IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 25.04.2022

CORAM :

THE HONOURABLE MR. JUSTICE R. MAHADEVAN
and
THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

Tax Case Appeal No. 85 of 2009

M/s. Ashok Leyland Ltd.,
19, Rajaji Salai
Chennai - 600 001 ...Appellant/Appellant

Versus

The Assistant Commissioner of Income Tax
Company Circle - 1 (1)
Chennai - 600 034 ...Respondent/Respondent

Appeal filed under Section 260-A of The Income Tax Act, 1961 against the order dated 27.09.2007 passed in ITA No.2445/Mds/2005 on the file of Income Tax Appellate Tribunal, "A" Bench, Chennai preferred against the order of Commissioner of Income Tax (Appeals)VII, dated 29.08.2005 made in I.T.A. T.R. No. 16/2004-2005 filed against the Assessment order of the Deputy Commissioner of Income Tax, Company Circle I(1) Chennai dated 28.03.2003 for the Assessment year 2000-2001.

For Appellant : Mr. Venkatanarayanan
for Mr. Subbaraya Iyer

For Respondent : Mr. T. Ravikumar

JUDGMENT

(Judgment of the court was delivered by R. Mahadevan, J.)

This tax case appeal is filed by the appellant/Assessee, calling in question the correctness of the order dated 27.09.2007 passed by the Income Tax Appellate Tribunal, "A" Bench, Chennai, in ITA No.2445(Mds)2005 relating to the assessment year 2000-2001.

2. On 03.03.2009, this tax case appeal was admitted by this Court on the following substantial questions of law:

"1. Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the appellant is not entitled to deduction in respect of amounts due from M/s.Bangur Finance Limited (BFL) which has become irrecoverable?

2. Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the loss incurred in the nature of capital loss and hence not allowable under Section 28 of the Act?

3. Without prejudice to the above, whether the Tribunal ought to have allowed the loss as a capital loss in as much as loss on the sale of shares obtained in connection with settlement of debt, the assessee could not realise the entire debt?

3. According to the appellant/assessee, they are engaged in the business of manufacture and sale of automobiles. For the assessment year 2000-2001, they filed their return of income on 27.11.2000 admitting 'nil' income under normal provisions of the Income Tax Act (in short, “the Act”) and Rs.24,35,60,175/- under Section 115JA of the Act. Upon scrutiny of the same, notice under section 143(2) came to be issued on 28.11.2001. In response, the representative of the appellant appeared before the assessing officer and submitted the documents sought for. Ultimately, the assessing officer passed the order of assessment on 28.03.2003 making certain additions/disallowance. Aggrieved by the same, the appellant filed an appeal before the Commissioner of Income Tax (Appeals), who, by order dated 29.08.2005, rejected the appeal filed by the appellant and confirmed the order dated 28.03.2003 passed by the assessing officer. Assailing the order of the Appellate Authority, the appellant preferred a further appeal before the Tribunal. By order dated 27.09.2007, the said appeal was dismissed by the appellant. Therefore, this tax case appeal by the appellant / asseeessee.

4. The learned counsel for the appellant submitted that prior to the financial year 1997-1998, the appellant advanced certain sum to M/s. Bangur Finance Limited and the total amount due from the said firm during the financial year 1997-1998 was Rs.8,91,82,466/- which includes a sum of Rs.91,82,466/- towards interest and the same was assessed as part of business income in the relevant assessment years. The amount due was

secured by 4,68,630 shares of Bank of Rajasthan held by the appellant as security against the said loan. However, the said firm committed default in repayment of the loan amount and a sum of Rs.7,64,669/- alone was paid by the said firm towards repayment of the debt due and the appellant adjusted Rs.13,56,522/- being dividend received on the Bank of Rajasthan shares held by the appellant against the debt due, leaving the balance due of Rs.7,78,78,809/- as on 31.03.1998. In view of such default committed by the said firm, the appellant made entries in the books of account for Rs.5,64,13,050/- for the assessment year 1998-1999 (financial year 1997-1998) towards the amount due from the said firm, which was arrived at after considering the value of shares of Bank of Rajasthan held by the appellant as security. Therefore, while filing the return for the Assessment year 1998-1999, the said amount of Rs.5,64,13,050/- was claimed as deduction under Section 28 of the Act. In the meanwhile, the shares of Bank of Rajasthan were vested with the appellant, as per the order dated 05.08.1999 passed by the High Court of Calcutta and the shares were delivered to the appellant during August 1999 and were subsequently sold during December 1999 and the proceeds thereof were adjusted against the dues of the said firm. However, the Assessing Officer did not allow the claim of the appellant in respect of the said amount of Rs.5,64,13,050/- on the ground that the loss of the appellant crystallized only when the shares pledged with it were sold and therefore, the same could not be allowed in the assessment year 1998-1999. Further, the appellant had written off the amount of Rs.4,80,71,436/- towards dues not recoverable from the said firm in the financial year 1999-2000 i.e., Assessment year 2000-2001. Since the appellant sold the shares in the financial year 1999-2000 (assessment year 2000-2001), the claim of Rs.4,80,71,436/- should have been allowed in the assessment year 2000-2001. But, the Assessing Officer disallowed the claim on the ground that the advances are on capital account and therefore, the loss suffered by the appellant is a capital loss, which is neither admissible under Section 36 (1) (iii) nor under section 37 (1) of the Act. When the same was challenged by way of appeal, the same was dismissed by the Appellate Authority, by confirming the order of the assessing officer, which was also affirmed by the Tribunal.

