

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.04.2012

CORAM:

THE HONOURABLE MRS.JUSTICE CHITRA VENKATARAMAN

and

THE HONOURABLE MR.JUSTICE K.RAVICHANDRA BAABU

Tax Case (Appeal) No.756 of 2004

The Commissioner of Income-Tax

Trichy.

.. Appellant

versus

M/s.Lakshmi Vilas Bank

Salem Road, Kathaparai

Karur.

.. Respondent

PRAYER: Tax Case Appeal filed under Section 260A of the Income Tax Act against the order dated 10.12.2003 made in I.T.A.No.265/Mds/1996 on the file of the Income Tax Appellate Tribunal, "C" Bench, Chennai for the assessment year 1992-93.

For appellant : Mr.T.Ravikumar
Standing Counsel for Income Tax

For respondent : Mr.R.Venkatanarayanan

JUDGMENT

(Judgment of the Court was delivered by CHITRA VENKATARAMAN,J.)

This Tax Case (Appeal) filed by the Revenue was admitted on the following substantial questions of law relating to the assessment year 1992-93:

"1. Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that a sum of Rs.47,13,112/- as a bad debt for the period under consideration, the assessee is entitled to the bad debt written off as allowable, even though the same was hit by the provisions of Section 36(1)(vii) of the Income Tax Act, 1961?

2. Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the assessee is entitled to the depreciation on electrical fittings and typewriters etc., on plant and machinery and granted relief, even after the assessment year 1987-88 the plant and machinery and furniture and electrical fittings are classified separately for the purpose of depreciation?"

2. As far as the first question is concerned, learned Standing Counsel appearing for the Revenue fairly submitted that the issue is covered by a decision of this Court reported in (2012) 248 CTR (SC) 1 (Catholic Syrian Bank Ltd. Vs. Commissioner of Income Tax), which is against the Revenue. Hence, the first question is answered against the Revenue.

3. As far as the second question is concerned, it is seen from the order of the Tribunal that in respect of the claim for depreciation on furniture and electrical fittings as well as typewriters, the Tribunal applied the decision of the assessee's own case for the assessment years 1990-91 and 1991-92, wherein, the Tribunal followed the decision relating to the very same assessee in respect of the assessment year 1988-89 and took the view that the assessee was entitled to depreciation at 33 1/3 % on typewriters and calculators. In the circumstances, the assessee's appeal in respect of the said claim was answered in favour of the assessee. Aggrieved by the relief granted, which, according to the Revenue, is contrary to the Schedule on depreciation, the present appeal has been filed.

4. A perusal of the order of the Tribunal relating to the assessment years 1988-89, 1990-91 and 1991-92 reveals that the assessee made a claim for depreciation on electrical fittings, pipe fittings and typewriters at 33 1/3%. Pointing out that on and from 1988-89, the rate of depreciation was revised from 15% to 33 1/3%, the claim of the assessee was allowed.

5. Appendix I attached to Rule 5 prescribes the rate of depreciation. In Clause II of Part A, rate of depreciation is given in respect of furniture and fittings. The said table reads as under:

Block of assets

Depreciation allowance as percentage of written down value

II. FURNITURE AND FITTINGS

(1) Rate applicable to furniture and fittings not covered by sub-item (2) below 10

(2) Furniture and fittings used in hotels, restaurants and boarding houses; schools, colleges and other educational institutions; libraries; welfare centres; meeting halls; cinema houses; theatres and circuses; and furniture and fittings let out on hire for use on the occasion of marriages and similar functions 15

6. Given the fact that the furniture and fittings are with reference to the bank, the assessee carrying on business in banking, sub-clause (1) would be a relevant entry and hence, the assessee would be entitled for deduction at 10%. This leaves us one more item, namely, typewriter.

7. As far as machinery and plant are concerned, Clause III of Appendix-I gives the rate of depreciation in respect of machinery and plant, other than those specifically listed, at 33.33% during the relevant period of time, which was amended to 25% with effect from 1.4.1992 as against the original percentage of 33.33%. The contention of the Revenue herein is that typewriter, as such, could not be brought in under the head of machinery under Entry "Machinery and Plant". Admittedly, there is no definition of what 'machinery' is about. However, in the decision reported in (1964) 53 ITR 165 (Commissioner of Income Tax, Madras Vs. Mir Mohammed Ali), the Apex Court referred to the decision of the Privy Council in the case of Corporation of Calcutta v. Chairman, Cossipore and Chitpore Municipality reported in [1922] I.L.R. 49 Cal. 190 (P.C.), which defined the word "machinery" as under:

" The word ' machinery ' when used in ordinary language prima facie means some mechanical contrivances which, by themselves or in combination with one or more other mechanical contrivances, by the combined movement and inter-dependent operation of their respective parts generate power, or evoke, modify, apply or direct natural forces with the object in each case of effecting so definite and specific a result. "

Thus the Apex Court considered the meaning of the word 'machinery' and pointed out that the word is not a technical term and in the absence of any definition under the Act, ordinary meaning would prevail. Indeed Rule 8 of the Income Tax Rules treats aero-engines separately from aircraft, but this cannot be used to interpret the clauses in the Act that what was purchased and installed was machinery and after installation, a wider meaning has to be given to the said term.

8. In the decision reported in (2000) 244 ITR 192 (Commissioner of Income Tax Vs. Anand Theatres), the Apex Court applied this principle in construing whether the hotel premises could be considered as a plant.

9. As far as the present case is concerned, we are concerned about typewriter being treated as a machinery. Applying the decision of the Apex Court reported in (1964) 53 ITR 165 (Commissioner of Income Tax, Madras Vs. Mir Mohammed Ali), we hold that typewriter is a machinery entitled to depreciation at 25% and not at 33 1/3 %, as had been held by the Tribunal.

10. Learned counsel appearing for the assessee submitted that the order of the Tribunal relating to the previous years have not been, in any manner, disturbed by filing Tax Case (Appeals). In the circumstances, the view of the Tribunal may be accepted.

11. We do not find any good ground to accept the line of reasoning, particularly when the claim is relating to depreciation. Given the different percentage of depreciation in respect of plant and machinery and the object of granting depreciation is to get a true picture of the real income of the business, we have no hesitation in accepting the plea of the Revenue that as far as assessment year 1992-93 is concerned, the furniture and fittings are to be granted depreciation at 10% and the typewriter as machinery at 25%. Hence, the second question is answered in favour of the Revenue.

12. Accordingly, this Tax Case (Appeal) is partly allowed. No costs.

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To

1. The Income Tax Appellate Tribunal, "C" Bench, Chennai.
2. The Commissioner of Income Tax (Appeals) VI, Madras.
3. The Assistant Commissioner of Income Tax, Company Circle I

Trichy