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TCA Nos.431 and 432 of 2009

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 30.07.2025

DELIVERED ON : 16.09.2025

CORAM :

THE HONOURABLE MR. MANINDRA MOHAN SHRIVASTAVA,
CHIEF JUSTICE

AND

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

TCA Nos.431 and 432 of 2009

The Commissioner of Income Tax
Chennai.

Appellant(s)
in both appeals

Vs

Bank of Madura Limited
(now merged with ICICI Limited)
"Karamuthu Nilayam",
758, Anna Salai,
Chennai-600 002.

Respondent(s)
in both appeals

PRAYER: Appeals under Section 260A of the Income-tax Act, 1961
against the order of the Income Tax Appellate Tribunal, Madras "A"
Bench, dated 14.8.2008 in ITA.Nos.2115/Mds/2004 and 2119/Mds/
2004, respectively.



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For Appellant(s):

Mr.D.Prabhu Mukunth Arunkumar
Senior Standing Counsel

For Respondent(s):

Mr.R.Vijayaraghavan
for M/s.Subbaraya Aiyar
Padmanabhan and Ramamani

JUDGMENT

THE CHIEF JUSTICE

These appeals have been filed by the revenue aggrieved by the order dated 14.8.2008 passed by the Income Tax Appellate Tribunal [ITAT] and have been admitted on the following common substantial questions of law:

- (i) Whether on the facts and circumstances of the case, the Tribunal was right in holding that the assessment u/s 147 was invalid in view of the proviso to Section 14A even though the proceedings have not attained finality as per the Board's circular No.11/2001, dated 23.7.2001?
- (ii) Whether on the facts and circumstances of the case, the Tribunal was right in holding that the proviso to Section 14A would operate even in



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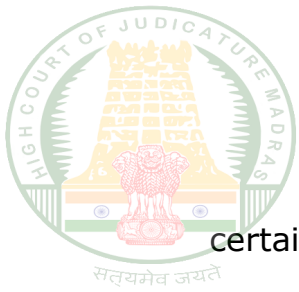
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respect of cases where the assessment is made for the first time u/s 147 of the Income Tax Act?

(iii) Whether in the facts and circumstances of the case, the Tribunal was right in granting deduction in respect of bad debts both under Section 36(1)(vii) and (viiia) simultaneously?"

2.1. The assessee bank (now merged with the ICICI Bank Limited), for the assessment year 2000-2001, filed its return of income on 30.11.2000 admitting a total income of Rs.21,39,92,530/-. The return of income was processed on 30.3.2001 and refund due to the assessee of Rs.6,35,27,000/- was granted along with interest under Section 244A of the Income-tax Act, 1961 [Act] of Rs.1,67,28,726/-.

2.2. It was noticed and revealed that the assessee bank had claimed bad debts to the tune of Rs.18.95 Crores, consisting of Rs.12.16 Crores being bad debts written off and claimed in the profit and loss account under Provisions and Contingencies-Schedule 17 to the profit and loss account and balance sheet; and another sum of Rs.6,79,60,434/- representing capital portion written off in respect of



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certain transactions claimed in the memo of income.

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2.3. Having noticed the issues relating to bad debts, the assessment was reopened and notice under Section 148 of the Act was issued, in response to which the assessee bank filed return of income on 24.1.2002 admitting the same income as returned in the original return. In these proceedings, the Assessing Officer found that the assessee was following mercantile system of accounting and, therefore, was of the view that, after the amendment of Section 145A of the Act with effect from 1.4.1997, interest accrued should be included in the total income of the assessee and brought the same to tax.

2.4. The assessee bank earned income which was exempt under Section 10 of the Act, but it had not shown any expenditure to earn this income. It claimed interest to the tune of Rs.33.98 Crores as exempt under Section 10 of the Act. The Assessing Officer estimated 7.2% of this amount as reasonable expenditure to earn the exempt income.



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2.5. The assessee bank had also admitted an amount of Rs.17,80,06,571/- as interest on securities, but did not include the same in the total income. The assessee bank also claimed bad debts to the tune of Rs.12.16 Crores, which was disallowed by the Assessing Officer on the ground that the bad debts written off under Section 36(1)(vii) of the Act should be adjusted against the credit balances in provision for bad and doubtful debts made under Section 36(1)(viia) of the Act. The bad debts written off to the extent of Rs.12.16 Crores was found to be wrongly allowed.

