IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.02.2021

CORAM :

The Honourable Mr.Justice T.S.SIVAGNANAM
and
The Honourable Ms.Justice R.N.MANJULA

Tax Case Appeal No.769 of 2018

M/s.Indus Finance Ltd.,
4th Floor, Kothari Building,
114, M.G.Road, Nungambakkam,
Chennai - 600 034. .. Appellant

Vs

The Deputy Commissioner of
Income Tax,
Corporate Circle - 2(2), Chennai. .. Respondent

APPEAL under Section 260A of the Income Tax Act, 1961 against the order dated 03.05.2018 made in ITA.No.1348/Chny/2017 on the file of the Income Tax Appellate Tribunal, 'A' Bench, Chennai for the assessment year 2012-13.

against The Commissioner of Income Tax (Appeals)-6, Room No.221, 121, MG Road Nungambakkam ,Chennai 600 034, in ITA No.121/CIT(A)-6/2015-16 dated 26/04/2017 for the assessment year 2012-2013, against the order of the Deputy Commissioner of Income Tax Corporate Circle-2(2), Room No.512, 5th floor " WANA PARTHY BLOCK " No.121, Mahadma Gandhi Road Nungambakkam, Chennai 600 034, dated 31/03/2015 made in PAN No.AAFCS4074A for the Assessment year 2012-2013.

For Appellant : Mr.A.S.Sriraman

For Respondent : Mr.R.Karthik Ranganathan
Senior Standing Counsel

JUDGMENT
(Delivered by T.S.Sivagnanam,J)

This appeal, filed by the assessee, is directed against the order dated 03.05.2018 made in ITA.No.1348/Chny/2017 on the file of the Income Tax Appellate Tribunal, 'A' Bench, Chennai ('the Tribunal' for brevity) for the assessment year 2012-13.

2. The appeal was admitted on 27.06.2019 on the following substantial questions of law:

> "i. Whether the annual accounts/financial statements adopted under the Companies Act, 1956 could be altered/adjusted in making additions under the books profits regime under Section 115JB of the Act other than the permitted adjustments prescribed therein by the Assessing Officer/respondent in computing book profits for taxation under the Act?
>
> ii. Whether the disclosure for charging higher depreciation for book purposes under the Companies Act, 1956 could be considered as adequate on the plain reading of the annual report of the appellant while overlooking the management's perspective of charging higher rate of depreciation based on the performance of the asset?
>
> iii. Whether the additional conditions on disclosure in the circular issued could override the prescription for the preparation of the financial statements as per Section 205 read with Schedule XIV of the Companies Act, 1956?
>
> iv. Whether the Appellate Tribunal is correct in approving the addition of excess depreciation quantified under Section 115JB of the Act despite the acceptance of the right of the appellant/assessee under the Companies Act, 1956 for charging different rate of depreciation while compiling the financial statements for the assessment year under consideration? and
>
> v. Whether the interpretation of Section 43B (d) of the Act is correct in the context of the interest payable on the loan taken on the security of the key-man insurance policies for considering the correctness of the deduction claimed in relation thereto while such charge of interest would fall within the ambit of Section 37(1) of the Act?"

3. We have heard Mr.A.S.Sriraman, learned counsel for the appellant and Mr.R.Karthik Ranganathan, learned Senior Standing Counsel appearing for the respondent-Revenue.

4. The learned counsel for the appellant-assessee submits that the appellant-assessee has already filed the declaration/undertaking under the Vivad Se Vishwas Scheme on 30.01.2021 and is awaiting orders to be passed in Form No.3.

5. In the light of the subsequent event, the Competent Authority shall process the application/declaration in accordance with the Direct Tax Vivad Se Vishwas Act, 2020 (Act 3 of 2020) and pass appropriate orders as expeditiously as possible. The assessee is given liberty to restore this appeal in the event the ultimate decision to be taken on the declaration filed by the assessee under Section 4 of the said Act is not in favour of the assessee. If such a prayer is made, the Registry shall entertain the prayer without insisting upon any application to be filed for condonation of delay in restoration of the appeal and on such request made by the assessee by filing a miscellaneous petition for restoration, the Registry shall place such petition before the appropriate Division Bench for orders.

6. The tax case appeal stands disposed of with the aforementioned liberty and consequently, the substantial questions of law framed are left open. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

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

2. The Deputy Commissioner of Income Tax,
Corporate Circle - 2(2),
Chennai.

3. The Commissioner of Income Tax(Appeals)-6,
Room 221, 121, MG Road Nungambakkam
Chennai 600 034.

+1 cc to M/s.S.Sridhar, Advocate Sr.No. 11088

TCA.No.769 of 2018

VSNII(CO)
RMP(18/03/2021)