

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 01.02.2021

CORAM:

**THE HON'BLE MR. JUSTICE M.DURAISWAMY
AND
THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI**

T.C.A.No.1394 of 2008

M/s.India Equipment Leasing Ltd.,
(merged with Sundaram Finance Limited)
21, Patullos Road,
Chennai – 600 002.

... Appellant

Vs.

The ACIT,
Co.Cir.VI(4),
Chennai.

... Respondent

Appeal preferred under Section 260A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Madras, “A” Bench, dated 28.09.2007 in I.T.A.No.864/Mds/2004, Assessment Year 1996-97.

For Appellant : Mr.Venkatanarayanan
for M/s.Subbaraya Aiyar

For Respondent : Mr.T.Ravi Kumar,
Senior Standing Counsel

JUDGMENT

(Judgment was delivered by M.DURAISWAMY, J.)

Challenging the order passed in I.T.A.No.864/Mds/2004 for the assessment year 1996-97 on the file of the Income Tax Appellate Tribunal, Madras, “A” Bench, the assessee has filed the above appeal.

2.The appellant is engaged in the business of hire purchase, financing, equipment leasing and allied activities. For the assessment year 1996-97, the appellant filed its return of income on 28.11.1996 declaring an income of Rs.1,70,88,730/-. The return was processed under Section 143(1)(a) on 08.05.1997 determining a refund of Rs.40,16,312/-. Subsequently, notice under Section 148 was issued on 12.04.2000. The assessment under Section 147 was completed on 28.03.2002 determining the total income at Rs.3,19,76,283/-. While completing the re-assessment, the Assessing Officer has disallowed/added the income under other heads. The appellant *bonafide* entered into transaction in the normal course of business with Bellary Steels and Alloys Limited for leasing of Unmachined Casting Rolls to the tune of Rs.51,06,290/- and Rs.68,58,190/- on 03.08.1995 and 24.08.1995 respectively. These rolls

were supplied by M/s.ORV Castings Private Limited, Bellary and leased to M/s.Bellary Steels and Alloys Limited. The inward pass and stores receipt issued by the lessee Company would clearly evidence the fact that the rolls were duly taken delivery by the lessee. According to the appellant, the depreciation claimed on the rolls is *bonafide*. The Assessing Officer treated the transaction as a finance transaction. The Assessing Officer, without giving proper opportunity, proceeded on the basis of the stand taken in the assessment of M/s.Sundaram Finance Limited. The excise invoice raised by the supplier M/s.ORV Castings Private Limited, which carry their excise registration number, evidence the fact that they were engaged in the manufacture of roll. The transaction entered by Bellary Steels and Alloys Limited with the appellant is a finance lease transaction. They have executed Lease Agreement and also furnished Installation Certificate. The subsequent accounting of the transaction differently in their books which was not in agreement with the very nature of this transaction for which they have executed the documents does not vitiate the base nature of the transaction. During the course of penalty proceedings against levy of penalty under Section 271(1)(c), the CIT (Appeals) had directed the

Assessing Officer to re-examine the issues by cross examining the lessees and to submit a report. However, the Assessing Officer has not submitted any report. The appellant has been consistently following the method of recognizing income on accrual basis as per prudential norms prescribed by RBI and the Accounting Standards notified by the Central Government under Section 145A. This method is also consistent with the provisions of the Companies Act and the Guidance Note on Accrual Basis issued by the Institute of Chartered Accountants of India. When there is an uncertainty of realization of income, the norms aforesaid provide for deferment of such income. The Assessing Officer rejected the contentions of the appellant and added the above sum to the income of the appellant.

3.The appellant had purchased Computer Software at a cost of Rs.49,08,393/- and used it in the business of leasing. Since the Software Technology is fast changing, it could not be of any enduring nature. However, the Assessing Officer rejected the contentions of the appellant and granted depreciation at 60% based on CIT (Appeals) order in the case of M/s.Sundaram Finance Limited. Aggrieved against the

assessment order, the appellant preferred an appeal to the CIT (Appeals) and re-iterated the submissions made before the Assessing Officer. The CIT (Appeals) confirmed the disallowance of depreciation on leased assets and expenditure on Software. With respect to income on NPA, the CIT (Appeals), following the order of 1999-00, directed the Assessing Officer to verify and allow. Aggrieved against the order of CIT (Appeals), the assessee and the department preferred appeals to the Income Tax Appellate Tribunal. The Tribunal, by a common judgment dated 28.09.2007, dismissed the assessee's appeal and allowed the revenue's appeal. Aggrieved over the order passed by the Income Tax Appellate Tribunal in I.T.A.No.864/ Mds/2004 for the assessment year 1996-97, the assessee has filed the above appeal. The above appeal is admitted on the following substantial questions of law:

“1)Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that lease transactions entered into by the appellant with M/s.Bellary Steels and Alloys Ltd., is not genuine and hence not entitled to depreciation?

