

THE HON'BLE THE CHIEF JUSTICE UJJAL BHUYAN

AND

THE HON'BLE SRI JUSTICE N.TUKARAMJI

I.T.T.A.No.244 of 2006

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

Heard Mr. Mohd. Mukhairuddin, learned counsel for the appellant and Mr. J.V.Prasad, learned Standing Counsel, Income Tax Department for the respondent.

2. This appeal has been preferred by the assessee under Section 260A of the Income Tax Act, 1961 (briefly 'the Act' hereinafter) against the order dated 24.06.2005 passed by the Income Tax Appellate Tribunal, Hyderabad Bench 'A', Hyderabad (briefly 'Tribunal' hereinafter) in I.T.A.No.937/Hyd/2002 for the assessment year 1998-99.

3. Learned counsel for the appellant submits that by the aforesaid order dated 24.06.2005, Tribunal had disposed of two appeals of the appellant being I.T.A.No.937/Hyd/02 for the assessment year 1998-99 and I.T.A.No.29/Hyd/04 for the assessment year 2000-2001; in respect of ITA.No.29/Hyd/2004 for the assessment year 2000-2001, assessee had filed I.T.T.A.No.243 of 2006 before this Court, which

was allowed *vide* the judgment and order dated 14.12.2022. He therefore, submits that a similar order may be passed in the present appeal as well.

4. Learned Standing Counsel for the respondent has not disputed the same.

5. In I.T.T.A.No.243 of 2006, appellant had proposed the following questions as substantial questions of law:

“(A) Whether the Appellate Tribunal is correct in law in disallowing the lease equalization charge claimed as a deduction from gross lease rentals received by the assessee in respect of finance lease of assets?

(B) Whether the Appellate Tribunal is correct in law in upholding the additions to lease rental income recognised by assessee in compliance with the mandatory accounting standard AS 19 read with accounting standard No.1 notified U/s.145 (2) of the Income Tax Act?

(C) Whether the Appellate Tribunal is correct in law in disallowing the lease equalization charge claimed by the appellant which as per the accounting standard is meant to mitigate the effect of capital receipts embedded in lease rentals and disallowance of the

lease equalization charge would amount to taxing capital receipts?”

6. This Court answered the above questions in the following manner:

11. This issue is no longer *res integra* as the same has been answered by the Supreme Court in **Commissioner of Income Tax-VI v. Virtual Soft Systems Limited** [(2018) 6 Supreme Court Cases 584]. In the said decision, Supreme Court examined the guidelines issued by the Institute of Chartered Accountants of India (briefly referred to hereinafter as ‘ICAI’) and also referred to Section 211 of the Companies Act, 1956 to emphasize that Accounting Standards prescribed by ICAI shall prevail until Accounting Standards are prescribed by the Central Government. It has been held as follows:

“11. Prior to critically examining the case, it would be appropriate to have an understanding and significance of the Guidance Note issued by the ICAI. The ICAI is an expert body, created by the Parliament under the Chartered Accountants Act, 1949. The ICAI’s publication on the subject indicates that the Guidance Note on Accounting for Leases was issued by it for the first time in 1988 which was later on revised in 1995. The Guidance Note reflects the best practices adopted by the accountants throughout the world. The

ICAI is a recognized body vested with the authority to recommend accounting standards for ultimate prescription by the Central Government in consultation with the National Advisory Committee of Accounting Standards for the presentation of true and fair financial statements.

12. Section 211 of the Companies Act, 1956 as it stood before the amendment dealt with “the Form and contents of balance sheet and profit and loss account”. Sub-section (3-C) of Section 211 was added vide the 1999 Amendment with retrospective effect. The relevant portion of Section 211 of the Companies Act is reproduced herein as under:

“211. (3-C) For the purposes of this section, the expression “accounting standards” means the standards of accounting recommended by the Institute of Chartered Accountants of India constituted under the Chartered Accountants Act, 1949 (38 of 1949), as may be prescribed by the Central Government in consultation with the National Advisory Committee on Accounting Standards established under sub-section (1) of Section 210-A:

Provided that the standards of accounting specified by the Institute of Chartered Accountants of India shall be deemed to be the accounting standards until the accounting standards are prescribed by the Central Government under this sub-section.”

