IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.02.2019

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

Tax Case (Appeal) No.953 of 2008

Commissioner of Income Tax
Chennai. ... Appellant/Appellant

Vs.

Bharat Overseas Bank Limited.,
"Habeeb Towers"
196 Anna Salai, Chennai -2. ...Respondent/Respondent

Tax Case Appeal filed under Sec. 260A of the Income Tax Act, 1961 against the common order of the Income Tax Appellate Tribunal, Chennai 'A' Bench, Chennai, dated 14.12.2007 in ITA No. 93/Mds/2007.

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For Appellant : Mr.T.Ravikumar
Senior Standing Counsel

For Respondent : M/s. R.Vijayaraghavan

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JUDGMENT

(Delivered by **DR.VINEET KOTHARI, J.**)

The Revenue has filed this Appeal under Section 260A of the Act purportedly raising the following substantial questions of law on which the Appeal was admitted by a Co-ordinate Bench of this Court on 16.07.2008.

> "***1.*** *Whether on the facts and circumstances of the case, the Tribunal was right in holding that debts actually written off which do not arise out of rural advances are not affected by the proviso to clause (vii) to Section 36(1) of the Act?*
>
> ***2.*** *Whether in the facts and circumstances of the case, the Tribunal was right in applying the ratio of the decision in the PVAL Kulandagan Chettiar's case and excluding the income from the Bangkok branch from the total income, without considering the provisions of the Double Taxation Agreement with Thailand?".*

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2. The relevant findings of the learned Tribunal with regard to both the issues in question are quoted below for ready reference:-

> *"**2.** After hearing both the parties, we find taht this issue had come up for adjudication before this Tribunal for the Asst. Year 1999-2000 in ITA No. 421/Mds/2003 in the Assessee's own case and the issue was adjudicated vide para 3 of the order of this Tribunal dated 30.3.2006, which reads as under:-*
>
> *"**3.** We have heard the rival submissions. The assessee claimed deduction in respect of debts written off under the provisions of SEction 36(1)(vii) of the Act. The Assessing Officer found that the assessee did make provision for bad and doubtful debts and that the actual write off of debts was less than the provision. Therefore the question arose that if the actual write off of bad debts was less than the provision whether the claim can be allowed in terms of the proviso to Section 36(1)(vii). It was argued before the Revenue authorities that the proviso to Section 36(1)(vii) would apply only in respect of rural advances written off as bad*

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and therefore notwithstanding the fact that the actual amount written off is less than the provision for bad and doubtful debts, the assessee would be entitled to the deduction. Both the parties agreed that this issue stands covered by the decision of the Tribunal in assessee's own case in ITA Nos 231 to 237 and 239 to 242 (Mds)/2001 and 907(Mds)/1998 dated 7.1.2..5. In this case, the Tribunal took the view that debts actually written off which do not arise out of rural advances are not affected by the proviso to clause (vii) to Section 36(1) of the Act. However, the details of the rural advances were not made available to us. Therefore we set aside the impugned order and restore the matter to the file of the Assessing Officer with a direction to decide it afresh in the light of the aforesaid decision after providing adequate opportunity to the assessee of being heard."

Following the above decision, we set aside the order of the CIT (Appeals) on this issue and remit the matter back to the file of the Assessing Officer with a direction to decide the issue afresh in the light of the direction given in the earlier order as above.

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__3.__ As regards the next ground, after hearing both the parties, we find that this issue was also considered by this Tribunal in the consolidated order dated 21.4.2006 in ITA Nos. 299 to 301 & 605/Mds/2001 in the case of the same Assessee, wherein following the Judgement of the Hon'ble Supreme Court in the case of CIT v. P.V.A.L. Kulandagan Chettiar (267 ITR 654), the following directions have been given vide paragraph 4 & 5 of the order of this Tribunal:-

The learned counsel for the assessee at the time of hearing submitted that this issue is covered by the decision of the Hon'ble Supreme Court in the case of CIT P.V.A.L. Kulandagan Chettiar (267 ITR 654), wherein it has been held as under:-

"Where liability to tax arises under the local enactment the provisions of Sections 4 and 5 of the Income-tax Act, 1961, provide for taxation of global income of an assessee chargeable to tax thereunder. But this is subject to the provisions of an agreement entered into between the Central Government and the Government of a foreign country for avoidance of double taxation as envisaged

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under Section 90 to the contrary, if any, and such an agreement will act as an exception to or modification of Sections 4 and 5 of the Income-tax Act. The provisions of such agreement cannot fasten a liability where the liability is not imposed by a local Act. Where tax liability is imposed by the Act, the agreement may be resorted to either for reducing the tax liability or altogether avoiding the tax liability. In case of any conflict between the provisions of the Agreement and the Act, the provisions of the agreement would prevail over the Act in view of the provisions of Section 90(2). Section 90(2) makes it clear that "where the Central Government has entered into an agreement with the Government of any country outside India for granting relief of tax, or for avoidance of double taxation, then in relation to the assessee to whom such agreement applies, the provisions of the Act shall apply to the extent they are more beneficial to that assessee", meaning thereby that the Act gets modified in regard to the assessee in so far as the agreement is concerned if it falls within the category stated therein."

5. *Respectfully following the decision of the Hon'ble Supreme Court, we confirm the order of the learned CIT*

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(Appeals) and accordingly the Assessing Officer will enquire into the existence of the Double Taxation Avoidance Agreement between India and Bangkok, as directed by the learned CIT (Appeals).

4. *Respectfully following the above order, we set aside the order of the CIT (Appeals) and remit the matter to the Assessing Officer to decide the issue in the light of the decision of the Hon'ble Supreme Court cited supra, after verifying whether permanent establishment of the Assessee was located in India or not."*

3. From a bare reading of the order of the Tribunal, it is clearly borne out that both the issues have been remanded back to the Assessing Officer to consider both the issues afresh.

4. Since it is only remand order, we are of the clear opinion that no substantial question of law can be actually said to be arising from the said order of learned Tribunal. The matter is open before the Assessing Officer, who of'course is expected to take a considered view in proper manner after giving due opportunity of hearing to the Assessee.

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5. The learned counsels were unable to inform as to whether any order has been passed or not by the Assessing Authority so far pursuant to the remand order passed by the learned Tribunal on 14th December 2007. Thus, we return the aforesaid questions of law unanswered, lest it affects the exercise of discretion by the Assessing Officer.

6. With the aforesaid observations, this Tax Case Appeal is disposed of. No costs.

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

27.02.2019.

Index: Yes/No.
Internet: Yes/No.

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