3.1. Assailing the order of the Assessing Officer, the assessee filed an appeal before the Commissioner of Income Tax (Appeals) [CIT(A)]. With regard to the issue of disallowance of Rs.2,44,65,600/- under Section 14A of the Act, the CIT(A) directed the Assessing Officer to restrict the disallowance under Section 14A of the Act to 2% as against 7.2% and partly allowed the appeal on this issue.

3.2. On the issue of bad debts and interest on securities, the CIT(A) allowed the appeal in favour of the assessee.



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4. Aggrieved by the order of the CIT(A), both the assessee and the revenue filed appeals before the ITAT and the ITAT, by the impugned order, held the issues in favour of the assessee.

5. It is this order which is under challenge in these appeals requiring our consideration on above stated questions of law.

6.1. Learned counsel appearing for the revenue contended that the ITAT grossly erred in setting aside the order of the lower authorities by deleting the disallowance made under Section 14A of the Act by the Assessing Office at 7.2% and restricted to 2% by the CIT(A).

6.2. Learned counsel for the revenue would further submit that the ITAT failed to apply the Board Circular No.11/2001, dated 23.7.2001, according to which, only when assessment proceedings have attained finality before 1.4.2001, it could not be reopened under Section 147 of the Act to disallow expenditure incurred on exempted income under Section 14A of the Act. Pointing out that, in the present case, the intimation under Section 143(1) of the Act itself was issued



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only on 30.3.2002, i.e., after 1.4.2001, it was contended that the proceedings had not reached finality as on 1.4.2001 and it was not a case of concluded transaction, therefore, as per the Board's circular, the reopening of assessment was legally justified.

6.3. It is further contended that the ITAT completely erred in upholding the order of the CIT(A) that the claim for bad debts should be allowed in its entirety. The ITAT erred in law in allowing the entire claim of the assessee failing to see that the assessee, being a scheduled bank, is covered by the provisions of Section 36(1)(viia) of the Act and, as such, the calculations made by the Assessing Officer are perfectly in order.

6.4. It is also submitted that the ITAT ought to have seen and appreciated that with respect to scheduled banks, the statute has laid down that bad debts of only a certain percentage can be written off, with a social objective in view and, therefore, the banks cannot be allowed deduction of all bad debt claimed, thereby making the provisions of Section 36(viia) of the Act otiose.



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6.5. In support of his submissions, learned counsel for the revenue has placed reliance upon the following authorities:

- i. Circular No.11 of 2001, dated 23.7.2001 issued by the Central Board of Direct Taxes;
- ii. The Deputy Commissioner of Income Tax and another v. Zuari Estate Development and Investment Company Ltd¹;
- iii. The Assistant Commissioner of Income Tax v. Rajesh Jhaveri Stock Brokers (P) Ltd²;
- iv. Honda Siel Power Products Ltd v. Deputy Commissioner of Income Tax and another³;
- v. Honda Siel Power Products Ltd v. Deputy Commissioner of Income Tax and another⁴;
- vi. Morvi Industries Ltd v. Commissioner of Income Tax⁵;
- vii. Girilal and Company v. Income Tax Officer and others⁶;
- viii. Commissioner of Income Tax and others v.

1 (2015) 373 ITR 661 (SC)

2 (2007) 291 ITR 500 (SC)

3 (2012) 247 CTR 316 (SC)

4 (2012) 247 CTR 322 (Delhi)

5 (1971) 82 ITR 835 (SC)

6 (2016) 387 ITR 122 (SC)



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Syndicate Bank⁷;

ix. South Indian Bank Ltd v. Commissioner of
Income-tax, Cochin⁸;

x. The Commissioner of Income Tax-II v. City
Union Bank Ltd⁹; and

xi. Hill Top Holdings India Ltd v. Commissioner of
Income-tax¹⁰.

7.1. Per contra, learned counsel for the respondent/assessee, supporting the order passed by the ITAT, has contended that the ITAT, while deciding the issues, has correctly applied the law applicable.

