IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.02.2025

CORAM :

THE HONOURABLE MR.JUSTICE S.S.SUNDAR
and
THE HONOURABLE MR.JUSTICE C.SARAVANAN

T.C.A.No.760 of 2008

Commissioner of Income Tax,
Chennai. ... Appellant

Vs.

M/s.Indbank Merchant Banking
Services Limited,
3rd Floor, Krest Building,
No.2, Jehangir Street,
Second Line Beach,
Chennai – 600 001. ... Respondent

Prayer: Appeal under Section 260A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Madras "A" Bench, Chennai dated 30.11.2007 in I.T.A.No.915/Mds/2006 for the Assessment Year 1997-1998 and for setting aside the same.

For Appellant : Mr.Avinash Krishnan Ravi
and Mr.T.Ravikumar
Senior Standing Counsel

For Respondent : Mr.G.Baskar

JUDGMENT

(Judgment of this Court was delivered by **C.SARAVANAN, J.**)

The present appeal has been admitted on 08.07.2008. Following substantial questions of law were framed for answering in this appeal:

i. Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the reopening beyond four years is bad in law, merely because the schedule to the accounts contained the fact of non-recognition of certain income, inspite of Explanation 1 to Section 147 of the Income Tax Act?

ii. Whether income from non-performing assets can be offered only on cash basis, even though the assessee is following a mercantile system of accounting?

2. By the Impugned Order dated 30.11.2007, the Appellate Tribunal had partly allowed/partly dismissed I.T.A.No.915/Mds/2006 filed by the respondent / assessee against the Appellate Order dated 07.03.2006 of the Appellate Commissioner, against the Assessment Order dated 28.03.2005 passed under Section 143(3) read with Section 147 of the Income Tax Act, 1961.

3. The Appellate Commissioner had allowed the aforesaid appeal of the respondent / assessee against the Assessment Order dated 28.03.2005 insofar as

i. Non-Recognition of Income from Non-Performing Assets for Rs.4,38,95,858/- by following order dated 01.12.2004.

ii. Expenditure relatable to exempt income for Rs.30,58,660/-.

4. The dispute pertains to the Assessment Year 1997-1998. The respondent / assessee had filed a return of income on 25.11.1997. In the return of income, the respondent / assessee had declared a loss of Rs.4,85,81,394/-. The said return was processed under Section 143(1)(a) of the Income Tax Act, 1961 on 01.07.1998. An amount of Rs.5,94,33,892/- was added to the taxable income. It appears, the appellant had filed I.T.A.No.171/1998-1999 dated 22.01.1999. The Appellate Commissioner vide Order dated 22.01.1999 opined that Assessing Officer was free to examine the issue in the regular Assessment.

5. Thereafter, a scrutiny assessment order was passed on 14.03.2000 under Section 143(3) of the Income Tax Act, 1961 whereby, the net taxable income of the respondent / assessee was determined as Rs.4,59,19,240/-. In the aforesaid scrutiny assessment order, the following income were added:-

Heads	**Amount**
Amount written off as income	Rs.5,94,33,892/-

Heads	Amount
towards Non-Preferential Assets	
Lease Income towards Lease Equalization	Rs.3,50,66,737/-
Total	Rs.9,45,00,629/-

6. Thus, the total income of the respondent / assessee was determined as Rs.5,94,33,892/- + Rs.3,50,66,737/- - Rs.4,85,81,394/- = Rs.4,59,19,235/- (Rs.4,59,19,240/-)

7. It appears that earlier against the order dated 01.07.1998 passed under Section 143(1)(a) of the Income Tax Act, 1961, the respondent / assessee had filed an appeal in I.T.A.No.171/1998-1999. The Appellate Commissioner by an Order dated 22.01.1999 in I.T.A.No.171/1998-1999, held that the issue was debatable and cannot form part of the assessment under Section 143(1) of the Income Tax Act, 1961 and opined that the Assessing Officer was however, free to examine the issue in the regular assessment. It is, in the course of the regular assessment on the aforesaid sum of Rs.5,94,33,892/-, a sum of Rs.3,50,66,737/- was added from lease income towards lease equalization.

