IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 05-03-2019

CORAM

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

T.C.A.Nos.76 & 77 of 2009

M/s.Sundaram Finance Limited ...Appellant in both Appeals

-Vs-

The Joint Commissioner of Income Tax,
Special Range - II,
Chennai - 600 006. ...Respondent in both Appeals

T.C.A.No.76 of 2009 is filed under Section 260A of the Income Tax Act,1961, against the order of the Income Tax Appellate Tribunal, Chennai 'A' Bench, dated 10.03.2006, passed in ITA.No.1978/MDS/2000 for the Assessment Year 1997-98.

T.C.A.No.77 of 2009 is filed under Section 260A of the Income Tax Act,1961, against the order of the Income Tax Appellate Tribunal, Chennai 'A' Bench, dated 10.03.2006, passed in ITA.No.2021/MDS/2000 for the Assessment Year 1997-98.

These appeals against the Commissioner of Income Tax Appeals-IX Chennai made in ITA No.116/2000-2001 Date of Order 26.09.2000 for Assessment Year 1997-98 against the order of Joint Commissioner of Income Tax Special Range II, Chennai -34, for the PAN No.AAAJ1000iK/16-1, dated 23.03.2000 for the Assessment Year 1997-1998.

For Appellant : Mr.R.Vijayaraghavan
for M/s.Subbaraya Aiyar Padmanabhan

For Respondent : Mr.T.Ravikumar,
Senior Standing Counsel.

JUDGMENT

(Judgment of the Court was delivered by Dr.Vineet Kothari,J.)

Both these Appeals have been filed by the Appellant/Assessee under Section 260A of the Income Tax Act, in short, 'Act', raising the following Substantial Questions of Law arising from the order of the learned Income Tax Appellate Tribunal, in short, 'Tribunal', dated 10.03.2006, for Assessment Year 1997-1998.

2. T.C.A.No.76 of 2009 was admitted by a Co-ordinate Bench of this Court on 03.03.2009 only on three questions quoted below, as the remaining above quoted six questions were already covered by a Division Bench decision of this Court in T.C.No.107 of 2002, dated 09.02.2009. The Admission Order of the Co-ordinate Bench of this Court, dated 03.03.2009, is quoted below for ready reference :

> "Though the Tax Case Appeal is filed by formulating as many as nine questions of law including the following questions of law as questions No.1 to 5 :
>
> 1. Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that since the appellant is following Mercantile System of Accounting, the interest income on Non-Performing Assets (sticky loans) should be assessed to tax on accrual basis ?
>
> 2. Whether on the facts and in the circumstances of the case, the Tribunal ought to have appreciated that the income was not accounted on account of uncertainty of realisation and hence applying the ratio of the decision of the Supreme Court in the case of Godhra Electric Supply Co. vs. C.I.T. (225 ITR 746) held that income does not accrue even under Mercantile System of Accounting ?
>
> 3. Whether on the facts and in the circumstances of the case, the Tribunal was right in law in not following the decision of the jurisdictional High Court in the Appellant's own case for the Assessment Years 1993-94 and 1994-95?
>
> 4. Whether on the facts and in the circumstances of the case, the Tribunal ought to have appreciated that RBI guidelines are

also in line with the method of determining the real income of an assessee and it is in accordance with the ratio of the decision of the Apex Court in the case reported in Godhra Electric Supply Co. vs. C.I.T. (225 ITR 746) and is also in accordance with the Accounting Standard issued by the CBDT and hence the Non-recognition of Income in line with the RBI guideline cannot be brought to tax ?

5. Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that the Appellant is not entitled to deduction of the 'provision' made in respect of Non-Performing Assets which are considered irrecoverable ?

6. Whether the Appellate Tribunal was justified in not appreciating that the provision made in respect of Non-Performing Assets if not allowable as a bad debt is allowable as a business loss ?,

as the said six questions of law so formulated were held against the assessee in T.C.No.107 of 2002 on 09.02.2009 by a Division Bench of this Court and they are decided against the assessee, the above appeal is admitted on the following substantial questions of law :

1. Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the differential income on hire purchase transaction due to the change in the apportionment of income from Sum of Digits Method (SOD) to Internal Rate of Return (IRR) method effected by the appellant in the relevant previous year is not for bonafide reasons ?

