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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.01.2022

CORAM

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

T.C.A.NO.1187 OF 2009

Dr.K.Chandrasekaran

... Appellant/Appellant

.Vs.

The Commissioner of Income Tax,  
Coimbatore.

... Respondent/Respondent

PRAYER:-

Appeal under Section 260A of the Income Tax Act, 1961 against the order dated 20.12.2007 made in IT.SS.A.No.38(Mds)/2003 on the file of the Income Tax Appellate Tribunal, Madras 'D' Bench for the Block Assessment period 1988-89 to 1998-99.

Preferred against the Order passed by the Commissioner of Income Tax (Appeals)-II, Coimbatore, dated 29/01/2003 made in Appeal No.41-C/2002-2003 preferred against the Order passed by the Deputy Commissioner of Income Tax, Central Circle-II, Coimbatore, dated 28/03/2002.

For Appellant : Mr.T.Vasudevan

For Respondent : M/s.M.V.Pushpa  
Junior Standing Counsel  
For Mr.M.Swaminathan  
Senior Standing Counsel

JUDGMENT

MOHAMMED SHAFFIQ, J.

Calling in question the order dated 20.12.2007 passed by the Income Tax Appellate Tribunal, Madras 'D' Bench, in IT (SS) A.No.38/Mds/2003, relating to the block assessment period 1988-



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89 to 1998-99, the appellant/assessee has come up with this tax case appeal, raising the following substantial questions of law:

1. Whether on the facts and in the circumstances of the case, the Tribunal was justified in law in rejecting the claim of bad debt/trading loss of the amount advanced by the assessee in the course of its money-lending activity?
2. Whether the Tribunal was justified in law in confirming the disallowance of bad debt without adverting to the material placed on record as to the inability of the debtor to pay the interest and the principal amount?
3. Whether the Tribunal is justified in law in confirming the disallowance even while its conclusion is not backed by any reasoning as to the rejection of the bad debt/trading loss claimed by the assessee?
4. Whether on the facts and in the circumstances of the case, the claim of the assessee as to bad debt/trading loss should have been allowed in the light of the observations of the Madras High Court in the case of Devi Films reported in 49 ITR 874 and the Gujarat High Court in the decision reported in 226 ITR 605?
5. Whether the Tribunal was not justified in law in following the Madras High Court decision in South India Surgical Co.Ltd ( 287 ITR 62) when the facts of that case and the facts in the assessee's case did not match at all and therefore that decision does not apply on all fours to the case on hand?

2. The appellant is a practising ophthalmic surgeon in Salem and also derives agricultural income from coffee grown in his lands at Yercaud. His family is also engaged in money lending business. While so, there was a search operation under section 132 of the Income Tax Act in the business and residential premises of the appellant and other family members on 22.12.1997 which was completed on 23.12.1997. Pursuant thereto, notice under section 158BC was issued on 27.04.1998, to which, the appellant filed his returns on 01.06.1998 for the block period commencing on 01.04.1987 and ending on 22/23.12.1997. He, in working out the net income from money lending, claimed set off of bad debts to the extent of Rs.25.55 lakhs. The assessing officer disallowed the entire claim of bad debts, inasmuch as the same were not written off in the books in terms of Section 36(1)(vii) and accordingly, passed the assessment order on 20.12.1999 under section 158BC r/w section 143(3) of the Income Tax Act.



3. On appeal, the appellant/assessee raised a fresh plea that the bad debts may be alternatively treated as trading loss. The Commissioner of Income Tax (Appeals) remanded the matter back to the assessing officer to examine the alternate plea. On remand, the assessing officer, while accepting the claim of trading loss with regard to the advance to four persons amounting to Rs.13.5 lakhs, rejected the claim of the assessee relating to one Mani for an advance of Rs.12.5 lakhs and accordingly, passed the fresh assessment order under section 143 (3) r/w section 251 on 28.03.2002. The said assessment order of the assessing officer was confirmed by the Commissioner of Income Tax (Appeals), with the following observations:

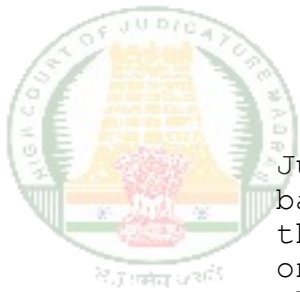
"...The very fact that the appellant's mother or the firm have not considered the loan as not recoverable is of considerable significance while evaluating the claim of the appellant....

...On a careful consideration of the all the aspects of this issue, I agree with the assessing officer that the claim of trade loss or bad debt of Rs.12.50 lakhs relating to the loan advanced to Mani is not well founded.....

... Also, the debtor is having substantial income. In view of the above, the disallowance of Rs.12.50 lakhs is sustained."

