IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.02.2022

CORAM :

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

TCA.Nos.606 & 607 of 2010

Commissioner of Income Tax I,
Trichirappalli.

... Appellant in both TCAs

Vs

The Lakshmi Vilas Bank Ltd.,
Kathaparai,
Karur 639 006. ... Respondent in both TCAs

Appeals preferred under Section 260A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Chennai "D" Bench, dated 06.03.2009 in I.TA.Nos.1575 and 1576/Mds/2006.

For Appellant	:	Mr.M.Swaminathan, Senior Standing Counsel assisted by Mrs. V.Pushpa, Junior Standing Counsel in both TCAs
For Respondent	:	Mr.Subbaraya Iyer in both TCAs

COMMON JUDGMENT

(Judgment of the Court was delivered by R.MAHADEVAN, J.)

These tax case appeals at the instance of the Revenue, are directed against the order dated 06.03.2009 passed by the Income Tax Appellate Tribunal, Chennai 'D' Bench, in I.TA.Nos.1575 and 1576/Mds/2006, relating to the respective assessment years 2001-02 and 2002-03, proposing the following substantial questions of law:

> “(i) Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that the assessee was entitled to higher depreciation on vehicles given on lease at 40% instead of the normal rate of 25% even though no evidence was produced to show that the vehicles were being run on hire and also ignoring the fact that the leasing in the assessee's case was part of its business of financing the purchase of vehicles?
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> (ii) Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in allowing relief on the issue of the enhancement made by the commissioner of income Tax (Appeals) relating to the broken period interest forming part of the purchase price of securities which remained unsold at the end of the accounting year and therefore would have gone to enhance the value of the closing stock of securities?
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> (iii) Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in granting the relief to the extent of Rs.214,56,22,999/- regarding the enhancement made by the Commissioner of Income Tax (Appeals) on the issue of broken period of interest whereas the actual enhancement on the basis of the finding and directions given in the order of the Commissioner of Income Tax (Appeals)was only Rs.2,32,17,244/-?

(iv) Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in holding that the claim of the assessee for depreciation in the value of securities was allowable and deleting the enhancement made by the Commissioner of Income Tax (Appeals) as per the working given in its Appellate order showing the net appreciation in the value of securities to the extent of Rs.5,44,45,453/-?

(v) Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in applying the decision of the Supreme Court in the case of UCO Bank v. Commissioner of Income Tax (240 ITR 355) since the assessee has not followed a consistent method of valuing the closing stock of securities?

(vi) Without prejudice to the preceding question, whether on the facts and in the circumstances of the case, the income Tax Appellate Tribunal was right in deleting the interest levied under Section 234D by holding that the provision was applicable only for the assessment year 2004-05 and onwards whereas the provision applied to all regular assessments made on or after 1.6.2003 irrespective of the Assessment year involved?"

2.At the time of admission, i.e., on 04.10.2010, a Co-ordinate Bench of this court has rejected the first question of law, in the light of the decision of this court in the case of ***CIT v. Madan & Co. [254 ITR 445]***; and admitted these appeals on the respect of the questions.

3.Today, when the matters were taken up for consideration, the learned counsel for the appellant/Revenue made the following submissions, which have also been agreed upon by the learned counsel for the respondent/ assessee:

(i)Though the first substantial question of law relating to depreciation on leased vehicle, was not admitted, the same is covered in favour of the assessee and against the Revenue in the light of the decision of the Hon'ble Supreme Court in the case of ***ICDS v. CIT [350 ITR 527***], wherein, it was held that "*where leasing of machinery is a mode of carrying on business by the assessee, the assessee would be entitled to claim depreciation and when the actual use of the vehicle is in hire business, it is entitled for depreciation at a higher rate*".

(ii)The substantial questions of law 2 and 3, in respect of broken period interest, have already been decided in favour of the assessee and against the revenue, in the judgment dated 01.02.2017 passed in T.C.A. Nos. 826 to 828 of 2008 in respect of the assessee's own case, relating to the assessment years 1999-2000 and 2000-2001, the relevant passage of which is usefully extracted below:

> "5.The following question of law, though raised, has not been admitted:-
>
> > "Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is right, in law, in holding that the broken period interest is to be treated as revenue expenditure?"
>
> 6.Both parties would agree that the question is a substantial question of law that merits consideration. Accordingly, we admit the same. The finding of fact is to the

effect that securities are held as stock-in-trade and that the income from sale therefrom is offered to tax as revenue. In the light of the admitted facts as seen from the order of the authorities, the expenditure incurred by the assessee towards broken period is liable to be allowed as revenue expenditure. There is no infirmity in the order of the Tribunal in this regard.

7.The question stands answered in favour of the assessee, following the judgment of the Bombay High Court in *American Express International Banking Corporation Vs. CIT (258 ITR 601)*. The appeals are dismissed. No costs."

