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TC(A) No. 441 of 2008 etc., batch

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.08.2022

CORAM

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

Tax Case (Appeal) Nos. 441, 442, 443, 444, 445, 446,
448, 449, 450, 451, 452 and 453 of 2008

T.C.A. No. 441 of 2008

M/s. Indian Bank
66, Rajaji Salai
Chennai - 600 001

.. Appellant

Versus

The Deputy Commissioner of Income Tax
Special Range-1
No.121, Nungambakkam High Road
Chennai - 600 034

.. Respondent

T.C.A. No. 441 of 2008:- Appeal filed under Section 260A of The Income Tax Act, 1961 against the Order dated 25.10.2007 passed in I.T.A. No. 2368/MDS/2004 on the file of the Income Tax Appellate Tribunal, Chennai Bench "A"

For Appellant : Mr. B. Baskar
for Mrs. Mallika Srinivasan
in all the appeals

For Respondent : Mr. Karthick Ranganathan
Senior Standing Counsel
in all the appeals



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COMMON JUDGMENT

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[Judgment of the Court was delivered by **R. MAHADEVAN, J.**]

All these appeals are filed by the assessee / Indian Bank, Rajaji Salai, Chennai, assailing the common order dated 25.10.2007 passed by the Income Tax Appellate Tribunal, in respect of the respective assessment years 1995-96, 1996-97, 1999-2000, 2000-01, 2001-02, 2002-03, 1994-95, 1991-92, 1992-93, 1997-98, 1998-99 and 1993-94.

2. According to the appellant / assessee, they are a nationalised bank and wholly owned by the Government of India; and engaged in the business of banking as defined under the Banking Regulation Act. While so, by a notification published in Part II, Section 3 (ii) of the Gazette India Extraordinary dated 19.02.1990 issued by the Government of India, Ministry of Finance, Department of Economic Affairs, the Central Government sanctioned a scheme for amalgamation of the Bank of Thanjavur Limited, Thanjavur with the Indian Bank. One of the clauses contained in the said Gazette notification dated 19.02.1990 reads thus:

"4(I)...

(e) premises and all other immovable properties and any assets acquired in satisfaction of claims shall be valued at their market value.



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(f) Furniture and fixtures, stationery in stock and other assets, if any, shall be valued at the written down value as per books or the realisable value as may be considered reasonable."

Subsequently, for the assessment years under consideration, in the returns of income filed by them, the appellant claimed depreciation in respect of the assets taken over from the Bank of Thanjavur, as per the scheme of amalgamation formulated by the Central Government, with effect from 20.02.1990. However, the assessing officer disallowed the depreciation on the ground that the assessee should have taken the written down value of the Bank of Thanjavur, instead of the acquired price of the Indian Bank and accordingly, passed the assessment orders, *inter alia* making additions and disallowances in respect of other issues.

3. Challenging the orders of assessment passed by the Assessing Officer, the assessee filed statutory appeals before the Commissioner of Income Tax (Appeals) by contending that they claimed depreciation on the assets taken over from the Bank of Thanjavur on the basis of valuation of assets determined by the Government under the scheme of amalgamation with reference to the valuation as its cost of acquisition of the assets; but, the Assessing Officer in the course of assessment, concluded that the value of the assets taken over has to be determined on the basis of the written down value



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of assets as per the records maintained by the Bank of Thanjavur; and therefore, the orders of the Assessing Officer insofar as it relates to the disallowance of depreciation, are against the provisions of law and contrary to the facts of the case.

4. The appellate authority, on consideration of the grounds raised by the assessee, allowed the appeals and set aside the orders of assessment relating to disallowance of part of the depreciation in respect of the assets taken over from the Bank of Thanjavur, on the premise that the appellant claimed depreciation on such assets as per the cost fixed by the Government of India, whereas according to provisions of section 43(6) of the Income Tax Act, in the case of assets acquired during the previous year, the actual cost to the assessee should be taken as the written down value. Aggrieved over the same, the Revenue went on appeals before the Income Tax Appellate Tribunal. By a common order dated 25.10.2007, the Tribunal allowed the appeals filed by the revenue and reversed the orders of the Appellate Authority with respect to the claim of depreciation in respect of the properties taken over from the Bank of Thanjavur. Therefore, the appellant / assessee is before this court with the present tax case appeals to quash the same.



5. The aforesaid Tax Case Appeals were admitted on the following substantial questions of law:

"(1) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is right in law in confirming the disallowance of part of the depreciation relating to the assets taken over by the appellant from the Bank of Thanjavur pursuant to the scheme of amalgamation formulated by the Ministry of Finance, Government of India?"

