IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.02.2019

CORAM

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

Tax Case Appeal No. 328 of 2011

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

Vs.

M/s. Shriram Investments Limited.,
(since amalgamated with M/s. Shriram Transport
Finance Co Limited
No.123, Angappa Naicken Street
Chennai - 600 001. .. Respondent/Appellant

Tax Case Appeal filed under Section 260-A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'C' Bench, Chennai, dated 30.03.2011 made in ITA No. 791/Mds/2010 against the order passed by the Commissioner of Income Tax, Chennai dated 24/03/2010 made in C.No.3033/02/III/2008-09 and against the Order passed by the Additional Commissioner of Income Tax, Company Range VI, Chennai-34 dated 31/12/2007 made in PAN AAECS4041G for the Assessment Year 2005-2006.

For Appellant : Mr. T.R.Senthilkumar
Sr. Standing Counsel

For Respondent : R.Sivaraman

J U D G M E N T

(Delivered by C.V.KARTHIKEYAN, J.)

By way of this Appeal, the appellant has assailed the Judgement and Order of the Tribunal dated 30.03.2011, whereby the Tribunal had allowed the Appeal preferred by the Assessee.

2. This Court while admitting the Appeal on 11.10.2011 had framed the following substantial questions of law:-

"(a) Whether on the facts and in the circumstances of the case, the Tribunal was right in quashing the revisional order passed by the CIT under Section 263 of Income Tax Act, 1961?;

(b) Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the claim for deduction of Rs.1,83,16,468/- being deduction on securitization income from returned income, which was not even claimed in the revised return and as such is contrary to the Judgement of the Supreme court in the case of Goetz India Limited., reported in 284 ITR 323?"

3. Heard Mr.T.R.Senthilkumar, learned Senior Standing counsel for the appellant and Mr.R.Sivaraman, learned counsel for the respondent.

4. The facts leading to this Appeal are that the Commissioner of Income Tax, Chennai -III had invoked the provisions of Section 263 of the Income Tax Act to revise the Assessment Order dated 31.12.2007 passed for the Assessment Year 2005-2006. A show cause notice had been issued under Section 263 of the Act dated 02.03.2010 to the respondent Assessee.

5. In the said show cause notice, it had been claimed that on a perusal of the Assessment Order dated 31.12.2007 passed under Section 143(3) of the Income Tax Act for the Assessment Year 2005-2006, a total income of Rs.60,55,98,506/- had been determined. It was observed that the Assessee a NBFC had followed Mercantile System of Accounting and also the Prudential Norms for Income Recognition prescribed by the Reserve Bank of India for Non banking Financial Companies. It was stated that the income from Non Performing Assets (NPAs) cannot be recognised and included in taxable income merely on the basis of accrual and the policy of Income Recognition should be based on the actual recovery. It was further observed that the respondent Assessee had not recognised and included such income from the Non performing assets both in its statutory book of account and in its income tax books of account. It was also further observed that the Assessee had deducted from the total income a sum of Rs.183.16 lakhs on account of a mistake in the computation of total income. It was claimed that the revised return of income had not been filed and consequently, the claim for deduction was not admissible.

6. In response to the show cause notice, the respondent Assessee stated that the Assessing Officer had made detailed enquiries / investigations and there was no loss to the revenue because the claims of deduction made were according to law. It was also pointed out by the respondent Assessee that in the earlier assessment year, a similar issue had been considered and decided in favour of the Assessee. With respect to the securitization aspect, it was claimed that the income from securitization had been wrongly offered to tax in the year under consideration. The said income was spread over the assessment years from 2005-2006 to 2011-2012. This has been allowed by the Assessing Officer.

7. The Commissioner of Income Tax however set aside the assessment order on the following issues:-

> "(i) Verification to be made regarding the extent of income arising to the assessee in respect of NPAs?; and
>
> (ii) Claim for deduction of Rs.1,83,16,468/- on account of securitization income made during the course of assessment proceedings and allowed by the Assessing Officer."

8. Aggrieved by the same, the respondent Assessee filed an Appeal before the Income Tax Appellate Tribunal. By order dated 30.03.2011, the Appeal of the Assessee was allowed. The Tribunal, held that the Judgement relied by the Commissioner of Income Tax in Goetze (India) Limited., Vs. Commissioner of Income - Tax reported in (2006) 284 ITR 323 (SC) was not applicable to the facts of the present case.

9. It was held that in respect of the issue regarding accrual of income of non banking finance company, in so far as interest of NPA's is concerned, it has to be considered and included only after realising the income from NPAs. This observation was made following CIT Vs Elgi Finance Limited., reported in 293 ITR 357 (Mad), wherein it had been held that the interest computed as taxable income has to be deducted. It was therefore found that no error had crept in the assessment order.

10. With respect to the claim for deduction of Rs.1,83,16,468/- for deduction in securitization income from the return income in view of the fact that the Assessee did not file a revised return, it was observed that there was no new item of income or expenditure had arisen and the correct computation of income from the same set of transactions can be

done in two ways. Two views were possible on the subject. Holding as above, the Tribunal allowed the Appeal of the respondent Assessee.

