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

TAX CASE APPEAL NOS.603 TO 605 OF 2011

M/s.Indian Bank
Central Office
Accounts Department
31, Rajaji Salai
Chennai - 600 001 ...Appellant in all cases

Versus

The Joint Commissioner of Income Tax/
Deputy Commissioner of Income Tax/
Assistant Commissioner of Income Tax,
Special Range -I/Company Circle II (3)
121 Nungambakkam High Road
Chennai - 600 034 ...Respondent in all cases

Common Prayer : Appeal filed under Section 260A of the Income Tax Act, 1961 against the order dated 30.06.2011 in I.T.A.Nos.985, 986 & 1082/Mds/2003, on the file of the Income Tax Appellate Tribunal, 'A' Bench, Chennai against the Order of the Commissioner of Income Tax Appeals-XI, Chennai-34 in ITA No.269, 252 and 376/2001-02, dated 28.02.2003, 28.02.2003 and 11.03.2003, respectively, against the Assessment order dated 04.03.1996 passed by the Deputy Commissioner of Income Tax, Special Range-I, Chennai-34 for the Assessment year 1989-90, 1990-91 and 1998-99 dated 04.03.1996, 26.03.1993 and 30.03.2001, respectively.

For Appellant : Mr.G.Baskar (in all cases)

For Respondent : Mr.Karthik Ranganathan (in all cases)
Senior Standing Counsel

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

These tax case appeals filed by the appellant / assessee, are directed against the common order dated 30.06.2011 passed by the Income Tax Appellate Tribunal, 'A' Bench, Chennai, in

I.T.A.Nos. 985, 986 & 1082/Mds/2003, relating to the assessment year 1989-90, 1990-91 & 1998-99, formulating the following substantial question of laws:-

T.C.A.No.603 of 2011

"(i) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is right in law in not adjudicating on the issue raised by the Appellant for want of CoD clearance pursuant to the judgment of the Supreme Court in the matter of Elcot?

(ii) Whether on the facts and in the circumstances of the case the Income Tax Appellate Tribunal is right in law in not considering on merits the following specific issue raised by the Appellant?

(a) Deduction under Sec.80M of the Income Tax Act."

T.C.A.No.604 of 2011

" (i) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is right in law in not adjudicating on the issue raised by the Appellant for want of CoD clearance pursuant to the judgment of the Supreme Court in the matter of Elcot?

(ii) Whether on the facts and in the circumstances of the case the Income Tax Appellate Tribunal is right in law in not considering on merits the following specific issue raised by the Appellant?

(i) Disallowance of foreign branches' entertainment expenditure.

(ii) Disallowance of expenditure under Sec.14 of the Act.

(iii) Additions and disallowances made under Sec.115J of the Act for Sec.14A disallowances.

(iv) Provision for bad and doubtful debts.

(v) Transfer from investment reserve.

(vi) Transfer from contingency reserve."

T.C.A.No.605 of 2011

"(i) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is right in law in not adjudicating on the issue raised by the Appellant for want of CoD clearance pursuant to the judgment of the Supreme Court in the matter of Elcot?

(ii) Whether on the facts and in the circumstances of the case the Income Tax Appellate

Tribunal is right in law in not considering on merits the following specific issue raised by the Appellant?

(a) Disallowance of expenditure under Sec.14A of the Act."

2.Before the Tribunal, it was contended by the appellant that by virtue of the decision of the Hon'ble Supreme Court in the case of Electronics Corporation of India Limited v. UOI [(2011) 332 ITR 58], no approval from CoD was required for pursuing an appeal by a public sector undertaking before the Tribunal or any higher forums. The said contention was resisted by the respondent / Revenue stating that the decision of the Hon'ble Supreme Court in the case of Electronics Corporation of India (supra) did not obliterate whatever was legally done by the CoD, prior to such decision; when the CoD had specifically denied permission, it could not be held that a subsequent decision of the Hon'ble Supreme Court would render such decision of CoD infructuous; and therefore, the Tribunal could not adjudicate an issue on which CoD had denied permission to the assessee to pursue in appeal. Considering the rival submissions, the Tribunal found that once a decision has been taken by the CoD, during its period of utility, after exercising its mind, that certain issues need not be taken up in appeals, it cannot be given a go-bye; and the decision of the Hon'ble Supreme Court in Electronics Corporation of India's case (supra) cannot be so interpreted to render nugatory decisions already taken by CoD. Ultimately, the Tribunal was of the opinion that the assessee could not be permitted to assail an issue on which CoD had specifically denied permission to pursue an appeal. After holding so, the Tribunal, while considering all the issues involved in the appeals, has declined to consider certain issues, for which the appellant has not obtained permission from the Committee on Disputes (CoD). The finding of the Tribunal gave rise to the first substantial question of law in all these tax case appeals. The second question of law is ancillary to the same.

3.Heard both sides and perused the materials placed before this court, including case laws.

4.There cannot be any dispute that the Hon'ble Supreme Court in Electronics Corporation of India Ltd (supra) held that the Committee on Disputes has outlived its utility and consequently, the earlier order of the supreme court directing constitution of the Committee is recalled. Ever since the judgment of the supreme court, there is no scope for the committee on Disputes considering clearance for filing appeal between Public Sector Undertakings or between Government and Public Sector Undertakings.

5.However, in CIT v. Central Bank of India [(2014) 51 taxmann.com 527 (Bombay)], it was noted by the Bombay High Court that the Revenue had not made any application to obtain approval of the CoD before it filed its appeal to the Tribunal; and at that time, CoD mechanism being very much in force. Therefore, it was held that the necessity of obtaining approval from CoD which was in practice at the relevant time, cannot be done away with, on the ground that the supreme court subsequently held that the said practice needs to be discontinued. Accordingly, the petition was dismissed in favour of the assessee.

6.In another decision in CIT v. State Bank of Travancore [(2014) 46 taxmann.com 442 (Kerala) (FB)], it was held that when the committee considered and declined permission to the Revenue, the committee remained validly constituted under the orders of the Supreme Court, and so much so, we are afraid, we cannot ignore those orders. We refused to entertain the appeals and rejected the same for the reason that the Committee on Disputes declined permission. It was further observed that the Hon'ble Supreme Court in the judgment in Electronics Corporation of India Ltd (supra), has not stated as to whether the approvals granted or declined by the committee could be gone into by the appellate court in any case pending or disposed of; and hence, the applications of the Revenue cannot be allowed.

7.Applying the legal proposition as laid down in the aforesaid decisions to the facts of the present case, wherein the Tribunal has refused to consider certain issues raised by the appellant, for which, the CoD denied permission, we answer the first substantial question of law raised herein against the appellant. In view of the same, we do not consider the second substantial question of law raised in all these appeals. Accordingly, all the tax case appeals are dismissed. No costs.

Sd/-
Assistant Registrar(CS-IX)

// True Copy //

Sub Assistant Registrar

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To

1.The Joint Commissioner of Income Tax/
Deputy Commissioner of Income Tax/
Assistant Commissioner of Income Tax,
Special Range -I/Company Circle II (3)
121 Nungambakkam High Road
Chennai - 600 034

2.The Commissioner of Income Tax (Appeals)
Chennai

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

+1cc to M/s.G.Baskar, Advocate Sr.No.11676

TCA Nos.603 to 605 of 2011

PPA(CO)
RVM(18/03/2022)