(iii)The 4th and 5th substantial questions of law qua depreciation in the value of securities, are covered in favour of the assessee and against the Revenue, as per the judgment of this court dated 07.02.2006 made in TCA Nos.94 & 95 of 2002, reported in ***(2006) 284 ITR 0093*** in respect of the assessee's own case relating to the assessment years 1985-86 and 1986-87, wherein, it was concluded that "*the assessee Bank having all along treated the Government securities as its stock-in-trade and the Revenue having accepted this position in the earlier years, fall in market value of the securities was allowable as deduction*". Identical issue was decided against the revenue by the Karnataka High Court also, in the case of ***CIT v. Karnataka Bank [110 taxmann.com 128]***, which is pending before the Hon'ble Supreme Court.

(iv) The last and sixth substantial question of law with regard to interest under section 234D, has been considered and answered in favour of the revenue, in the decision in ***CIT v. Fisher Sanmar Ltd [(2014) 47 taxmann.com 364 (Madras) / (2014) 361 ITR 296 (Madras)]***, wherein, this court placed reliance on the judgment of a Co-ordinate Bench in ***CIT v. Infrastructure Development Finance Co. Ltd [(2012) 340 ITR 580/(2013) 33 taxmann.com 622 (Mad)],*** and pointed out that since the regular assessment in the reported decision was completed on March 30, 2004 and section 234D came into operation on and from June 1, 2003, prior to the completion of the regular assessment, the assessee was liable to pay interest on the excess refund amount received as contemplated under section 234D of the Income-tax Act. Following the same, this court allowed the said tax case in favour of the Revenue. For better appreciation, the relevant passage of the judgment in ***CIT v. Infrastructure Development Finance Co. Ltd (supra)*** is extracted hereunder:

> "20. In the case on hand, though previously, the amount has been refunded to the assessee, the subsequent check made by the Revenue, made it clear that the assessee is not entitled to get refund, which has necessitated the Revenue to claim refund. In this case, the assessment was completed only on 30.03.2004, the date on which the order of assessment came to be passed. But, the amended provision of section 234D came into force with effect from 01.06.2003. When once the regular assessment is completed after the amended provision of law came into operation, we have no hesitation to hold that the assessee is liable to pay interest on the refunded amount, as contemplated under section 234D. It is not the year of assessment

that falls for consideration in such circumstances, but the date on which the regular assessment order has been passed. In the case on hand, though the assessment year is 2001-2002, the regular assessment was made on 30.03.2004, by which time, the amended provision of law, having into operation on and from 01.06.2003, is in force. Therefore, the order passed by the Assessing Officer, levying interest on the amount of refund, is well within the parameters of law and the contra orders passed by the Commissioner of Income Tax (Appeals) and the Income Tax Appellate Tribunal, to the effect of ignoring this principle of law, are illegal and they are accordingly set aside.

21. Before parting with, we place on record our concern for the public money. If the contention of the assessee that he is not liable to pay any interest for the excess amount of refund, which is a public money, received and enjoyed by him for considerably a long period of time is entertained, the same, besides being against the purport of section 234D, also puts great dent to the exchequer. Therefore, we are not inclined to accept this contention of the assessee, who knowing fully well that it is a public money, has enjoyed the excess refund for considerably a long period of time. At the cost of repetition, we hold that since the regular assessment has been completed only on 30.03.2004 and the amended provision of law i.e., section 234D came into operation on and from 01.06.2003, which is well prior to the completion of the regular assessment, certainly, the assessee is liable to pay interest on the excess refund amount received and enjoyed by him all these years as contemplated under section 234D of the Act.

22. Accordingly, this appeal preferred by the Revenue is allowed, answering both the questions of law in favour of the Revenue. No costs."

4.Having regard to the facts and circumstances of the case and taking note of the submissions made by the learned counsel on either side and also following the aforesaid decisions, we answer the substantial questions of law 1,2,3,4 and 5 in favour of the assessee and against the Revenue. Insofar as the sixth question of law is concerned, we decide the same in favour of the Revenue and against the assessee and accordingly, remand the matter to the assessing officer to rework the same and pass appropriate orders, on merits and in accordance with law, after providing due opportunity of hearing to the assessee. Such an exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this judgment. The order of the Tribunal stands set aside to that extent alone and both the appeals are accordingly disposed of. No costs.

(R.M.D., J.) **(J.S.N.P., J.)**
22.02.2022

Index : yes/no
Internet : yes/no
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To
1. The Income Tax Appellate Tribunal,
Chennai "D" Bench.

2. Commissioner of Income Tax I,
Trichirappalli.

3.Commissioner of Income Tax (Appeals)
Tiruchirappalli.

4.The Deputy Commissioner of Income Tax
Circle-1, Trichy – 620 001.

R. MAHADEVAN, J.
and
J.SATHYA NARAYANA PRASAD, J.

av/rk

TCA.Nos.606 & 607 of 2010

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