IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.09.2021

CORAM :

THE HON'BLE MR. JUSTICE T.S. SIVAGNANAM
AND
THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

T.C.A.Nos.704 to 711 of 2013

M/s.The Karur Vysya Bank Ltd.,
Karur. ...Appellant in all appeals

Vs.

The Commissioner of Income-Tax,
Trichy. ...Respondent in all appeals

Tax Case Appeals in T.C.A.Nos.704 to 709 of 2013 preferred under Section 260A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Madras, "A" Bench, dated 17.01.2013 in I.T.A.Nos.902/Mds/2010, 903/Mds2010, 904/Mds/2010, 907/Mds/2010, 930/Mds/2011 and 931/Mds/2011, for the Assessment Years 1999-2000, 2000-01, 2001-02, 2005-06, 2004-05 and 2006-07, respectively.

T.C.A.Nos.704 to 709 of 2013

Against the order of the Commissioner of Income Tax-5 Appeals, Tiruchirappalli dated 23.03.2010 in ITA Nos.358/05-06, 53/04-05, 311/07-08 respectively and dated 30.03.2021 in ITA Nos.664/06-07 & 379/08-09 and against the order of the Assistant Commissioner of Income Tax, Company circle I (i/c) Tiruchirappalli dated 31.03.2005, 28.03.2003, 09.03.2004 respectively in GIR/PAN No.101CT16/AAACT3373J for the assessment years 1999-2000, 2000-2001, 2001-02 & dated 27.02.2007, 29.12.2006 & 31.12.2018 respectively in PAN No.AAACT3373J for the assessment years 2005-06, 2004-05 & 2006-07.

Tax Case Appeals in T.C.A.Nos.710 and 711 of 2013 preferred under Section 260A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Madras, "A" Bench, dated 30.01.2013 in I.T.A.Nos.905/Mds/2010 and 906/Mds/2010 respectively for the Assessment Year 2002-03.

T.C.A.Nos.710 and 711 of 2013

Against the order of the Commissioner of Income Tax Appeals, Tiruchirappalli dated 23.03.2010 in ITA.Nos.310/07-08 & 254/04-05 and against the order of the Assistant Commissioner of Income Tax, company circle I(i/c) Tiruchirappalli dated 31.12.2017 in

GIR/PAN No.AAACT3373J & dated 18.08.2004 in GIR/PAN No.101CT16/AAACT3373J for the assessment year 2002-2003.

For Appellant : Mr.R.Vijayaraghavan
for M/s.Subbaraya Aiyar Padmanabhan
in all appeals

For Respondent : Mr.M.Swaminathan
Senior Standing Counsel
and Ms.V. Pushpa
Standing Counsel
in all appeals

C O M M O N J U D G M E N T

(Judgment was delivered by T.S. SIVAGNANAM, J.)

These Tax Case Appeals have been filed by the assessee, M/s.Karur Vysya Bank Limited, Karur, under Section 260A of the Income Tax Act, 1961 ("the Act" for brevity), challenging the order passed by the Income Tax Appellate Tribunal, Madras "A" Bench, in I.T.A.Nos.902, 903, 904, 907, 930 and 931/Mds/2011 for the Assessment Years 1999-2000, 2000-01, 2001-02, 2005-06, 2004-05 and 2006-07, respectively, and I.T.A.Nos.905 & 906/Mds/2010 for the Assessment Year 2002-03.

2.Though the Tax Case Appeals were admitted on 17.04.2014 to decide nine substantial questions of law, with the consent of the learned counsel on either side, the questions are re-framed as hereunder :

"1.Whether on the facts and in the circumstances of the case, the Tribunal was justified in confirming the disallowance of 2% estimated expenses on exempted income, in the absence of a finding as to the incurring of expenditure?

2.Whether on the facts and in the circumstances of the case, the Tribunal was justified in law in confirming the disallowance of software expenses as being relatable to capital filed?

3.Whether on the facts and in the circumstances of the case, the Tribunal was justified in law in disallowing the payment made to Registrar of Companies for increasing the authorised capital?

4.Whether on the facts and in the circumstances of the case, the Tribunal was justified in law in confirming the disallowance of Rs.3,51,55,372/- being arrears of wages on account of upward pay decision as per MOU signed on 11.03.1999?

5.Whether on the facts and in the circumstances of the case, the Tribunal was justified in law in confirming the disallowance of Rs.4,13,43,888/- being ex-gratia paid to employees?

