IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.07.2019

CORAM :

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

Tax Case Appeal No.1939 of 2008

M/s.Sundaram Finance Ltd.
21, Patullos Road
Chennai-600002 ...Appellant

-vs-

The Additional Commissioner of Income Tax,
Company Circle-VI(4)
Chennai ...Respondent

Tax Case Appeal under Section 260-A of the Income Tax Act, 1961, is directed against the order passed by the Income Tax Appellate Tribunal, Madras "C" Bench, Chennai in I.T.A No.829/Mds/2005, dated 31.07.2007 for the assessment years 2001-02.

For appellant : Mr.Vijayaraghavan

For Respondent : Mr.T.Ravi Kumar
Senior Standing Counsel

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JUDGEMENT

[Judgement of the Court was made by T.S.Sivagnanam, J.]

This Tax Case Appeal by the assessee, filed under Section 260-A of the Income Tax Act, 1961, ('the Act' for brevity) is directed against the order passed by the Income Tax Appellate Tribunal, Madras "C" Bench, Chennai in I.T.A No.829/Mds/2005, dated 31.07.2007 for the assessment years 2001-02.

2.The above Tax Case Appeal has been filed raising the following substantial questions of law:-

> *"1. Whether the facts and in the circumstances of the case, the Tribunal was right in law in holding that the internal rate return (IRR) method is the appropriate method of income recognition in hire purchase transaction as against the Even Spread Method (ESM) regularly followed by the appellant?*
>
> *2. Whether on the facts and circumstances of the case, the Tribunal was right in law in holding that the amount of the provision made in the earlier years in respect of Non Performing Assets which was reversed during the current assessment year is taxable even though the provisions were not allowed as deductions*

in the respective assessment years?"

3. We have heard Mr.Vijayaraghavan, learned counsel for the appellant/assessee and Mr.T.Ravi Kumar, learned Senior Standing Counsel for the respondent/revenue.

4. It is agreed by the learned counsels on either side that substantial question of law no.1, as framed above, was answered in favour of the assesee in the assessee's own case vide judgment dated 05.03.2019. The Division Bench took note of the decision in the case of ***Commissioner of Income Tax Vs. Ashok Leyland Finance Ltd***. reported in **[(2013) 213 Taxman 0204]**, the decision of Andhra Pradesh High Court in ***Shri Chakra Financial Services Ltd. Vs Commissioner of Income Tax*** reported in **[(2013) 350 ITR 398],** and allowed the assessee's appeal assigning the following following reasons:

> *6. Having perused the aforesaid Judgements, we are of the clear opinion that the later decision of Andhra Pradesh High Court relied on by the learned counsel for the Revenue does not help the case of the Revenue and Andhra Pradesh High Court itself distinguished the facts before it from the Madras High Court decision in the case of Ashok Leyland (Supra). Admittedly, the Assessee has been*

following the same method of E.M.I for bifurcation of its income into Principal and interest component for all these years in question. The S.O.D method gives higher finance charges (interest) for the initial years and lower finance charges (interest) for the later years, i.e, the Sum of Digits is sum total of the number of years e.g. If the Hire Purchase Agreement is for 10 years, the SOD is 55 (1+2+3+4+5+6+7+8+9+10=55). Therefore, total financial charges for the first year would be 10/55, for the second year 9/55, for third year 8/55 and so forth which would clearly give higher financial charges for interest taxable in the first year. This SOD method even though adopted by the Assessee in its Book of Accounts on the basis of Guidelines issued by the Institute of Chartered Accountants of India was not adopted in the Returns of Income filed by it which consistently adopted EMI method for taxability of interest income all these years. Since, for the previous assessment years, this Court has already approved such bifurcation of income and has held that interest income (Finance charges) on consistently adopted basis of E.M.I. would be taxable in the hands of the Assessee, the mere change of Accounting method in its Book of Accounts on the basis of S.O.D. does not alter the position in the tax in the hands of the assessee. Therefore, the Judgement of Andhra Pradesh High Court in the case of ***Sri Chakra Financial Services Ltd. Vs. Commissioner of Income Tax [(2013) 350 ITR 398]*** *is distinguishable.*

7. On the other hand, since in the case of Ashok Leyland Finance Ltd., (supra) 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, in this case.

8. Accordingly, the present Appeal of Assessee is allowed and the questions of law are answered in favour of the Assessee and as against the Revenue. No order as to costs.

Following the above decision, the substantial question of law no.1 is answered in favour of the assesee.

