution or a State financial corporation or a State industrial investment corporation referred to in sub-Clause (c) in Section 36(1)(viia) shall, at its option, be allowed in any of the two consecutive

assessment years commencing on or after 1st April 2003 and ending before 1st April 2005, deduction in respect of any provision made by it for any assets classified as doubtful assets or loss assets in accordance with the guidelines issued by it in this behalf, of an amount exceeding ten per cent of the amount of such assets shown in the books of account of such institution or corporation, as the case may be, on the last day of the previous year. Thus, in our view, the proviso carves out an exception from the stipulation in sub-Clause (c) otherwise, the use of the expression "at its option" would loose its significance.

9. It is noteworthy to point out at this juncture that the amendment was brought into the Act by inserting the said proviso with effect from 01.04.2003 and this was with an object of granting incentive for debt/capital market and financial sector by which, the Central Government directed fiscal incentive for provisioning in respect of bad and doubtful debts in the case of banks and financial institutions. Therefore, the proper method of interpreting the proviso is to give life to the proviso and the intention behind the insertion of the proviso.

10.It is pointed out that a similar proviso is contained under sub-Clause (a) of Section 36(1)(viiia) which apply to schedule bank and non-schedule bank and this proviso was inserted with effect from 01.04.2000. Thus, the Central Government proposes the amendment to give a retrieve for State industrial corporation, public financial institution and State financial Corporation giving them an option to claim deduction in respect of any provision made by it for any assets classified by the Reserve Bank of India as doubtful assets or loss assets.

11.The proviso also place another condition that those assets should be classified by the Reserve Bank of India as doubtful assets or loss assets in accordance with the guidelines issued by the Reserve Bank of India.

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12.Thus, in our considered view, the interpretation given by the CIT(A) and the Tribunal is perfectly valid. Thus, for the above reasons, the appeal filed by the Revenue, is dismissed and the substantial question of law is answered in favour of the assessee. No costs.

(T.S.S., J.)

(N.S.K., J.)

13.11.2018

Index : Yes/No

Internet : Yes/No

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To

The Income-tax Appellate Tribunal, "C" Bench, Chennai.

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T.S.Sivagnanam, J.
and
N.Sathish Kumar, J.

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