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TCA No. 692 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28-04-2026

CORAM

THE HON'BLE Dr.JUSTICE G. JAYACHANDRAN

AND

THE HON'BLE MR.JUSTICE SHAMIM AHMED

TCA No. 692 of 2010

M/s Indian Bank
No 66, Rajaji Salai Chennai-600 001.

..Appellant(s)

Vs.

The Assistant Commissioner
of Income Tax,
Company Circle- II (3)
No 121 Nungambakkam High Road,
Chennai-600 034.

..Respondent

Tax Case (Appeal) filed under Section 260-A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Chennai – Bench “D”, dated 18.12.2009 in I.T.A.No.1136/MDS/2007 (Assessment Year 2001-2002).

For Appellant: Mr.G.Baskar for Mr.N.Muthukumar

For Respondent(s): Mr.T.Ravi Kumar, Senior Standing Counsel



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JUDGMENT**(Judgment of the Court was delivered by Dr.G.Jayachandran J.)**

This Tax Case Appeal is filed by the assessee being aggrieved by interpretation of Section 36(i)(viia) of the Income Tax Act, 1961, thereby depriving the right of the assessee exercising the option provided under the said Section.

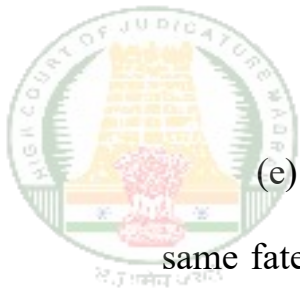
2. Brief facts necessary to decide the issue raised in this appeal, are as below:

(a) For the Assessment Year 2001-2002, the appellant/Indian Bank, which is a Nationalised Bank, filed its Return of income admitting the loss of Rs.836,73,14,639/-.

(b) After scrutiny, proceedings were initiated under Section 143(2) of the Income Tax Act. The appellant filed a petition for rectification of certain errors that had crept in, in the order of assessment, dated 31.03.2004.

(c) While considering the rectification application and allowing part of the prayer sought for in the rectification application, the Assessing Authority has reduced the loss by dis-allowing the specific portion of the loss claimed under the head “bad debts - written off”.

(d) The order of the Assessing Officer, challenged by the assessee/appellant herein, ended against the appellant/Bank.



(e) The further order before the Income Tax Appellate Tribunal faced the same fate and hence, the present appeal is filed by the Indian Bank before this Court.

3. This Court, on taking note of the grounds of appeal, has formulated the following substantial questions of law while admitting this appeal on 08.03.2011:

(i) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is right in holding that the rectification made by the Assessing Officer invoking Section 154 of the Income Tax Act, disallowing the claim for deduction of Rs.173,73,00,000/- under Section 36(1)(vii-a)(a), is correct in law ?

(ii) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is right in holding that the main provision under Section 36(1)(vii-a)(a) is alternate to the relief available under the proviso to the said clause ?

(iii) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is right in holding that once the Bank exercises the option under the proviso, it would not be entitled to the relief under the main provisions of Clause (Vii-a)(a) ?

(iv) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is right in holding that the issue relating to the claim of



allowances to a Bank in terms of Section 36(1)(vii-a)(a) and the proviso thereunder, is not a debatable issue and consequently, is liable to rectification under Section 154 of the Income Tax Act ?

4. At the outset, learned counsel appearing for the appellant/Bank submitted that the issue as to whether the expression “at its option” used in the proviso to sub-section (vii-a) of Section 36(1), refers the option of the assessee or the option of the Assessing Officer, has been given a quietus by the Honourable Supreme Court in the case of Commissioner of Income Tax, Chennai, Vs. Tamilnadu Industrial Investment Corporation Limited, reported in 2019 (112) Taxmann.com 387 (SC). The Honourable Supreme Court has upheld the order of this Court.

5. While taking this Court to the provisions of Section 36(1)(vii-a) of the Income Tax Act (quoted below),

Section 36: Other deductions:

(1) The deductions provided for in the following clauses shall be allowed in respect of the matters dealt with therein, in computing the income referred to in Section 28--

... ..

... ..