11. The first substantial question of law relate to whether the Tribunal was right in questioning the revisional order passed by the CIT under Section 263 of the Income Tax Act 1961. Section 263 of Income Tax Act 1961 is as follows:-

> " Revision of order prejudicial to revenue:
>
> 263(1) The Principal Commissioner or Commissioner may call for and examine the record of any proceeding under this Act, and if he considers that any order passed therein by the Assessing Officer is erroneous in so far as it is prejudicial to the interests of the revenue, he may, after giving the assessee an opportunity of being heard and after making or causing to be made such inquiry as he deems necessary, pass such order thereon as the circumstances of the case justify, including an order enhancing or modifying the assessment, or cancelling the assessment and directing a fresh assessment."

12. The crucial phrases in the said Section is that the order of the Assessing Officer must be erroneous and it must be prejudicial to the interests of the Revenue.

13. In the Commissioner of Income Tax Ward II (4), Chennai, Vs. Smt. Tasneem Z. Madraswala reported in (2010) 324 Income Tax Return 67, the Madras High Court has held as follows:-

> "4. The suo-motto power conferred under Section 263 of the Income Tax Act, 1961 can be exercised by the Commissioner when the order of the Assessing Officer is erroneous and prejudicial to the interests of the revenue. While exercising the said power, the Commissioner will have to satisfy the twin conditions, namely, the order of the Assessing Officer which is sought to be revised is erroneous and also prejudicial to the interests of the revenue. The said power is of wide import. The phrase, "prejudicial to the interests of the revenue" has to be read in conjunction with an erroneous order passed by the Assessing Officer."

14. In CIT Vs Elgi Finance Limited., reported in 293 ITR 357 (Mad), had been held by a Co-ordinate Bench of this Court that in a case where the Assessing Officer found that the Assessee was following the Mercantile System of Accounting, then both the income as well as the expenditure should be accounted on accrual basis. In view of the same, the Tribunal was of the view that the lower authorities had erred in treating the interest on non-performing assets as income of the Assessee and directed the Assessing Officer to delete the said interest from the computation of taxable income. The interest from such non-performing assets would be taxed in the appropriate assessment years on the basis of actual receipt. It has transpired during arguments that this decision was challenged before the Hon'ble Supreme Court but the Special Leave Petition filed by Revenue was dismissed.

15. With respect to the second substantial question of law, Goetze (India) Limited., Vs. Commissioner of Income - Tax reported in (2006) 284 ITR 323 (SC), related to a case where for the assessment year 1995-96 the Assessee filed its return on November 30, 1995 and on January 12, 1998 sought to claim a deduction by way of a letter addressed to the Assessing Officer. The Assessing Officer disallowed it on the ground that there was no provision in the Income-tax Act, 1961 allowing an amendment in the return without filing a revised return. The Tribunal confirmed this, as did the High Court. The Hon'ble Supreme Court dismissed an appeal holding that the decision was restricted to the power of the assessing authority to entertain a claim for deduction otherwise than by a revised return, and did not impinge on the power of the Appellate Tribunal under Section 254 of the Income-tax Act, 1961.

16. The facts in the present case are totally different. Here, it had been clearly held that the Income from the relevant transactions, when they were treated as non securitized were spread over the assessment years from 2005-2006 to 2011-2012, whereas the income from the very same transactions had been offered in full for the assessment year 2005-2006. It was clear that there was no reduction of income in view of the fact that though the income reduces in the return year, it goes to increase the income of the Assessee in the subsequent years. As there was neither any new income nor any fresh expenditure and it was only computation of income from the same set of transactions in two ways, namely, one treating them as securitized and other treating them as non securitized, no prejudice was caused to the Revenue.

17. Consequently, it is seen that both the pre-requisite requirements for invoking revisional powers under Section 263 were not satisfied namely, an error and a prejudice caused to the Revenue.

18. We therefore hold that the Appeal of Revenue does not have any merit and consequently, the substantial questions of law are answered in favour of Assessee and the Tribunal was right in quashing the revisional order passed by the CIT under Section 263 of the Income Tax Act and the Tribunal was also right in holding that the claim for deduction on securitization income from return income. The Judgement of the Hon'ble Supreme Court in the case of Goetze (India) Limited., Vs. Commissioner of Income - Tax reported in (2006) 284 ITR 323 (SC) would not apply to the facts of this case.

19. The Tax Case Appeal filed by Revenue is dismissed. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

vsg

To

1) The Commissioner of Income Tax,
Chennai-34

2) The Income Tax Appellate Tribunal,
Madras C Bench, Chennai - 34.

3) The Commissioner of Income Tax.
Chennai III(i/c)
Chennai - 34.

4) The Additional Commissioner of Income Tax,
Company Range VI, Chennai-34

+1cc to Mr.T.R.Senthilkumar, Advocate vide SR No.9920

Tax Case Appeal No. 328 of 2011

SR(CO)
SSM(22/03/2019).