IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.03.2019

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

Tax Case Appeal Nos. 283 and 284 of 2006

Commissioner of Income Tax
Madurai ... Appellant in both T.C.A.'s

..Vs..

The Tamilnadu State Transport Corporation (Madurai) Ltd
Madurai. ... Respondent in both T.C.A.'s

Tax Case Appeals filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'C' Bench, Chennai, dated 05.08.2005 made in I.T.A.No.2599/Mds/95 and I.T.A.No.640/Mds/96 for the Assessment Years 1991-92 and 1992-93.

For Appellant (in both T.C.A.'s) : Mr. M.Swaminathan
Ms.V.Pushpa
Senior standing counsel

For Respondent (in both T.C.A.'s) : Mr.A.S.Sriraman
for Mr.S.Sridhar

COMMON JUDGMENT

(Delivered by DR.VINEET KOTHARI,J)

The Revenue has filed these two Appeals, raising the Substantial Questions of law under Section 260A of the Act, against the order of the learned Tribunal dated 05.08.2005 for the Assessment Years 1991-1992 and 1992-1993.

2. The Appeal in T.C.A.No.283 of 2006, was admitted on 07.03.2006, by a Co-ordinate Bench of this Court on the following Substantial Question of Law:

"(i) Whether in the facts and circumstances for the case, the Tribunal was right in allowing deduction in respect of contributions to Institute of Road Transport that were not actually paid during the relevant previous year?

(ii) Whether in the facts and circumstances of the case the tribunal was right in holding that the assessee is entitled to accounting reimbursement claims in respect of student concession passes on a cash basis, while it was generally following a mercantile system of accounting?

3. The Appeal in T.C.A.No.284 of 2006 was admitted on 07.03.2006, by a Co-ordinate Bench of this Court on the following Substantial Questions of Law:

"(i) Whether in the facts and circumstances for the case, the Tribunal was right in allowing deduction in respect of contributions to Institute of Road Transport that were not actually paid during the relevant previous year?

(ii) Whether in the facts and circumstances of the case the tribunal was right in holding that the assessee is entitled to accounting reimbursement claims in respect of student concession passes on a cash basis, while it was generally following a mercantile system of accounting?

(iii) Whether in the fact and circumstances of the case, the Tribunal was right in holding that no additional tax could be levied under Section 143 (1A) in the case of reduction of loss, without applying the provisions of section 143 (1A)(B) introduced with retrospective effect from 1.4.1989 by the Finance Act, 1993?"

4. The learned counsel for the Revenue Mr.M.Swaminathan urged before us that the deduction claimed by the Assessee in respect of the contribution of Rs.33,53,400/- towards the contributions made to the Institute of Road Transport, indicates that the scientific research was made by the Assessee, under Section 35(1)(ii) of the Act which pertains to weighted deduction of one and half times of expenditure incurred, by the Assessee on the Scientific Research Institution, and not under Section 37 of the Act. He, therefore, submitted that since the part amount of Rs.20,00,000/- was paid by the Assessee after the completion of the financial year, the same could not have been allowed for deduction under Section 35(1)(ii) of the Act.

5.However, on the other hand, learned counsel for the Assessee Mr.A.S.Sriraman submitted that the part of the total sum of

Rs.33,53,400/- viz., a sum of Rs.20,00,000/- was paid by the Assessee to the said institution under the directions of the State Government, to which the communication was received by the Assessee only on 25.03.1992 i.e., on the fag end of the Financial year. Though this amount has been paid after the end of the financial year, since the liability was incurred during the financial year relevant to 1992-1993, the same deserves to be allowed in A.Y. 1992-1993 only. He further submitted that the Assessee has not claimed weighted deduction of one and half times as per Section 35(1)(ii) of the Act but only 100% of the actual expenditure incurred by the Assessee and the same ought to have been allowed as business expenditure under Section 37 of the Act, which has been rightly allowed by the learned CIT (Appeals) as well as the Tribunal under Section 37 of the Act. The said contributions were paid to the Institution of Road Transport on the following dates:

