IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 12.08.2024

CORAM

THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**
and
THE HONOURABLE **MR. JUSTICE G.ARUL MURUGAN**

Tax Case Nos.930 to 932 of 2007 and 1303 of 2008

Commissioner of Income Tax
Chennai
... Appellant in the above appeals

Vs

IndusInd Bank Ltd.
2401, General Thimayya Road,
Cantonment,
Pune – 411 001,
Maharastra.
(Respondent substituted vide this order)
... Respondent in the above appeals

PRAYER: APPEALs filed under Section 260A of the Income Tax Act, 1961 against orders dated 07.04.2006 in I.T.A.Nos.181/Mds/2002, 1519/Mds/1997 and 1936/Mds.1997 dated 28.02.2006 in ITA No.1217/Mds/2000 on the file of the Income Tax Appellate Tribunal, Madras 'A' Bench for assessment year 1998-99, 1993-94, 1995-95 and 1997-98.

For Appellant : Mr.T.Ravikumar
Senior Standing Counsel

For Respondent : Mr.R.Venkata Narayanan
for M/s.Subbarayar Aiyar Padmanabhan

COMMON JUDGMENT

(Judgment of the Court was delivered by Dr.ANITA SUMANTH,J.)

Learned Senior Standing Counsel for the appellant has filed a memo dated 06.08.2024 seeking permission to substitute the name of the respondent. In light of there being no objection, the said memo is ordered.

2. Heard Mr.T.Ravikumar, learned Senior Standing counsel for the appellant/Revenue and Mr.Venkata Narayanan, learned counsel for the respondent/assessee.

3. At the time of admission of the appeals on 06.07.2007 and 26.08.2008, the following substantial questions of law have been admitted.

> *"(i) Whether in the facts and circumstances of the case, the Tribunal was right in holding that the assessee is justified in following the Equated Monthly Instalment method to account the finance charges for the Income tax purposes only?*
> *(ii) Whether in the facts and circumstances of the case, the Tribunal was right in holding that the assessee is justified in following Sum of Digits Method to account the finance charges to arrive at balance sheet and profit and loss statements only ?*
> *(iii) Whether in the facts and circumstances of the case, the Tribunal was right in holding that the assessee is justified in following one method of accounting for the income tax purpose to attract lesser tax and other method to show higher income in its balance sheet and profit and loss statement ?"*

4. Both learned counsel would bring to our attention the decision of this Court in the case of *Commissioner of Income Tax V. Ashok Leyland Finance*

Ltd.[1], relating to Assessment Years (A.Ys).1991-92, 1992-93, 1999-2000 and 2003-04, wherein, this Court had dealt with the identical issues as in this case, answering the same in favour of the assessee and against the Revenue. The discussion in that matter is as follows:

> *"17. A perusal of the order of the Tribunal clearly showed that the nature of the business transaction conducted by the assessee was one of a hire purchase giving vehicles on hire purchase and the assessee had not given any finance or loan for the purchase of vehicle. The terms of the agreement thus clearly point out that the hire purchaser shall not have any proprietary right or title until he exercised, in writing, his option to purchase, as provided in the agreement by payment of the whole amount due under the agreement or in term thereof. A reading of the agreement shows that the principal and finance charges for the entire period of contract had been shown separately in the schedule attached to the agreement. The total amount of hire purchase charges, namely, principal and finance charges, were divided equally by number of instalments specified in the contract. Thus, the method employed for arriving the monthly instalment is an EMI method and the right of the assessee to receive the hire purchase charges on various due dates are as per the schedule mentioned in the agreement.*
>
> *18. In the light of the said finding of fact, one has to look at the reasoning of the Tribunal referring to the order of the Special Bench of the Hyderabad Tribunal and the assessee's own case in respect of the previous assessment year. Referring to the earlier orders of the Tribunal, which came on reference before this Court and which in turn was also rejected by this Court under judgment dated 12.3.1998, the Tribunal held that the consistency of returning the income for the purpose of income was only on EMI method. This was so, ever since the assessee started its business in this field. The Tribunal further pointed out that in loan transaction, only money is really*

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involved, but in a hire purchase transaction, hiring of asset other than money is involved; the title to the property will pass on to the hirer, when all the instalments are paid and when the hire purchaser exercises his option to purchase. Therefore, given the fact that the character of the transaction was pure and simple a hire purchase agreement and that the transaction had not in any manner undergone any change from the one which was the subject matter of consideration by the Tribunal for the earlier years, in respect of which, reference application filed by the Revenue was dismissed, the Tribunal came to the conclusion that the Assessing Officer had committed a serious error in ignoring the EMI method, to adopt SOD method.