5. As far as substantial question of law no.2 is concerned, Mr.T.Ravi Kumar, learned Senior Standing Counsel appearing for the revenue, pointed out that before the Tribunal, the assessee had conceded the issue that the said question is covered by the decision in the case of ***Tamil Nadu Power Finance and Infrastructure Development Corporation Ltd. Vs. JCIT*** reported in **[280 ITR 491]** and the contention, which have been raised before us in this appeal, were never canvassed as before the CIT(A) or before the Tribunal.

6. The question to be answered is whether the amount of the provision made in the earlier years in respect of non-performing assets, which was reversed during the current assessment years is taxable, even though the provisions were not allowed as deductions in the respective assessments years. On perusal of the grounds raised by the assessee before the CIT(A) and Tribunal, we find that the factual position has not been analysed. Though noted by the CIT(A) in paragraph 4.7.1 in order dated 13.01.2005, before the Tribunal, the assessee did not specifically canvassed the issue as canvassed before us to contend that the CIT(A) erred in not giving a direction to the Assessing Officer to follow consistent stand taken in the assessment for the earlier years in respect of the provision for non-performing assets. As noticed above, before the Tribunal, it appears that the assessee made a submission that the issue is covered by the decision in the case of ***Tamil Nadu Power Finance and Infrastructure Development Corporation Ltd.*** (supra). It cannot be denied that the said decision will have no application to the facts of the case.

7. Mr.T.Ravi Kumar, learned counsel for the revenue, brought to the notice of the Court that the decision of the Hon'ble Supreme Court in ***Southern Technologies Ltd Vs.Joint Commissioner of***

Income Tax reported in **[(2010) 320 ITR 0577**], the law laid down in the said decision is that Section 37 applies only to the items which do not fall in Sections 30 to 36; since provision for doubtful debt is expressly excluded from Section 36(1) without order and it cannot be claimed as deduction under Section 37 even on the basis of 'real income theory'. The assessee cannot argue against the said decision nor the learned counsel for the assessee has made any such attempt before us.

8. It is pointed out by Mr.T.Ravi Kumar, learned counsel for the revenue that there is no substantial question of law arising for consideration, as the matter is entirely factual. We do not agree with the said submission because if a provision was not allowed as a deduction in the previous year, then the same has to be examined by the Assessing Officer because, only if the provision charged to profit and loss account was allowed in the earlier years. In the instant case, the Assessing Officer has added it on the ground, if credit figure is allowed, it would amount to double deduction.

9. The assessee's case is that the Tribunal ought to have appreciated that these represent net reversal of provision, credited to

profit and loss account, and this reversal can be assessed as income only if the provision made in the earlier years was allowed as deduction in the respective assessment year.

10. Such verification exercise was never done in the assessee's case for the year under consideration. If it is so, whether it would be substantial question of law for consideration, on this aspect, we are guided by the decision of the Division Bench in the case of ***Narayanan Chettiar Industries Vs. Income Tax Officer*** reported in **[(2005) 277 ITR 0426]**. The question was whether the amount in question can be added as income in the hands of the assessee under Section 41(1) of the Act. It was held that the revenue can add a sum to the assessee's income under Section 41(1) only if it can prove that the allowance or deduction has been made in the assessment in the previous year in respect of loss, expenditure or trading liability. In this regard, reliance was placed on the decision of the Hon'ble Supreme Court in ***Tirunelveli Motor Bus Service Co. (P) Ltd. Vs. CIT*** reported in **[(1970) 78 ITR 55 (SC)].** Thus, it was concluded that in the absence of any finding of the Tribunal that any deduction or allowance, in respect of amount written off by the assessee's sister concern, was made in the assessment of the assessee in an earlier

year, the matter was remanded for a fresh decision in accordance with law.

11. Considering the facts and circumstances of the case as pointed out by us earlier, what is required to be seen is, for the assessment years under consideration, whether the provisions were allowed as deduction in the respective assessment years. Therefore, we are of the considered view that the matter requires fresh consideration by the Assessing Officer on this aspect.

12. For the above reasons, we are of the view that the matter should be remanded back to the Assessing Officer, who will take a fresh decision on the merits of this issue. In the result, this appeal is allowed and the matter is remanded back to Assessing Officer to take a fresh decision in the matter noting the factual and legal position. No costs.

(T.S.S., J.) (V.B.S., J.)
29.07.2019

ska/mp
Index: Yes/No

To
The Additional Commissioner of Income Tax,
Company Circle-VI(4)
Chennai

T.S.Sivagnanam, J.
and
V.Bhavani Subbaroyan, J.

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