2)Whether on the facts and in the circumstances of the case, the Tribunal was justified in ignoring the evidences produced by the appellant that would establish the lease

transactions entered into by the appellant are genuine and hence entitled to depreciation?

3)Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the cost of software purchased by the appellant and given it on lease is capital in nature and hence not allowable as deduction?"

The appellant has raised the following substantial question of law in the grounds of appeal:

“Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the notional income relating to Non-Performing Assets in regard to which there was no certainty about its recovery should be taxed as income?”

4.The learned counsel appearing for the appellant – assessee submitted that in similar circumstances, the Hon'ble Division Bench of this Court in the appeals in **T.C.A.Nos.2097 to 2099 of 2008 [Commissioner of Income Tax, Chennai Vs. M/s.Indbank Merchant Banking Services Ltd., Krest Bldg (III Floor), 26/27, Jehangir Street, Second Line Beach, Chennai]** dated **30.07.2019**, following the ratio laid down by the Hon'ble Supreme Court in **(2018) 90 taxmann.com 365**

(SC) [Commissioner of Income Tax vs. Vasisth Chay Vyapar Ltd.],

decided the questions of law in favour of the assessee and against the Department. Further, the learned counsel submitted that the ratio laid down by the Hon'ble Division Bench squarely applies to the facts and circumstances of the present case.

5. In view of the submission made by the learned counsel for the appellant – assessee, it would be appropriate to extract the relevant portion of the order dated 30.07.2019 made in T.C.A.Nos.2097 to 2099 of 2008, which reads as follows:

“ ...

7. At this juncture, it would be worthwhile to take note of the following paragraphs of the decision of the High Court of Delhi in the case of Vasisth Chay Vyapar Ltd.:

“18. However, when we examine the issue involved therein minutely and deeply in the context in which that had arisen and certain observations of the Apex Court contained in that very judgment, we find that the proposition advanced by Mr. Sabharwal may not be entirely correct. In the case before the Supreme Court, the assessee a NBFC debited ` 81,68,516 as provision against NPA in the profit and loss account, which was

claimed as deduction in terms of Section 36 (1) (vii) of the Act. The assessing officer did not allow the deduction claimed as aforesaid on the ground that the provision of NPA was not in the nature of expenditure or loss but more in the nature of a reserve, and thus not deductible under section 36(i) (vii) ITA 139/2008, ITA 466/2008, ITA 537/2008, ITA 408/2003 of the Act. The assessing officer, however, did not bring to tax ` 20,34,605 as income (being income accrued under the mercantile system of accounting). The dispute before the Apex court centered around deductibility of provision for NPA. After analyzing the provisions of the RBI Act, their Lordships of the Apex Court observed that in so far as the permissible deductions or exclusions under the Act are concerned, the same are admissible only if such deductions/exclusions satisfy the relevant conditions stipulated therefor under the Act. To that extent, it was observed that the Prudential Norms do not override the provisions of the Act. However, the Apex Court made a distinction with regard to "Income Recognition" and held that income had to be recognized in terms of the Prudential Norms, even though the same deviated from mercantile system of accounting and/or section 45 of the Income Tax Act. It can be said, therefore, that the Apex Court approved the „real income" theory which is

engrained in the Prudential Norms for recognition of revenue by NBFC.

..... Therefore, subject to the requirements of the IT Act, profits to be assessed under the IT Act have got to be Real Profits which have to be computed on ordinary principles of commercial accounting. In other words, profits have got to be computed after deducting Losses/ Expenses incurred for business, even though such losses/ expenses may not be admissible under Sections 30 to 43D of the IT Act, unless such Losses/ Expenses are expressly or by necessary implication disallowed by the Act. Therefore, even applying the theory of Real Income, a debit which is expressly disallowed by Explanation to Section 36(1)(vii), if claimed, has got to be added back to the total income of the assessee because the said Act seeks to tax the "real income" which is income computed according to ordinary commercial principles but subject to the provisions of the IT Act. Under Section 36(1)(vii) read with the Explanation, a "write off" is a ITA 139/2008, ITA 466/2008, ITA 537/2008, ITA 408/2003 condition for allowance. If "real profit" is to be computed one needs to take into account the concept of "write off" in contradistinction to the "provision for doubtful debt".

