IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.02.2022

CORAM

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

T.C.A.No. 61 of 2022

M/s. Indian Overseas Bank,
763, Anna Salai,
Chennai 600 002.
PAN.AAACI 1223J .. Appellant/Appellant

Versus

The Asst. Commissioner of Income Tax,
Large Taxpayer Unit-2,
Chennai 600 034
.. Respondent/Respondent

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, "A" Bench, Chennai, dated 30.09.2021 in ITA.No.660/Chny/2019.

TCA.No. 61 Of 2022

Against the order of the The Commissioner of Income Tax (Appeals) 17 Chennai-34, dated 31/01/2019 Made in ITA.No.202/2017-18 against the order of the The Deputy Commissioner of Income Tax, Large Taxpayer Unit-2, Chennai 600 101, dated 28/03/2013 made in GI/PA.No. AAACI 1223 J for the Assessment Year 2011-2012.

For Appellant : Mr. Subbaraya Aiyar Padmanabhan

For Respondent : Mr. T. Ravikumar,
Senior Standing Counsel

J U D G M E N T

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

This is an assessee's appeal assailing the order of the Income Tax Appellate Tribunal dated 30.09.2021 in ITA No.660/Chny/2019 relating to the assessment year 2011-12.

2.The relevant facts leading to the filing of this appeal would run thus:

2.1. The appellant / assessee is a Nationalised Bank carrying on the business of banking. For the assessment year 2011-12, they filed its return declaring income of Rs.550.19 crores, on 29.09.2011. After scrutiny of the same, the assessment was completed under section 143(3) of the Income-tax Act, 1961 (in short, 'the Act') on 28.08.2013 determining the total income of Rs..2117.12 crores. Subsequently, the assessment was reopened under section 147 of the Act and notice under section 148 dated 30.03.2016 came to be issued, to which, the appellant filed its return on 20.04.2016 declaring the same income as was admitted in its original return filed on 29.09.2011 and also requested the assessing officer to furnish the reasons recorded for reopening the assessment. The assessing officer, vide communication dated 16.07.2016, stated that “the appellant had reserved Rs.209.81 crores under Agricultural Debt Waiver and Debt Relief Scheme, 2008 (in short, 'the Scheme') as third instalment during the year; and the provision of debt was already allowed as bad debt; and hence, the same is required to be brought to tax”. Upon receipt of the same, the appellant filed its objection on 25.07.2016 to the reopening of the assessment.

2.2. However, the Assessing Officer, by order dated 28.11.2016, rejected the said objections. Thereafter, reassessment order dated 29.12.2017 came to be passed under section 143(3) r/w sec.147 of the Act, determining the total income at Rs.1750,79,83,070/-, including Rs.209,61,00,000/- towards loan amount repaid by the Government under the Scheme, besides levied penalty under section 271(1)(c).

2.3. Aggrieved by the said reassessment order passed by the assessing officer, the appellant / assessee preferred an appeal before the Commissioner of Income Tax (Appeals), who, vide order dated 31.01.2019 upheld the reopening of assessment after following the order of the Tribunal in ITA.Nos.2124, 2125 and 2126/Mds/2013 relating to the Assessment Years 2006-07, 2007-08 and 2010-11 and partly allowed the appeal by directing the assessing officer to verify the claim of the appellant and pass fresh orders.

2.4. Challenging the said order of the CIT (Appeals), the appellant went on further appeal before the Income Tax Appellate Tribunal. The Tribunal also, by order dated 30.09.2021, partly allowed the appeal and directed the assessing officer to re-examine the issue afresh in accordance with law.

2.5. Therefore, the appellant / assessee is before this court with this tax case appeal.

3.The following substantial questions of law are formulated in this tax case appeal:

"1.Whether on the facts and circumstances of the case, the Tribunal was right in law in holding that reopening of assessment is valid in the absence of any new tangible material that had come to the knowledge of the assessing officer after the completion of scrutiny assessment u/s.143(3) of the Act?

2.Whether the order of the Tribunal is perverse in holding that there is escapement of income with regard to the amount which is already claimed as bad debt by the assessee and again the assessee has received the same amount under debt waiver and debt relief scheme?

3.Whether the order of the Tribunal is perverse in not appreciating that there is no escapement of income since the amount reimbursed by the Government to the extent it pertained to interest was already credited to P & L account and offered to tax and in respect of the principal amount, the same was only a repayment of loan which was paid by Government of India instead of farmer and hence the same can never be treated as income of the bank?

4.Whether the Tribunal was right in law in setting aside the assessment to the file of the Assessing Officer to verify whether any of the loans have been allowed as a provision made u/s.36 (1)(viia)?

5.Whether the Tribunal erred in not appreciating the fact that the provisions made u/s.36(1)(viia) is an overall provisions and not a provision against any specific loan and will not reduce the outstanding of any specific loan. Hence the recovery of any loan will not result in any income in the nature of recovery of a specific debt written off?

6.Whether the Tribunal erred in not appreciating that only when a loan written off u/s.36(1)(vii) as per Explanation and Section 36 (1)(vii) read with Explanation 5 to Section 36(1), the same should be set off against the provisions made u/s.36(1)(viia) and not when an outstanding loan is recovered?”

