



T.C.A.No.193 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Dated : 26.03.2025

CORAM:

**THE HONOURABLE MR JUSTICE S. S. SUNDAR
AND
THE HONOURABLE MR JUSTICE C. SARAVANAN**

Tax Case Appeal No.193 of 2011

Commissioner of Income Tax
Chennai

..Appellant

Vs

M/s.Indbank Merchant
Banking Services Ltd
V Floor, Spencer Towers
Anna Salai
Chennai-600 002

..Respondent

Prayer :- Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961, as against the order of the Income Tax Appellate Tribunal, Chennai B Bench, dated 03.11.2010 in ITA.No.1128/Mds/2010 for the assessment year 1996-97.

For Appellant : Mr.Avinash Krishnan Ravi, Junior Standing counsel

For Respondent: Mr.G.Baskar.



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JUDGMENT

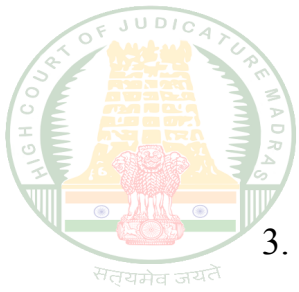
WEB COPY(Order of the Court was made by the Hon'ble **C. SARAVANAN, J.**)

This appeal is directed against the impugned order dated 03.11.2010 passed by the Income Tax Appellate Tribunal in ITA.No.1128/MDS/2010. By the impugned order, the Appellate Tribunal has dismissed the appeal filed by the appellant herein viz., Income Tax Department.

2. In this appeal, the appellant-Income Tax Department has raised the following substantial questions of law.

“1. Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in confirming the order of the Commissioner of Income Tax (Appeals) deleting the disallowance of Rs.10,86,54,376.89 being provision for non-performing assets?

2. Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in applying the decision of the Supreme Court in the case of Vijaya Bank Vs C.I.T. (323 ITR 166) wherein it was held that even if the individual debtor's account had not been written off, it was enough if the amount debited to the Profit & Loss account and the current assets were reduced by the amount of bad debts whereas in the assessee's case, the assessee had not debited the amount to the Profit & Loss Account but had debited the same only in the Profit & Loss Appropriation Account ?”



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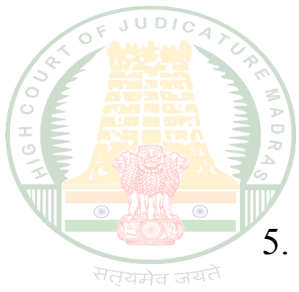
3. The contention of the appellant-Income Tax Department is that law has been clarified by the Honourable Supreme Court and by a decision of a Division Bench of this Court in the following cases:-

1. *Vijaya Bank Vs. Commissioner of Income Tax and Others [2010] 323 ITR 166 (SC).*

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

(3) *Ashok Leyland Finance Limited Vs. The Deputy Commissioner of Income Tax, Company Circle 1(1) – MANU/TN/9589/2022.*

4. We have heard the learned counsel for the appellant-Income Tax Department and the learned counsel for the respondent-assessee. We have also perused the books of accounts, balance sheet and the Profit and Loss account of the respondent-assessee for the Financial Year 1995-96, which is relevant for the assessment year 1996-97, in respect of which respondent had filed a return of income under Section 139 (1) of the Income Tax Act on 11.06.1997.



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5. The specific case of the appellant-Income Tax Department is that mere provision in the Books of Accounts viz., Balance Sheet and Profit and Loss Account is not sufficient to claim deduction under Section 36(i) (vii) and 36/29 of the Income Tax Act, 1961. It is specifically contended that the assessee had not debited the amount to the Profit and Loss account.

