IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.01.2019

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE DR.JUSTICE ANITA SUMANTH

Tax Case (Appeal) Nos.1270 & 1271 of 2009

The Commissioner of Income Tax
Coimbatore.

...Appellant in the above T.CAs/
Appellant

Vs.

M/s.Elgi Ultra Industries Ltd.,
India House, Trichy Road,
Coimbatore - 18.

...Respondent in the above T.CAs/
Respondent

Tax Case Appeals filed under Section 260A of the Income Tax Act, 1961 against the orders of the Income Tax Appellate Tribunal, Madras 'D' Bench, Chennai, dated 14.09.2007 made in ITA No.2207 & 2208/Mds/2005 for the assessment years 2002-03 and 2003-04 against the order passed by the Commissioner of Income Tax (Appeals)-I, Coimbatore dated 25.07.2004 made in Appeal Nos.399 & 400/04-05 and against the order passed by the Assistant Commissioner of Income Tax, Coimbatore dated 29.12.2004 made in P.A.No/GIR No.AAACE4566G/CO.CIR.I(1)/CBE for the Assessment year 2003-04 and against the order passed by the Assistant Commissioner of INcome Tax, Company Circle I(1), Coimbatore dated 29.12.2004 made in P.A.NO/GIR No.AAACE4566G/CO.CIR.1(1)/CBE,for the Assessment year 2002-03.

For Appellant : Mrs.K.G.Usha Rani
for Mr.T.R.Senthil Kumar
Sr.Standing Counsel

For Respondent : Mr.N.V.Balaji

C O M M O N J U D G M E N T

(Delivered by DR.ANITA SUMANTH,J)

These Tax Case (Appeals) have been filed by the Revenue challenging an order of the the Income Tax Appellate Tribunal dated 14.09.2007 relating to Assessment Years 2002-03 and 2003-04.

2. Two issues arise in these appeals and by order dated 30.11.2009, the following substantial questions of law have been admitted by this Court for resolution:

> '1. Whether on the facts and circumstances of the case, the Tribunal was right in holding that the assessee is entitled to relief under section 80IA of the I.T.Act, 1961?
>
> 2. Whether on the facts and circumstances of the case, the Tribunal was right in holding that the assessee is entitled to claim deduction of Bad debts without adjudicated the claim whether it is a trade debt?"

3. The first substantial question of law is covered by the earlier orders of this Court in the assessees' own case (Commissioner of Income-tax, Coimbatore V. Elgi Ultra Industries Ltd.) ((2012) 25 taxmann.com561(Mad.)) and in T.C.(A)No.1140 of 2009 dated 11.12.2018.

4. Following the same, the first substantial question of law is answered in favour of the assessee and against the Revenue.

5. As regards the second substantial question of law, the provisions of section 36(1)(vii) of the Income Tax Act, 1961 provide for allowance of an amount representing bad debt or part thereof, which is written off as irrecoverable in the accounts of the assessee for the previous year.

6. In the present case, the admitted fact is that the assessee had taken over certain debts from M/s.Elgi Finance Ltd. and has offered a sum of Rs.1,74,90,872/- and Rs.87,45,435/- as interest received in respect of the debts in the same assessment years. The same have been assessed to tax. Out of the total debts, a sum of Rs.81.00 lakhs and Rs.53.00 lakhs have been collected back in the present assessment years and a sum of Rs.31,91,237/- and Rs.90,15,652/- have been claimed as bad debts.

7. The claim was disallowed on the ground that the debts have been taken over from the sister concerns voluntarily only as a measure of support to it and knowing fully well that the same was irrecoverable. Thus, the claim for write-off, according to the Assessing Officer, was liable to be denied. In appeal, the Commissioner of Income Tax (Appeals) allowed the claim of the assessee.

8. We find, as a matter of fact, that the Tribunal has taken note of the position that the Memorandum and Articles of Association permitted the assessee to carry on the business of money lending and the transactions in question have been held to be in the realm of business activity.

9. There is no dispute raised before us on this factual position. In the light of the same, the second substantial question of law is also answered in favour of the assessee and against the Revenue.

10. Accordingly, both the Tax Case (Appeals) are dismissed. No costs.

sl

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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

2. The Commissioner of Income Tax(Appeals)-I,
   Coimbatore.

3. The Assistant Commissioner of Income Tax,
   Company Circle-I(1),Coimbatore.

+2cc to Mr.K.Krishnamoorthy, Advocate, S.R.No.3011/19
+1cc to Mr.T.R.Senthil Kumar, Advocate, S.R.No.2948/19

T.C.(A) Nos.1270 & 1271 of 2009

SR(CO)
kak(20/02/2019)