IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.02.2019

CORAM

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

Tax Case Appeal No. 1343 of 2007

Commissioner of Income Tax
Chennai. Appellant

..Vs..

M/s.Ashok Leyland Finance Ltd
Sudharshan Buildings
No.86 Chamiers Road
Chennai 18. Respondent

Tax Case Appeals filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'A' Bench, Chennai, dated 28.02.2007 made in I.T.A.Nos.2834 (Mds)/2005.

For Appellant : Mr.T.Ravikumar
Senior Standing counsel

For Respondent : Mr.R.Venkatraman

J U D G M E N T

(Delivered by DR.VINEET KOTHARI,J)

The Revenue has filed this appeal under Section 260 A of the Income Tax, 1961 raising the substantial questions of law arising from the order of the Income Tax Appellate Tribunal, dated 28.02.2007 in respect of T.C.A.No. 2834/Mds/2005 for the Assessment Year 2002-2003.

2. This appeal was admitted by a Co-ordinate Bench of this Court on 22.10.2007 on the following substantial questions of law:

> *""1. Whether in the facts and circumstances of the case, the Tribunal was right in holding that the assessee is justified in following the Equated Monthly Instalment method to account the finance charges for the income tax purposes only?*
>
> *2. Whether in the facts and circumstances of the case, the Tribunal was right in holding that the assessee is justified in following sum of Digits Method to account the finance charges to arrive at balance sheet and profit and loss statements only?*
>
> *3. Whether in the facts and circumstances of the case, the Tribunal was right in holding that the assesee is justified in following one method of accounting for the income tax purpose to attract lesser tax and other method*

to show higher income in its balance sheet and profit and loss statement?

4. Whether in the facts and circumstances of the case, the Tribunal was right in holding that the assessee is entitled to depreciation on assets, when it purely a finance transaction?

5.Whether in the facts and circumstances of the case, the Tribunal was right in holding that the disallowance of expenditure incurred in relation relation to exempt income should be restricted to an ad hoc amount of 2 % , and not on the proportion of the exempt income to the other income earned?"

3. Except Question No.5, the other Questions of Law are answered in terms of the Judgment rendered by us today in T.C.A.Nos.1299 and 1300 of 2008. The relevant portion the said Judgment is quoted below:

"11. On the other hand, since in the case of the same Assessee, the Coordinate Bench of this Court has upheld the taxability with regard to interest income on EMI method, which has been consistently followed, there is no reason to take a different view in the matter for the present Assessment years.

12. Therefore, we do not find any merit in these

Appeals filed by Revenue and accordingly these Appeals are dismissed and the questions of law are answered in favour of the Assessee and as against the Revenue. No order as to costs"

4.Accordingly the Questions of Law 1 to 4 raised are answered in favour of the Assessee and as against the Revenue. As far as the Question No.5 is concerned, the Tribunal has upheld the disallowance of expenditure incurred in relation to exempt income should be restricted to an ad hoc amount of 2% as per the past practice.

5. The learned counsel for the Revenue however submitted that such disallowance should not be restricted to 2%, but should be proportionate to the exempted income.

6. The findings of the Tribunal are quoted below for ready reference.

" 3.3 Another issue raised in this appeal pertains to Commissioner of Income Tax (Appeals)'s direction of restricting the disallowance made towards earning of exempt income to 2 per cent.

"3.3.1 On this issue, the Assessing Officer had made an estimated dis allowance on the basis of proportion of investment income to total income.

3.3.2 Upon assessee's appeal, the learned Commissioner of Income Tax (Appeals) had followed Tribunal's order in assessee's own case for earlier year holding that 2% of the dividend income can be allocated as expenditure for earning the exempted income.

3.3.3 We have considered the issue and find that Tribunal in its earlier orders has restricted the disallowance to 2% and accordingly we hold that learned Commissioner of Income Tax (Appeals) has taken a correct view of the matter. We uphold the same.

3.3.4 In the result, the Revenue's appeal is partly allowed for statistical purposes. "

7. Having regard to the submissions made by the learned counsel for the parties we are satisfied with the contention of the learned counsel for the Revenue against the disallowance on ad-hoc basis @ 2% cannot be accepted as the same has been consistently adopted by Revenue itself. There is no reason to take a different view and to disallow the same at different levels. Hence, we are not inclined to disturb the findings of the Tribunal in this regard.

This Appeal of Revenue is disposed of with the aforesaid observations. No costs. No order as to costs.

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

27.02.2019

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

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To

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

TCA No.1343 of 2007

27.02.2019