6.Whether on the facts and in the circumstances of the case, the Tribunal was justified in upholding the reassessment u/s.147?"

3.Insofar as the substantial question of law No.1 is concerned, it arises for consideration in all appeals except T.C.A.Nos.706 of 2013 and 711 of 2013, relating to Assessment Years 2001-02 and 2002-03 respectively.

4.So far as the 2nd substantial question of law is concerned, it arises for consideration only in three appeals, namely, T.C.A.Nos.704 of 2013, 705 of 2013 and 706 of 2013.

5.With regard to the 3rd substantial question of law, it arises for consideration in two appeals, namely, T.C.A.Nos.704 of 2013 and 711 of 2013.

6.The 4th substantial question of law, which pertains to disallowance of arrears of wages, arises for consideration only in one of the appeals, namely, T.C.A.No.704 of 2013 for the Assessment Year 1999-2000.

7.The 5th substantial question of law arises for consideration only in one of the appeals, namely, T.C.A.No.709 of 2013 for the Assessment Year 2006-07.

8.The 6th substantial question of law, which pertains to reopening of assessment under Section 147 of the Act, arises for consideration only in one of the appeals, namely, T.C.A.No.710 of 2013 for the Assessment Year 2002-03.

9.Heard Mr.R.Vijayaraghavan, learned counsel appearing for M/s.Subbaraya Aiyar Padmanabhan, learned counsel for the appellant/assessee and Mr.M.Swaminathan, learned Senior Standing Counsel and Ms.V.Pushpa, learned Standing Counsel, appearing for the respondent/Revenue.

10.Since few of the substantial questions of law, which have been framed for consideration, are covered by certain decisions, we shall first dispose of the same, for which purpose, we need not be required to elaborately deal with the factual situation.

11.The 2nd substantial question of law, which has been framed for consideration, is as to whether the order of the Tribunal was correct in confirming the disallowance of software expenses as being relatable to capital fee. This issue has been squarely covered by the decision of the Division Bench of this Court in the case of Commissioner of Income Tax v. Southern Railways Ltd. reported in (2006) 282 ITR 379 (Mad), wherein, the question was answered in favour of the assessee, which was also taken note of in the case of Commissioner of Income Tax, Trichy v. The Lakshmi Vilas Bank Ltd. [T.C.A.Nos.210 and 211 of 2018, dated 24.07.2018]. Thus, the substantial question of law No.2 is answered in favour of the appellant/assessee.

12.Insofar as the substantial question of law No.3 is concerned, the Tribunal followed the decision of the Hon'ble Supreme Court in the case of Punjab State Industrial Development Corporation Ltd. v. Commissioner of Income Tax reported in (1997) 225 ITR 792 (SC). We find no error in the said decision of the Tribunal. Hence, the 3rd substantial question of law is answered against the appellant/assessee.

13.With regard to the 4th substantial question of law, which relates to disallowance of arrears of wages, which arises for consideration only for one Assessment Year, namely, AY 1999-2000, the said question is covered by the decision of the Division Bench of this Court in the case of Commissioner of Income Tax, Chennai-I v. M/s.Kasturi and Sons Ltd. [T.C.No.958 of 2008, dated 28.08.2018] and was answered in favour of the assessee. Following the same, the substantial question of law No.4 is answered in favour of the appellant/assessee.

14.The 5th substantial question of law, which pertains to disallowance of ex-gratia payment, has been decided in favour of the assessee in the assessee's own case in Commissioner of Income Tax, Chennai v. The Karur Vysya Bank Ltd., Karur [T.C.A.No.611 of 2014, dated 05.08.2021]. Following the same, the 5th substantial question of law is answered in favour of the appellant/assessee.

15.Now reverting back to the substantial question of law No.1, which pertains to disallowance of estimated expenses, the assessee is a Banking Company and it has got interest free funds, which have been invested. The assessee's case was that, it did not incur any collection charges and the amounts were invested out of circulating capital. The Assessing Officer did not agree with the said submission and referred to the addition made in the earlier years and as against those additions, the Commissioner of Income Tax (Appeals), Tiruchirapalli ("CIT(A)" for brevity) had deleted the additions and the Revenue has challenged the order before the Tribunal and the issue is pending. Therefore, the Assessing Officer chose to disallow the proportionate expenses. The assessee filed an appeal reiterating the earlier stand that the assessee Bank did not incur any expenditure to get the tax free income and the assessee Bank, at no point of time, had borrowed money for being invested in tax free securities and therefore, requested the Commissioner to delete the addition. The CIT(A) directed the Assessing Officer to restrict the disallowance to 2% only on tax free bond, which in the opinion of the CIT(A), was a reasonable disallowance. This finding was questioned by the assessee before the Tribunal and the Tribunal found 2% to be a reasonable sum.

