IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.03.2020

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE MR.JUSTICE R.SURESH KUMAR

Tax Case (Appeal) No.522 of 2010

The Commissioner of Income Tax-II
Trichirapalli. ...Appellant/Respondent

Vs.

M/s.City Union Bank Limited
Central office, 149, T.S.R.Big Street
Kumbakonam. ...Respondent/Appellant

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal 'C' Bench, Chennai dated 13.11.2009 in ITA No.739/Mds/2009 for the Assessment year 2001-2002 against the order of the Commissioner of Income Tax Appeals Tiruchirapalli dated 24.03.2009 made in I.T.A. No. 559/2006-2007 for the assessment year 2001-2002 against the order of the Additional Commissioner of Income Tax, Kumbakonam dated 29/12/2006 made in PAN/GIR No. C-8010/AAACC1287E for the assessment year 2001-2002.

For Appellant : Mr.J.Narayanasamy
Senior Standing Counsel

For Respondent : Mr.V.S.Jayakumar

J U D G M E N T

(Judgment of the Court was delivered by DR.VINEET KOTHARI,J.)

This Tax Case Appeal has been filed by the Revenue calling in question the correctness of the order passed by the Income Tax Appellate Tribunal, 'C' Bench, Chennai dated 13.11.2009 for the Assessment Year 2001-02 holding in favour of the Assessee that the amount of stale Demand Drafts not claimed by customers and which had become barred by limitation cannot be treated as income of the Respondent Assessee Bank.

2. The relevant findings of the learned Tribunal are quoted below for ready reference.

> "4. The above ratio was rendered on account of facts of that case where the ITO found that for the assessment years 1982-83 and 1983-84, the assessee had transferred an amount of Rs.17,381 to the Profit & Loss Account of the Company during the accounting period ended on March 31, 1982 (assessment year 1982-83) and an amount of Rs.38,975/- during the accounting period ended on March 31, 1983 (assessment year 1983-84). But these amounts were not included in the total income of the assessee. The sums were stated to be credit balances standing in favour of the customers of the company. Since these balances were not claimed by the customers, the amounts were transferred by the assessee to the Profit & Loss Account. The ITO was of the view that because the surplus had arisen as a result of trade transactions, the amount had the character of income and had to be added as income of the assessee for the purpose of income-tax assessment. The additions were deleted by the ld.CIT(A) and this was upheld by the Tribunal. But the facts of this case are different because in banking business, RBI guidelines are to be followed and that by, simplicitor, efflux of time, say beyond 3 years, ordinary limitation would not apply as the assessee has been showing cumulative total liability at the relevant period. In this case, after detailing period total outstanding amount has been shown in the Annexure attached to the assessment order. Actually, items are coming in and going out of this account every now and then throughout the year, and it is treated like a current account operated upon regularly doing in the course of business. Given the nature of transactions, the encashment of drafts after revalidation thereof, is a regular feature. Rather the common-sense demands that such drafts cannot be treated as unclaimable because time-barred, given the nature of banking transactions. Drafts issued, becoming stale is not an uncommon factor rather it is a usual and common feature in all banks. Unless the draft amount becomes, in fact, unclaimable which can be by virtue of multifarious facts available and not by guess work, this cannot be treated as bank's income. There is no such law which can convert such a liability into the income/asset of the assessee-bank after the lapse of particular time lag. The decision of the Hon'ble Supreme Court (cited supra) is, otherwise helpful to the claim of the assessee. The Assessing Officer has

not given any clear cut finding as to how the amount has become unclaimable. Hence we set aside the impugned finding and delete the entire addition.”

3. The present appeal filed by the Revenue was admitted by a Coordinate Bench of this Court on the following substantial question of law.

"Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in deleting the addition of Rs.49,19,660/- made by the Assessing Officer being the amount of stale drafts not claimed for more than three years and the claim for which had become barred by limitation without applying the ratio of the Supreme Court's decision in the case of Commissioner of Income Tax Vs.T.V.Sundaram Iyengar & Sons Ltd.(222 ITR 344)? ”

4. Both the learned counsel fairly submit that, the controversy involved in the present appeal is covered by a decision of the Division Bench of the Karnataka High Court in “Commissioner of Income Tax -Vs- Raddi Sahakara Bank Niyamitha” delivered on 30.01.2017 reported in [2017] 395 ITR 652 (Karnataka) (to which one of us DR.VINEET KOTHARI, J. was a party), in which the Division Bench of the Karnataka High Court has held as under:

“4. The learned counsel at bar submitted before the court that this controversy is no longer res integra and the Division Bench of this court in CIT v. Karnataka Vikas Grameen Bank in I. T. A. No. 100014 of 2014 and connected case, decided on December 14, 2015, has held, following the decision of the hon'ble Supreme Court in the case of CIT v. T. V. Sundaram Iyengar and Sons Ltd. reported in [1996] 222 ITR 344 (SC), that such an addition cannot be made under section 41(1) of the Act, since the liability of the assessee-bank to pay back the amounts to the customers in respect of such stale demand drafts and pay orders does not cease in law. The relevant extract from the judgment of the Division Bench of the court as contained in para 18 thereof including the extract from the decision of the hon'ble Supreme Court is quoted below for ready reference :

"18. A careful perusal of the above provision leads us to infer that section 41(1) can be pressed into service when an allowance or deduction is sought to be made in respect of loss, expenditure or trad ing liability is incurred by the assessee. In the instant case, the sum of Rs. 58,38,581 has remained with the assessee owing to the fact that the payees or holders of the draft/pay orders had not encashed them. The language employed by the Legislature being unambiguous, it would be incongruous to construe the said sum as either a loss, expenditure or trading liability incurred by the assessee. While deal ing with a situation of unclaimed amount, the hon'ble Supreme Court.

In the case of T. V. Sundaram Iyengar and Sons Ltd. [1996] 222 ITR 344 (SC), has held as follows (page 351 of 222 ITR) :

"We are unable to uphold the decision of the Tribunal. The amounts were not in the nature of security deposits held by the asses see for performance of contract by its constituents. As it appears from the facts of the case, the amounts were depleted by adjustments made from time to time. The Commissioner of Income-tax (Appeals) found that the assessee wrote back the amounts to its profit and loss account because the various trading parties did not claim these amounts for a long time. The amounts represented credit balances in the name of the trading parties and was taken to its profit and loss account. The Commissioner of Income-tax (Appeals) held that these amounts were not revenue receipts but were of capital nature. The provisions of section 41(1) were not attracted in the facts of this case because the assessee's liability to pay back the amounts to its cus tomers had not ceased. The Tribunal agreed with this view.' (under lining is by us)

19. The Tribunal adverting to the above ruling has rightly deleted the sum of Rs. 58,38,581 added by the assessing authority by holding it as unsustainable in law."

5. Having perused the record, we are in respectful agreement with the aforesaid decision of the Division Bench of this court and we do not find any reason to take a different view of the matter and in view of the aforesaid, we do not find any substantial question of law arising in the present case."

5. We agree with the said view of the Karnataka High Court and accordingly the question of law framed in this appeal is answered against the Revenue and in favour of the Assessee. The Appeal filed by the Revenue deserves to be dismissed and is accordingly dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

KST

To

1. Income Tax Appellate Tribunal
'C' Bench,Chennai.

2. The Commissioner of Income Tax- II,
Tiruchirapalli.

3. The Commissioner of Income Tax Apeal,
Tiruchirapalli

4. The Additional Commissioner of Income Tax,
Kumbakonam.

+ 1 CC to MR. J.Narayanaswamy, Advocate, SR 18656
+ 1 CC to Mr. V.S.Jayakumar, Advocate, SR 18579

T.C.(A) No.522 of 2010

VBA
MRP 28/05/2020
SP(16/07/2020)