4.According to the learned counsel for the appellant, there is no escapement of income, since the amount reimbursed by the Government to the extent it pertained to interest, was already credited to P& L account and offered to tax; and in respect of the principal amount, the same was only the repayment of loan, which was paid by the Government, instead of farmer and therefore, the same can never be treated as income of the bank; hence, there was no new tangible material based on which the assessment was reopened by the assessing officer. However, without considering the said aspect in proper perspective, both the CIT(A) and the Tribunal erroneously upheld the reopening of the assessment by the assessing officer. In support of the said submission, he placed reliance on the decisions of Full Bench of Delhi High Court in the case of CIT v. Kelvinator of India Limited [256 ITR 1], which was affirmed by the Hon'ble Supreme court in the decision reported in 320 ITR 561; and this court in the case of TANMAC India v. DCIT [(2016) 97 CCH 0189]. Further, the learned counsel, placing reliance on the decision of the Hon'ble Supreme Court in Catholic Syrian Bank Ltd v. CIT [343 ITR 270], wherein it was held that “only agricultural debts written off should be first adjusted against the provisions made and allowed under section 36(1)(viia)”, submitted that the Tribunal erred in setting aside the issue of taxing the reimbursement by the Government loan due from agriculturist to the file of the Assessing officer to verify whether any part of the loan was allowed as a provision made under section 36(1)(viia). It is also submitted by the learned counsel that the appellant has already preferred an appeal in TC(A) No.178 of 2020 against the order relied on by the Tribunal in respect of the assessee's own case in ITA No.1879/Chny/2017 dated 06.06.2019 for the assessment year 2008-09 and hence, the said order has not become final. With these submissions, the learned counsel prayed for allowing this appeal by setting aside the order of the Tribunal.

5.Mr.T.Ravikumar, learned senior standing counsel taking notice for the respondent submitted that after careful examination of the facts and circumstances of the case, in the light of the material evidence placed before it, the Tribunal has rightly held the reopening the assessment as valid, but remanded the matter to the file of the Assessing Officer for consideration of the issue afresh and hence, the same does not require any interference by this court.

6.Heard both sides and perused the materials placed before this court.

7.The facts stated above are not in dispute. The issues raised before the Tribunal were (i)whether reopening the assessment is valid or not; and (ii)whether the amount received under Agricultural Debt Relief and Debt Waiver Scheme is taxable or not. The Tribunal recorded the following findings: Issue No.1:

> "6.We find from the above reasons that the finding given by the AO is that the assessee has already claimed as a provision for debt and same is allowed. Subsequently, the assessee has received an amount of Rs.209.61 crores under Agricultural Debt Waiver and Debt Relief Scheme, 2008. It is very clear that the amount, which is already claimed as a bad debt by the assessee and again assessee has received the same amount under debt waiver and debt relief scheme. According to the AO, there is an escapement of income. Accordingly, the AO has issued a notice u/s. 148 of the Act and completed assessable u/s. 143(3) r/w s.147 of the Act on 29.12.2017.
>
> 7.In view of the above, we are of the opinion that the AO has correctly recorded the reasons and reopened the assessment and completed the assessment u/s. 147 of the Act thus, the reopening is valid."

Issue No.2:

> "9.The ld. counsel or the assessee has submitted that the similar issue already came up before the Hon'ble ITAT "C" Bench, Chennai for assessment years 2008-09, 2009-10 & 2012-13 in ITA Nos.1879, 1880 & 1881/Chny/2017 vide order dated 06.06.2019 directed the AO to re-examine the issue afresh in accordance with law. ...
>
> 10.We therefore respectfully following the order passed by the Tribunal in the assessee's own case, we direct the AO to re-examine the issue afresh in accordance with law."

8.Though the appellant challenged the aforesaid order of the Tribunal in respect of both the issues, by raising various grounds and also placing reliance on case laws, we are of the view that the Income-tax Act is a self-contained Act and this court under section 260A of the Act in its appellate jurisdiction, is not the proper forum for deciding such mixed questions. Therefore, we remand the matter to the Assessing Officer as done by the Tribunal, however, with a direction to consider all the issues raised by the appellant, without being influenced by any of the observations made by the Tribunal, and pass orders afresh, after providing reasonable opportunity to the appellant. Such an exercise shall be completed within a period of three months from the date of receipt of a copy of this judgment.

9.Accordingly, this tax case appeal stands disposed of. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

msr

To
1. The Income Tax Appellate Tribunal
'A' Bench, Chennai.

2. The Asst. Commissioner of Income Tax,
Large Taxpayer Unit-2,
Chennai 600 034.

3. The Commissioner of Income Tax (Appeals) 17
Chennai.

4. The Deputy Commissioner of Income Tax,
Large Taxpayer Unit-2,
Chennai 600 101.

+1cc to Mr. T. Ravikumar, Advocate, S.R.No.11167
+1cc to Mr. Subbaraya Aiyar Padmanabhan, Advocate, S.R.No.11834

T.C.A.No. 61 of 2022

NMI(CO)
CT 16/03/2022