4. The matter was carried by way of further appeal by the appellant before the Income Tax Appellate Tribunal. The Tribunal also confirmed the order of the Commissioner of Income Tax (Appeals) and the relevant portion of the said order is extracted hereunder:

"We have heard both the parties and perused the materials on record. In this case, the assessee has advanced money to Shri.Mani on 11.6.96 and the block period ended on 22.12.97. The statement of the assessee that the debt has become bad in such a short period of time is not acceptable. It is not statement for the assessee to say that he became pessimistic about the prospect of recovery of the debt in question. He must feel honestly convinced that the financial position of the debtor was so precarious and shaky and that it would be impossible to collect any money from him. The question is really one of fact depending upon the various facts and diverse circumstances bearing on the debtor's pecuniary position, his commitments and obligations. The



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Judgment of the assessee in regarding the debt as a bad debt must be an honest judgment. The judgment of the assessee must be established to have been taken on relevant facts and circumstances, which should show that the debt is not realizable for some fault on the part of the debtor or some supervening impossibility on the part of the debtor to pay but not possible difficulties or hurdles the assessee may have to incur to compel the recalcitrant debtor to pay. The assessee for his convenience may decide that the debt is too small and it is not worthwhile to pursue the debtor but that judgment would not be an honest judgment, which would establish that the debt has become a bad debt. The same view was taken by the jurisdictional High court in the case of South India Surgical Co. Ltd Vs ACIT ( 287 ITR (62) ( Mad)). Hence we decline to accept the plea of the assessee and the claim of bad debt is rejected. We confirm the order of the learned Commissioner of Income-tax( Appeals) and dismiss the appeal filed by the assessee.

Aggrieved over the order of the Tribunal, the appellant/assessee filed the present appeal.

5. On 10.11.2009, this appeal was admitted on the following substantial question of law:

"Whether on the facts and in the circumstances of the case, the Tribunal was justified in law in rejecting the claim of bad debt/trading loss of the amount advanced by assessee in the course of its money leading activity?"

6. Heard both sides and perused the materials placed before this court, more particulars, the order impugned herein.

7. We find that the claim of bad debts made by the appellant/assessee was found unacceptable by the Tribunal, inasmuch as for treating a debt as having turned bad, it is necessary to make an objective decision on the facts as to the impossibility of collection/recovery of the debt, such an opinion must be honest and ought to be made after taking into account all the relevant factors, whereas the opinion of the appellant was not honest nor objective, keeping in view the relevant factors. Therefore, the Tribunal rejected the plea of the assessee and confirmed the order of the Commissioner of Income Tax (Appeals).

8. Be it noted, whether a debt turned bad is a question of fact, which would clear from the Judgment of the Supreme Court



in Travancore Tea Estates Co. Ltd. v. CIT, (1998) 8 SCC 667 at page 667, wherein it is held as follows:

"It is well settled that whether a debt has become bad or the point of time when it became bad are pure questions of fact."

9. In this context, it is relevant to point out the observation of the supreme court in the case of Bank of Bihar Ltd. v. CIT, [(1962) 45 ITR 427] which reads as under:

"6. The question whether a debt is a bad debt is one of fact and if there is some evidence to justify the conclusion it is not open to the High Court in a reference under Section 66 of the Indian Income Tax Act to reappreciate the evidence. As observed by their Lordships of the Privy Council in CITv.S.M. Chitnavis [LR 59 IA 290] in interpreting Section 24 of the Indian Income Tax Act, 1922,

"Whether a debt is a bad debt, and, if so, at what point of time it became a bad debt, are questions which in their Lordships' view are questions of fact, to be decided in the event of dispute by the appropriate tribunal, and not by the ipse dixit of anyone else. The assessee has no option of declaring a debt as bad... In every case it is a question of fact, to be determined after consideration of all relevant circumstances."

10. In the light of the aforesaid legal proposition, we find no reason to interfere with the concurrent findings of the Authorities below in as much as whether a debt is bad, being essentially a question of fact. As the appellant has not made out any question of law much less substantial question of law, this tax case appeal deserves to be dismissed and is accordingly, dismissed. No costs.

Sd/-

Assistant Registrar(CS II)

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Sub Assistant Registrar

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To

1. The Income Tax Appellate Tribunal,  
Madras 'D' Bench,  
Chennai.
2. The Commissioner of Income Tax,  
Coimbatore.
3. The Commissioner of Income Tax (Appeals)-II,  
Coimbatore.
4. The Deputy Commissioner of Income Tax,  
Central Circle-II,  
Coimbatore.

+1cc to Mr.M.Swaminathan, Advocate, S.R.No.3270

T.C.A.NO.1187 OF 2009

PM(CO)  
PBS/07/02/2022