IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.03.2022

CORAM :

THE HON'BLE MR. JUSTICE R.MAHADEVAN
AND
THE HON'BLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

T.C.A.NO.260 OF 2012

M/s.Hotel Sri Lakshmi
No.292, Big Bazaar Street,
Coimbatore - 641 001.
PAN:AACFH0357H

...Appellant/
Appellant

Versus

The Assistant Commissioner of Income-Tax,
Circle - III,
Coimbatore.

...Respondent/
Respondent

Tax Case Appeal filed under Section 260 (A) of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal 'B' Bench, Chennai in I.T.A.No.1314/Mds/2011 dated 26.07.2012.

Against the order of Commissioner of Income-Tax(Appeals)-I, Coimbatore dated 26.05.2011 in Appeal No.28/2010-2011 and against the order of Assistant Commissioner of Income-Tax, Circle III, Coimbatore dated 30.12.2018 in PAN.No.AACFH0357H for the Assessment Year 2006-2007.

For Appellant : Mr.S.Sridhar

For Respondent : Mr.M.Swaminathan,
Senior Standing Counsel
and Mrs.K.G.Usharani,
Junior Standing Counsel

JUDGMENT

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

This Tax Case Appeal has been preferred by the appellant/assessee against the order passed by the Income Tax Appellate Tribunal 'B' Bench, Chennai in I.T.A.No.1314/Mds/2011 dated 26.07.2012, relating to the Assessment Year 2006-07.

2.According to the appellant / assessee, they are a partnership firm and they filed their return of income for the assessment year 2006-07, on 31.10.2006 admitting a total income of Rs.37,31,370/-, which was originally processed under section 143(1) of the Income-tax Act, 1961 (in short, the Act) on 11.04,2007. However, while passing the assessment order under section 143(3) on 30.12.2008, the respondent disallowed the claim of bad debts to the tune of Rs.22,94,000/-. Challenging the said assessment order, the appellant preferred an appeal before the Commissioner of Income Tax (Appeals)-1, Coimbatore, who by order dated 26.05.2011, dismissed the same thereby confirming the order of the respondent / assessing officer. The second appeal filed by the appellant before the ITAT, Chennai also ended in dismissal, by order dated 26.07.2012, which is impugned in this appeal.

3.On 21.11.2012, this appeal was admitted on the following substantial question of law:

> "Whether the Tribunal is correct in law in sustaining the disallowance of the claim of business loss u/s.28 of the Act which claim was alternatively made as against the original claim of bad debts u/s.36 (1)(vii) of the Act in relation to the transaction involving advancing of monies for purchase of property in the process of making an attempt to expand the business of the appellant by misreading the facts of the case resulting in perversity in the order passed by them?"

4.The learned counsel for the appellant/assessee submitted that without assigning proper reasons and justification, the authorities below disallowed the claim of bad debts of Rs.22,94,000/-, which is erroneous and unsustainable in law. According to him, the misappropriation of funds provided in the course of the attempt to expand the business of the appellant / assessee had to be construed as a business loss / bad debts in the computation of taxable total income, which is eligible for deduction within the scope of the Act. The learned counsel further submitted that the complaint given to the police department had clearly established the fact of the loss suffered by the appellant / assessee for the purpose of purchase of property, however, the same was not taken into consideration by the authorities below. The learned counsel also placed reliance on a decision of the Hon'ble Supreme Court in the case of Badridas Daga Vs. Commissioner of Income Tax [(1958) 34 ITR 10 (SC)], wherein, it was held as follows:

> "In the result, we are of opinion that the loss sustained by the appellant as a result of misappropriation by Chandratan is one which is incidental to the carrying on of his business, and that it should therefore be deducted in computing the profits under Section 10(1) of the Act. In this view, the order of the lower court must be set aside and the reference answered in the affirmative. The appellant will get his costs of this appeal and of the reference in the Court below."

Ultimately, it is submitted that the loss incurred by the appellant/assessee had to be allowed as business loss or bad debt and hence, the appeal may be allowed by setting aside the order of the authorities below.

5.On the other hand, the learned standing counsel appearing for the respondent submitted that after examining the facts and circumstances of the case, in the light of the materials available before the same, the authorities below uniformly held that the loss incurred by the appellant / assessee cannot be treated as business loss for the purpose of deduction under the Act and hence, their well considered findings need not be interfered with by this court.

6.We have heard both sides and perused the materials available on record.

7.The short issue involved herein is with regard to the disallowance of claim of the appellant /assessee to the tune of Rs.22,94,000/- under the head 'business loss / bad debts'. In order to appreciate the same, it is but necessary to analyse the findings of the authorities below to that extent alone.

8.The appellant made the claim of bad debts of Rs.22,94,000/- for the assessment year in question, stating that they paid money to some persons, who promised to get a loan of Rs.8 crores at a low rate of interest and the deal did not materialise and they were duped by the individuals. To substantiate the same, they filed a copy of the complaint with the police. However, the assessing officer disallowed the said claim, on the premise that the same was neither revenue nor was it a loan or debt incurred in respect of the business carried on by the appellant in the relevant accounting year.

