

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 12.08.2024

WEB COPY

CORAM

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

Tax Case Nos.1301 and 1302 of 2008

Commissioner of Income Tax I
Chennai

... Appellant in both the appeals

Vs

IndusInd Bank Ltd.
2401, General Thimayya Road,
Cantonment,
Pune – 411 001,
Maharashtra
(Respondent substituted vide this order)

... Respondent in both the appeals

PRAYER: APPEALS filed under Section 260A of the Income Tax Act, 1961 against orders dated 28.02.2006 in I.T.A.Nos.1712(Mds)/1999 and 300/Mds/2000 on the file of the Income Tax Appellate Tribunal, Madras 'A' Bench for assessment year 1996 - 97.



WEB COPY

T.C.Nos.1301 and 1302 of 2008



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.)

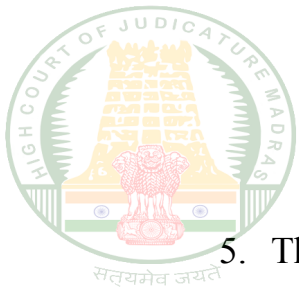
Learned Senior Standing Counsel for the appellant has filed a memo dated 06.08.2024 seeking permission to substitute the name of the respondent. In light of there being no objection, the said memo is ordered.

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

3. The first substantial question of law raised for our consideration in these appeals relating to Assessment Year ('AY') 1996-97 is as follows:

1. Whether in the facts and circumstances of the case, the Tribunal was right in holding that interest on loans taken for 'land development' is to be treated as revenue expenditure?

4. The assessee had claimed allowance of interest of a sum of Rs.5,06,78,000/- (Rs.5.06 crores approx.) paid to banks and financial institutions. According to it the interest related to loans taken for property development under the head 'land for property development' and hence, the amount had been rightly claimed in terms of the Income tax Act 1961 ('Act').



WEB COPY

5. The Assessing Authority denied the exemption claimed despite reliance by the assessee on the case of *India Cements V. Commissioner of Income Tax*¹. The Officer was of the view that no evidence had been produced by the assessee to establish that the lands had acquired only for the purpose of property development. The case of *India Cements*² was distinguished on facts.

6. That apart, the Assessing Authority was of the view that if at all the case of the assessee was that interest was to be paid for lands acquired for business expansion, such claim ought to have been in terms of Section 36(i)(iii) and not Section 37 of the Act. The assessment was finalised in the aforesaid terms.

7. As against the order of assessment, first appeal was filed where the assessee had reiterated that the borrowings had directly related to purchase of stock-in-trade and hence the claim was allowable.

8. As regards the reference to Section 36(1), the assessee had pointed out that property development was not a new venture as it had been carrying on this line of activity since 1988-89 when it had engaged in its maiden project at Gandhi Nagar, Adyar, Chennai. However, that project had been a non-starter, since the property had been taken over by the Appropriate Authority in terms

1 60 ITR 52

2 Foot Note Supra (1)



of Section 269UC under Chapter XX C of the Act.

WEB COPY

9. The Commissioner of Income Tax (Appeals) had gone into the matter in detail returning findings that one of the objects of the assessee company related to property development, the resources for various lines of businesses carried on by the assessee was drawn from a central pool and that the borrowings in question had been for business purposes. Thus, he found merit in claim of interest in terms of Section 37 or Section 36(1)(iii) of the Act and allowed the same.

10. The matter was carried in appeal by the Revenue before the Tribunal. The Tribunal found that the Assessing Authority had blown hot and cold on the issue. While on the one hand he had stated that interest related directly to funds borrowed for the acquisition of property, he had also stated that the activity of property development was a new line of activity.

11. After looking into the records before it, the Tribunal, the final fact finding authority, found that property development found place as one of the objects of the Assessee. The Tribunal notes that the identical issue had come up for consideration for the previous year and evidence had been placed by the assessee before the CIT(A) in regard to identical activity being carried on for the earlier year as well. Referring to the decision of this Court in *CIT V*.



*R.M.Maruthai Naidu & Sons*³, the order of the Commissioner of Income Tax (Appeals) was confirmed.

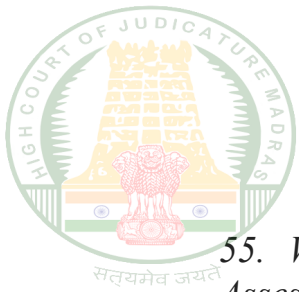
12. Before us, no material is placed to dislodge the concurrent factual findings of the first and second appellate authorities to the effect that the assessee is in the business of property development. There is also no material to contradict the position that the loans have been availed from banks for any purpose other than for acquisition of land for property development.