8. On the aforesaid sum, the respondent / assessee was required to pay

the following amounts toward tax as detailed below:-

	Income-tax @ 40%	Rs. 1,83,67,696/-
ADD	Sur-charge @ 7.5%	Rs. 13,77,577/-
		Rs. 1,97,45,273/-
LESS	TDS credit	Rs. 24,46,717/-
		Rs. 1,72,98,556/-
LESS	Advance tax paid	Rs. 96,75,000/-
	Tax payable	Rs. 76,23,556/-
ADD	234-B interest	Rs. 54,88,920/-
	234-C interest	Rs. 1,64,647/-
	Tax payable	Rs. 1,32,77,123/-
LESS	Demand raised under Section 143(1)(a) dated 01.07.1998	Rs. 35,72,030/-
	Additional Tax	Rs. 97,05,093/-

9. Meanwhile, the assessment was reopened by issuance of a Notice dated 16.03.2004 under Section 148 of the Income Tax Act, 1961, which ultimately culminated in a Re-Assessment Order dated **28.03.2005** wherein, the following taxable income of the respondent / assessee was redetermined:-

1. income from the alleged non-performing assets - **Rs.4,38,95,858/-**
2. The expenditure relatable to exempt income – **Rs.30,85,866/-**
3. The expenses disallowed - **Rs.31,13,223/-** (as dealt in order dated

28.03.2002 for the Assessment Year 1996-1997).

4. write off amount - **Rs.1,32,56,081/-**

10. Thus, total income of the respondent / assessee was redetermined as follows:-

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cost. Therefore considering the nature of income, expenditure in relation to earning of exempted income is estimated at 10% receipt. **Rs. 3,05,36,60/-**

3. **Depreciation:** Assessee claimed depreciation on assets leased to Kedia Group of companies. These assets were stated to be purchased from non - existent firms. Therefore, the transaction has been held to be sham and depreciation has been disallowed in the Assessment year 1996-97. The issue has been discussed at length in the order dated 28/03/2002. Accordingly, the depreciation claimed is disallowed.

	Depreciation	
Kedia distilleries Ltd.	Rs. 82,64,730	
Kedia Castle Dellon Inc. Ltd.	81,89,672	
	Rs. 1,64,54,402	**Rs. 1,64,54,402/-**

4. **Public issue expenses:** Assessee claimed public issue expenses of Rs. 31,13,223/- u/s.35D. The issue has been dealt in the order dated 28/03/2002 for Assessment year 1996-97. The expenses has been held as capital and disallowed. Accordingly for this year also it is disallowed. **Rs. 31,13,223/-**

5. **Write off:** The representative claimed that interest from the following cases have written off and stated as under:

> The expenditure debited to the profit & loss account towards provision for non performing assets of Rs. 59433892/- includes the following amounts which were written off in the year as irrecoverable.
>
> | Name of the Party | Nature | Amount (Rs.) |
> |---|---|---|
> | Ushma Investments Pvt. Ltd. | Interest on | 77,73,788 |
> | Vistas Finance and Leasing Pvt. Ltd. | Intercorporate loans | 54,82,293 |
> | Total | | 1,32,56,081 |
>
> The same has been disclosed in Note No.2(ii)(a) in the Notes on Accounts under Schedule 'M' forming part of the accounts for the year 1996-97 as under:
>
> Rs. 132.56 lakhs, the interest waived on Intercorporate loans and the same have been reduced from Intercorporate deposits under current assets."

The claim is allowed **(-) Rs. 1,32,56,081/-**

Subject to the above the total income is computed as under:

Total income as per order dt. 14/02/2003 (115JA)	Rs. 1,28,74,400
Total income before sett off of loss as per order dated 15/11/2000	Rs. 1,08,52,503

Add: Disallowances (as discussed above)

1. Non recognition of income from NPA	4,38,95,858	
2. Expenditure relatable to exempt income	30,85,866	
3. Depreciation on leased assets	1,64,54,402	
4. Public issue expenses	31,13,223	
		6,65,49,349
		7,74,01,852
Less: Interest written off now allowed		- 1,32,56,081
		6,41,45,771
Less: Loss b/f from Assessment year 1995-96		22,87,033
Assessed income		Rs. 6,18,58,738

As the income computed under normal method is more than the book profit u/s.115JA, the same is adopted.

Tax thereon	Rs. 2,47,43,496
Surcharge	18,55,762
Total	2,65,99,258
Less: TDS	25,76,787
	2,40,22,471
Add: Advance-tax	96,75,000
Balance	1,43,47,471
Add: Interest u/s. 234C	36,750
Total	1,43,84,221
Add: Addl. Tax u/s. 143(1A)	51,56,960
	1,95,41,181
Add: Interest u/s. 234A(3)	25,27,584
Interest u/s. 234B(3)	1,46,38,924
Demand payable	Rs. 3,67,07,689

This should be paid as per the Demand Notice & Challan enclosed

R. VISWANATHAN
Assistant Commissioner of Income-tax,
Company Circle II(3), Chennai-34

To
The assessee

11. As mentioned above, on further appeal, the Appellate Commissioner in I.T.A.(TR) No.59/2005-2006 (I.T.A.No.76/2005-2006) vide order dated 07.03.2006, partly allowed and partly dismissed the appeal of the respondent / assessee.