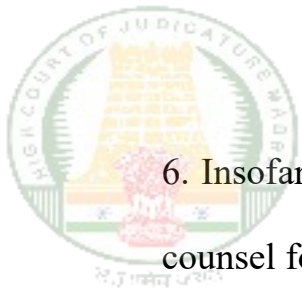
(vii-a) in respect of any provision for bad and doubtful



debts made by --

(a) a scheduled bank not being (..... certain words omitted by Act 32 of 1994, Section 14 (w.e.f. 1.4.1995) a bank incorporated by or under the laws of a country outside India or a non-scheduled bank (or a co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank) (inserted by Act 22 of 2007, Section 13 (w.e.f. 1.4.2007), an amount (not exceeding seven and one-half per cent) (substituted by Act 20 of 2002, Section 19, for “not exceeding five per cent” (w.e.f. 1.4.2003) of the total income (computed before making any deduction under this clause and Chapter VI-A) and an amount not exceeding (ten per cent) (substituted by Act 32 of 1994, Section 14, for “four per cent” (w.e.f. 1.4.1995) of the aggregate average advances made by the rural branches of such bank computed in the prescribed manner;”

the learned counsel for the appellant-Indian Bank submitted that the view of this Court regarding the interpretation of Section 36(1)(vii-a) of the Income Tax Act, should be applied to the case on hand and hence, the substantial questions of law (ii) and (iii) are hereby held in favour of the assessee.



6. Insofar as the substantial questions of law (i) and (iv) are concerned, learned counsel for the appellant/assessee/Indian Bank submitted that in the rectification petition filed by the assessee under Section 154, the Commissioner of Income Tax has gone beyond the scope of the rectification application and without notice to the assessee, which is mandatory, he had reduced the loss, which is in excess of the power conferred under Section 154(3) of the Income Tax Act.

7. In response, learned Senior Standing Counsel appearing for the Income Tax Department submitted that the Honourable Supreme Court, in the case of Commissioner of Income Tax Vs. Tamilnadu Industrial Investment Corporation Limited, reported in 2019 (112) Taxmann.com 387 (SC), had dismissed the Special Leave Petition filed by the Revenue, but has not gone into the merits of the appeal therein.

8. The learned Senior Standing Counsel for the Department further submitted that while considering the rectification application of the assessee, the Assessing Authority had found error apparent on the face of the records regarding the deduction claimed under Section 36(1)(vii-a) of the Income Tax Act by the assessee and therefore, had interfered in the assessment order.

9. The learned Standing Counsel appearing for the Department fairly conceded that, while dis-allowing the deduction on the above said interpretation, the



Assessing Authority had not gone in detail about the claim of the assessee in respect of the deduction made under Section 36(1)(vii-a) of the said Act.

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10. Considering the submissions made on either side and also following the dictum of the Honourable Supreme Court reported in 2019 (112) Taxmann.com 387 (SC)(Calcutta) in the appeal preferred by the Department, we are of the view that the interpretation of the Department in respect of Section 36(1)(vii-a) of the Income Tax Act and also the application of the expression “at its option”, are not contrary to the spirit of the said Act. Option to choose either of the clauses in Section 36(1)-(vii(a)) is the exclusive domain and prerogative of the assessee and not the Assessing Authority.

11. When a tax payer had chosen to exercise the option to claim deduction in a particular way, which is permissible under law, the Assessing Officer cannot supersede the right of the tax payer. If the interpretation of the Department is to be accepted, the use of the expression “at its option”, would loose its significance.

12. Hence, we hold the substantial questions of law in (ii) and (iii) in favour of the assessee-Bank.

13. This appeal filed by the assessee-Indian Bank, is allowed, with a direction



to the Assessing Officer to re-compute the taxable income by applying Section 36(1)(vii-a) of the Income Tax Act, as interpreted by the Honourable Supreme Court in the decision reported in 2019 (112) Taxmann.com 387 (SC).

14. In view of our finding in respect of the substantial questions of law (ii) and (iii), the substantial questions of law (i) and (iv) are allowed and held in favour of the assessee, as it is only academic.

15. With the above observations, this appeal is disposed of.

(G.J.,J.) (S.S.A.,J.)
28-04-2026

Index: Yes
Speaking order
Neutral Citation: Yes
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To

The Assistant Commissioner
of Income Tax,
Company Circle- II (3)
No.121, Nungambakkam High Road,
Chennai-600 034.



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Dr.G.JAYACHANDRAN, J.

and

SHAMIM AHMED, J.

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