2. Whether on the facts and in the circumstances of the case, the Tribunal erred in not appreciating that IRR is a more defined and accepted method of accounting than SOD and hence ought to have upheld the change in method of accounting ?

3. Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the cost of software given on lease is capital in nature and hence not allowable as deduction ?

Notice to the Respondent."

3. T.C.A.No.77 of 2009 was admitted by a Co-ordinate Bench of this Court along with T.C.A.No.76 of 2009 on 03.03.2009 on the following only Substantial Question of Law :

> "Whether on the facts and in the circumstances of the case, the Tribunal was right in treating the amount of Rs.2,70,675/- collected as contingent deposit as income of the appellant ?

4. Learned Counsels at Bar fairly submitted that the questions framed above, on which these Appeals were admitted, are now covered by a decision of this Court in the case of Assessee itself in Sundaram Finance Limited v. Assistant Commissioner of Income Tax, (2009) 318 ITR 452, which was upheld by the Supreme Court in (2012) 349 ITR 356; Commissioner of Income Tax v. Elgi Finance Ltd., (2007) 293 ITR 357; and Integrated Finance Co. Ltd. v. Joint Commissioner of Income Tax, (2015) 373 ITR 517. The relevant extracts from the aforesaid judgments are quoted below for ready reference :

> (i) Sundaram Finance Limited v. Assistant Commissioner of Income Tax, (2009) 318 ITR 452 :
>
> The assessee filed an appeal against the order of the Tribunal, Madras, 'A' Bench made in ITA No.54/Mad/2002 dt.31st July,2006. The relevant asst. yr. is 1998-99. The substantial questions of law formulated for entertainment of the appeal are as follows :
>
> > '1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the appellant is not entitled to deduction of the 'provision' made in respect of non-performing assets which are considered irrecoverable ?
> >
> > 2. Whether the Tribunal was justified in not appreciating that the provision made in respect of non-performing assets if not allowable as a bad debt is allowable as a business loss ?
> >
> > 3. Whether, on the facts and in the circumstances of the case, the Tribunal was right in treating the amount of Rs.36,47,585/- collected as contingent deposit as income of the appellant ?'
>
> 2. The facts of the case as culled out from the grounds of appeal are as follows :
>
> 3. The appellant-company is engaged in the business of hire purchase financing, equipment

leasing and allied activities. For the asst. yr. 1998-99, the appellant filed a return of income on 30th Nov., 1998, declaring a total income of Rs.50,38,16,950. The regular assessment under s.143 (3) was completed on 30th March, 2001, determining the total income at Rs.79,16,75,880. While completing the assessment, the AO disallowed the deduction for provision for non-performing assets and contingency deposit. Aggrieved against the above order, the appellant preferred an appeal to the CIT(A). The CIT(A) by following the earlier order of his predecessor for the asst. yr. 1995-96 allowed the appeal. Aggrieved against the order of the CIT(A), the Revenue preferred an appeal before the Tribunal. The Tribunal following the decision of this Court in T.N.Power Finance & Infrastructure Development Corporation Ltd. vs. Jt. CIT (2007) 213 CTR (Mad) 610 : (2006) 280 ITR 491 (Mad) decided the issue against the appellant. With regard to the collection of contingency deposits, the Tribunal followed its order for the earlier assessment years and reversed the order of the CIT(A). The correctness of the said order is now put in issue before this Court.

4. We heard the counsel for the appellant and perused the materials on record.

5. The first and second questions of law are inter-related to each other. Learned counsel appearing for the assessee submits that the issue involved in these questions of law is squarely covered by the decision of this Court in the case of T.N. Power Finance & Infrastructure Development Corporation Ltd. (supra) against the assessee. In the said judgment, the Division Bench of this Court has held that the assessee was not entitled to deduction in view of the Explanation to s. 36 (1) (viia) of the IT Act which says that the provision for bad and doubtful debt made in the accounts of the assessee is not an allowable deduction. Likewise, the third question of law is also covered by the decision of this Court in the case of CIT vs. Sakthi Finance Ltd. (2007) 210 CTR (Mad) 300; (2007) 291 ITR 83 (Mad), wherein it was held that as long as the receipt of the amount by the assessee was clearly associated with liability to refund the amount, such receipt of the amount would not be characterised as an income and, therefore, the same cannot be taxed vide K.C.P. Ltd. vs. CIT (2000) 162 CTR (SC) 320 : (2000) 245 ITR 421 (SC) and CIT vs. Southern Explosives Co. (2000) 242 ITR 107 (Mad).

