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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.03.2022

CORAM :

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

Tax Case Appeal No. 961 of 2010

Commissioner of Income Tax - II
Tiruchirapalli ...Appellant

Versus

M/s.City Union Bank Ltd.,
Central Office,
149, T.S.R. Big Street,
Kumbakonam. ...Respondent

Appeal filed under Section 260-A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal "C" Bench, Chennai, dated 30.10.2009 passed in I.T.A.No.1485/Mds/2007

against the Appellate order of the Commissioner of Income-tax (Appeals) Tiruchirapalli-620 001 dated 22.03.2007 and made in I.T.A. No. 116/2006-2007 for the Assessment year 2003-2004; and

against the Assessment order of the Assistant Commissioner of Income-tax, Circle-I, Kumbakonam dated 31.03.2006 and made in PAN/GIR No. C-8010/AAACC1287E for the Assessment year 2003-2004.

For Appellant : Mr. J. Narayanasamy
For Respondent : Mr. V.S. Jayakumar

JUDGMENT

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

This tax case appeal has been filed by the appellant / Revenue, challenging the order dated 30.10.2009 passed by the Income Tax Appellate Tribunal, "C" Bench, Chennai, in I.T.A.No.1485/Mds/2007, relating to the assessment year 2003 - 04.

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2. The respondent is a banking company and they filed its return of income on 27.11.2003 admitting a total income of Rs.5269.64 lakhs for the assessment year 2003-04. The return so filed by the respondent was processed under Section 143 (1) of The Income Tax Act (in short, the Act) and a notice under Section 143 (2) was issued to the respondent. In response, the representative of the respondent appeared before the Assessing Officer and furnished the particulars called for. On consideration of the documentary evidence submitted, the Assessing Officer passed an assessment order dated 31.03.2006 determining the taxable income of the respondent at Rs.102,59,90,180/- by making certain additions.

3. Aggrieved by the order of assessment dated 31.03.2006, the respondent filed an appeal before the Commissioner of Income Tax (Appeals), Tiruchirapalli in ITA No.116/2006-2007. Upon due contest, the appellate authority partly allowed the appeal filed by the respondent by order dated 22.03.2007. In respect of the claim under section 36(1)(viia), the appellate authority held that the assessee was entitled to deduction of the entire provision for bad and doubtful debts of Rs.8.53 crores and accordingly, deleted the disallowance made by the assessing officer. As regards the disallowance of Rs.12.63 crores in respect of bad debts written off, the appellate authority agreed with the contention of the respondent that if there was no deduction claimed for the provision for bad and doubtful debts in respect of non-rural advances under clause (viia) and then, deduction was being claimed as a debt written off under section 36(1)(vii) r/w sub section (2) of section 36 for non-rural advances and there being no double deduction, the amount so written off can be allowable under section 36(1)(vii) and allowed the deduction claimed for bad debts written off and accordingly, deleted the addition of Rs.12.63 crores made by the assessing officer.

4. As against the order of the appellate authority, both the appellant / revenue as well as respondent / assessee filed appeals before the Income Tax Appellate Tribunal. By order dated 30.10.2009, the Tribunal dismissed the appeal filed by the Revenue and partly allowed the appeal filed by the assessee. Challenging the said order of the Tribunal, the Revenue is before this court with this appeal.

5. By order dated 29.11.2010, this court admitted the aforesaid tax case appeal on the following substantial questions of law:

> "1. Whether on the facts and in the circumstances of the case, the Income Tax

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Appellate Tribunal was right in holding that the claim of bad debts in relation to non-rural branches of the assessee bank is allowable without first setting off against the provision already allowed u/s.36(1)(viia), when no distinction between advances relating to non-rural and rural advances has been made in section 36 (1)(vii) of the Act?

2. Whether in the facts and circumstances of the case, the Tribunal was right in deleting disallowance of provision before bad debts under Section 36 (1) (viia) of Rs.8.53 crores observing that as per Rule 62ABA of the Income Tax Rules 1962, the aggregate average advances made by the rural branches have to be computed by taking the amounts of advances made by each rural branch as outstanding at the end of last day of each month comprised in the previous year, whereas the aggregate average has to be worked out only in respect of advances made during the year as otherwise, there would be double deduction?"