"(2) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is right in law in invoking Explanation 7 to Section 43 (1) of the Income Tax Act in regard to the aforesaid issue and confirming the disallowance of depreciation?"

6. Mr. Baskar, learned counsel for the appellant/assessee would contend that the Tribunal erred in holding that the transaction involved in the present case, falls under Explanation 7 to Section 43 (1) of the Act; and that, the amalgamating bank namely Bank of Thanjavur ceased to exist and therefore, the provisions come into operation and disallowance of depreciation by the Assessing Officer is justified. According to the learned counsel, such a conclusion arrived at by the Tribunal is incorrect, by contending that the banking business of Bank of Thanjavur Limited was taken over by the appellant on 20.02.1990 under a scheme of take over formulated by the Government of India, with the approval of the Reserve Bank of India; as per the scheme, the value of assets of the banking business taken over by the appellant was determined by the Government of India for the purpose of computation of tax and the compensation to be paid to the Bank of Thanjavur



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Limited and therefore, for the assessment years subsequent to the date of taking over, the appellant claimed depreciation on the assets so taken over from the Bank of Thanjavur on the basis of valuation of assets determined by the Government under the scheme of amalgamation with reference to the valuation as its cost of acquisition of the assets; however, the Assessing Officer erroneously concluded that for the purpose of granting depreciation, the value of the assets taken over has to be determined on the basis of the written down value of assets as per the records maintained by the Bank of Thanjavur and not on the basis of the value at which the appellant was directed to take over the assets under the scheme of amalgamation. Therefore, the learned counsel sought to allow these appeals by setting aside the order of the Tribunal. In this regard, the learned counsel placed reliance on a decision of this Court in respect of the appellant's own case in ***Indian Bank v. Deputy Commissioner of Income Tax [(2013) 213 Taxmann 0389]*** wherein it was held as follows:

"28. In the circumstances, the assessee's tax case on the question of granting deduction on the expenditure made by way of additional interest made to the PSUs and the commission paid to the broker viz., M/s. Chandrakala & Co., as falling under Section 37 of the Act, is allowed and we answer the second question of law in favour of the assessee. As far as the broken period interest on the stock-in-trade and permanent securities are concerned, there is no justification for remanding the matter back to the Assessing Officer and that the order of Commissioner of Income Tax (Appeals) merits acceptance, consequently, the first question is answered in favour of the assessee.

29. Thus, as regards the valuation of the securities held by the assessee, while we confirm the order of the Income Tax Appellate



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Tribunal, which confirmed the order of the Commissioner of Income Tax (Appeals), whose view was based on carrying out the report from the Assessing Officer, following the decision in the case of UCO Bank vs. CIT reported in 240 ITR 355, we hold that the securities held as stock-in-trade and investments are to be valued at cost or market price, whichever is lower."

7. Per contra, the learned counsel for the respondent/revenue submitted that consequent upon the coming into force the scheme of amalgamation, the transferor bank ceased to exist and therefore, the Tribunal rightly held that the case of the assessee clearly comes within the purview of Explanation 7 to Section 43 (1) of the Act and accordingly, allowed the appeals preferred by the Revenue, by the order impugned herein, which does not require any interference at the hands of this court. In support of his contention, the learned counsel referred to a decision of the Bombay High Court in ***Habib Hussein v. Commissioner of Income Tax [(1963) 48 ITR 859 (Bom)]***, in which it was held thus:-

"If Mr. Joshi's contention is accepted, in cases where depreciable assets are purchased not at a fixed price but on percentage basis of gross returns of the business, the assessee would not be entitled to claim any depreciation at all in any year because the price payable would get determined at the end of the year or years and naturally, therefore, would not be an amount expended or a liability incurred for a certain amount by an assessee at the commencement of the year for acquisition of the assets. Had that been the intention of the legislature, it would have so said clearly by adding "as incurred by him before the commencement of the business" after "actual cost to the assessee" in sub-section (5) of section 10. In our opinion, therefore, a portion of the sum of Rs.3,30,000/- attributable towards the acquisition of the depreciable assets as would be hereafter determined should be included in the actual cost of these assets to the assessee in the year or years of account at the commencement of which the liability to pay it or part thereof had accrued or would accrue".



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8. This court considered the submissions made on both sides and perused the materials placed on record.