.....However, these Directions 1998 and the IT

Actoperate in different areas. These Directions 1998 have nothing to do with computation of taxable income. These Directions cannot overrule the "permissible deductions" or "their exclusion" under the IT Act. The inconsistency between these Directions and Companies Act is only in the matter of Income Recognition and presentation of Financial Statements. The Accounting Policies adopted by an NBFC cannot determine the taxable income. It is well settled that the Accounting Policies followed by a company can be changed unless the AO comes to the conclusion that such change would result in understatement of profits. However, here is the case where the AO has to follow the RBI Directions 1998 in view of Section 45Q of the RBI Act. Hence, as far as Income Recognition is concerned, Section 145 of the IT Act has no role to play in the present dispute."

19. We have also noticed the other line of cases wherein the Supreme Court itself has held that when there is a provision in other enactment which contains a non-obstante clause, that would override the provisions of Income Tax Act. TRO Vs. Custodian, Special Court Act (supra) is one such case apart from other cases of different High Courts. When the judgment of the Supreme Court in Southern Technology (supra) is read in

manner we have read, ITA 139/2008, ITA 466/2008, ITA 537/2008, ITA 408/2003 it becomes easy to reconcile the ratio of Southern Technology with TRO Vs. Custodian, Special Court Act.

20. Thus viewed from any angle, the decision of the Tribunal appears to be correct in law. The question of law is thus decided against the Revenue and in favour of the assessee. As a result, all these appeals are dismissed.”

8. The above decision was affirmed by the Hon'ble Supreme Court holding that the consideration of the question by the High Court of Delhi has been given a meaningful reasoning and affirmed the finding. Thus, by applying the above mentioned decision, the Substantial Questions of law are answered against the revenue and in favour of the assessee.

9. In the result, the tax case appeals are dismissed. No costs.”

6. Mr. T. Ravi Kumar, learned Senior Standing Counsel appearing for the respondent – Department has not produced any contra judgement.

7.In these circumstances, we are of the considered view that the ratio laid down by the Hon'ble Division Bench of this Court in T.C.A.Nos.2097 to 2099 of 2008 squarely applies to the facts and circumstances of the present case. Following the ratio laid down by the Hon'ble Supreme Court in (2018) 90 taxmann.com 365 (SC) [Commissioner of Income Tax vs. Vasisth Chay Vyapar Ltd.] (cited supra) and the ratio laid down by the Hon'ble Division Bench in T.C.A.Nos.2097 to 2099 of 2008, the order passed by the Income Tax Appellate Tribunal in I.T.A.No.864/Mds/2004 for the assessment year 1996-97 is liable to be set aside. Accordingly, the same is set aside. The substantial questions of law are decided in favour of the appellant – assessee. The Tax Case Appeal stands allowed.

सत्यमेव जयते

WEB COPY

[M.D., J.] [T.V.T.S., J.]