6. According to the learned counsel for the appellant, when there was no distinction provided under the proviso to Section 36 (1) (vii) for bad debts relating to advances made by rural and non-rural branches, the Tribunal ought to have restored the disallowance made by the assessing officer relating to bad debts written off under section 36(1)(vii) of Rs.12.63 crores. As regards the claim of deduction of Rs.8.53 crores, the learned counsel for the appellant contended that the aggregate average has to be worked out only in respect of advances made during the year, as otherwise, there would be double deduction.

7. On the contrary, the learned counsel for the respondent / assessee submitted that (i)the provision made for bad debts on rural advances only, had been claimed u/s 36(1)(viia) and the provision for non-rural advances had been disallowed by the assessee itself for income tax purposes and therefore, the bad debts written off for non-rural advances during the year is an allowable deduction u/s 36(1)(viia); and agreeing with the same, the CIT(A) allowed the deduction of Rs.12.63 crores in respect of non-rural bad debts written off u/s 36(1)(vii) of the Act, which was confirmed by the Tribunal. (ii)Referring to Rule 62ABA of the Income Tax Rules, the learned

counsel submitted that the aggregate average advances made by the rural branches have to be computed by taking the amounts of advances made by each branch as outstanding at the end of the last day of each month comprised in the previous year; and hence, the CIT(A) rightly allowed the deduction of Rs.8.53 crores u/s 36(1)(viia) in respect of the provision for bad and doubtful debts and the same was also confirmed by the Tribunal.

8. we have considered the submissions made by the learned counsel for both sides and also perused the materials placed before this court, including case laws.

9. In the order impugned in this appeal, the Tribunal dismissed the appeal filed by the appellant / Revenue, thereby upholding the order of the CIT(A) with respect to allowing the deduction of Rs.12.63 crores in respect of non-rural bad debts written off u/s 36(1)(vii) of the Act and allowing the deduction of Rs.8.53 crores u/s 36(1)(viia) relating to the provision for bad and doubtful debts made u/s.36(1)(viia)(a) of the Act.

10.1 At the outset, it is to be pointed out that the first issue involved herein qua deduction of Rs.12.63 crores in respect of non-rural bad debts written off u/s 36(1)(vii) of the Act, has already been dealt with in favour of the assessee, in the decisions in (i)Commissioner of Income-tax v. City Union Bank Ltd [(2007) 163 Taxman 495 (Madras)] and Catholic Syrian Bank Ltd v. Commissioner of Income-tax [(2012) 18 taxmann.com 282 (SC)]. For better appreciation, the relevant paragraphs of the said decisions are extracted below:

City Union Bank Ltd case:

> "7. With regard to the first substantial question of law raised in T.C.(A) No.22 of 2004 and the first substantial question of law raised in T.C.(A) No.466 of 2004, the Division Bench of this Court by judgment dated 23.1.2007 made in T.C.(A) Nos.15 and 24 of 2003 -CIT v. Tamilnadu Mercantile Bank Ltd., [2007] 291 ITR 137 (Mad.), after referring to the decisions in CIT v. Canara Bank [1992] 195 ITR 66 (Kar.), CIT v. Shoorji Vallabhdas and Co. [1962] 46 ITR 144 (SC), H.M.Kashiparekh and Co. Ltd. v. CIT [1960] 39 ITR 706 (Bom), Poona Electric Supply Co. Ltd. v. CIT [1965] 57 ITR 521 (SC), Morvi Industries Ltd. v. CIT [1971] 82 ITR 835 (SC), State Bank of Travancore v. CIT [1986] 158 ITR 102 (SC), Godhra Electricity Co. Ltd., v. CIT [1997] 225 ITR 746 (SC) held that the assessee is taxable for interest on securities only on

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specified dates when it becomes due for payment, in view of third proviso to Section 145(1) of the Act, which was in force during the relevant assessment years.

8.In view of the ratio laid down in the decisions referred supra, the first substantial question of law raised in T.C.(A) No.22 of 2004 and the first substantial question of law raised in T.C.(A) No.466 of 2004 is answered in favour of the assessee and against the revenue.

9. With regard to the second question of law in T.C.(A) No.22 of 2004, the only question of law in T.C.(A) No.196 of 2004 and the second question of law in T.C.(A) No.466 of 2004, the learned counsel for the assessee submitted that a similar issue has been answered in favour of the assessee in South Indian Bank Ltd. v. Commissioner of Income-tax, [2003] 262 ITR 579 (Ker.).

