In the High Court of Judicature at Madras

Dated : 15.6.2020

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

and

The Honourable Mrs.Justice PUSHPA SATHYANARAYANA

Tax Case Appeal No.401 of 2013

The Commissioner of Income Tax, Coimbatore ...Appellant/Appellant

Vs

M/s.Elgi Ultra Industries Ltd., Coimbatore-18 ...Respondent/Respondent

APPEAL under Section 260A of the Income Tax Act, 1961 against the order dated 22.11.2012 made in ITA.No.1690/Mds/2012 on the file of the Income Tax Appellate Tribunal, Chennai 'D' Bench for the assessment year 2009-10. ITA.No.1690/MDS/2012 against the Commissioner of Income Tax(Appeals)-I, Coimbatore order dated, 13/6/2012 in P.A.No/G.I.R.No.-AAACE4566G for the Assessment year 2009-2010 against the Assistant Commissioner of Income Tax, company circle-1(1). Coimbatore order dated 30/12/2011 in P.A.No/G.I.R.No.-AAACE4566G for the Assessment year 2009-10.

For Appellant : Mr.T.R.Senthilkumar, SSC assisted by Ms.K.G.Usharani, SC

For Respondent: Mr.Arun Prasad

Judgment was delivered by T.S.Sivagnanam,J

We have heard Mr.T.R.Senthilkumar, learned Senior Standing Counsel, assisted by Ms.K.G.Usharani, learned Standing Counsel appearing for the appellant - Revenue and Mr.Arun Prasad, learned counsel appearing for the respondent.

2. This appeal, filed by the Revenue under Section 260A of the Income Tax Act, 1961 (for short, the Act) is directed against the order dated 22.11.2012 made in ITA.No.1690/Mds/2012 on the file of the Income Tax Appellate Tribunal, Chennai 'D' Bench (for brevity, the Tribunal) for the assessment year 2009-10.

3. The appeal has been admitted on 16.9.2013 on the following substantial questions of law :

> "i. Whether, under the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was correct in allowing the claim of the assessee for deduction of bad debts of Rs.421,09,445/- as 'business loss' allowable under Section 37 following its earlier order in ITA.No. 317/Mds/2011, which has not become final since the Revenue has preferred further appeal before this Court in TCA.No.285 of 2012 ?
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> ii. Whether, under the facts and circumstances of the case, the Income Tax Appellate Tribunal was correct in not holding that the transaction was a sham transaction entered into with the sole objective of evading tax particularly when the respondent has offered a small portion of the income to tax in an earlier year and claiming the entire debt in the phased manner in the subsequent years including the assessment year in appeal?
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> iii. Whether, under the facts and circumstances of the case, the Income Tax Appellate Tribunal was correct in holding that bad debts written off is allowable under Section 37(1) of the Act when such write off is specifically not allowed as a deduction under Section 36(1)(vii) of the Act ? And
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> iv. Whether, under the facts and circumstances of the case, the Income Tax Appellate Tribunal was correct in holding that bad debts written off is allowable under Section 37(1) of the Act, since the discount on the debts taken over was assessed as business income in the earlier year ?"

4. It is submitted that the substantial questions of law framed for consideration in this appeal have been decided in favour of the assessee by the Hon'ble Division Bench of this Court in TCA.Nos.1270 and 1271 of 2009 in the assessee's own case by a common judgment dated 09.1.2019.

5. The relevant portions in the said judgment dated 09.1.2019 read thus:

> "5. As regards the second substantial question of law, the provisions of section 36(1)(vii) of the Income Tax Act, 1961 provide for allowance of an amount

representing bad debt or part thereof, which is written off as irrecoverable in the accounts of the assessee for the previous year.

6. In the present case, the admitted fact is that the assessee had taken over certain debts from M/s.Elgi Finance Ltd. and has offered a sum of Rs.1,74,90,872/-; and Rs.87,45,435/-; as interest received in respect of the debts in the same assessment years. The same have been assessed to tax. Out of the total debts, a sum of Rs.81.00 lakhs and Rs.53.00 lakhs have been collected back in the present assessment years and a sum of Rs.31,91,237/-; and Rs.90,15,652/-; have been claimed as bad debts.

7. The claim was disallowed on the ground that the debts have been taken over from the sister concerns voluntarily only as a measure of support to it and knowing fully well that the same was irrecoverable. Thus, the claim for write off, according to the Assessing Officer, was liable to be denied. In appeal, the Commissioner of Income Tax (Appeals) allowed the claim of the assessee.

8. We find, as a matter of fact, that the Tribunal has taken note of the position that the Memorandum and Articles of Association permitted the assessee to carry on the business of money lending and the transactions in question have been held to be in the realm of business activity.

9. There is no dispute raised before us on this factual position. In the light of the same, the second substantial question of law is also answered in favour of the assessee and against the Revenue.

10. Accordingly, both the Tax Case (Appeals) are dismissed."

6. Following the said judgment, the above tax case appeal is dismissed and the substantial questions of law framed are answered in favour of the assessee and against the Revenue. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Income Tax Appellate Tribunal, Chennai 'D' Bench.

2.The Assistant Commissioner of Income Tax
(Appeals)I, Coimbatore.

3.The Assistant Commissioner of Income Tax,
Company circle I(1), Coimbatore.

TCA.No.401 of 2013

RJI (CO)
RV (03/09/2020)