19. We are in agreement with the reasoning of the Tribunal in this regard that when once the Revenue had accepted the character of the transaction as hire purchase transaction, the income that flows from the transaction has to necessarily follow the treatment that is given under the hire purchase agreement. Secondly, when the Revenue had not disputed the fact that on all the earlier years, the Revenue had treated the income as per the hire purchase agreement on EMI basis, there are no materials available as on record to show that following such method had really resulted in suppression of income, in other words, there was no true reflection of the income that has to be assessed under the Act.

20. In the background of this fact, when we look at the decision of the Special Bench of Hyderabad Income Tax Appellate Tribunal in the case of Deputy Commissioner of Income Tax V. Nagarjuna Investment Trust Ltd.) reported in (1998) 62 TTJ (Hyd) (SB) 33, on which heavy reliance was placed, we find therein that the facts are totally a different one. The assessee therein financed its customer for purchasing machinery from abroad. Even though the agreement was captioned as hire purchase agreement, a reading of various clauses showed that the assessee had accounted for its finance interest income in relation to hire purchase agreement on SOD method in its books of account, by apportioning each EMI between interest component and principal component, the interest income progressively reduced with the reduction in the outstanding principal amount. Thus, based on the hire purchase agreement that it recognised the SOD method for the *purpose of arriving at its real income, rightly, the Tribunal held it otherwise that the income had to be computed only on SOD method. The Tribunal pointed out that in the face of the factual findings herein that the contract is one of hire purchase agreement, the income had to be arrived at on EMI basis only.*

21. As far as the reliance placed by the Revenue on the decision of the Kerala High Court reported in (2008) 220 CTR (Ker) 286 (Commissioner of Income Tax Vs. Kerala State Financial Enterprises Ltd. & ors.) is concerned, we do not find that the said decision would be of any assistance to the Revenue, since those agreements were for financing for purchase of vehicle. In the circumstances, we reject the reliance placed by the Revenue.

22. As far as Circular No.127 (12)-I.T.2 dated 13.5.1943 is concerned, even though the said circular is issued in the context of hire purchaser's rights, yet, the instructions given are with reference to cases relating to purchase of assets under the hire purchase agreement. The Revenue does not dispute the fact that on entering into the hire purchase agreement, the hire purchaser does not become the owner immediately and hirer vendor is the owner. It also does not dispute the fact that the hire purchaser becomes the owner of the asset only on payment of the whole amount due under the agreement.

23. Going by the above-said facts, we do not find that the reliance placed on by the assessee to the Circular dated 13.5.1943 could be called a misplaced one. Apart from the above-said circular, there is yet another circular issued by the Central Board of Direct Taxes dated 13.1.1998, which was given under the Interest Tax Act 1974, particularly with reference to the hire purchase transactions' taxability of hire charges as interest.

24. A perusal of the said circular shows the instruction given to the Commissioner as to the manner in which the transaction of hire purchase has to be considered. If we apply the same to the facts herein, we find, rightly, the Tribunal adopted the correct approach for arriving at its finding.

25. In the light of the above, we have no hesitation in confirming the order of the Tribunal, thereby rejecting the appeals filed by the Revenue. Accordingly, the above Tax Case (Appeals) stand dismissed. No costs."

5. The aforesaid order has been followed subsequently in the assessee's own case for A.Ys.1995-96, 2000-01 and 2001-02 in T.C.(A)Nos.1413 to 1418 of 2008, decision dated 02.08.2022.

6. Though Mr.Ravikumar states that appeals have been filed before the Hon'ble Supreme Court challenging the aforesaid order, he is not in a position to supply particulars of those appeals.

7. Hence, in the interests of consistency, we apply the ratio of the aforesaid decision and answer the substantial questions of law, extracted in paragraph 3, in favour of the assessee and against the Revenue.

8. These Tax Case (Appeals) are dismissed. No costs.

(A.S.M.,J) (G.A.M.,J)
12.08.2024

Index:Yes/No
Speaking order
Neutral Citation: Yes
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Note: Registry is directed to make necessary amendments in the cause title.

Dr.ANITA SUMANTH,J.
AND
Mr.G.ARUL MURUGAN,J.

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