12. Snapshot of the order of the Appellate Commissioner is summarized in the following table:-

Grounds	Heading	Order	Result
Ground No.1	Non-recognition of income from non-performing assets	The Assessing Officer is directed to delete the addition made on account of income from Non-performing assets and modify the order. This ground of appeal is **Allowed**.	**Allowed**
Ground No.2	Expenditure relatable to exempt income	The Assessing Officer is directed to modify the order. This ground of appeal is **Allowed**.	**Allowed**
Ground No.3	Disallowance of depreciation	Having regard to the sum totality of facts, the Appellate Commissioner therefore confirmed the order of the Assessing Officer. This ground of appeal is **Dismissed**.	**Dismissed**
Ground No.4	Disallownace under Section 35D	The appellant has not been able to file any evidence in support of this claim at the appeal stage. Resultantly, the disallowance made is hereby confirmed. This ground of appeal is **dismissed.**	**Dismissed**
Ground No.5	Additional Ground	In the order under appeal, the Assessing Officer has addressed the issue at great length and	**Dismissed**

Grounds	Heading	Order	Result
		justified the issue of notice under Section 148 dated 16.03.2004. Further it has also been found from the records that notice under section 143(2) in this case was issued on 24.08.2004 and served on the assessee on 26.08.2004 in responde to which Shri Mukundan, Vice President of the company attended the hearing before the Assessing Officer on 09.09.2004. For the reasons stated, the additional ground raised is **Dismissed**.	

13. Aggrieved by the same, both the appellant herein and the respondent filed Appeals in I.T.A.No.1732/Mds/2006 and I.T.A.No.915/Mds/2006 respectively before the Appellate Tribunal.

14. The Appellate Tribunal has allowed the respondent / assessee's appeal and dismissed the appellant's appeal. In other words, the additions made in the assessment order dated 28.03.2005 pursuant to Notice dated 16.03.2004 issued under Section 148 of the Income Tax Act, 1961 with the approval of the Commissioner dated 24.08.2004 has been completely reversed by the Appellate Tribunal.

15. The Appellate Tribunal has allowed the appeal of the respondent / assessee and dismissed the appeal of the appellant Department on the ground that there was no failure on the part of the respondent / assessee to truly and fully disclose all material facts necessary for determining the tax in the light of the decision of this Court in **Commissioner of Income Tax** Vs. **Elgi Finance Company Limited**, 286 ITR 674 and that of the decision of the Hon'ble Supreme Court in **Commissioner of Income Tax** Vs. **Foramer France**, 264 ITR 566.

16. Learned counsel for the appellant Income Tax Department has stated that what was added to the income of the respondent / assessee was a sum of **Rs.5,94,33,892/-** vide Order dated 14.03.2000 and lease equalization of **Rs.3,50,66,737/-** and after deducting / reducing the admitted loss of **Rs.4,85,81,394/-**, the taxable income was arrived at **Rs.4,59,19,235/-**. It is submitted that the respondent / assessee had failed to disclose all the facts that all income has not been recognized from certain advances as detailed above in the table, which have been allowed.

17. It is submitted that the Appellate Tribunal has only referred to the 1st proviso to Section 147 of the Income Tax Act, 1961 but has ignored Explanation 1 to Section 147 of the Income Tax Act, 1961. It is submitted that mere production of Books of Account or other evidence from which material evidence could be gathered with due diligence or discovered by the Assessing Officer will not necessarily amount to disclosure within the meaning of 1st *Proviso* to Section 147 of the Income Tax Act, 1961. Hence, submits that the Impugned Order of the Tribunal has to be set aside.

18. Learned counsel for the appellant has placed reliance on the following decisions:-

i. **Phool Chand Bajrang Lal and others** V. **Income Tax Officer and others**, [1993] 203 ITR 456 (SC)

ii. **Calcutta Discount Company Limited** Vs. **Income Tax Officer, Companies District, I and others**, [1961] 41 ITR 191 (SC)

iii. **Amin's Pathology Laboratory** Vs. **P.N.Prasad and others**, [2001] 252 ITR 673 (Bom.)

iv. **T.N.Power Finance and Infrastructure Development Corporation Limited** Vs. **Joint Commissioner of Income Tax**, (2006) 280 ITR 491.

