IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.12.2021

CORAM :

THE HONOURABLE MR. JUSTICE R.MAHADEVAN
and
THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

TCA.Nos.1239 to 1241 of 2009

Commissioner of Income Tax,
Company Circle - I (3)
Coimbatore. ...Appellant in all Tax Case Appeals

Vs

M/s.Elgi Equipments Ltd.,
Elgi Industrial complex Singanallu,
Coimbatore - 641 005. ...Respondent in Tax Case Appeals

Appeals preferred under Section 260A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Madras “D” Bench, dated 14.03.2008 in I.TA.No.1503/Mds/2006, I.TA.No.1504/Mds/2006 & I.TA.No.1505/Mds/2006 and against the order of the Commissioner of Income Tax (Appeals)-I, Coimbatore, dated 31.03.2006 in ITA.Nos.395 to 397/05-06, Assessment Years 2001-02, 2002-03 & 2003-04 and against the order of the Assistant Commissioner of Income Tax Company Circle-I(3), Coimbatore-18 dated 31.01.2006 in PAN.No.AAACE4784E Assessment Years 2001-02, 200-03, 2003-04.

For Appellant : Mr.M.Swaminathan,
Senior Standing Counsel
assisted by Mrs. V.Pushpa,
Junior Standing Counsel

For Respondent : Mr.N.V.Balaji in all cases

COMMON JUDGMENT

(Judgment of the Court was delivered by R. MAHADEVAN, J.)

These tax case appeals have been filed by the appellant / Revenue, challenging the order dated 14.03.2008 passed by the Income Tax Appellate Tribunal, Chennai 'D' Bench, in I.TA.No.1503/Mds/2006, I.TA.No.1504/ Mds/2006 &

I.TA.No.1505/Mds/2006, relating to the respective assessment years 2001-02, 2002-03 & 2003-04.

2. By order dated 08.12.2009, this court admitted the aforesaid tax case appeals on the following substantial questions of law:

> "(i). Whether on the facts and circumstances of the case, the Tribunal was right in deleting the interest levied under Section 234-D of the Income Tax Act ? and
>
> (ii) Whether on the facts and circumstances of the case, the Tribunal was right in holding that disallowance of bad debts amounting to Rs.30,20,000/- was not proper?"

3.1 Today, when the matters were taken up for consideration, the learned counsel for the appellant / Revenue as well as the respondent / assessee jointly submitted that the first substantial question of law involved in these appeals has already been considered and decided in favour of the Revenue by judgment dated 19.03.2019, passed in TCA.Nos.1457 and 1458 of 2008, the relevant passage of which, is usefully extracted hereunder:

> "5.On the Second Question of Levy of Interest under section 234D of the Act on the excess refund made to the Assessee along with the Assessment intimation sent to him under section 143(1) of the Act, the learned senior standing counsel for the Revenue drew our attention to a judgment of this court in the case of Commissioner of Income Tax v. Fisher Sanmar Ltd, (2014) 361 ITR 296 (Mad), wherein, a Division Bench of this Court held that if the regular assessment of the Assessee is made after the amendment of provisions of Section 234D of the Act w.e.f. 01.06.2003, then, the provisions of Section 234D for levy of interest on the excess refund amount would become applicable, even though the assessment period may be prior to the said date of amendment."
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> "9. As for the Question of Levy of Interest under Section 234D of the Act, though computation of interest will depend upon the appeal effect order to be passed, the quantum of net payment is to be determined accordingly, after allowing weighted deduction under Section 35 (2AB) of the Act, as indicated above. The provisions of Section 234D of the Act have been held applicable for Assessment Year

2003-2004 in question in terms of the decision of the Co-ordinate Bench of this Court in the case of Fisher Sanmar Ltd., cited supra. Accordingly, Questions of Law Nos.3 and 4 are answered in favour of the Revenue and against the Assessee."

3.2 Following the aforesaid judgment, which applies to the facts of the present case, the first question of law is answered in favour of the Revenue and against the Assessee.

4.1 As far as the second substantial question of law is concerned, it is submitted by the learned counsel for both sides that the same has been considered and decided in favour of the assessee and against the revenue, by a judgment dated 09.01.2019, passed in TCA.Nos.1270 and 1271 of 2009, the relevant passage of which, is usefully extracted hereunder:

> "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.
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> 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.
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> 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.
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> 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."

4.2 In the light of the aforesaid judgment, which holds good to the case of the assessee, the second substantial question of law involved in these appeals is answered in favour of the assessee and against the Revenue.

5. In the result, the Appeals of the Revenue are allowed in part as indicated above. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

av/rsh

To

1. The Income Tax Appellate Tribunal,
   Madras "D" Bench.

2. The Commissioner of Income Tax,
   Company Circle - I (3)
   Coimbatore.

3. The Commissioner of Income Tax (Appeals)-I,
   Coimbatore.

4. The Assistant Commissioner of Income Tax,
   Company Circle-I(3),
   Coimbatore-18.

+3ccs to Mr.N.V.Balaji, Advocate, S.R.No.65086,65088,65089

TCA.Nos.1239 to 1241 of 2009

NR[co]
NSK 11/02/2022