IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 03-04-2019

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI

AND

THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

T.C.A.No.938 OF 2008

First Leasing Company of India Ltd. ... Appellant

-vs-

The Assistant Commissioner of Income Tax,
Company Circle – II (1),
Chennai- 600 034. ... Respondent

Appeal under Section 260A of the Income Tax Act,1961, against the order of the Income Tax Appellate Tribunal, Chennai 'A' Bench, dated 07.12.2007, passed in ITA No.1586/Mds/2006.

For Appellant : Mr.Gopalakrishnan,
for Official Liquidator

For Respondent : Mr.Karthik Ranganathan,
Senior Standing Counsel,
assisted by Mr.S.Rajesh,
Junior Standing Counsel.

JUDGMENT

(By ***Dr.Vineet Kothari,J.***)

The Assessee, namely, First Leasing Company Limited, has filed this Appeal under Section 260A of the Income Tax Act, in short, 'Act', raising the following Substantial Questions of Law, which were admitted by a Co-ordinate Bench of this Court on 15.07.2008, arising from the order of the learned Income Tax Appellate Tribunal, Chennai 'A' Bench, dated 07.12.2007.

> *"1. Whether the Tribunal was right in law in holding that the Lease Equalisation Charges are not allowable ?*
>
> *2. Whether the Tribunal was right in law in holding that the provision for Non Performing Assets is not to be added back while computing the Book Profits u/s 115JA of the Income Tax Act,1961 ?*
>
> *3. Whether the Tribunal was right in law in holding that the provision for Non Performing Assets is not allowable, even though the same was based on the directions from the RBI ?*
>
> *4. Whether the Tribunal failed to note that when, despite the High Court's interim order, the income from NPAs was included in the taxable income, the Department could disallow the provision for NPAs ?*

5. Whether the order of the Tribunal is liable to be set aside in view of the order of interim injunction granted by this Court in respect of the provision for Non Performing Assets ?"

2. The Assessee-Company has since gone into liquidation and, therefore, Mr.Gopalakrishnan, learned Counsel for Official Liquidator, has represented the Assessee-Company in liquidation. Mr.Karthik Ranganathan, learned Senior Standing Counsel, appears for the Respondent-Revenue.

3. Learned Senior Standing Counsel for the Revenue has fairly submitted that Question No.1 on Lease Equalisation Charges has been decided against the Revenue by the Supreme Court in the case of *Commissioner of Income Tax* v. *Virtual Soft Systems Ltd*., (2018) 6 SCC 584, wherein, the Hon'ble Supreme Court has held that Lease Equalisation Charges are deductible as expenditure against the Lease Rental Income in the hands of the Assessee. The relevant portion of the said judgment of the Hon'ble Supreme Court is quoted below for ready reference :

"16. In the present case, the relevant Assessment Year is 1999-2000. The main contention of the Revenue is that the Respondent cannot be allowed to claim deduction

regarding lease equalization charges since as such there is no express provision regarding such deduction in the IT Act. However, it is apt to note here that the Respondent can be charged only on real income which can be calculated only after applying the prescribed method. The IT Act is silent on such deduction. For such calculation, it is obvious that the Respondent has to take course of Guidance Note prescribed by the ICAI if it is available. Only after applying such method which is prescribed in the Guidance Note, the Respondent can show fair and real income which is liable to tax under the IT Act. Therefore, it is wrong to say that the Respondent claimed deduction by virtue of Guidance Note rather it only applied the method of bifurcation as prescribed by the expert team of ICAI. Further, a conjoint reading of Section 145 of the IT Act read with Section 211 (un-amended) of the Companies Act make it clear that the Respondent is entitled to do such bifurcation and in our view there is no illegality in such bifurcation as it is according to the principles of law. Moreover, the rule of interpretation says that when internal aid is not available then for the proper interpretation of the Statute, the court may take the help of external aid. If a term is not defined in a Statute then its meaning can be taken as is prevalent in ordinary or commercial parlance. Hence, we do not find any force in the contentions of the Revenue that the *accounting standards prescribed by the Guidance Note cannot be used to bifurcate the lease rental to reach the real income for the purpose of tax under the IT Act.*

17. To sum up, we are of the view that the Respondent is entitled for bifurcation of lease rental as per the accounting standards prescribed by the ICAI. Moreover, there is no express bar in the IT Act regarding the application of such accounting standards."