7.2. Learned counsel for the assessee would submit that Section 14A of the Act, particularly the proviso attached thereto, was correctly interpreted by the ITAT while arriving at the conclusion that the Assessing Officer is debarred from taking any action under Section 147 of the Act for any assessment year beginning on or before 1.4.2001. According to him, the exercise undertaken by the Assessing Officer

⁷ (2020) 422 ITR 460 (Karnataka)

⁸ (2019) 410 ITR 50 (Kerala)

⁹ Judgment dated 7.3.2022 in TCA No.961 of 2010 (Madras)

¹⁰ (2005) 278 ITR 501 (Calcutta)



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amounts to reassessment, as the assessment has already been done earlier and the proviso to Section 14A of the Act debars the Assessing Officer to reassess under Section 147 of the Act.

7.3. Learned counsel for the assessee would further submit that there is no illegality in the finding of the ITAT that the assessee was entitled to appropriate deduction in respect of bad debts. The findings recorded by the ITAT in granting deduction in respect of bad debts are in accordance with the provisions applicable.

7.4. According to learned counsel for assessee, it was rightly held by the ITAT that, since the Assessing Officer has disallowed depreciation treating the transactions as financial transactions, the CIT(A) accepted the alternate ground of the assessee that these advances have become bad and held that once the Assessing Officer had disallowed the claim of depreciation on the leased assets and when the genuineness of the debts which have become bad were not doubted by him, the assessee should have been allowed deduction in respect of bad debts.



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7.5. Learned counsel for the assessee placed reliance upon the following judgments:

- i. South Indian Bank Ltd v. Commissioner of Income Tax¹¹;
- ii. The Commissioner of Income Tax v. Indian Overseas Bank¹²;
- iii. The Commissioner of Income Tax v. ICICI Bank Limited¹³;
- iv. Catholic Syrian Bank Ltd v. Commissioner of Income Tax¹⁴;
- v. Commissioner of Income Tax v. City Union Bank Ltd¹⁵;
- vi. Commissioner of Income Tax v. The Lakshmi Vilas Bank Ltd¹⁶;
- vii. Deputy Commissioner of Income Tax and another v. Karnataka Bank Ltd¹⁷;
- viii. Deputy Commissioner of Income Tax and another v. Karnataka Bank Ltd¹⁸;

11[2021] 130 Taxmann.com 178 (SC)

12 Judgment dated 18.8.2021 in TCA Nos.906 and 907 of 2015 (Madras)

13 Judgment dated 21.10.2008 in TCA Nos.1428 of 2008 (Madras)

14(2012) 343 ITR 270 (SC)

15(2007) 291 ITR 144 (Madras)

16 Judgment dated 24.7.2018 in TCA.No.201 of 2018 etc.]

17 (2009) 316 ITR 345 (Karnataka)

18 (2012) 349 ITR 705 (SC)



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- ix. Vijaya Bank v. Commissioner of Income Tax and another¹⁹;
- x. The Karur Vysya Bank Ltd v. Commissioner of Income Tax-I²⁰; and
- xi. Commissioner of Income Tax v. Essar Teleholding Ltd²¹.

ANALYSIS, FINDING AND CONCLUSION:

First and Second Questions of Law:

8. The answer to first and second questions of law involves interpretation, analysis, scope and ambit of Section 14A of the Act. Section 14A of the Act, to the extent it is relevant for decision making in the present case, is reproduced hereunder for ready reference:

"Expenditure incurred in relation to income not includible in total income.

14A. (1) Notwithstanding anything to the contrary contained in this Act, for the purposes of computing the total income under this Chapter, no deduction shall be allowed in respect

¹⁹ (2010) 323 ITR 166

²⁰ Judgment dated 8.2.2022 in TCA No.509 of 2010 etc.

²¹(2018) 401 ITR 445 (SC)



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of expenditure incurred by the assessee in relation to income which does not form part of the total income under this Act.

(2) The Assessing Officer shall determine the amount of expenditure incurred in relation to such income which does not form part of the total income under this Act in accordance with such method as may be prescribed, if the Assessing Officer, having regard to the accounts of the assessee, is not satisfied with the correctness of the claim of the assessee in respect of such expenditure in relation to income which does not form part of the total income under this Act.

(3) The provisions of sub-section (2) shall also apply in relation to a case where an assessee claims that no expenditure has been incurred by him in relation to income which does not form part of the total income under this Act:

Provided that nothing contained in this section shall empower the Assessing Officer either to reassess under section 147 or pass an order enhancing the assessment or reducing a refund already made or otherwise increasing the liability of the assessee under section 154, for any assessment year beginning on or before the 1st day of April, 2001.