6. The decision of the Honourable Supreme Court and the decision of this Court referred supra have settled the position and there is no further requirement for us to give a fresh decision on the Substantial questions of law. The Honourable Supreme Court in *Vijaya Bank Vs. Commissioner of Income Tax and Ors [cited supra]*, has observed as under:-

“However, as stated by the Tribunal, in the present case, besides debiting the Profit and Loss Account and creating a provision for bad and doubtful debt, the assessee-Bank had correspondingly/simultaneously obliterated the said provision from it's accounts by reducing the corresponding amount from Loans and Advances/debtors on the asset side of the Balance Sheet and, consequently, at the end of the year, the figure in the loans and advances or the debtors on the asset side of the Balance Sheet was shown as net of the provision "for impugned bad debt". In the



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judgement of the Gujarat High Court in the case of **Vithaldas H. Dhanjibhai Bardanwala** [supra], a mere debit to the Profit and Loss Account was sufficient to constitute actual write off whereas, after the Explanation, the assessee(s) is now required not only to debit the Profit and Loss Account but simultaneously also reduce loans and advances or the debtors from the asset side of the Balance Sheet to the extent of the corresponding amount so that, at the end of the year, the amount of loans and advances/debtors is shown as net of provisions for impugned bad debt. This aspect is lost sight of by the High Court in its impugned judgement.”

7. A reading of the order of the Appellate Commissioner dated 28.04.2010 in ITA.No.20/1999-2000/A-III and the impugned order of the Appellate Tribunal dated 03.11.2020 in ITA.Nos.1128/Mds/2020 MDS/2010, impugned herein does not disclose examination of the books of accounts in the light of the decision of the Supreme Court in ***Vijaya Bank Vs. Commissioner of Income Tax and Others*** [cited supra].

8. In the impugned order, it is not indicated whether the assessee had debited the amount in the balance sheet as contemplated, apart from debiting the amount from its Profit and Loss Account. This exercise was to be completed in



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the light of the earlier remand order of the Tribunal dated 05.06.2006 in
WEB ITA.No.1146/Mds/00 and ITA.No.2/Mds/01.

9. In the impugned order, the Tribunal has merely relied on the Chartered Accountant's certificate dated 11.07.2005 and arrived at the conclusion based on the treatment given under similar circumstances for the subsequent assessment year.

9A. The impugned order before the Tribunal itself was pursuant to an earlier order passed by the ITAT dated 05.06.2006 in ITA.No.1146/Mds/00 & Int.T.A.No.2/Mds/01. By the aforesaid order, the Tribunal had referred the case back to the Commissioner of Income Tax (Appeals) in the light of the certificate issued by the Chartered Accountant that a sum of Rs.10,86,54,377/- has actually been written off as irrecoverable dues. Relevant portion of the aforesaid order of the Tribunal reads as under:-

“7. We have heard the rival contentions and perused the relevant records. We find that on analogical issue in assessee's own case in I.T.A.No.66/Mds/01 for assessment year 1997-98, this Tribunal vide order dated 15.12.05 has held that,



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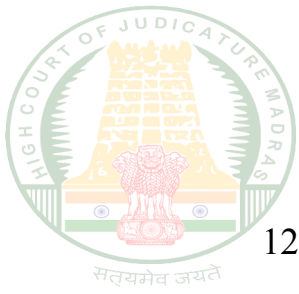
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“No deduction is possible without the compliance of the conditions contained in Section 36(i)(vii). However, in respect of the amount of Rs.1,32,56,081/- we restore the matter to the files of the Commissioner of Income Tax (Appeals) to verify whether this amount was written off and whether the assessee complied with the requisite conditions for claiming the amount as bad debt”.

9B. The above exercise was not done.

10. Since the accounts have not been examined as was required in terms of the Remand Order dated 05.06.2006 in ITA.No.1146/Mds/00 & Int.T.A.No.2/Mds/01 and in terms of the decision of the Honourable Supreme Court in *Vijaya Bank case [cited supra]*, we are inclined to set aside the impugned order and remit the case back to the Original Authority to redo the exercise afresh and pass a fresh order.

11. Since the dispute pertains to the Assessment Year 1996-1997, we expect the Assessing Officer to pass a fresh Assessment Order *de novo* within a period of 6 months from the date of receipt of a copy of this order.



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12. Needless to state, the respondent-assessee and/or its successor if any, as the case may be, shall be heard before final orders are passed in the *de novo* proceedings.

13. The Tax Case Appeal is disposed of on the above terms. No costs.

(S.S.SUNDAR, J.) (C.SARAVANAN, J.)
26.03.2025

nvsri

To

1.The Commissioner of Income Tax
Chennai

2. The Income Tax Appellate Tribunal, Chennai B Bench

3. The Joint Commissioner of Income Tax, Special Range IV, Chennai-34.



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