5. The learned counsel for the appellant further submitted that the appellant is entitled to claim deduction of the amount due from M/s. Bangur Finance Limited and to write off the same. Since the Assessing Officer himself stated that the loss of this kind can be entertained, if it is incurred in the relevant previous year, the loss got crystallised during the assessment year 2000-2001 and therefore, the appellant was right

in claiming the sum of Rs.480,71,436/- during the assessment year 2000-2001. However, the Tribunal erred in holding that the loss incurred by the appellant in respect of loan advanced to M/s.Bangur Finance Ltd is in the nature of capital loss and hence, not allowable under section 28 of the Act. It is also submitted that if the loss is not allowed as a deduction, the same would have to be considered as part of the cost of 4,68,630 shares of Bank of Rajasthan transferred to the appellant, pursuant to the order of Calcutta High Court dated 05.08.1999 and capital gains, if any, accordingly computed upon its sale by the appellant in December, 1999. Whereas, the Tribunal failed to do so and also rejected the plea of the appellant that the capital loss should be allowed to be carried forward on the ground that the loss has not arisen out of transfer of asset. Thus, according to the learned counsel, the order of the Tribunal is contrary to law, facts and circumstances of the case and hence, the same is liable to be set aside.

6. Per contra, the learned counsel for the respondent/revenue would contend that a capital loss to be carried forward would arise by way of transfer of an asset as contemplated under Section 45 read with Section 2 (47) of the Act. In other words, there must be a transfer and for attracting capital gain tax, the gain should arise from the transfer of an asset. Thus, the liability of the assessee to recover the deposit from the BFL company did not amount to transfer of capital assets by mere writing off the debt. In support of the said contentions, the learned counsel placed reliance on the decision of the Allahabad High Court in Commissioner of Income Tax v. Indian Turpentine & Rosin Co. Ltd. [(1980) 124 ITR 830]. Therefore, the learned counsel submitted that the order of the Tribunal does not call for any interference by this court.

7. We have heard both sides and perused the materials placed on record.

8. The issue involved herein is relating to claim of Rs.83,41,614/- towards bad debts made by the appellant / assessee, which was subsequently, enhanced to Rs.4,80,71,436/- during the course of assessment proceedings. The said claim was disallowed by the assessing officer as it was not satisfied the criteria laid down under section 36(2) of the Act, after having found that money lending and banking are not the principal activities of the assessee and they made the advance of surplus funds available with it for earning interest and they could not recover the principal and hence, the same was written off as irrecoverable. It was further noted by the assessing officer

that the advances are transactions on capital account and therefore, the loss suffered by the assessee is capital loss which is neither admissible under section 36(1)(vii) nor under section 37(1) of the Act. The order of the assessing officer was confirmed by the CIT(A), on the premise that putting surplus money as inter corporate deposit for earning of interest cannot be said to be incidental to business or during ordinary course of business and hence, the loss of investment by way of deposits by the appellant, cannot be claimed as revenue loss. The said order of the CIT(A) was also affirmed by the Tribunal in the further appeal filed by the appellant / assessee, by observing that if the provision written back is the excess provision than the money realized, then that would 100% be brought to tax apart from the fact that whether it is a revenue loss or capital loss; the loss sustained by the assessee in respect of the loan advanced to BFL is in the nature of capital loss and is not allowable under section 28 of the Act; and there is no transfer of asset involved and hence, the loss sustained by the assessee is not liable to be carried forward, though it is a capital loss. We do not find any reason to interfere with the said well considered findings of the authorities below, as the same are based on the material evidence available before them.

9. At this juncture, it is pertinent to refer to the decision rendered by the Allahabad High Court in Commissioner of Income Tax v. Indian Turpentine & Rosin Co. Ltd., (1980) 124 ITR 830, cited on the side of the respondent, wherein, it was held as follows:-

> "8. .....In the instant case, rightly speaking, it was not a case of any trading loss. It was the case of a mistake in passing entries in the books. As noted above, in the previous year, relevant to the assessment year 1966-67, the assessee despatched certain goods of the value of Rs.71,648/- to M/s.Mandya Paper Mills, Madras. Necessary entries were passed in the books by debiting the purchaser's account and crediting the sales account. The purchaser did not take delivery of those goods and on assessee's instructions those goods were sold by its own agent on its account in the previous year relevant to the assessment year 1967-68. The assessee received the sale proceeds and instead of reversing the entries made in the accounting year relevant to the year 1966-67, it credited the sales account and debited the stores account. Thus, the mistake occurred in that year. The

assessee knew that the goods despatched in the preceding year had not been taken delivery of by the purchaser and had been sold on its account by its agent. Therefore, it should have made the necessary entries in that year itself and there would not have arisen any question of the profit of 1967-68 being inflated as observed by the Tribunal. This mistake certainly could not have been corrected by the assessee itself by reversing the entries in the previous year relevant to the year under consideration and then claiming deduction of the amount as a bad debt or as a trade loss. It could not have been a bad debt and that contention was rightly given up. It could not have been a trade loss either because no such loss occurred to the assessee in the relevant previous year."

10. In such view of the matter, the questions of law raised in this appeal are answered against the assessee and in favour of the revenue. Accordingly, the Tax Case Appeal stands dismissed. No costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The Assistant Commissioner of Income Tax
Company Circle - 1 (1), Chennai - 600 034

2.The Commissioner of Income Tax (Appeals)VII, Chennai.

3.The Income Tax Appellate Tribunal, A Bench, Chennai.

4. The Deputy Commissioner of Income Tax, Company Circle I(1)

+1 CC to Mr.T.Ravi Kumar, Advocate sr 27876
+1 CC to M/s. Subbaraya Aiyar, Advocate sr 28449.

TCA No. 85 of 2009

RSI(CO)
SP(10/06/2022)