Accordingly, Question No.1 is answered in favour of the Assessee and against the Revenue.

4. On Question No.2 about the Provision for Non Performing Assets to be added back for computing Book Profits under Section 115JA of the Act, learned Senior Standing Counsel for the Revenue submitted that the said issue has been decided by a Co-ordinate Bench of this Court, in which one of us, namely, Hon'ble Dr.Vineet Kothari,J., was a Member in the case of *M/s.Integrated Finance Co. Ltd.* v. *Deputy Commissioner of Income Tax*, in T.C.A.Nos.1532 and 1533 of 2008, on 18.12.2018. The relevant portion of the said judgment is also quoted below for ready reference :

"9. Pursuant to the decision of the Madras High Court in the case of Beard Sell (supra), the Supreme Court in the case of CIT V. HCL Comet Systems & Services Ltd. ((2008) 305 ITR 409) considered the question of whether a provision for bad and doubtful debts would be part of 'book profits' in terms of Explanation (c) to s.115JA of the Act. The Bench held that such provision would only represent a probable diminution in the value of the asset not a provision for liability. Thus, Explanation (c) to s.115JA would not be attracted in such instances and the amount was not liable to be added back in the computation of book profits.

10. The aforesaid judgment of the Supreme Court was overcome by way of a legislative amendment and Finance (No.2) Act 2009 inserted clause (g) in Explanation to s.115JA with retrospective effect from 01.04.1998 to read as follows :

***115JA Deemed Income relating to certain companies**.*

.....

Explanation – For the purposes of this section, "book profit" means the net profit as shown in the profit and loss account for the relevant previous year prepared under sub-section (2), as increased by -

....

(g) the amount or amounts set aside as provision for diminution in the value of any asset, if any amount referred to in clauses (a) to (g) is debited to the profit and loss account, and as reduced by -

...........'

11. Thus the settled position in law as on date is that with effect from 01.04.1998 any amount set aside as provision for diminution in value of asset would be liable to be added back to the "book profits" in terms of s.115JA of the Act."

Accordingly, Question No.2 is answered in favour of the Revenue and against the Assessee.

5. As regards Question Nos.3 and 4 about Allowability of Provision for Non Performing Assets, learned Senior Standing Counsel for the Revenue brought to our notice that the said issue is covered by a decision of a Co-ordinate Bench of this Court in the case of *T.N.Power Finance Infrastructure Development Corpn. Ltd.* v. *Joint Commissioner of Income Tax*, (2006) 153 Taxman 466 (Mad). The relevant portion of the said decision is quoted below for ready reference :

"5. Further, the Commissioner (Appals), on the facts of the case, found that merely because the Reserve Bank of India has directed the assessee to provide for non-

performing assets, that direction cannot override the mandatory provisions of the Income-tax Act contained in Section 36 (1) (viia) which stipulate for deduction not exceeding 5 per cent of the total income only in respect of the provision for bad and doubtful debts which are predominately revenue in nature or trade related and not for provision for non-performing assets which are of predominately capital nature, and held that the Assessing Officer was right in disallowing the provision of Rs.30 lakhs debited in the profit and loss account of the assessee towards non-performing assets.

6. In this view of the matter, we are of the view that the Appellate Tribunal was right in upholding the order of the Commissioner of Income-tax (Appeals) in disallowing provision for non-performing assets which was debited to the profit and loss account. Accordingly, the question of law is answered in the affirmative, against the assessee and in favour of the revenue. The appeals are dismissed. No costs."

Accordingly, Question Nos.3 and 4 are answered in favour of the Revenue and against the Assessee in the same terms.

6. Question No.5 need not be answered separately, as the other Questions have already been concluded and covered by the aforecited judgments.

7. Appeal of the Assessee is disposed of accordingly. No costs.

Index : Yes/No (V.K.,J.) (C.V.K.,J.)
Internet : Yes/No 03-04-2019
Speaking / Non-Speaking Order

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To

1.The Assistant Commissioner of Income Tax,
Company Circle – II (1),
Chennai- 600 034.

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

DR.VINEET KOTHARI, J.
and
C.V.KARTHIKEYAN, J.

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