IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.01.2022

CORAM:

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

Tax Case (Appeal).No.1388 of 2009

The Commissioner of Income-Tax-I
Coimbatore ..Appellant

Vs

M/s.Elgi Equipments Limited
Elgi Industrial Complex, Trichy Road
Singanallur, Coimbatore-641 005
(PAN No.AAACE4784E) ..Respondent

Prayer: Tax Case Appeal filed against the order of the Income-tax Appellate Tribunal "A" Bench Chennai dated 27.04.2009 passed in I.T.A.No.464/Mds/2008 against the order of the Commissioner of Income Tax (Appeals)-1, Coimbatore dated 10.01.2008 passed in Appeal.No.290/06-07, against the order of the Assistant Commissioner of Income Tax, Company Circle I(3), Coimbatore dated 28.11.2006 for the Assessment Year 2004-05.

For Petitioner : Mr.M.Swaminathan
Senior Standing Counsel

For Respondent : Mr.N.V.Balaji

JUDGMENT

[Order of the Court was made by R. MAHADEVAN, J.]

This tax case appeal has been filed by the appellant / Revenue, challenging the order dated 27.04.2009 passed by the Income Tax Appellate Tribunal, Chennai -A Bench, in I.TA.No.464/Mds/2008, relating to the assessment year 2004-05.

2. By order dated 21.12.2009, this court admitted the aforesaid tax case appeal on the following substantial question of law:

?"Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in allowing the bad debts as claimed by the assessee even though the conditions laid down in Section 36(1)(vii) read with Section 36(2) were not satisfied ?"

3. The facts of the case is that that assessee had entered into agreements with M/s.Elgi Finance Ltd., for the take over and assignment of certain book debts. In the period relevant to assessment year 2004-05 the assessee wrote off certain debts from certain parties as bad debts which amounted to Rs.8,44,46,006/-. The Assessing Officer did not allow the claim of the assessee for deduction. The assessee took up the matter in appeal before the Commissioner of Income Tax (Appeals). The CIT(A) while following its order for the assessment years 2001-02, 2002-03 and 2003-04 on this point and the decision of the ITAT in the case of two sister concerns has concluded to delete the impugned addition. As against the order of CIT(A), the Revenue filed appeal before the ITAT. By order dated 27.04.2009, the ITAT dismissed the appeal of Revenue, upholding the order of CIT(Appeals). Aggrieved by the same, the Revenue has filed the present Tax Case (Appeal).

4. Today, when the matter was taken up for consideration, the learned counsel for the appellant / Revenue as well as the respondent / assessee jointly submitted that the substantial question of law involved in this appeal has already been considered and decided in favour of the assessee by judgment dated 06.12.2021, passed in TCA.Nos.1239 to 1241 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.
>
> 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.

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.

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. "

5 In the light of the aforesaid judgment, which holds good to the case of the assessee, the substantial question of law involved in this appeal is answered in favour of the assessee and against the Revenue.

6. In the result, the Appeal of the Revenue is dismissed. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1. The Commissioner of Income-Tax-I
Coimbatore.

2. The Income-tax Appellate Tribunal "A" Bench,
Chennai.

3. The Commissioner of Income Tax (Appeals)-1,
Coimbatore.

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

+1cc to Mr.N.V.Balaji, Advocate, S.R.No.4425
+1cc to Mr.M.Swaminathan, Advocate, S.R.No.4223

SSI[co]
NSK 10/02/2022