



Tax Case Appeal No. 1822 of 2008

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.11.2021

CORAM :

THE HONOURABLE MR. JUSTICE R.MAHADEVAN

AND

THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

Tax Case Appeal No. 1822 of 2008

IND BANK HOUSING LIMITED

480, Anna Salai, III Floor

Nandanam

Chennai – 600 035

.. Appellant

Versus

The Commissioner of Income Tax (Chennai) – I

Aayakar Bhavan

Nungambakkam High Road

Chennai – 600 034.

..

Respondent

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Chennai "A" Bench, dated 12.06.2008 passed in I.T.A.No.87/Mds/2007.

For Appellant : Mr.Santhoshkrishnan
for M/s. Mahalingam Associates

For Respondent : Mr.Karthik Ranganathan



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Senior Standing Counsel
J U D G M E N T

(Judgment was delivered by R.MAHADEVAN, J.)

This tax case appeal has been filed by the appellant / assessee, challenging the order dated 12.06.2008 passed by the Income Tax Appellate Tribunal, 'A' Bench, Chennai, in I.T.A.No.87/Mds/2007, relating to the assessment year 1999-2000.

2.By order dated 17.12.2008, this court admitted the aforesaid tax case appeal on the following substantial question of law:

“1.Whether in the absence of escapement of income, the Tribunal was right in sustaining the validity of assessment made under Section 147 of the Income Tax Act?

2.Whether in the light of the mandatory prudential norms issued by National Housing Bank in exercise of the powers conferred to it by National Housing Bank Act, 1987 regarding recognition of income in respect of housing finance companies which are binding and similar to the guidelines issued by Reserve Bank of India in respect of non-banking finance companies and on the basis of which an identical



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issue has already been decided in favour of the assessee by this court in the case of CIT vs. Elgi Finance Limited (293 ITR 357), the Tribunal was right in law in upholding the addition of the sum of Rs.6,70,93,602/- receipt of which is totally uncertain and extremely doubtful and hence, not permitted to be recognised as income both under the prudential norms as also the accounting principles, especially when there is no provisions under the Income Tax Act, 1961, empowering the department to force the assessee to recognise such income, solely for Taxation purposes?”

3. We have heard Mr.Santhoshkrishnan, learned counsel appearing for the appellant/assessee and Mr.Karthik Ranganathan, learned senior standing counsel appearing for the respondent/Revenue.

4.It is not disputed that the principal question of law arisen for consideration in this appeal is the second substantial question of law, which has already been decided in favour of the assessee by the Apex Court in ***Commissioner of Income Tax v. Vasisth Chay Vyapar Ltd. [(2019) 410 ITR 244 (SC)]***, wherein, it was observed as under:

"The assessee, a non-banking financial company bound



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by the directions of the Reserve Bank of India, made certain inter-corporate deposits upon which it did not receive interest for more than six months. Since the Non-Banking Financial Companies Prudential Norms (Reserve Bank) Directions, 1998 mandated a non-banking financial company to declare such advances as non - performing assets when the accrued interest therein was not paid by the debtor continuously for six months, treating the said inter-corporate deposit as a non-performing asset, the assessee did not show the interest as its income, which according to the assessee was not realisable. The High Court held that the assessee-company being a non-banking financial company, was bound by the provisions of the Reserve Bank of India Act, 1934, and the 1998 Directions, under which it was mandatory on the part of the assessee not to recognise the interest on the inter-corporate deposit as income, having regard to recognised accounting principles, that the assessee had admittedly not received any interest on the inter-corporate deposit since the assessment year 1996-97 as it had become a non-performing asset in accordance with the Prudential Norms which was entered in the books of account as well, that even in the succeeding assessment years, no interest was received and the position remained the same until the assessment year 2006 -07, that even the principal itself had become doubtful of recovery and that therefore it was legitimate to infer that interest thereupon



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had not "accrued", that the inter-corporate deposit had become a non-performing asset and on such non-performing asset where the interest was not received and the possibility of recovery was almost nil, it could not be treated to have accrued in favour of the assessee. On appeal to the Supreme Court, it was held, dismissing the appeal, that the consideration of the question had been given a full and meaningful reasoning and called for no interference. The decision of the Delhi High Court in CIT v. Vasisth Chay Vyapar Limited [2011] 330 ITR 440 (Delhi) was affirmed."

5. In the light of the aforesaid decision, the second substantial question of law is answered in favour of the appellant / assessee and accordingly, this tax case appeal stands allowed. In regard to the first substantial question of law, it is left open. No costs.

(R.M.D., J.) (M.S.Q., J.)
29.11.2021

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Internet : Yes

Index : Yes / No

R.MAHADEVAN, J.



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and
MOHAMMED SHAFFIQ, J.

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To

1. The Commissioner of Income Tax (Chennai) – I
Aayakar Bhavan
Nungambakkam High Road
Chennai – 600 034.
2. The Income Tax Appellate Tribunal,
Chennai "A" Bench.
3. The Assistant Commissioner of Income Tax,
Company Circle II (3),
Chennai.

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