9.The order of the assessment was challenged by the appellant before the appellate authority and it was pleaded that they were intending to raise a loan for the purpose of expanding its business by increasing the capacity of the lodge and the neighbouring building owners also intended to offer their business complex to the appellant; and therefore, the amount was advanced in good faith in the course of carrying on the business of the appellant. However, the said plea was not accepted and the disallowance made by the assessing officer was confirmed, after having observed that the facts mentioned by the appellant were entirely different from what were given in the complaint filed before the police station and the appellant could not establish any business link or commercial expediency for the commission of Rs.25 lakhs paid to the agent; and the appellant also could not produce any agreement or correspondence which could show that there was any business purpose behind the sum being given and hence, the amount was not advanced in respect of the business carried on by the appellant nor has any business connection with the firm.

10.The Tribunal also affirmed the findings of the appellate authority and dismissed the further appeal filed by the appellant in this regard and the detailed findings of the Tribunal are quoted below for ready reference:

> "6... Assessing Officer had come to a conclusion that a loan was being raised by one of the partners, namely, Shri K.P.S.Prakash for purchase of a land at Coimbatore and the said Shri K.P.S.Prakash had paid to Shri Ramar the impugned sum of arranging such loan. This conclusion was arrived from the complaint given by Shri K.P.S.Prakash to Police in January, 2002. In the face of the complaint given by Shri K.P.S.Prakash that the sum paid to Shri Ramar was for arranging a loan for acquiring land at Coimbatore, the subsequent version of the assessee that the proposal was only for execution of its lodging business, by acquiring adjacent property, cannot be believed at all. If that was so, Shri K.P.S.Prakash would not have stated in the first

instance that the amount was sought for purchase of land at Coimbatore. He could have very well stated that it was for the purpose of acquiring the adjacent land. In the complaint filed before the Police, there was not even a whisper that the proposal was for expansion of the assessee-firm's business. It is clear that the amounts were paid for the partner's personal purpose only. Nothing was produced before the CIT (Appeals) to show that assessee had any intention to purchase any adjacent property for expansion of the business. It would also be naïve to believe that assessee would have paid a sum of Rs.25 lakhs just like that without any agreement. Without having produced any records to show that the sum paid was for business purpose or for commercial expediency, the claim, in our opinion, was rightly disallowed. Assessee might have accounted the payment made by Shri K.P.S.Prakash in its books. Recording of such transaction by itself would not render it an allowable expense either as bad debt or as a business loss. If it was only a fee paid for arranging loan for the assessee's business, the amount need not have been shown as debt due from Shri Ramar. Having suffered a personal loss, Shri K.P.S.Prakash was only trying to charge such loss in the accounts of the assessee by claiming it as bad debt. Neither it was allowable as bad debt nor as a business loss. No business purpose was demonstrated by the assessee at all. As for the decisions of Hon'ble Apex Court in the case of Badridos Dega (supra) and National Bank Limited (supra) relied on by the learned A.R., both are not applicable on facts here. In the case of Badridos Daga, the loss was by an agent holding power of attorney to operate concerned assessee's bank account. In the case of National Bank Limited, cash, which was the stock-in-trade of the concerned assessee was looted and hence, loss was on account of decoity. As for the case of TRF Ltd., relied on by the learned A.R., no doubt it was held that a claim of bad debt was allowable if it was written off as irrecoverable in the accounts of the assessee. But, the said decision does not absolve an assessee from proving that the debt was incurred during the course of business, for the purpose of its business. We are, therefore, of the opinion that the authorities below were justified in disallowing the claim of the assessee."

11.It could be seen from the findings of the authorities below that after analysing the entire pleadings and the submissions made on either side, they have in unequivocal terms, held that there was no material available to prove that the loss incurred by the appellant / assessee was for the purpose of acquiring the property at Coimbatore for expansion of its business and hence, the same was not treated as business loss / bad debts. Such a finding rendered by the authorities below, based on the material evidence, does not require any interfere by this court. Further, the decision relied on the side of the appellant as was made before the Tribunal, is of no help to the case of the appellant / assessee, as it is factually distinguishable.

12.At this juncture, it may be useful to refer to the decision of the Hon'ble Supreme Court in Metroark Ltd. v. CCE [(2004) 12 SCC 505], wherein it was held as under:

> "8. Even otherwise, the law on the subject is clear. The Tribunal is the final fact-finding authority. Unless it is shown that there is something perverse in its finding, this Court would not interfere. No authority is required for this purpose. But as a large number of authorities are cited, we refer to them: Pragati Computers (P) Ltd. v. Collector of Customs [(2000) 10 SCC 150], Reliance Silicon (I) (P) Ltd. v. CCE [(1997) 1 SCC 215], Asian Paints India Ltd. v. CCE [(1988) 2 SCC 470 : 1988 SCC (Tax) 201] and Collector of Customs v. Swastic Woollens (P) Ltd. [1988 Supp SCC 796 : 1989 SCC (Tax) 67]."

13.That apart, it is settled law that "a court of appeal interferes not when the judgment under attack is not right, but only when it is shown to be wrong" [Refer: Dollar Co. v. Collector of Madras, (1975) 2 SCC 730].

14.In such view of the matter, there is no question of law, much less substantial question of law arisen for consideration herein. Accordingly, this Tax Case Appeal stands dismissed. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. Income Tax Appellate Tribunal 'B' Bench,
   Chennai.

2. The Commissioner of Income Tax (Appeals)-I,
   Coimbatore.

3. The Assistant Commissioner of Income-Tax,
   Company Circle – III,
   Coimbatore.

+1cc to Mr.M.Swaminathan, Senior Standing Counsel, S.R.No.20843

T.C.A.No.260 of 2012

AJS(CO)
PM/27/04/2022