01.02.2021

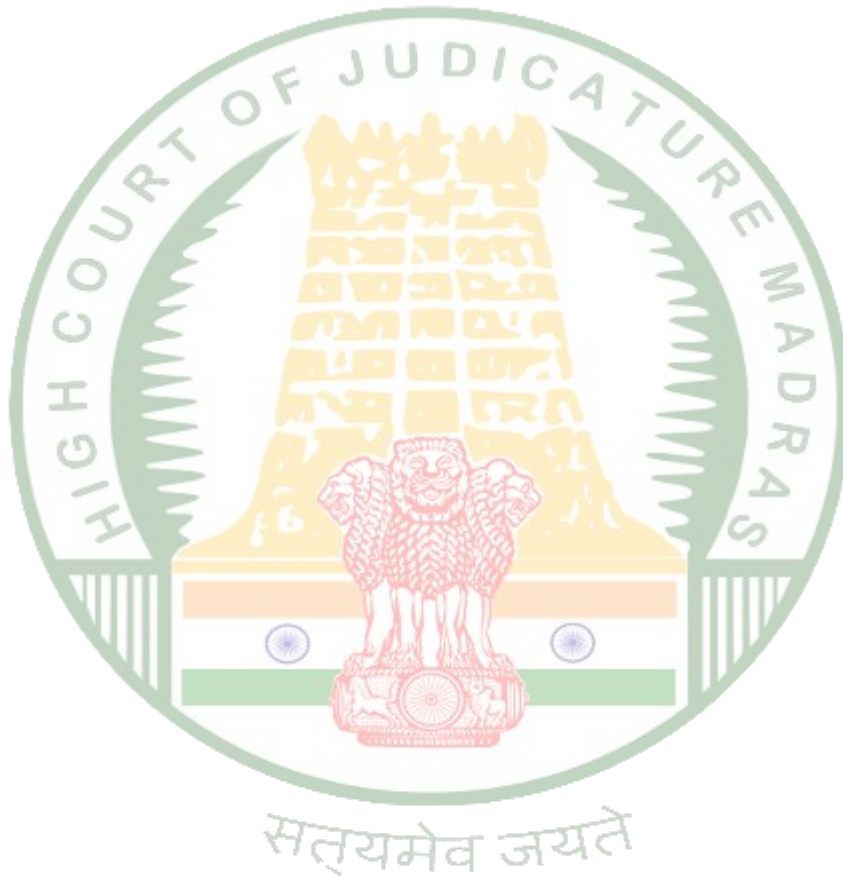
Index : Yes/No

Internet : Yes

va

To

The Income Tax Appellate Tribunal, Chennai, “A” Bench



WEB COPY

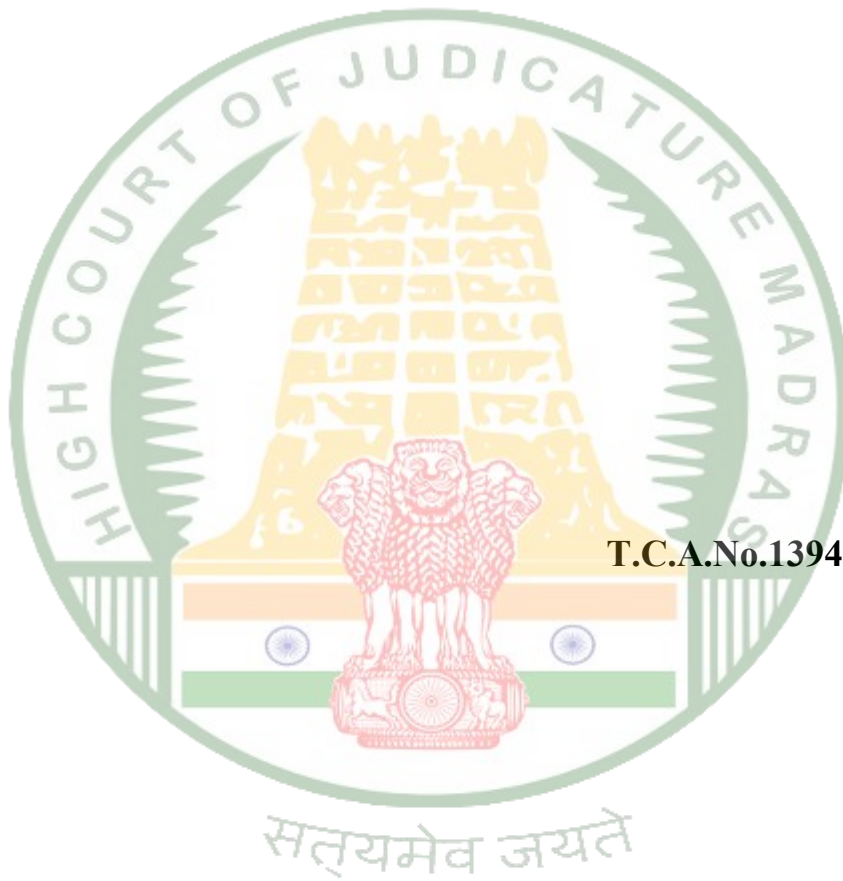
T.C.A.No.1394 of 2008

M.DURAISWAMY, J.

and

T.V.THAMILSELVI, J.

va



T.C.A.No.1394 of 2008

WEB COPY

01.02.2021