Explanation.—For the removal of doubts, it is hereby clarified that notwithstanding anything to the contrary



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contained in this Act, the provisions of this section shall apply and shall be deemed to have always applied in a case where the income, not forming part of the total income under this Act, has not accrued or arisen or has not been received during the previous year relevant to an assessment year and the expenditure has been incurred during the said previous year in relation to such income not forming part of the total income."

9. There is abundance of judicial authority on the above aspect.

We shall, however, refer to only some of the decisions on this aspect.

9.1. In the case of *Commissioner of Income Tax v. Essar Teleholding Ltd* (supra), the purpose of introducing Section 14A of the Act was examined as below:

"15. The purpose for which Section 14-A was introduced was given in the explanatory memorandum issued with the Finance Bill, 2001, which reads as under:

'Certain incomes are not includible while computing the total income as these are exempt under various provisions of the Act. There have been cases where deductions have been claimed in respect of such exempt income. This in effect means that the tax incentive given by way of exemptions to certain categories of income is being used to reduce also the tax payable on the non-



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exempt income by debiting the expenses incurred to earn the exempt income against taxable income. This is against the basic principles of taxation whereby only the net income i.e. gross income minus the expenditure, is taxed. On the same analogy, the exemption is also in respect of the net income. Expenses incurred can be allowed only to the extent they are relatable to the earning of taxable income. It is proposed to insert a new Section 14-A so as to clarify the intention of the legislature since the inception of the Income Tax Act, 1961, that no deduction shall be made in respect of any expenditure incurred by the assessee in relation to income which does not form part of the total income under the Income Tax Act. The proposed amendment will take effect retrospectively from 1-4-1962 and will accordingly, apply in relation to Assessment Year 1962-1963 and subsequent assessment years.'

16. Section 14-A being retrospective in operation w.e.f. 1-4-1962, was being used by the assessing officers for reopening the assessments, the Central Board of Direct Taxes came with a clarification vide Circular No. 11 of 2001 dated 23-7-2001. Para 4 of the circular stated as follows:

'The Board has considered this matter and hereby directs that the assessments where the proceedings have become final before the first day of April, 2001 should not be reopened under



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Section 147 of the Act to disallow expenditure incurred to earn exempt income by applying the provisions of newly inserted Section 14-A of the Act.'

17. By the Finance Act, 2002, a statutory provision was also inserted by way of proviso to Section 14-A. What was clarified by the circular has been statutorily engrafted in the proviso to the following effect:

'Provided that nothing contained in this section shall empower the assessing officer either to reassess under Section 147 or pass an order enhancing the assessment or reducing a refund already made or otherwise increasing the liability of the assessee under Section 154, for any assessment year beginning on or before the 1st day of April, 2001.'

18. By the Finance Act, 2006, Section 14-A was numbered as sub-section (1) and after sub-section (1), sub-sections (2) and (3) were inserted w.e.f. 1-4-2007 to the following effect:

"14-A. (2) The assessing officer shall determine the amount of expenditure incurred in relation to such income which does not form part of the total income under this Act in accordance with such method as may be prescribed, if the assessing officer, having regard to the accounts of the assessee, is not satisfied with the correctness of



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the claim of the assessee in respect of such expenditure in relation to income which does not form part of the total income under this Act.

(3) The provisions of sub-section (2) shall also apply in relation to a case where an assessee claims that no expenditure has been incurred by him in relation to income which does not form part of the total income under this Act."

9.2. In the case of *South Indian Bank Ltd v. Commissioner of Income Tax* (supra), their Lordships in the Supreme Court held as under:

*"6. Section 14-A was introduced to the Income Tax Act by the Finance Act, 2001 with retrospective effect from 1-4-1962. The new section was inserted in aftermath of judgment of this Court in *Rajasthan State Warehousing Corpn. v. CIT*, (2000) 242 ITR 450 . The said section provided for disallowance of expenditure incurred by the assessee in relation to income, which does not form part of their total income. As such if the assessee incurs any expenditure for earning tax-free income such as interest paid for funds borrowed, for investment in any business which earns tax-free income, the assessee is disentitled to deduction of such interest or other expenditure. Although the provision was introduced retrospectively from 1-4-1962, the*