13. The relevant portions of the orders of the Commissioner of Income Tax (Appeals) and Tribunal are extracted below for completion of narration;

Order of the Commissioner of Income Tax (Appeals) dated 31.08.1999:

Further, I am of the opinion that the interest is chargeable under a definite and specific section being section 36(1)(iii) and the only condition for admissibility is that the money should be borrowed for the purpose of business. Once it is established that the money has been borrowed for the purpose of business then the claim of interest is to be allowed. Here, I find that all the conditions are satisfied: (1) It is one of the objectives of the assessee company; (2) The management and funding is done from a centralized source; (3) Income from this venture has been offered in subsequent year. On the basis of above discussion, I direct the Assessing Officer to allow the claim of interest.

Order of the Tribunal dated: 28.02.2006:



WEB COPY

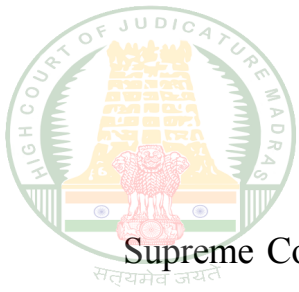
55. *We have considered the issue raised. We find that Assessing Officer has blown both hot and cold in the same breath. Initially he stated that there is no evidence to prove that interest on borrowed fund was relatable to acquisition of property. Thereafter, he proceeded to conclude that since property development was new activity, interest for it is not allowable. Here we find that learned Commissioner of Income Tax (Appeals) has mentioned that this activity was duly included in the objectives of the company and evidence pertaining to embarking upon similar activity in previous year was also shown. Further, the learned Commissioner of Income Tax (Appeals) has referred to Hon'ble Jurisdictional High Court decision in CIT Vs. R.M. Maruthai Naidu & Sons 192 ITR 666 as under:-*

"The question whether two or more lines of business may be regarded as the same business or different businesses depends not upon the special methods prescribed by the Income Tax Act for computation of the taxable income, but upon the nature of the businesses, the nature of their co-organisation, management, source of the capital fund utilized, method of book keeping and a host of other related circumstances which stamp them as the same or distinct and the test is whether there was any interconnection, any interlacing, interdependence and any unity at all embracing the two businesses. The existence of common management, common business organization, common administration, common fund and a common place of business furnishes such interconnection, interlacing, interdependence and unity."

On the anvil of aforesaid exposition and facts of the present case, we concur with the learned Commissioner of Income Tax (Appeals) that expenditure on interest as claimed by assessee is allowable.

In the result, Revenues appeal on this issue is dismissed.

14. The Delhi High Court, after noticing the ratio of the judgments of the



Supreme Court in *India Cements*⁴, *Challapalli Sugars Ltd. V.CIT*⁵ and of the Bombay High Court in *Calico Dyeing and Printing Works V. CIT*⁶ has, in the case of *Commissioner of Income Tax. V. Monnet Industries Ltd*⁷ set out following guidelines in matter of claims relating to loans/interest.

15. The aforesaid decision of the Delhi High Court has been confirmed by the Supreme Court in *Commissioner of Income Tax. V. Monnet Industries Ltd*⁸ in the following terms:

“7. The upshot of the aforesaid decisions as applied by the Tribunal in instant case is that :

(i) a loan taken or capital borrowed is, by itself, not a capital asset, nor does it give an advantage of an enduring nature;

(ii) as long as a loan was taken or capital was borrowed for the purposes of business, the assessee is entitled to claim interest paid thereon as deduction under s. 36(1)(iii) of the Act;

(iii) interest may have to be capitalized after the borrowed capital or loan taken is utilized in bringing into existence an asset at the stage of commencement of business. In other words, after the assessee's business had already commenced then the interest paid on capital borrowed or loan taken can be claimed as deduction under s. 36(1)(iii) of the Act.

*(iv) in coming to the conclusion whether the interest paid on capital borrowed or loan taken in setting up a new line of business ought to be capitalized or treated as revenue expenditure, the test as laid down by the Supreme Court in the case of *Produce Exchange Corporation (supra)* and *Prithvi Insurance Co. (supra)* would be relevant and;*

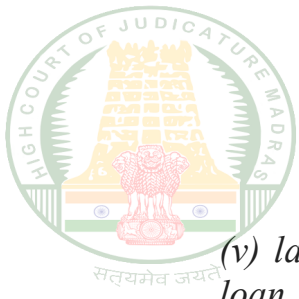
4 Foot Note Supra (1)

5 98 ITR 167

6 34 ITR 265

7 332 ITR 627

8 350 ITR 304



(v) *lastly, as long as interest is paid on capital borrowed or loan taken in respect of new line of business which is in the same business fold for the purposes of ascertaining income under s. 28 of the Act, it can be claimed as a deduction under s. 36(1)(iii) of the Act.*”

16. In light of the discussion as above, the first question of law is answered in favour of the assessee and against the revenue.