9. There cannot be any dispute that the Central Government sanctioned a scheme for amalgamation of the appellant bank with Bank of Thanjavur Limited, Thanjavur, by a notification dated 19.02.1990 issued by the Government of India, Ministry of Finance, Department of Economic Affairs. As per the said scheme for amalgamation, the transferee bank shall in consultation with the transferor bank, value the property and assets and reckon the liabilities of the transferor bank in accordance with the provisions stipulated thereunder. Pursuant to the scheme of amalgamation, which came into effect from 20.02.1990, the appellant bank filed their returns of income, *inter alia*, claiming depreciation in respect of the assets taken over from the Bank of Thanjavur, for the assessment years under consideration. However, while passing the orders of assessment, the assessing officer disallowed a part of depreciation, stating that the value of the assets taken over by the transferee bank has to be determined on the basis of the written down value of assets as per the records maintained by the bank of Thanjavur and not on the basis of the value at which the appellant was directed to take over the assets under the scheme for amalgamation. On appeals, the said orders of assessment were



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reversed by the CIT(A), however, at the instance of the Revenue, the Tribunal confirmed the orders of assessment passed by the Assessing Officer, by the order impugned herein.

10. On a reading of the order impugned herein, it could be seen that after having considered the contention raised on the side of the appellant / assessee that it is not a case of amalgamation as contemplated under Explanation 7 to section 43; the assessee took over only the part of the business of Bank of Thanjavur and the Bank of Thanjavur is still existing and not completely got merged with the assessee bank, the Tribunal was of the view that no evidence was produced to substantiate the said contention and accordingly, rejected the claim of the appellant / assessee, seeking depreciation in respect of the assets taken over from the transferor bank. In this regard, the observation of the Tribunal is usefully extracted below:

"6. Shri. Meenakshisundaram, learned counsel for the assessee vehemently contended that the nomenclature is not decisive. In the instant case the word 'amalgamation' is loosely used. Actually, it is not a case of amalgamation as contemplated under Explanation 7 to section 43. Assessee took over only the part of the business of Bank of Thanjavur. Bank of Thanjavur is still existing and not completely got merged with the assessee Bank, albeit no evidence in regard to the same was furnished before us. We have given time to the learned counsel for the assessee to substantiate this fact. But no evidence in this regard was brought before us. We have examined the scheme of amalgamation formulated by the Ministry of Finance, Govt. of India. As per the said scheme, transferor bank was required to prepare a balance sheet which was to be filed with the Registrar of Companies. Transferor Bank was not required to prepare balance sheet or profit and loss account or to lay the same before the



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members or file copies thereof with the Registrar of Companies or to hold any AGM for the purpose of considering the balance sheet and account or for any other purpose or to comply with the provisions of section 159 of the Companies Act, 1956. It was not necessary for the Board of Directors of the transferor bank to meet as required by section 285 of the Act. From this it is quite clear that the transferor bank consequent upon the amalgamation ceased to exist. As such the case of the assessee clearly comes within the ken of Explanation 7 to section 43 (1). In our opinion, AO rightly disallowed the depreciation. Accordingly, we reverse the order of the CIT (A) on this count and restore the order of the AO."

In the absence of any concrete evidence to prove the stand so taken on the side of the appellant / assessee, the Tribunal rightly reversed the orders of the CIT(A) and restored the orders of the assessing officer, in the opinion of this court.

11. At this juncture, the learned counsel for the appellant prayed that the appellant / assessee may be granted an opportunity to furnish the required documentary evidence in support of their case that the transferor bank viz., Bank of Thanjavur is still functioning and only a part of the business of the said bank, was merged with the transferee bank; and they claimed depreciation in respect of the assets taken over from the transferor bank on the basis of the valuation determined by the Government as per the scheme of amalgamation, for which, there is no serious objection on the side of the respondent.

12. Considering the facts and circumstances of the case and having regard to the submissions now placed by the learned counsel on either side, this court sets aside the order of the Tribunal, which is impugned herein and



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remand the matter to the Tribunal for fresh consideration. The appellant is directed to produce all the required documents to substantiate their claim to the Tribunal within a period of four weeks from the date of receipt of a copy of this judgment. On such production, the Tribunal shall consider the same and pass orders afresh, on merits and in accordance with law, after affording due opportunity of personal hearing to the appellant / assessee, as expeditiously as possible. In the event of failure on the part of the appellant / assessee to furnish the required documents within the time stipulated by this court, the order of the Tribunal which is impugned herein, shall stand restored and confirmed.

13. Accordingly, all these tax case appeals are disposed of. No costs.

(R.M.D., J) (M.S.Q., J)

25.08.2022

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Index : Yes / No

Internet : Yes / No

To

1. Deputy Commissioner of Income Tax

Special Range-1

No.121, Nungambakkam High Road

Chennai - 600 034

2. The Income Tax Appellate Tribunal, Bench "A", Chennai

3. The Commissioner of Income Tax (Appeals) XI

Chennai.



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R.MAHADEVAN, J.
and
MOHAMMED SHAFFIQ, J.

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Common Judgment in
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