<u>Date of Payment</u>	<u>Amount</u>
16.07.1991	Rs. 3,53,400/-
10.03.1992	Rs.10,00,000/-
10.08.1992	Rs. 5,00,000/-

12.09.1992	Rs. 5,00,000/-
20.10.1992	Rs. 5,00,000/-
9.11.1992	Rs. 5,00,000/-
	Rs.33,55,400/-

6. From the above, we can see that though the payments to the extent of Rs.13,53,000/- was made by the Assessee before the end of the previous year i.e, on 31.03.1992 relevant to the Assessment year 1992-1993 and Rs.20,00,000/- on four different dates in the next financial year 1992-1993, but the Assessee has not even claimed weighted deduction under Section 35 (1)(ii) of the Act. Though the said provisions have been referred to in the Assessment Order, and the claim of the Assessee was made in that provision, but since the Assessee has not claimed weighted deduction of one and half times but only on the actual total expenditure incurred by the Assessee in this year on accrual basis, since the direction of the State Government for the payment of Rs.20,00,000/- came just before the end of the financial year, therefore, in our opinion, the entire expenditure in this

regard ie., Rs.33,55,400/-, deserves to be allowed in the hands of the Assessee under Section 37 of the Act for A.Y.1992-1993 in the present case. Therefore, both the authorities below have rightly allowed the same under Section 37 of the Act and the question of applying Section 35 (1)(ii) of the Act to the said contributions did not arise, since the Assessee has not claimed weighted deduction for one and half times of actual expenses in this regard. Therefore, the first question deserves to be answered against the Revenue and in favour of the Assessee. We hereby do so.

7. As far as the second Question of Law is concerned, the same pertains to reimbursement of the amount on account of Students' Concession Passes given by the Assessee which itself is a State Government Undertaking and was bound by the directions of the State Government. The State Government delayed the reimbursement of the difference of costs on account of such Concession Passes given by the Assessee to the students to travel in the buses operated by it in the State. The Assessee adopted the accounting of such reimbursement received from the State Government, on cash basis. The Assessing Authority, on the other hand, sought to tax such

reimbursement amount which was even though received in the later years as accrued income in the present Assessment Year 1992-1993. We find that even though the Assessee, a Government Corporation was usually adopting the mercantile method of accounting, but for the Student Concession Passes given to the students as per the directions of the State Government, which was reimbursed by the State Government with a delay in later years, the Assessee as a Commercially prudent business organisation, adopted cash basis for accounting for the same and contended before the authorities below that such reimbursement received from the State Government should be taxed in the year in which such reimbursement was actually made by the State Government and not on accrual basis in A.Y.1992-1993. There is no statutory compulsion on the part of the Assessee to account for all its income on accrual basis only, but even a mixed or a hybrid system of accounting can be adopted by the Assessee. The only thing is that such method of accounting should be consistently adopted by the Assessee. Since, the reimbursement of Students' Concession Passes, was the issue arising in this year for the first time only, the assessee cannot be faulted in adopting cash basis for accounting for such reimbursement from the State Government in its Profit and Loss

Accounts on cash basis. Since the reimbursement by the State for these Assessment Years admittedly were not received during these Assessment years, the same cannot be taxed in these years. The learned Tribunal as well as the CIT (A) in our opinion rightly allowed this practice to be adopted by the Assessee on account of reimbursement only for cash basis. Therefore, the Second Question of Law also deserves to be answered as against the Revenue and in favour of the Assessee.

8. In view of the aforesaid finding, we do not find that any merit in these Appeals filed by the Revenue and the same are dismissed. No order as to costs.

(V.K.,J.) (C.V.K.,J.)
21.03.2019

Index : Yes/No
Internet : Yes/No
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DR.VINEET KOTHARI, J.
and
MR.C.V.KARTHIKEYAN, J.

arr

To

1. Deputy Commissioner of Income Tax,
   Special Range-II, Madurai.

2. Commissioner of Income-Tax (Appeals),
   Madurai.

3.Assistant Registrar,
  Income Tax Appellate Tribunal,
  C Bench, Chennai.

TCA Nos.283 and 284 of 2006

21.03.2019