10.The Division Bench of Kerala High Court in South Indian Bank Ltd. v. CIT [2003] 262 ITR 579, held that:

> "The proviso to clause (vii) of section 36(1) and clause (v) of section 36(2) of the Income-tax Act, 1961, were inserted simultaneously with effect from April 1, 1985, by the Finance Act, 1985. The scope of the proviso to clause (vii) of section 36(1) has to be ascertained from a cumulative reading of the provisions of clauses (vii), (viia) of section 36(1) and clause (v) of section 36(2). The intention of the Legislature in enacting the proviso to clause (vii) of section 36(1) and clause (v) of section 36(2) simultaneously is only to see that a double benefit in respect of the same bad debt is not given to a scheduled bank. A scheduled bank may have both urban and rural branches and advances give en from both branches. Having regard to the hazards involved in realising the advances made by rural branches particularly to agriculturists, certainly the assessee-bank might prefer to make provision for bad debt in respect of advances made in the rural

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branches. As a result of the amendment the scheduled bank will be entitled to the deduction of the entire bad debt relating to advances made by the urban branches written off in the books and also the difference between the amount written off in the books relating to advances made by the rural branches during the previous year relevant to the assessment year and the credit balance in the provisions for bad and doubtful debts account relating to advances made by the rural branches made under clause (viia). If the bad debt written off relates to debts other than for which provision is made under clause (viia) such debt will fall squarely under the main part of clause (vii) which is entitled to deduction and in respect of that part of the debt with reference to which a provision is made under clause (viia), the proviso will operate to limit the deduction to the extent of the difference between that part of debt written off in the previous year and the credit balance in the provision for bad and doubtful debts account made under clause (viia).” (p.579)

11. In the instant case, while allowing the claim for bad debts written off in respect of advances made by rural branches, the Commissioner of Income Tax (Appeals) as well as the Tribunal, was of the firm opinion that the assessee has not claimed any debts written off in respect of rural branch in the earlier year. If that be so, we find no error in the order of the Tribunal in holding that the claim of bad debts in relation to non-rural branches of the assessee bank is allowable. Accordingly, this issue is answered in favour of the assessee and against the Revenue.”

Catholic Syrian Bank Ltd case:

“41. To conclude, we hold that the provisions of Sections 36(1)(vii) and 36(1)(viia) of the Act are distinct and independent items of deduction and operate in their respective fields. The bad debts written off in debts, other than those for which the provision is made under clause (viia), will be

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covered under the main part of Section 36(1)(vii), while the proviso will operate in cases under clause (viia) to limit deduction to the extent of difference between the debt or part thereof written off in the previous year and credit balance in the provision for bad and doubtful debts account made under clause (viia). The proviso to Section 36(1)(vii) will relate to cases covered under Section 36(1)(viia) and has to be read with Section 36(2)(v) of the Act. Thus, the proviso would not permit benefit of double deduction, operating with reference to rural loans while under Section 36(1)(vii), the assessee would be entitled to general deduction upon an account having become bad debt and being written off as irrecoverable in the accounts of the assessee for the previous year. This, obviously, would be subject to satisfaction of the requirements contemplated under Section 36(2).

42. Consequently, while answering the question in favour of the assessee, we allow the appeals of the assessees and dismiss the appeals preferred by the Revenue. Further, we direct that all matters be remanded to the assessing officer for computation in accordance with law, in light of the law enunciated in this judgment."

10.2 Similarly, the second issue relating to deduction of Rs.8.53 crores u/s 36(1)(viia) with regard to the provision for bad and doubtful debts, is covered by the decision in Principal Commissioner of Income Tax, Jalpaiguri v. Uttarbanga Kshetriya Gramin Bank [(2018) 94 taxmann. Com 90 (Calcutta), in favour of the assessee and the relevant passage of the same is usefully extracted below:

"6.Mr. Nizamuddin, learned advocate appeared on behalf of the Revenue and submitted the amended direction made by the Tribunal on the ITO has resulted in the assessee getting double deduction which is not permissible on computation made under Rule 6ABA. He submitted a double deduction in the manner thus obtained by the assessee has not been expressly provided. He relied on a judgment of the Supreme Court in the case of Escorts Ltd. v. Union of India reported in (1993) 199 ITR 43, on the following

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portion in the said judgment appearing in page 64 of the report.

"A double deduction cannot be a matter of inference, it must be provided for in clear and express language, regard being had to its unusual nature and its serious impact on the revenues of the State."