(emphasis supplied)

13. The purpose behind the amendment in Section 211 of the Companies Act, 1956 was to give clear sight that the accounting standards, as prescribed by the ICAI, shall prevail until the accounting standards are prescribed by the Central

Government under this sub- section. The purpose behind the accounting standards was to arrive at a computation of real income after adjusting the permissible depreciation. It is not disputed that these accounting standards are made by the body of experts after extensive study and research.”

12. After referring to the Guidance Note on Accounting for Leases, revised in the year 1995, Supreme Court held that method of accounting followed as derived from ICAI Guidance Note is a valid method of capturing real income based on the substance of finance lease transaction. The rule of substance over form is a fundamental principle of accounting. Thereafter, Supreme Court held as follows:

“17. The bifurcation of the lease rental is, by no stretch of imagination, an artificial calculation and, therefore, lease equalisation is an essential step in the accounting process to ensure that real income from the transaction in the form of revenue receipts only is captured for the purposes of income tax. Moreover, we do not find any express bar in the IT Act which bars the bifurcation of the lease rental. This bifurcation is analogous to the manner in which a bank would treat an EMI payment made by the debtor on a loan advanced by the bank. The repayment of principal would be a balance sheet item and not a revenue item. Only the interest earned would be a revenue receipt chargeable to income tax. Hence, we do not find

any force in the contentions of the Revenue that whole revenue from lease shall be subjected to tax under the IT Act.”

13. Supreme Court considered the main contention of the Revenue that an assessee cannot be allowed to claim deduction regarding lease equalisation charges since there is no such express provision for deduction in the Act. This contention was repelled by the Supreme Court in the following manner:

“19. In the present case, the relevant assessment year is 1999-2000. The main contention of the Revenue is that the respondent cannot be allowed to claim deduction regarding lease equalisation charges since as such there is no express provision regarding such deduction in the IT Act. However, it is apt to note here that the respondent can be charged only on real income which can be calculated only after applying the prescribed method. The IT Act is silent on such deduction. For such calculation, it is obvious that the respondent has to take course of Guidance Note prescribed by the ICAI if it is available. Only after applying such method which is prescribed in the Guidance Note, the respondent can show fair and real income which is liable to tax under the IT Act. Therefore, it is wrong to say that the respondent claimed deduction by virtue of Guidance Note rather it only applied the method of bifurcation as prescribed by the expert team of

ICAI. Further, a conjoint reading of Section 145 of the IT Act read with Section 211 (unamended) of the Companies Act makes it clear that the respondent is entitled to do such bifurcation and in our view there is no illegality in such bifurcation as it is according to the principles of law. Moreover, the rule of interpretation says that when internal aid is not available then for the proper interpretation of the statute, the court may take the help of external aid. If a term is not defined in a statute then its meaning can be taken as is prevalent in ordinary or commercial parlance. Hence, we do not find any force in the contentions of the Revenue that the accounting standards prescribed by the Guidance Note cannot be used to bifurcate the lease rental to reach the real income for the purpose of tax under the IT Act.

20. To sum up, we are of the view that the respondent is entitled for bifurcation of lease rental as per the accounting standards prescribed by the ICAI. Moreover, there is no express bar in the IT Act regarding the application of such accounting standards.”

14. That being the position, the questions framed by the appellant are answered in favour of the assessee and against the Revenue.

15. Appeal is accordingly allowed. However, there shall be no order as to costs.

7. Following the above, the present appeal is also allowed by answering the questions framed by the appellant in favour of the assessee and against the revenue.

8. No costs.

As a sequel, miscellaneous petitions, pending if any, stand closed.

UJJAL BHUYAN, CJ

N.TUKARAMJI, J

Date: 01.02.2023
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