IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
AND
THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Tax Case Appeal Nos.200, 204, 205 and 206 of 2018
and
C.M.P.Nos.3365, 3366 and 3367 of 2018

Commissioner of Income Tax,
Trichy. .. Appellant in all appeals

Vs

The Lakshmi Vilas Bank Ltd.,
Salem Road Kathaparai,
Karur. .. Respondent in all appeals

Tax Case Appeals filed u/s.260-A of the Income Tax Act, 1961, against the orders of Income Tax Appellate Tribunal Madras 'A' Bench, dated 29.01.2016 in ITA No.1620/Mds/2014, ITA No.1206/Mds/2014, ITA No.1207/Mds/2014 and ITA No.1208/Mds/2014 for the Assessment Years 2000-01, 2001-02, 2001-02 and 2002-03 against the order of commissioner of Income Tax (Appeals) Tiruchirapalli made in ITA Nos.387/07-08 and 283/11-12 CIT (A)/TRY,DT.28/02/2014,463/10-11 DT.29/01/2014,463/10-11,DT.29/01/2014 and 389/07-08/CIT(A)/TRY DT.29/01/2014 Respectively against the order of the Assistant Commissioner of income Tax ,Tiruchirapalli,Additional commissioner of Income Tax Tiruchirapalli ,Additional commissioner of Income Tax Tiruchirapalli ,Assistant commissioner of Income Tax ,Company Circle I,Tiruchirapalli order dt.31.12.2007 , 15/12/2010,15.12.2010 and 31.12.2007 respectively made in PAN GIR.NO.AAA CT 4291P .

For Appellant : Mr.T.Ravikumar

For Respondent : Mr.Vijayaraghavan
for M/s.Subbaraya Aiyar
Padmanabhan & Ramamani

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COMMON JUDGMENT

[Judgment of the Court was made by T.S.SIVAGNANAM, J]

These appeals, at the instance of the revenue, challenges a common order passed by the Income Tax Appellate Tribunal Madras 'A' Bench dated 29.01.2016 in ITA No.1620/Mds/2014, ITA No.1206/Mds/2014, ITA No.1207/Mds/2014 and ITA No.1208/Mds/2014 for the Assessment Years 2000-01, 2001-02, 2001-02 and 2002-03.

2. The appeals have been filed raising the following substantial question of law:

> 'Whether on the facts and in the circumstances of the case and the grounds raised herein the Tribunal was right in holding the assessee is entitled for deduction of Lease Equalization Charges?'

3. We have heard Mr.T.Ravikumar, learned counsel for the appellant and Mr.Vijayaraghavan, learned counsel for the assessee.

4. Sofaras the above question is concerned, the Assessing Officer, while dealing with the issue, pointed out that the assets involved in are vehicles purchased and given on lease for a period of time and the assessee is not able to explain in its letter or during discussion how the assessee is eligible for depreciation even after transfer of asset to lessee at the end of the lease period i.e., 6 years. Further, the Assessing Officer pointed out that this fact is to be appreciated in the light of assessee amortizing total depreciation available for the asset during its useful time (ten years) over a period of 6 years itself under the heading 'Lease Equalization Charges'.

5. The assessee preferred appeal before the Commissioner of Income Tax (Appeals) and while dealing with the issue, the Commissioner of Income Tax (Appeals) concurred with the view taken by the Assessing Officer and pointed out that the assessee has claimed lease equalization charges based on guidance note issued by Institute of Chartered Accountants of India and that the Assessing Officer clearly mentioned in that order that the accounting practice cannot override any provisions of Income Tax Act. Further, it was pointed out that Section 29 of the I.T.Act provides that income under the head profits and gains, business and profession shall be computed in accordance with the provisions contained in the Section 32 to 43C and none of the provisions provides for any deduction for equalization charges. Thus, it was held that the revenue expenditure in the hands of the lessee cannot

become capital receipt in the hands of the lessor. Thus, it was held that the Assessing Officer has correctly disallowed lease equalization charges and confirmed. When the assessee carried the matter to the Tribunal, the Tribunal, after taking into consideration the factual position, took note of the decision of the Mumbai Bench of the Tribunal and held as follows:

> 'However, we are of the opinion that while allowing the deduction of account of lease equalization charges for the purpose of computing total income under the Income Tax Act, the difference between the annual lease charges of the leased assets and depreciation allowed under the Income Tax Act should be taken into consideration and not the difference between the annual lease charges and depreciation claimed by the assessee as per the Companies Act, 1956. The above ratio has been laid down on similar facts and circumstances in the case of Infrastructure Leasing & Financial Services Ltd. v. DCIT 146 ITD 297.'

Thus, by following the decision of the Mumbai Benches of the Tribunal, the matter was remitted back to the Assessing Officer to verify and allow the claim of the assessee for deduction on account of lease equalization charges in accordance with law. Accordingly, the appeal filed by the assessee was allowed for statistical purpose for all the Assessment Years under appeal. The question would be whether a substantial question of law would arise for consideration in the light of the order passed by the Tribunal. The Honourable Supreme Court in the decision in Hero Vinoth (Minor) v. Seshammal [2006 (5) SCC 545] brought out the distinction between the question of law and a substantial question of law. It is pointed out that question of law raised will not be considered as a substantial question of law if it stands already decided by a Larger Bench of the High Court concerned or by the Privy Council or by the Federal Court of by the Supreme Court. A substantial question of law will also arise in a contrary situation, where the legal position is clear, either on account of express provisions of law or binding precedents, but the Court below has decided the matter, either ignoring or acting contrary to such legal principle. In the second type of cases, the substantial question of law arises not because the law is still debatable, but because the decision rendered on a material question, violates the settled position of law. It is further pointed out that the Supreme Court should satisfied that the case involves a substantial question of law and not a mere question of law and also the substantial question of law has to be distinguished from a substantial question of fact. In the instant case, we find that the question raised before us is clearly factual and the Tribunal, rightly remitted the matter for fresh decision in accordance with law.

6. Mr.T.Ravikumar, learned standing counsel appearing for the revenue, submitted that the before the Assessing Officer, the assessee did not produce any records.

7. While considering the matter on remand, necessarily the assessee has to produce records. So far as the procedure of assessment in concerned, the Assessing Officer is the best person to decide all the modalities so as to ensure fairness in procedure and adequate opportunity to the assessee. In the instant case, this problem does not arise in the light of submission of Mr.Vijayaraghavan, learned counsel appearing for the assessee, that already the order passed by the Tribunal has been given effect to in terms of the directions issued by it.

Thus, for the above said reasons, these Tax Case Appeals are dismissed as no substantial question of law arises for consideration. No costs. Connected miscellaneous petitions are closed.

gm

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

TO,

1.The Income Tax Appellate Tribunal Madras 'A' Bench, Chennai.

2.The commissioner of Income Tax (Appeals) Tiruchirapalli.

3.The Additional commissioner of Income Tax, Tiruchirapalli

4.The Assistant commissioner of Income Tax ,Company Circle I,Tiruchirapalli

+4cc to Mr.T.Ravikumar , Advocate SR.No.49724, 49728,49279,49730

+4cc to M/s.Subbaraya Aiyar , Advocate SR.No.50081, 50085,50086,50086,50087

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ASK(16/11/2018)