v. **First Leasing Company of India Limited** Vs. **Assistant Commissioner of Income Tax, Company Circle-II (1)**, 2019 SCC OnLine Mad 5429.

vi. **Assistant Commissioner of Income Tax** Vs. **Rajesh Jhaveri Stock Brokers Private Limited**, [2007] 291 ITR 500 (SC).

vii. **Southern Technologies Limited** Vs. **Joint Commissioner of Income Tax, Coimbatore**, [2010] 320 ITR 577 (SC).

viii. **Sundaram Finance Limited** Vs. **Assistant Commissioner of Income Tax, Chennai**, [2012] 349 ITR 356 (SC).

ix. **Aparanjitha Finance Co. Limited** Vs. **The Joint Commissioner of Income Tax Special Range-II, Madurai**, 2015 SCC Online Mad. 1999.

x. **Commissioner of Income Tax, Kolkata-II, Kolkata** Vs. **Universal Industrial Fund Limited**, 2015 SCC OnLine Cal 5686.

xi. **Principal Commissioner of Income Tax-6** Vs. **Khyati Realtors Private Limited**, [2022] 447 ITR 167 (SC).

xii. **Commissioner of Income Tax, Kolkata-II, Kolkata** Vs. **M/s.Arco Impex Limited**, 2017 SCC OnLine Cal 9156.

xiii. **Commissioner of Income Tax** Vs. **Sakthi Finance Limited**, [2013] 352 ITR 102 (Mad.).

19. Learned counsel for the respondent / assessee has relied on the decisions of the Courts in the following cases:-

i. **Assistant Commissioner of Income-tax** V. **CEAT Limited**, [2023] 146 taxmann.com 108 (SC).

ii. **Commissioner of Income Tax** Vs. **ECO Media (P) Limited**, (2012) 81 CCH 0085 ChenHC.

iii. **Commissioner of Income Tax** Vs. **BAER shoes (India) (P) Limited**, (2011) 331 ITR 0435.

iv. **Commissioner of Income Tax** Vs. **M/s.Indbank Merchant Banking Services Limited** in T.C.A.Nos.2097 to 2099 of 2008 dated 30.07.2019.

20. Defending the Impugned Order, the learned counsel for the respondent / assessee submits that there was no failure on the part of the appellant Income Tax Department to disclose any material evidence for completing the assessment either before the return was processed under Section 143(1)(a) of the Income Tax Act, 1961 on 01.07.1998 or in the course of Assessment Order dated 14.03.2000 under Section 143(3) of the Income Tax Act, 1961 pursuant to Order of the Commissioner of Income Tax (Appeals) or the Appellate Commissioner dated 22.01.1999 in I.T.A.No.171/1998-1999.

21. Learned counsel for the respondent / assessee took us through the return of income filed by the respondent / assessee under Section 139 of the Income Tax Act, 1961 on 25.11.1997 and Part-VI attaching the list of documents / statements appended to the return of income filed on 25.11.1997.

22. It is submitted that since the respondent / assessee had taken a *bona fide* stand that not only a sum of Rs.594.33 lakhs **(Rs.5,94,33,892/-)** was not recognized as per the prudential norms of the Reserve Bank of India (RBI) but also a sum of Rs.438.96 lakhs comprising of Rs.179.12 lakhs under leasing, Rs.201.34 lakhs under Hire Purchase, Rs.17.50 lakhs under interest on Debentures and Rs.41 lakhs under interest on Inter Corporate Deposit was not recognised as income in the current year.

23. It is submitted that in the return that was processed under Section 143(1) of the Income Tax Act, 1961 itself, the aforesaid sum of Rs.594.33 lakhs was added and that the Appellate Commissioner vide Order dated 22.01.1999 in I.T.A.No.171/1998-1999 against the return that was processed under Section 143(1)(a) of the Income Tax Act, 1961 on 01.07.1998, given liberty to the Assessing Officer to examine the issue in the regular assessment.

24. It is submitted that during the regular assessment, all the informations were available and there was no suppression of any information that was required for completing the assessment under Section 143(3) of the Income Tax Act, 1961.

25. Learned counsel for the respondent / assessee also referred to the Annual Report of the Financial Year 1996-1997 for the relevant Assessment Year 1997-1998 wherein in Schedule-M in the notes of accounts, the above details were furnished and it is based on the Scheme, the Assessing Officer while processing the return under Section 143(1) of the Income Tax Act, 1961, had included a sum of Rs.594.33 lakhs vide Order dated 01.07.1998.

26. Thus, it is submitted that in the Assessment Order that was passed on 14.03.2000, the Assessing Officer added a sum of Rs.3,50,66,737/- being the amount that was deducted from the Lease Income towards Lease Equalization.