17. The second common question of law that arises for consideration is as follows:

2. Whether in the facts and circumstances of the case, the Tribunal was right in holding that the assessee is entitled to depreciation on assets in a sale cum lease transaction, which was clearly only a financial transaction, especially where the value of the old machinery which were financed has not been proved?”

18. At the threshold, we may say that the question of law is as vague as can be. The assessee has claimed depreciation on various assets. We have tabulated below the details of the transactions of sale and lease back in respect of which depreciation has been claimed including the details of the vendors and lessees:

T.C.No.1301 of 2008:

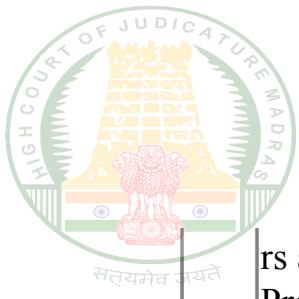
Sl No	Asset Particulars	Purchased from	Leased to
-------	-------------------	----------------	-----------



1	1) Slitting Line Machine 2) Hydro Testing Machine	Industrial Enterprises, Fazalganj, Kanpur	M/s. Rajinder Steels Ltd, Kanpur
2	Fabricated Machine	Chamundi Engineers Pvt Ltd., Mysore	UP Tannery Co Ltd., Delhi
3	Machinery	M/s. Assam Solvex Pvt Ltd., Dibrugarh, Assam	M/s. Sitapur Plywood Mfg. Ltd, Lucknow
4	Machinery	Style Syntax Pvt Ltd., UP	M/s. ShamkenMultifab Ltd
5	Static Thystor Control DC Drives	M/s. Isha Enterprises, Mumbai	SKS Ltd., New Delhi
6	Heat Pump	Sethi Enterprises, Azadpur, New Delhi	M/s. Sakura Seimitsu Ltd
7	Imported Machinery	Concern from New York - USA	M/s. Moser Baer India Ltd
8	Machinery	M/s Systek Machines India Pvt Ltd., Chennai	M/s. Amtek Auto Ltd, Gurgaon

T.C.No.1302 of 2008:

Sl No	Asset Particulars	Purchased from	Leased to
1	Plastic Injection Moulds	M/s. Videocon International Pvt Ltd., Aurangabad	M/s. Videocon International Pvt Ltd., Aurangabad
2	Recouperato	M/s Rajasthan	M/s Rajasthan State



WEB COPY

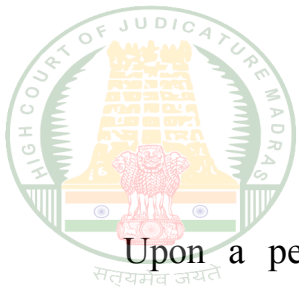
rs and Air
Pre –
HeatersState Electricity
Board

Electricity Board

19. The conclusion of the Tribunal in 5 out of 10 of the transactions is a remand of the issue to the Assessing Officer for re-examination. No submissions have been made before us in the context of why the remand prejudices the revenue. In 5 of the transactions, the case of assessee has been accepted and there are specific findings of the Tribunal confirming the aspects of existence of asset and genuineness of transactions. No material is placed before us to disturb/dislodge the factual findings of the Tribunal.

20. The question of law is itself general in nature, not addressing any specific transaction. It is incumbent on the revenue in such circumstances such as the present, where the order of the Tribunal relates to multiple transactions, to have identified the specific transaction where they believe that the conclusion of the Tribunal is erroneous and frame a substantial question of law accordingly. No such attempt has been made and instead a generic question of law has been framed without reference to any specific transaction.

21. The submissions made have also been substantially generic without drawing attention to any error in law or perversity in the order of the Tribunal.



Upon a perusal of the orders of the lower authority, we find that the conclusions of the Tribunal align with the records that have been produced before the authorities and there is no material placed before us to persuade us to conclude that the conclusions arrived at are erroneous or perverse.

22. Learned counsel for the assessee relies on a decision of this Court in the case of *First Leasing Co. of India Ltd. V. Assistant Commissioner of Income Tax and another*⁹, touching upon taxability of sale and lease back transactions. The ingredients of sale and lease back transaction, as noted by this Court in that matter, have been looked into by the Tribunal in the present cases. The 2nd question of law is also answered in favour of the assessee and against the revenue.

23. These Tax Cases are dismissed. No costs.

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

Index: Yes

Speaking order

Neutral Citation: Yes

sl

Note: Registry is directed to carry out necessary amendments in the cause title.

To

The Income Tax Appellate Tribunal, Madras 'A' Bench.



WEB COPY



T.C.Nos.1301 and 1302 of 2008

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

sl

Tax Case (Appeal) Nos.1301 and 1302 of 2008

12.08.2024