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retrospective effect was neutralised by a proviso later introduced by the Finance Act, 2002 with effect from 11-5-2001 whereunder, reassessment, rectification of assessment was prohibited for any assessment year, up to Assessment Year 2000-2001, when the proviso was introduced, without making any disallowance under Section 14-A. The earlier assessments were therefore permitted to attain finality. As such the disallowance under Section 14-A was intended to cover pending assessments and for the assessment years commencing from 2001-2002. It may be noted that in the present batch of appeals, we are concerned with disallowances made under Section 14-A for assessment years commencing from 2001-2002 onwards or for pending assessments."

10. Keeping in forefront the aforesaid provisions of law and decisions, we shall examine whether in the case in hand, it was a case of concluded transaction as explained by the Supreme Court, or whether it was a case of reassessment, which as per proviso to sub-section (3) of Section 14A of the Act would be impermissible under the law.



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11. The Assessing Officer made disallowance under Section 14A of the Act at 7.2% of tax free interest income as expenditure for earning exempt under Section 14A of the Act, which worked out to Rs.2,44,65,600/- (being 7.2% of Rs.33.98 crores).

The CIT(A), however, restricted this disallowance under Section 14A of the Act to 2% of Rs.33.98 Crores, which works out to Rs.67.96 lakhs.

The ITAT, however, went on to hold that under proviso to Section 14A of the Act, the Assessing Officer cannot make any disallowance for any assessment year beginning on or before 1.4.2001.

12. After referring to provisions contained in Section 14A of the Act, the reasons assigned by the ITAT are as below:

"A reading of the proviso above clearly shows that the Assessing Officer is clearly debarred from taking any action u/s 47 in this regard for any assessment year beginning on or before 1st day of April, 2001. The present assessment year being 2000-01, hence under the sanguine provisions of the Act, the Assessing Officer cannot make any disallowance in



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this regard u/s 14. Hence, we set aside the orders of the authorities below on this issue and decide the issue in favour of the assessee."

13. Therefore, the ITAT interpreted the provision in the manner that the Assessing Officer is debarred from taking any action under Section 147 of the Act for any assessment year beginning on or before 1.4.2001, and, as per the provisions of the Act, the Assessing Officer cannot make any disallowance in this regard under Section 14 of the Act.

14. The ITAT, while arriving at such conclusion, has completely misconstrued the nature of proceedings drawn earlier, prior to the framing of assessment under challenge in appeal before the ITAT.

15. On facts, it is not in dispute that the intimation under Section 143(1) of the Act itself was issued on 30.3.2002, i.e., after 1.4.2001. Furnishing of books of accounts, documents and other details does not amount to true disclosure and after introduction of



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Section 143(1) of the Act and amendment to Sections 147 and 148 of the Act, the processing of return under Section 143(1) of the act, by itself, without anything more, does not tantamount to assessment, as while processing the return, the Assessing Officer does not apply his mind.

16. In the case of *Assistant Commissioner of Income Tax v. Rajesh Jhaveri Stock Brokers (P) Ltd* (supra), the statutory scheme of Section 143(1) of the Act (as it stood before and after amendment w.e.f. 1.6.1999) was analysed as below:

"12. What were permissible under the first proviso to Section 143(1)(a) to be adjusted were, (i) only apparent arithmetical errors in the return, accounts or documents accompanying the return, (ii) loss carried forward, deduction allowance or relief, which was prima facie admissible on the basis of information available in the return but not claimed in the return and similarly (iii) those claims which were on the basis of the information available in the return, prima facie inadmissible, were to be rectified/allowed/disallowed. What was permissible was correction of errors apparent on the basis of the documents accompanying the return. The assessing officer had no authority to



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make adjustments or adjudicate upon any debatable issues. In other words, the assessing officer had no power to go behind the return, accounts or documents, either in allowing or in disallowing deductions, allowance or relief.