27. Learned counsel for the respondent / assessee also drew attention to Order passed under Section 154 of the Income Tax Act, 1961 on 08.06.2000 and had ordered refund of Rs.21,51,179/- taking note of Tax Free Bonds for a sum of Rs.3,05,86,604/-, and computed the aforesaid refund of Rs.21,51,179/-

under Section 115JA of the Income Tax Act, 1961. He also drew attention the following calculation in Section 154 Order dated 08.06.2000:-

Heads	Amount
Total Income	Rs.1,28,74,400/-
Income-tax thereon @ 40%	Rs. 51,49,760/-
Add : Surcharge @ 7.5%	Rs. 3,86,232/-
	Rs. 55,35,992/-
Less : TDS Credit given	Rs. 25,76,787/-
	Rs. 29,59,205/-
Less : Advance-tax paid	Rs. 96,75,000/-
Refund	Rs. 67,15,795/-
Less : 234-C Interest (as per 143(1)(a) dated 01.07.1998)	NIL
Less : Additional Tax levied under Section 143(1)(a) dated 01.07.1998	Rs. 51,56,960/-
Refund	Rs. 15,58,835/-
Add : Interest under Section 244-A @ 1%	Rs. 5,92,344/-
Total Refund	Rs. 21,51,179/-

28. We have heard the learned counsel and learned Senior Standing Counsel for the appellant and the learned counsel for the respondent.

29. We are of the view that although the petitioner had failed to include a sum of Rs.5,94,33,892/- in the return that was filed on 25.11.1997, the

Assessing Officer had included the same while processing the return on 01.07.1998 under Section 143(1)(a) of the Income Tax Act, 1961.

30. The aforesaid income of Rs.5,94,33,892/- was obtained by the Assessing Officer while passing the aforesaid order under Section 143(1)(a) of the Income Tax Act, 1961 on 01.07.1998 from the Annual Report filed by the respondent / assessee for the relevant Financial Year 1996-1997 and for the relevant Assessment Year 1997-1998.

31. As mentioned elsewhere above, the amount of Rs.438.96 lakhs which was added in the Re-Assessment Order dated 28.03.2005 was the 1st item which was left out by the Assessing Officer while including the aforesaid sum of Rs.5,94,33,892/- in the Order dated 01.07.1998 under Section 143(1)(a) of the Income Tax Act, 1961.

32. The option that was available at that point of time was to invoke jurisdiction under Section 263 of the Income Tax Act, 1961 as the Assessment Order that was passed on 14.03.2000 under Section 143(3) of the Income Tax Act, 1961, was both prejudicial to the interest of Revenue and erroneous.

33. Instead, an order came to be passed under Section 154 of the Income Tax Act, 1961 on 08.06.2000 by computing the income under Section 115JA of the Income Tax Act, 1961, resulting in refund of Rs.21,51,179/-.

34. Against the aforesaid Order also, the appellant had the remedy under Section 263 of the Income Tax Act, 1961 as it resulted in wrongful refund of Rs.21,51,171/- to the respondent / assessee.

35. Although Explanation 1 to Section 147 of the Income Tax Act, 1961 as it stood till 31.03.2021 stipulated that mere production of Books of Account or other evidence before the Assessing Officer from which material evidence could with due diligence have been discovered by the Assessing Officer will not necessarily amount to disclosure within the meaning of 1st *Proviso* to Section 147 of the Income Tax Act, 1961, the fact remains that both the amount of Rs.594.33 lakhs and 438.96 lakhs were available and were seen by the Assessing Officer while processing the return under Section 143(1) of the Income Tax Act, 1961 and while passing the order on 01.07.1998. Therefore, the invocation of machinery under Section 148 of the Income Tax Act, 1961 for passing reassessment order under Section 143(3) read with Section 147 of the

Income Tax Act, 1961 was without any jurisdiction and has therefore been rightly interfered by the Appellate Tribunal.

36. Although for the purpose of claiming deductions, the respondent / assessee should have written off such income under Section 36(1)(vii) of the Income Tax Act, 1961.

37. In the light of the above discussion, we answer the substantial questions of law in favour of the respondent / assessee and against the appellant Income Tax Department.

38. This Tax Case Appeal stands dismissed. No costs.

[S.S.S.R., J.] **[C.S.N., J.]**

19.02.2025

Neutral Citation : Yes / No

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To:

Commissioner of Income Tax,
Chennai.

S.S.SUNDAR, J.
and
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T.C.A.No.760 of 2008

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