IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.01.2019

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Tax Case (Appeal) Nos.339 to 341 of 2011

Commissioner of Income Tax - I,
Chennai. ... Appellant in all the Appeals

-vs-

M/s.TVS Finance & Services Ltd.,
(Formerly TVS Lakshmi Credit Ltd.)
"Jayalakshmi Estates",
24, Haddows Road,
Chennai-600 006. ... Respondent in T.C.(A) No.339 of 2011

M/s.TVS Finance & Services Ltd.,
(Formerly Harita Finance Ltd.)
"Jayalakshmi Estates",
24, Haddows Road,
Chennai-600 006. ... Respondent in T.C.(A) Nos.340 and 341 of 2011

Tax Case Appeals filed under Section 260A of the Income Tax Act, 1961 against the common order of the Income-tax Appellate Tribunal Chennai Bench 'C', Chennai, dated 22.12.2010, in I.T.A.Nos.1735 & 1736/Mds/2004 and 1879/Mds/2005 for the assessment years 1998-99, 1998-99 and 2001-02 respectively.ITA Nos.1735 to 1736/MDS/2004 and 1879/MDS/2005 against the Commissioner of Income Tax Appeals XI Chennai-34 in ITA.No.55/2001-2002 dt:08.06.2004 for the Assessment year 1998-99 and against the Joint Commissioner of Income Tax Special Range XI Chennai-34 order dt:30/03/2001 for the Assessment year 1998-99 on PAN/GIR.No.8H and against ITA.1736/MDS/2004 against the Commissioner of Income Tax Appeals XI Chennai-34 dt:08/06/2004 made in ITA.No.TR.No.496/2001-2002 for the Assessment year 1998-99 in G.I.No.PAN No/AAACH/0949L/8H against the Joint Commissioner of Income Tax Special Range X, Chennai-34 order dt:30/03/2001 for the Assessment year 1998-99 in GIR.No.38T and against ITA.1879/MDS/2005 and against the Commissioner of Income Tax Appeals XI Chennai-34 order dt:12/07/2005 in ITA/TR.No.274/2004-2005/ITA.221/2004-05 for the Assessment year 2001-2002 in GI/PAN.No.AAACH6041B and against the Assistant Commissioner of Income Tax, Companay circle III (2) Chennai-34 order dt:25/03/2004 made in PAN.No./GIR.No.32586 for the Assessment year.2001-2002.

For Appellant : Mr.M.Swaminathan,
(In all the Appeals) Senior Standing Counsel

For Respondent : Mr.R.Venkatanarayanan,
(In all the Appeals) for M/s.Subbaraya Aiyar,
Padmanabhan and Ramamani

COMMON JUDGMENT

(Delivered by T.S.Sivagnanam, J.)

These tax case appeals, filed by the Revenue under Section 260A of the Income-tax Act, 1961 (hereinafter referred to as "the Act"), are directed against the common order passed by the Income-tax Appellate Tribunal Chennai Bench 'C', Chennai, dated 22.12.2010, in I.T.A.Nos.1735 & 1736/Mds/2004 and 1879/Mds/2005 for the assessment years 1998-99, 1998-99 and 2001-02 respectively.

2.The above tax case appeals have been admitted, on 12.09.2011, on the following substantial questions of law:-

"T.C.(A) No.339 of 2011:-

"1.Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in allowing deduction of 1/10$^{th}$ of the share issue expenses without appreciating that the provisions of amortization under Section 35D applied only to the primary issue of shares and in respect of subsequent share issues, the expenditure had to be disallowed as capital expenditure?

2.Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in deleting the disallowance of lease equalization charges amounting to Rs.5,08,51,000/- under the normal computation of total income as well as in the computation of Book profits under Section 115JA?"

T.C.(A) No.340 of 2011:-

"Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in deleting the disallowance of lease equalization charges amounting to Rs.1,02,78,803/- in the computation of Book profits under Section 115JA?"

T.C.(A) No.341 of 2011:-

"Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in deleting the disallowance of lease equalization charges amounting to Rs.2,65,91,140/- in the computation of Book profits under Section 115JA?""

3.So far as the second substantial question of law in T.C.(A) No.339 of 2011 and the substantial question of law in T.C.(A) Nos.340 and 341 of 2011 are concerned, they pertain to lease equalization charges. The learned Senior Standing Counsel for the Revenue fairly states that the said question has been decided against the Revenue by the Hon'ble Supreme Court in the case of Commissioner of Income Tax vs. Virtual Soft Systems Ltd., (2018) 404 ITR 0409 (SC).

4.Accordingly, the said question is decided against the Revenue and the appeals are dismissed as against the said question of law, i.e., in respect of lease equalization charges.

5.So far as the first substantial question of law in T.C.(A) No.339 of 2011 is concerned, the Tribunal has allowed the same on the ground that such expenses were allowed in the assessment years 1990-91/1993-94 and 1/10$^{th}$ of the same was allowed 8/5 years out of 10 years till the assessment year 1996-97.

6.In our considered view, the Tribunal should have remanded the matter to the Assessing Officer to cause verification and then decide the issue. Therefore, we are of the view that the first substantial question of law in T.C.(A) No.339 of 2011 is to be remanded to the Assessing Officer for fresh consideration.

7.Accordingly, T.C.(A) No.339 of 2011 is partly allowed, the finding rendered by the Tribunal, insofar as it relates to the first substantial question of law, is set aside and the matter is remanded to the Assessing Officer to take a fresh decision on merits.

8.In respect of the second substantial question of law in T.C.(A) No.339 of 2011 and the substantial question of law in T.C.(A) Nos.340 and 341 of 2011, as stated above, is answered against the Revenue, following the decision of the Hon'ble Supreme Court in Virtual Soft Systems Ltd. (supra). No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

abr

To

1.The Income-tax Appellate Tribunal Chennai Bench 'C',
Chennai.

2.The Commissioner of Income Tax Appeals XI,
Chennai-34.

3.The Joint Commissioner of Income Tax,
Special Range XI, Chennai-34.

4.The Joint Commissioner of Income Tax,
Special Range X, Chennai-34.

5.The Assistant Commissioner of Income Tax,
Company Circle III(2) Chennai-34.

+1cc to Mr.Subbaraya Aiyar, Advocate, S.R.No.1382

+1cc to Mr.M.Swaminathan, Advocate, S.R.No.703

T.C.(A) Nos.339 to 341 of 2011

KJ(CO)
GSP(11/02/2019)