

THE HON'BLE THE CHIEF JUSTICE UJJAL BHUYAN

AND

THE HON'BLE SRI JUSTICE C.V.BHASKAR REDDY

I.T.T.A. No.438 of 2005

JUDGMENT: *(Per the Hon'ble the Chief Justice Ujjal Bhuyan)*

Heard Mr. Rohan Aloor, learned counsel for the appellant and Mr. B.Narasimha Sarma, learned Standing Counsel, Income Tax Department for the respondent.

2. This appeal has been preferred under Section 260A of the Income Tax Act, 1961 (briefly referred to hereinafter as 'the Act') against the order dated 15.07.2005 passed by the Income Tax Appellate Tribunal, Hyderabad Bench 'A', Hyderabad (briefly referred to hereinafter as 'the Tribunal') in I.T.A.No.53/Hyd/2001 for the assessment year 1997-98.

3. We find that while admitting the appeal, the substantial questions of law were not framed. In the memo of appeal, the following questions have been proposed as substantial questions of law:

“1) On the facts and in the circumstances of the case, whether the Income Tax Appellate Tribunal is correct in law in holding that the investments made by an investment company in share capital of another company would be capital investment/investment in the capital field for acquiring a profit making apparatus?

2) On the facts and in the circumstances of the case, whether the Income Tax Appellate Tribunal is correct in law in holding that the amounts advanced (as unsecured loans) by the Appellant Company to M/s.Kaveri Steripack Pvt. Ltd. is a capital investment and not entitled to write off as revenue loss as the same was not recoverable.”

4. From the above, it is seen that the first question proposed by the appellant is whether the investment made by it in the share capital of another company would be a capital investment or not. Corollary to the above, the next question proposed is whether the Tribunal was correct in holding that the amounts advanced by the appellant in the other company was a capital investment which could not be written off as revenue loss.

5. Appellant is an assessee under the Act having the status of a company. The assessment year under consideration is 1997-98. In the assessment proceedings, it is seen that appellant sought to write off an amount of Rs.11,80,190.00 including Rs.8,31,102.00 advanced to M/s. Kaveri Steripack Pvt. Ltd. as unsecured loan, as bad debts. Assessing Officer in the assessment order dated 27.03.2000 held that allowance of bad debt is governed by the provisions of Section 36(1)(vii) read with Section 36(2) of the Act. Assessing officer noted that as per appellant's own admission, it was merely apprehensive of not realising the loans advanced along with interest. In other words, the written off was a probability. Accordingly, the claim was disallowed.

5.1. Additionally appellant claimed investments of Rs.13,99,800.00 in the share capital of M/s. Kaveri Steripack Pvt. Ltd. as a bad investment and sought to write off the same. It was stated during the assessment proceedings that after investing the aforesaid amount, representatives of the appellant were inducted as Directors of M/s. Kaveri Steripack

Pvt. Ltd. but during the period June and July, 1996, there were disputes as regards conduct of affairs of the company i.e., M/s. Kaveri Steripack Pvt. Ltd. This led to filing of civil suits and counter civil suits. Ultimately A.P. State Financial Corporation which had advanced term loan to M/s. Kaveri Steripack Pvt. Ltd. locked up the premises. In view of the aforesaid position, appellant decided to write off the investment to the extent of Rs.13.99 lakhs as well as the unsecured loan of Rs.8.31 lakhs. Assessing officer *vide* the assessment order dated 27.03.2000 referred to the provisions contained in Section 36(1)(vii) read with Section 36(2) of the Act and found that the aforesaid amounts were not written on from the books of the appellant. Additionally it was held that such expenditure incurred by the appellant was not a trading liability; rather as per the own admission of the appellant, it was a capital outlay. Holding that the conditions stipulated in Section 36(1)(vii) read with Section 36(2) of the Act as well as Section 37(1) of the Act were not complied with, assessing officer refused to write off the aforesaid amounts as bad debts. However, the same was treated as a capital outlay.

6. Aggrieved by the above, appellant preferred first appeal before the Commissioner of Income Tax (Appeals)-IV, Hyderabad (briefly referred to hereinafter as 'CIT(A)'). By the order dated 21.11.2000, the appeal preferred by the appellant was dismissed.

7. Thereafter appellant preferred further appeal before the Tribunal. However, by the order dated 15.07.2005, the appeal was dismissed by the Tribunal.

8. Learned counsel for the appellant has placed reliance on a decision of the Madras High Court in **Commissioner of Income Tax v. Tamilnadu Industrial Investment Corpn. Ltd.**¹ to contend that investments made by an investment company like that of the appellant would be considered to be revenue expenditure and entitled to necessary deductions. He has also placed reliance on a decision of the Supreme Court in **Indore Malwa United Mills Ltd., Indore v. State of Madhya Bharat**² to contend that money lent would be a debit item in the accounts of the

¹ MANU/TN/1795/2017

² MANU/SC/134/1964

company in accordance with the accepted commercial practice. If the amount is realised, it would be a credit item. Both would be proper items of accounts for ascertaining the profit and loss of the company. If the debt becomes irrevocable, it would be a bad debt.

