

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.01.2019

CORAM

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

Tax Case Appeal Nos.776 to 778 of 2009

Commissioner of Income Tax -I
Chennai.

..... Appellant in the above T.C.As

Vs.

Apollo Hospitals Enterprises Ltd.,
(Amalgamated Company of Indian
Hospitals Corporation Ltd)
All Towers, IV Floor
22 Greams Road, Chennai - 600 006.

..... Respondent in the above T.C.As

Tax Case Appeals filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'A' Bench, Chennai, dated 19.12.2008 made in ITA Nos.1282, 1283 and 1516/Mds/2006 for the Assessment Years 1999-2000, 2002-03 and 1999-2000, against the order passed by the Commissioner of Income Tax, (Appeals)-III dated 8/3/2006 in ITA No.316/2005-06/A-III and in ITA No.147/2005-06-A III, against the Assessment Order for the Assessment Year 1999-2000 and for the Assessment Year 2002-03 passed by the Assistant Commissioner of Income Tax, Company Circle I(1), Chennai dated 31.3.2005 and 18.3.2005 in PA/GIR/No.AX1-015.

For Appellant : Mr.T.Ravi Kumar
Sr. Standing Counsel

For Respondent : Mr.N.V.Balaji

COMMON JUDGMENT

(Delivered by DR.ANITA SUMANTH,J)

These Tax Case (Appeals) are filed by the Revenue challenging an order of the Income Tax Appellate Tribunal dated 19.12.2008 made in ITA Nos.1282, 1283 and 1516/Mds/2006 in respect of Assessment Years 1999-2000, 2002-03 and 1999-2000.

2. This Court vide order dated 25.08.2009 admitted the following substantial questions of law for consideration:

Assessment Year: 1999-2000:

1. Whether on the facts and circumstances of the case, the Tribunal was right in holding that the assessee is entitled to deduction of lease equalisation charge, which is nothing but an amount equal to the diminution in the value of depreciable leased assets, over and above the depreciation allowed under the Income Tax Act?

Assessment Years: 1999-2000 & 2002-03:

2. Whether on the facts and circumstances of the case, the Tribunal was right in holding that interest under section 234D cannot be charged in respect of the assessment years prior to the insertion of the section 234D, when the regular assessment was completed only subsequent to the insertion of section 234D?

3. Whether on the facts and circumstances of the case, no interest can be charged even for the period subsequent to the introduction of sec.234D, merely on the ground that the refund was granted prior to its introduction?

3. We have heard Mr.T.Ravikumar, learned Senior Standing Counsel appearing for the appellant/Revenue and Mr.N.V.Balaji, learned counsel appearing for the respondent/assessee.

4. Both learned counsel concur on the position that substantial question of law No.1 relating to deduction of lease equalisation charges is covered by a judgment of the Supreme Court in the case of Commissioner of Income Tax VI V. Virtual Software Systems Limited ((2018) 404 ITR 409), wherein the Supreme Court considered the following substantial question of law:

'5. The short question that arises for consideration before this Court is whether the deduction on account of lease equalisation charges from lease rental income can be allowed under the Income Tax Act, 1961, on the basis of Guidance Note issued by the Institute of Chartered Accountants of India (ICAI)?'

5. The conclusion of the Supreme Court at paragraph nos.16 and 17 of the said judgment is as follows:

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.

6. Accordingly, we answer substantial question of law No.1 in favour of the assessee and against the Revenue.

7. In so far as substantial questions of law 2 and 3, relating to levy of interest under section 234D are concerned, both learned counsel concur that the issue is settled by the judgment of the Supreme Court in the case of Commissioner of Income Tax -I V. Reliance Energy Ltd. ((2013) 358 ITR 371) wherein the Supreme Court holds that the provisions of section 234D would be attracted in the case of assessments made after the date of its insertion, being 01.06.2003.

8. In the instant case, the orders of assessment for Assessment Years 1999-2000 and 2002-03 are 18.03.2005 and 31.03.2005, both being subsequent to 01.06.2003. Accordingly, the provisions of section 234D would stand attracted in both cases.

9. We answer the 2nd and 3rd substantial questions of law in favour of the Revenue and against the assessee.

10. In the upshot, all the above Tax Case (Appeals) are disposed of as above. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

- 1)The Income Tax Appellate Tribunal,
Madras 'A' Bench, Chennai.
- 2)The Commissioner of Income Tax (Appeals)-III,
Chennai-34.
- 3.The Assistant Commissioner of Income Tax,
Company Circle I(1), Chennai-34.

+1cc to Mr.N.V.Balaji, Advocate Sr.559
+2cc to Mr.T.Ravikumar, Advocate Sr.401

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