13. One thing further to be noticed is that intimation under Section 143(1)(a) is given without prejudice to the provisions of Section 143(2). Though technically the intimation issued was deemed to be a demand notice issued under Section 156, that did not per se preclude the right of the assessing officer to proceed under Section 143(2). That right is preserved and is not taken away. Between the period from 1-4-1989 to 31-3-1998, the second proviso to Section 143(1)(a), required that where adjustments were made under the first proviso to Section 143(1)(a), an intimation had to be sent to the assessee notwithstanding that no tax or refund was due from him after making such adjustments. With effect from 1-4-1998, the second proviso to Section 143(1)(a) was substituted by the Finance Act, 1997, which was operative till 1-6-1999. The requirement was that an intimation was to be sent to the assessee whether or not any adjustment had been made under the first proviso to Section 143(1) and notwithstanding that no tax or interest was found due from the assessee concerned. Between 1-4-1998



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and 31-5-1999, sending of an intimation under Section 143(1)(a) was mandatory. Thus, the legislative intent is very clear from the use of the word "intimation" as substituted for "assessment" that two different concepts emerged." While making an assessment, the assessing officer is free to make any addition after grant of opportunity to the assessee. By making adjustments under the first proviso to Section 143(1)(a), no addition which is impermissible by the information given in the return could be made by the assessing officer. The reason is that under Section 143(1)(a) no opportunity is granted to the assessee and the assessing officer proceeds on his opinion on the basis of the return filed by the assessee. The very fact that no opportunity of being heard is given under Section 143(1)(a) indicates that the assessing officer has to proceed accepting the return and making the permissible adjustments only. As a result of insertion of the Explanation to Section 143 by the Finance (No. 2) Act of 1991 with effect from 1-10-1991, and subsequently with effect from 1-6-1994, by the Finance Act, 1994, and ultimately omitted with effect from 1-6-1999, by the Explanation as introduced by the Finance (No. 2) Act of 1991 an intimation sent to the assessee under Section 143(1)(a) was deemed to be an order for the purposes of Section 246 between 1-6-1994 to 31-5-1999, and under Section 264



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between 1-10-1991, and 31-5-1999. It is to be noted that the expressions "intimation" and "assessment order" have been used at different places. The contextual difference between the two expressions has to be understood in the context the expressions are used. Assessment is used as meaning sometimes "the computation of income", sometimes "the determination of the amount of tax payable" and sometimes "the whole procedure laid down in the Act for imposing liability upon the taxpayer". In the scheme of things, as noted above, the intimation under Section 143(1)(a) cannot be treated to be an order of assessment. The distinction is also well brought out by the statutory provisions as they stood at different points of time. Under Section 143(1)(a) as it stood prior to 1-4-1989, the assessing officer had to pass an assessment order if he decided to accept the return, but under the amended provision, the requirement of passing of an assessment order has been dispensed with and instead an intimation is required to be sent. Various circulars sent by the Central Board of Direct Taxes spell out the intent of the legislature i.e. to minimise the departmental work to scrutinise each and every return and to concentrate on selective scrutiny of returns. These aspects were highlighted by one of us (D.K. Jain,J.) in Apogee International Ltd. v. Union of India [(1996) 220 ITR 248 (Del)]. It may be noted above



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that under the first proviso to the newly substituted Section 143(1), with effect from 1-6-1999, except as provided in the provision itself, the acknowledgment of the return shall be deemed to be an intimation under Section 143(1) where (a) either no sum is payable by the assessee, or (b) no refund is due to him. It is significant that the acknowledgment is not done by any assessing officer, but mostly by ministerial staff. Can it be said that any "assessment" is done by them? The reply is an emphatic "no". The intimation under Section 143(1)(a) was deemed to be a notice of demand under Section 156, for the apparent purpose of making machinery provisions relating to recovery of tax applicable. By such application only recovery indicated to be payable in the intimation became permissible. And nothing more can be inferred from the deeming provision. Therefore, there being no assessment under Section 143(1)(a), the question of change of opinion, as contended, does not arise."