9. On the other hand, Mr. B.Narasimha Sarma, learned counsel for the respondent submits that issue involved in the present appeal is short and precise. The question is whether investments made by the appellant in another company could be treated as a bad debt under Section 36(1)(vii) of the Act.

10. We have heard learned counsel for the parties and perused the materials on record.

11. We have already noticed the findings returned by the assessing officer.

12. Assessing officer noted that to writing off any sum under the head 'bad debt' is governed by the provisions of Section 36(1)(vii) of the Act read with Section 36(2) thereof.

The foremost condition required to treat an advance as a bad debt or to write off the same is that such advance must accrue or arise out of the activity of the business of the assessee. In other words, it has to necessarily mean a trading liability of the assessee (appellant). However, it was noted that as per appellant's own admission, a consolidated sum of Rs.31.34 lakhs was advanced to M/s. Kaveri Steripack Pvt. Ltd. with the idea of effecting a takeover of the said company as a going concern. Therefore, as per the appellant's own admission, this was a capital outlay and consequently a capital expenditure though incidentally it may help in the business of the company in making profit. Therefore, assessing officer concluded that the outlay of Rs.31,34,000.00 was in the nature of a capital outlay, the write off of which could not be allowed within the meaning of Section 36(1)(vii) read with Section 36(2) of the Act.

13. In appeal before CIT(A), it was contended on behalf of the appellant that the investments/advances to M/s. Kaveri Steripack Pvt. Ltd. had sprung out of commercial

expediency and that since the transaction had taken place in the ordinary course of business, appellant was entitled to be allowed deduction under Section 36(1)(vii) read with Section 36(2) of the Act or alternatively under Section 37(1) of the Act. After due consideration CIT(A) held as follows:

“4.4 I have considered the arguments from the appellant’s side. The effort to take over KSPL was to diversify into health care segment. The appellant had invested money for acquisition of profit making apparatus. The entire investment was, therefore, a capital outlay. Therefore, if on account of subsequent development the appellant had to write off part of the same, it has to be treated as a capital loss and the amount written off cannot qualify for deduction either u/s. 36(1)(vii) r.w.s. 36(2) or u/s. 37(1) of Income-tax Act, 1961. The matter in this regard is squarely covered against the appellant and in favour of the revenue by the decision of hon’ble Supreme Court in the case of Hasimara Industries Ltd. (230 ITR 927). The disallowance of Rs.22,30,902/- made the Assessing Officer is, therefore, confirmed.”

13.1. Thus, CIT(A) rejected the contention of the appellant and confirmed the disallowance made by the Assessing Officer.

14. When this was carried forward in further appeal before the Tribunal, Tribunal also did not accept such contention of the appellant and by the order dated 15.07.2005 rejected the same in the following manner:

“5. We have heard rival contentions. On a careful consideration of the facts and circumstances of the case, we hold that the issue in question is squarely covered in favour of the Revenue and against the assessee by the decision of the Hon’ble Supreme Court in the case of Hasimara Industries Ltd. (supra). The assessee had decided to take over Kaveri Steripack Pvt. Ltd. as a going concern. The assessee diversified from its activity of investment company. Notes forming part of accounts clearly demonstrate that this was a take-over proposal. The ratio of the judgment of the Hon’ble Supreme Court in the case of CIT v. Amalgamations Pvt. Ltd. (supra) is not applicable to the facts of the case. In that case, there was a loss arising out of a guarantee issued by the assessee company. The case on hand is one where the assessee diversified and took over a running concern and made investment for the same. The judgment of the Hon’ble Supreme Court in the case of Essen Pvt. Ltd. (supra) also does not come to the rescue of the assessee. In that case also, it was a loss arising out of a guarantee issued. The assessee had rightly not argued that the deduction is allowable under sec. 36(1)(vii) read with sec. 36(2). Thus, in the facts and circumstances of the case, we uphold the order of the CIT (A).

6. In the result, the appeal of the assessee is dismissed.”

15. Thus, Tribunal noted that appellant had decided to takeover M/s. Kaveri Steripack Pvt. Ltd. as a going concern, thus diversifying from its activity of investment company. It was clearly a takeover proposal and accordingly investments were made. Admittedly, this was not a business expenditure, this being an expenditure in the nature of capital investment. Tribunal noted that appellant did not argue that the deduction claimed was allowable under Section 36(1)(vii) read with Section 36(2) of the Act. If that be the position, we need not elaborate or labour on the aspect relating to the allowability as a bad debt under Section 36(1)(vii) read with Section 36(2) of the Act.

16. That apart, we find that there is consistent and concurrent agreement on the findings returned by the assessing officer by the two lower appellate authorities. In further appeal under Section 260A of the Act, we are not inclined to disturb such findings. That apart, we do not find any substantial question of law for interference.

17. Consequently, the appeal is dismissed. However, there shall be no order as to costs.

18. As a sequel, miscellaneous applications pending, if any, in this appeal, shall stand closed.

UJJAL BHUYAN, CJ

C.V.BHASKAR REDDY, J

Date: 26.10.2022
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