16.The assessee is on appeal before us questioning the same, by referring to the decision of the Hon'ble Supreme Court in the case of Maxopp Investment Ltd. v. Commissioner of Income Tax reported in (2018) 402 ITR 640 (SC), the decision of the Hon'ble Supreme Court in the case of Commissioner of Income Tax v. State Bank of Patiala reported in (2018) 102 CHH 289 ISCC and the decision of the High Court of Delhi in the case of Principal Commissioner of Income Tax-7 v. M/s.Punjab and Sind Bank [I.T.A.Nos.904 and 906 of 2019, dated 16.10.2019].

17.The argument of the learned counsel for the assessee is that the recent decision of the High Court of Delhi had taken note of the decision of the Hon'ble Supreme Court in Maxopp Investment Ltd. and decided the matter concerning a Banking company and the said decision would squarely apply to the assessee's case, which is also a Banking company and the question of disallowance of an adhoc amount of 2% would not be sustainable.

18.The learned Senior Standing Counsel appearing for the Revenue strenuously contended that the submission made by the assessee before this Court is a submission made for the first time, not supported by any facts. In the assessee's own case in the earlier year, the Tribunal took note of the decision of this Court in the case of M/s.Simpson & Co. Ltd. v. The Deputy Commissioner of Income Tax, Company Circle-VI, Chennai [T.C.No.2621 of 2006, dated 15.10.2012] and confirmed the order passed by the CIT(A), and no interference is called for and prayed that the question may be answered against the assessee.

19.As rightly pointed out by the learned Senior Standing Counsel for the respondent/Revenue, the decisions relied on by the learned counsel for the appellant/assessee were not available when the Tribunal decided the matter, because, those decisions were rendered during the year 2018-19. In any event, the legal question requires to be considered. However, we find that, though the assessee specifically took a stand that they did not incur any expense to get the tax free income and assessee Bank has got more interest free funds for investing in the tax free income, the CIT(A) did not examine the said aspect, but merely directed the Assessing Officer to restrict the disallowance in this regard to 2% only on tax free bonds, finding the same to be reasonable. Had the CIT(A) adjudicated the correctness of the stand taken by the assessee and rendered a finding, the Tribunal could have tested the correctness of the same. Further, there has been development in law. We do not propose to deny the benefit of the assessee to place reliance on those decisions and put forth their submissions and for such purpose alone, we are inclined to remand the matter back to the Tribunal for fresh consideration. The substantial question of law No.1 is left open for fresh consideration by the Tribunal.

20.Insofar as the substantial question of law No.6 is concerned, which arises for consideration in T.C.A.No.710 of 2013, pertaining to the Assessment Year 2002-03, with regard to reopening of the assessment, the learned counsel for the appellant/assessee has filed a memo not pressing the said issue. The said memo is placed on record and the substantial question of law No.6 is left open.

21.In the result, these Tax Case Appeals are disposed of and the substantial questions of law, which arise for consideration in these appeals, are answered as follows :

- The 1st substantial question of law is left open for fresh consideration by the Tribunal. The matter is remanded back to the Tribunal for fresh consideration insofar as the 1st substantial question of law is concerned.
- The 2nd substantial question of law is answered in favour of the assessee.
- The 3rd substantial question of law is answered in favour of the Revenue.
- The 4th substantial question of law is answered in favour of the assessee.
- The 5th substantial question of law is answered in favour of the assessee.
- The 6th substantial question of law is left open, as not pressed by the appellant/assessee.

No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

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

2. The Commissioner of Income Tax Appeals,
   Trichy.

3. The Assistant Commissioner of Income Tax,
   Company Circle I(ic),
   Tiruchirappalli.

+1cc to M/s.Subbaraya Aiyar Padmanabhan, Advocate, S.R.No.45637
+1cc to Mr.M.Swaminathan, Advocate, S.R.No.45636

T.C.A.Nos.704 to 711 of 2013

AJS[co]
NSK 29/10/2021