17. The aforesaid decision was, later on, relied upon by the Hon'ble Supreme Court in the case of *Deputy Commissioner of Income Tax and another v. Zuari Estate Development and Investment Company Ltd* (supra) and it was held as below:

"4. After going through the detailed order passed by



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the High Court, we find that the main issue which is involved in this case is not at all addressed by the High Court. A contention was taken by the appellant Department to the effect that since the assessee's return was accepted under Section 143(1) of the Income Tax Act, there was no question of "change of opinion" inasmuch as while accepting the return under the aforesaid provision no opinion was formed and therefore, on this basis, the notice issued was valid. We find that this aspect is squarely covered by the judgment of this Court in CIT v. Rajesh Jhaveri Stock Brokers (P) Ltd., (2008) 14 SCC 208 in the following manner:

'15. In the scheme of things, as noted above, the intimation under Section 143(1)(a) cannot be treated to be an order of assessment. The distinction is also well brought out by the statutory provisions as they stood at different points of time. Under Section 143(1)(a) as it stood prior to 1-4-1989, the assessing officer had to pass an assessment order if he decided to accept the return, but under the amended provision, the requirement of passing of an assessment order has been dispensed with and instead an intimation is required to be sent. Various circulars sent by the Central Board of Direct Taxes spell out the intent of the



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legislature i.e. to minimise the departmental work to scrutinise each and every return and to concentrate on selective scrutiny of returns. These aspects were highlighted by one of us (D.K. Jain, J.) in Apogee International Ltd. v. Union of India, (1996) 220 ITR 248 (Del).

16. It may be noted above that under the first proviso to the newly substituted Section 143(1), with effect from 1-6-1999, except as provided in the provision itself, the acknowledgment of the return shall be deemed to be an intimation under Section 143(1) where (a) either no sum is payable by the assessee, or (b) no refund is due to him. It is significant that the acknowledgment is not done by any assessing officer, but mostly by ministerial staff. Can it be said that any 'assessment' is done by them? The reply is an emphatic 'no'. The intimation under Section 143(1)(a) was deemed to be a notice of demand under Section 156, for the apparent purpose of making machinery provisions relating to recovery of tax applicable. By such application only recovery indicated to be payable in the intimation became permissible. And nothing more can be inferred from the



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deeming provision. Therefore, there being no assessment under Section 143(1)(a), the question of change of opinion, as contended, does not arise."

18. The issue as to whether Section 14A of the Act barred original assessment on the basis of retrospective amendment was categorically answered by the Delhi High Court in the case of *Honda Siel Power Products Ltd v. Deputy Commissioner of Income Tax and another* (supra), as below:

"8. The petitioner has relied upon the proviso to section 14A of the Act. The proviso, according to us, is not applicable in view of the factual matrix of the present case and does not protect or come to the aid of the petitioner. In the present case, after return of income for the assessment year 2000-01 was filed on November 30, 2000, the case was taken up in scrutiny. Assessment order under section 143(3) of the Act was passed on March 7, 2003. The proviso only bars reassessment/rectification and not original assessment on the basis of the retrospective amendment. The proviso does not stipulate and state that section 14A of the Act cannot be relied upon during the course of the original assessment proceedings. The Assessing Officer was, therefore, required to disallow expenses incurred



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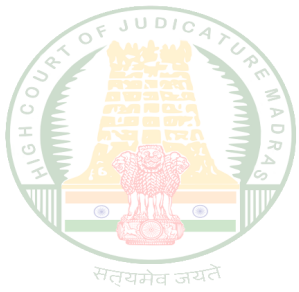
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for earning exempt or tax-free income. Failure on the part of the Assessing Officer to apply section 14A when he passed the assessment order under section 143(3) of the Act dated March 7, 2003, has prima facie resulted in escapement of income. The proviso is not intended to apply to the cases of the present nature. The object and purpose of the proviso is to ensure that the retrospective amendment is not made as a tool to reopen past cases, which have attained finality.”

19. Applying the law as enunciated in various authorities, referred to above, to the facts of the present case, there is no doubt in our mind that the finding recorded by the ITAT was erroneous in law, as it proceeded on an erroneous consideration that it was a case of reassessment or that after 1.4.2001 and even original assessment was not permissible under law.

20. Consequently, the first and second substantial questions of law are decided in favour of revenue and against the assessee.

Third Question of Law:



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21. As far as this question of law is concerned, we find that the Assessing Officer held that bad debts claimed under Section 36(1)(vii) of the Act cannot exceed provision of bad debts claimed under Section 36(1)(viia) of the Act.

In appeal, the CIT(A) directed the Assessing Officer to allow the bad debts of Rs.12.16 crores by following the order of the ITAT in assessee's own case for assessment year 1991-1992 in ITA No.2269/Mds/1994.

The ITAT affirmed the order of CIT(A).