Thus, the third question of law is also covered by the decisions (sic) against the assessee. Thus, as all the questions of law raised are already answered against the assessee, the questions of law so formulated need not be reconsidered by us again as the issue is already settled.

6. For the above reasons, the tax case appeal is dismissed."

(ii) Commissioner of Income Tax v. Elgi Finance Ltd., (2007) 293 ITR 357 :

"5. Heard the counsel. There is no dispute that the above issue has already been considered by this Court by the unreported judgment cited supra. Further, the Tribunal also considered the issue whether the income has in fact accrued at all or not and held as follows :

> 'In the case of non-performing assets, in the light of the notification issued by the Reserve Bank on classification of assets and the AS-9 issued by the ICAI in the matter of recognising income, and also in the light of the various circulars issued by the CBDT, it is to be seen that the question of accrual can be considered only after recognising income from such assets. If no income is recognised at all from such assets, there is no question of applying the principle of accrual. The principle of accrual comes into play only when income is recognised. In the present case, the assessee has classified its assets on the basis of the notification issued by the RBI and found that certain assets are coming under the category of non-performing assets. From such non-performing assets, the assessee has not recognised any income in consonance with the notification issued by the RBI and AS-9 issued by the ICAI. Therefore, the assessee is justified in not recognising the income as such. Once that is the case, there is no occasion to consider whether the principle of accrual would arise or not. In view of the matter, we are of the considered view that the lower authorities have erred in treating the interest on non-performing assets as income of the assessee company for the asst. yr. 1998-99. We

direct the AO to delete the said interest from the computation of taxable income. The interest from such non-performing assets. As will be taxed in the appropriate assessment years on the basis of actual receipt. The issue of interest from non-performing assets is therefore decided in favour of the assessee and the relevant grounds are allowed.'

From the above, it is clear that the Tribunal had given a factual finding that there is no accrual of income during the year.”

Thus, all the aforesaid questions of law are answered in terms of the judgments quoted above.

5. First and Second Questions of Law about Taxability of Apportionment of Income on Sum of Digits (SOD) Method or Internal Rate of Return (IRR) Method are covered by yet another decision rendered by us in the case of Commissioner of Income Tax v. M/s.Ashok Leyland Finance Ltd., in T.C.A.Nos.1299 and 1300 of 2008, on 27.02.2019. The relevant extracts from the said judgment are quoted below for ready reference :

“10. Having perused the aforesaid Judgments, 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 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 Judgment in the case of Sri Chakra Financial Services Ltd. Vs. Commissioner of Income Tax [(2013) 350 ITR 398] is distinguishable.

11. On the other hand, since in the case of the same Assessee, 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.

12. Therefore, we do not find any merit in these Appeals filed by Revenue and accordingly these Appeals are dismissed and the questions of law are answered in favour of the Assessee and as against the Revenue. No order as to costs."

6. In view of the aforesaid submissions and discussion made, both these Appeals are disposed of in the following manner :

First and Second Questions of Law on the Apportionment of Income on SOD or IRR Method are thus answered in favour of the Assessee and against the Revenue. Third Question of Law, as to whether Cost of Software given on lease is 'Capital' in nature or not, and the sole Question of Law in T.C.A.No.77 of 2009 as to treating the amount of Rs.2,70,675/- collected as Contingent Deposit as income of the appellant, on which the Appeals were admitted by a Co-ordinate Bench of this Court on 03.03.2009, are not pressed by the learned counsel for the Assessee. No costs.

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Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1.The Joint Commissioner of Income Tax,
Special Range - II,
Chennai - 600 006.

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

3. The Commissioner of Income Tax,
Appeals-IX, Chennai.

4. The Commissioner of Income Tax,
Special Range-II,
Chennai.

5. The Assistant Registrar,
Income Tax Appellate Tribunal,
III Floor, Rajaji Bhavan,
Besant Nagar, Chennai -90.

+1cc to Mr.T.Ravikumar, Advocate, SR.No.20664

+1cc to Mr.Subbaraya Aiyar, Advocate, SR.No.21243

T.C.A.Nos.76 & 77 OF 2009

Kak(30/05/2019)