IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.07.2019

CORAM :

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

TCA.Nos.2097 to 2099 of 2008

Commissioner of Income Tax,
Chennai. .. Appellant
in all the appeals

Vs.

M/s.Indbank Merchant Banking Services Ltd.,
Krest Bldg (III Floor), 26/27, Jehangir Street,
Second Line BEach, Chennai - 600 001.
PAN: AAAAC12107B .. Respondent
in all the appeals

Prayer : Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal Madras 'A' Bench, dated 08.04.2008 in I.T.A.Nos.559 & 571(Mds)/2005 and 1118(Mds)/2007 for the assessment year 2001-02, 1999-2000 and 2000-2001.

For Appellant
in all the appeals : Mr.Karthik Ranganathan
Senior Standing Counsel

For Respondent
in all the appeals : Mr.G.Baskar

COMMON JUDGMENT

[Judgment of the Court was delivered by T.S.Sivagnanam, J.]

These appeals by the Revenue under Section 260 A of the Income Tax Act, 1961 (hereinafter referred to as "the Act") are directed against the common order dated 08.04.2008 in I.T.A.Nos.559 & 571(Mds)/2005 and 1118(Mds)/2007 for the assessment year 2001-02, 1999-2000 and 2000-2001.

2.We have heard Mr.Karthik Ranganathan, learned Senior Standing Counsel appearing for the appellant/revenue and Mr.G.Baskar, learned counsel appearing for the respondent/assessee.

3.The appeals have been admitted on the following substantial questions of law :

(1) Whether on the facts and circumstances of the case, the Tribunal was right in deleting the addition of Rs.3,51,917/- being interest accrued on non-performing assets, even though the assessee is following a mercantile system of accounting?

(2) Whether on the facts and circumstances of the case, the assessee is entitled to follow a hybrid system of accounting by showing the interest on non-performing assets only on receipt

basis, while otherwise following a mercantile system of accounting contrary to the provisions of Section 145 of the Income Tax Act?

(3) Whether the prudential norms issued by the RBI will have any bearing on computation for the purpose of income tax and whether it will have an overriding effect over the provisions of the Income Tax Act?

4.We need not labour much to decide the Substantial Questions of law as it has been answered by the Hon'ble Supreme Court in the case of ***Commissioner of Income Tax vs. Vasisth Chay Vyapar Ltd. [(2018) 90 taxmann.com 365 (SC)]***, wherein the Hon'ble Supreme Court affirmed the decision of the High Court of Delhi in the case of ***Commissioner of Income Tax vs. Vasisth Chay Vyapar Ltd. [(2011) 330 ITR 0440***.

5.Mr.Karthik Ranganathan, learned Senior Standing Counsel for the revenue relied upon the decision of the Hon'ble Supreme Court in the case of ***Southern Technologies Ltd. vs. Joint Commissioner of Income Tax, Coimbatore [(2010) 187 Taxman 346 (SC)]*** and submitted that the questions framed for consideration are answered in favour of the revenue.

6.After hearing the learned counsels for the parties and carefully perusing the materials placed on record. We find that the decision in the case of ***Vasisth Chay Vyapar Ltd*** will fully apply to the facts and circumstances of the present case. To be noted that the High Court of Delhi in the case of ***Vasisth Chay Vyapar Ltd.*** took note of the decision in the case of ***Southern Technologies Ltd.*** which was relied on by the revenue and while interpreting the provisions of the Income Tax Act and the RBI Directions held in favour of the assessee.

7.At this juncture, it would be worthwhile to take note of the following paragraphs of the decision of the High Court of Delhi in the case of ***Vasisth Chay Vyapar Ltd.***:

> *"18. ....However, when we examine the issue involved therein minutely and deeply in the context in which that had arisen and certain observations of the Apex Court contained in that very judgment, we find that the proposition advanced by Mr. Sabharwal may not be entirely correct. In the case before the Supreme Court, the assessee a NBFC debited ` 81,68,516 as provision against NPA in the profit and loss account, which was claimed as deduction in terms ofSection 36 (1) (vii) of the Act. The assessing officer*

did not allow the deduction claimed as aforesaid on the ground that the provision of NPA was not in the nature of expenditure or loss but more in the nature of a reserve, and thus not deductible under section 36(i) (vii) ITA 139/2008,ITA 466/2008, ITA 537/2008,ITA 408/2003 of the Act. The assessing officer, however, did not bring to tax ` 20,34,605 as income (being income accrued under the mercantile system of accounting). The dispute before the Apex court centered around deductibility of provision for NPA. After analyzing the provisions of the RBI Act, their Lordships of the Apex Court observed that in so far as the permissible deductions or exclusions under the Act are concerned, the same are admissible only if such deductions/exclusions satisfy the relevant conditions stipulated therefor under the Act. To that extent, it was observed that the Prudential Norms do not override the provisions of the Act. However, the Apex Court made a distinction with regard to "Income Recognition" and held that income had to be recognized in terms of the Prudential Norms, even though the same deviated from mercantile system of accounting and/or section 45 of the Income Tax Act. It can be said, therefore, that the Apex Court approved the „real income" theory which is engrained in the Prudential Norms for recognition of revenue by NBFC.

.... Therefore, subject to the requirements of the IT Act, profits to be assessed under the IT Act have got

to be Real Profits which have to be computed on ordinary principles of commercial accounting. In other words, profits have got to be computed after deducting Losses/ Expenses incurred for business, even though such losses/ expenses may not be admissible under Sections 30 to 43D of the IT Act, unless such Losses/ Expenses are expressly or by necessary implication disallowed by the Act. Therefore, even applying the theory of Real Income, a debit which is expressly disallowed by Explanation to Section 36(1)(vii), if claimed, has got to be added back to the total income of the assessee because the said Act seeks to tax the "real income" which is income computed according to ordinary commercial principles but subject to the provisions of the IT Act. Under Section 36(1)(vii) read with the Explanation, a "write off" is a ITA 139/2008,ITA 466/2008, ITA 537/2008,ITA 408/2003 condition for allowance. If "real profit" is to be computed one needs to take into account the concept of "write off" in contradistinction to the "provision for doubtful debt".

.........However, these Directions 1998 and the IT Actoperate in different areas. These Directions 1998 have nothing to do with computation of taxable income. These Directions cannot overrule the "permissible deductions" or "their exclusion" under the IT Act. The inconsistency between these Directions and Companies Act is only in the matter of Income Recognition and presentation of Financial Statements.

The Accounting Policies adopted by an NBFC cannot determine the taxable income. It is well settled that the Accounting Policies followed by a company can be changed unless the AO comes to the conclusion that such change would result in understatement of profits. However, here is the case where the AO has to follow the RBI Directions 1998 in view of Section 45Q of the RBI Act. Hence, as far as Income Recognition is concerned, Section 145 of the IT Act has no role to play in the present dispute."

19. We have also noticed the other line of cases wherein the Supreme Court itself has held that when there is a provision in other enactment which contains a non-obstante clause, that would override the provisions of Income Tax Act. TRO Vs. Custodian, Special Court Act (supra) is one such case apart from other cases of different High Courts. When the judgment of the Supreme Court in Southern Technology (supra) is read in manner we have read, ITA 139/2008,ITA 466/2008, ITA 537/2008,ITA 408/2003 it becomes easy to reconcile the ratio of Southern Technology with TRO Vs. Custodian, Special Court Act.

20. Thus viewed from any angle, the decision of the Tribunal appears to be correct in law. The question of law is thus decided against the Revenue and in favour of the assessee. As a result, all these appeals are dismissed."

8.The above decision was affirmed by the Hon'ble Supreme Court holding that the consideration of the question by the High Court of Delhi has been given a meaningful reasoning and affirmed the finding. Thus, by applying the above mentioned decision, the Substantial Questions of law are answered against the revenue and in favour of the assessee.

9.In the result, the tax case appeals are dismissed. No costs.

(T.S.S., J.) **(V.B.S., J.)**
30.07.2019

Speaking order: Yes/No
Index: Yes/No
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To

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

T.S.SIVAGNANAM, J.

and

V.BHAVANI SUBBAROYAN, J.

cse

TCA.Nos.2097 to 2098 of 2008

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