22. Though number of decisions have been cited at bar by learned counsel for both parties, in our considered opinion, the authoritative pronouncement of the Supreme Court in the case of *Catholic Syrian Bank Ltd v. Commissioner of Income Tax* (supra), clinches the issue, wherein it was held that the provisions of Section 36(1)(vii) and Section 36(1)(viia) of the Act are distinct and independent items of deduction and operate in their respective fields. It was held thus:

"16. Sections 36(1)(vii) and 36(1)(vii-a) provide for such deductions, which are to be permitted, in



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accordance with the language of these provisions. A bare reading of these provisions shows that Sections 36(1)(vii) and 36(1)(vii-a) are separate items of deduction. These are independent provisions and, therefore, cannot be intermingled or read into each other. It is a settled canon of interpretation of fiscal statutes that they need to be construed strictly and on their plain reading.

17. The provisions of Section 36(1)(vii) would come into play in the grant of deductions, subject to the limitation contained in Section 36(2) of the Act. Any bad debt or part thereof, which is written off as irrecoverable in the accounts of the assessee for the previous year is the deduction which the assessee would be entitled to get, provided he satisfies the requirements of Section 36(2) of the Act. Allowing of deduction of bad debts is controlled by the provisions of Section 36(2). The argument advanced on behalf of the Revenue is that it would amount to allowing a double deduction if the provisions of Sections 36(1)(vii) and 36(1)(vii-a) are permitted to operate independently. There is no doubt that a statute is normally not construed to provide for a double benefit unless it is specifically so stipulated or is clear from the scheme of the Act. As far as the question of double benefit is concerned, the legislature in its wisdom introduced Section 36(2)(v) by the Finance Act, 1985 with effect from 1-4-1985. Section 36(2)(v) concerns itself as a check for claim of any double deduction and has to be read in conjunction with Section 36(1)(vii-a) of the Act. It requires the assessee to debit the amount of such debt or part thereof in the previous year to the provision made for that purpose.

...

41. To conclude, we hold that the provisions of Sections 36(1)(vii) and 36(1)(vii-a) of the Act are distinct and independent items of deduction and operate in their respective fields. The bad debts written



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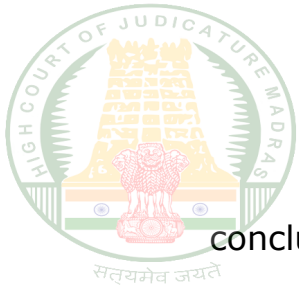
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off in debts, other than those for which the provision is made under clause (vii-a), will be covered under the main part of Section 36(1)(vii), while the proviso will operate in cases under clause (vii-a) to limit deduction to the extent of difference between the debt or part thereof written off in the previous year and credit balance in the provision for bad and doubtful debts account made under clause (vii-a). The proviso to Section 36(1)(vii) will relate to cases covered under Section 36(1)(vii-a) and has to be read with Section 36(2)(v) of the Act. Thus, the proviso would not permit benefit of double deduction, operating with reference to rural loans while under Section 36(1)(vii), the assessee would be entitled to general deduction upon an account having become bad debt and being written off as irrecoverable in the accounts of the assessee for the previous year. This, obviously, would be subject to satisfaction of the requirements contemplated under Section 36(2)."

23. Therefore, on this aspect, the order of the ITAT, affirming the order passed by the CIT(A), is in accordance with the declaration of law as propounded by the Hon'ble Supreme Court in the case of *Catholic Syrian Bank Ltd v. Commissioner of Income Tax* (supra).

24. The third question of law is, therefore, answered in favour of the assessee and against the revenue.

25. Consequently, even though the first and second questions of law are answered in favour of the revenue, in view of our



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conclusion on the third question of law in favour of the assessee
and against the revenue, the revenue appeals are dismissed.

There shall be no order as to costs.

(MANINDRA MOHAN SHRIVASTAVA, CJ)

(SUNDER MOHAN,J)

16.09.2025

Index : Yes
Neutral Citation : Yes
sasi

To:

1. The Assistant Registrar
Income Tax Appellate Tribunal
Madras.
2. The Commissioner of Income Tax (Appeals)-III
Chennai.
3. The Deputy Commissioner of Income Tax
Company Circle I(2), Chennai.



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THE HON'BLE CHIEF JUSTICE
AND
SUNDER MOHAN,J.

(sasi)

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16.09.2025