7. Mr.Khaitan, learned senior Advocate appeared on behalf of the assessee and submitted that the computation to be made as prescribed by Rule 6ABA is for the purpose of fixing the limit of the deduction available under section 36(1)(viia). Clause (a) and (b) in Rule 6ABA cannot be given the restricted interpretation. The amount of advances as outstanding at the last day of each month would be a fluctuating figure depending on the outstanding as increased or reduced respectively by advances made and repayments received. The assessee might provide for bad and doubtful doubts but the deduction would only be allowed at the percentage of aggregate average advance, computation of which is prescribed by Rule 6ABA.

8. We find from the amended direction made by the Tribunal that such direction is in terms of Rule 6ABA. The ITO has made the computation of aggregate monthly advances taking loans and advances made during only the previous year relevant to assessment year 2009-10 as confirmed by CIT (A). The Tribunal amended such direction, in our view, correctly applying the rule.

9. For the reasons aforesaid we do not find the questions suggested to be substantial questions of law involved in the case. As such the application and appeal are dismissed. "

11. This court has no disagreement with the legal proposition laid down in the aforesaid decisions. However, in the present case, though there was no double deduction, as alleged by the appellant / Revenue, there was no clear vision about the advances made by the rural and non-rural branches of the bank and the quantum of deduction was not properly determined by the assessing officer based on the materials furnished by the respondent / assessee. In this context, the relevant paragraphs of the assessment order dated 31.03.2006 passed by the assessing officer are quoted below:

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"5.3 When the assessee was asked to clarify whether the advances which were considered to be bad and doubtful in earlier years and for which the provision was made so as to claim deduction under section 36(1)(viia) of the Act, have been recovered subsequently, it was stated that as the provision claimed was not with reference to any particular debt due to the assessee but on an overall basis, it is not possible to certify that the bad debts claimed as trading loss for deduction u/s 36(1)(viia) was recovered or not. It was also stated that the assessee would not be able to give age-wise details of outstanding advances for the branches more so for the rural branches with reference to which the deduction was claimed, so as to determine whether any advance of earlier year for which provision was made is still outstanding.

5.4. In other words, the assessee is not in a position to give details of the advances with reference to which the deduction of Rs.14.99 crores was allowed as per Annexure 2 as deduction under section 36(1)(viia) towards unknown and anticipated trading loss by virtue of mere provision made on ad-hoc basis for bad and doubtful debts and to confirm that these advances were still outstanding as at the end of the previous year relevant to this accounting year."

"6.3.1. Therefore due to assessee's inability to relate the provision to any particular advance of a branch, it cannot be said whether it is a provision for rural advance or for non-rural advance so as to examine the monetary limit prescribed under section 36(1)(viia) for allowing deduction thereunder. Then such provision is only reserve for bad debts and not provision for bad and doubtful debts. Though the provisions of section 36(1)(viia) may be understood as a beneficial provision to the assessee company to claim deduction even in respect of reserve created by it to meet certain anticipated loss or contingency due to default of its debtors whom the assessee may not be able to easily identify at the end of the previous year, yet the computation machinery for determining the deduction admissible in the matter of write off bad and doubtful debts of rural or non-rural advance u/s 36(1)(v) read with the proviso thereunder and section 36(2)(v) of the Act would fail."

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Thus, it is evident from the above extract that the quantum of deduction arrived at by the assessing officer was not based on the documents produced by the respondent / assessee. The CIT(A) as well as the Tribunal also, did not look into those aspect, while allowing the deduction claimed by the respondent / assessee. Therefore, this court is of the opinion that for that limited purpose, the matter has to be re-examined by the assessing officer and the same has also been agreed upon by the learned counsel appearing for both sides.

12. In such view of the matter, the order of the Tribunal, which is impugned herein, is set aside and the matter is remitted to the assessing officer for quantification of the deduction allowable to the respondent. The assessing officer shall complete the said exercise, after providing due opportunity to the respondent for submission of both oral and documentary evidence, if any, and pass appropriate orders, on merits and in accordance with law, within a period of three months from the date of receipt of a copy of this judgment.

13. This tax case appeal is disposed of in the above terms. No costs.

s/d-
Assistant Registrar

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Sub-Assistant Registrar

dhk/gba
To
1.The Commissioner of Income Tax - II
Tiruchirapalli

2.The Income Tax Appellate Tribunal,
Chennai C Bench, Madras.

3.The Commissioner of Income Tax (Appeals)
Tiruchirapalli.

4. The Assistant Commissioner of Income-Tax
Circle-I, Kumbakonam
+1 CC to Mr.V.S. Jayakumar, Advocate sr 15118.

T.C.A.No.961 of 2010

PA(CO)
SP(11/04/2022)