

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.03.2019

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

Tax Case Appeal No. 159 of 2009

M/s. Sundaram Finance Limited.,
21, Patullos Road
Chennai – 600 002.

Appellant / Respondent

Vs.

The Assistant Commissioner of Income Tax
Company Circle VI(4)
Chennai.

Respondent//Appellant

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'C' Bench, Chennai, dated 17.04.2008 made in ITA No.1075/Mds/2006.

For Appellant : Mr.R.Vijayaraghavan

For Respondent : Mr. T.Ravikumar
Senior Standing Counsel

J U D G M E N T

(Delivered by **DR.VINEET KOTHARI, J**)

This Tax Case Appeal has been filed by the Assessee raising the following substantial questions of law arising from the order of the Income Tax Appellate Tribunal dated 17.04.2008 for the Assessment Year 2002-2003. The questions are quoted below for ready reference:-

“(i) Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding the amount received towards Capital Subsidy from M/s. Royal Sun and Alliance Plc, for infusion of additional capital by the appellant in the joint venture company as per the terms of Letter of Intent, dated 05.04.2000 is revenue receipt chargeable to tax?;

(ii) Whether, on the facts and in the circumstances of the case, the Tribunal was right in not holding that the bad debts recovered by the Appellant, which were written off and allowed as deduction in respect of companies which got amalgamated with the appellant company, should not be taxed in the hands of the appellant?;

(iii) Whether on the facts and in the circumstances of the case the Tribunal was justified in directing the assessing officer to reexamine the issue regarding the allowability of bad debts recovered in view of Section 41(1)(b) as well as Section 41(4) of the Act ignoring the decision of the Madras High Court in the case of CIT Vs. P.K.Kaimal (123 ITR 755)?;

(iv) Whether, on the facts and in the circumstances of the case, the Tribunal was right in treating the amount of Rs.99,02,600/- collected as contingent deposit towards disputed sales tax as income of the appellant?"

2. Question Nos. 2, 3 and 4 are not pressed by the learned counsel for the appellant/ Assessee.

3. As far as the Question No.1 quoted above is concerned, the learned counsel for the Assessee relying upon the decision of the Hon'ble Supreme Court in the case of **Siemens Pub. Communication Network Pvt. Ltd., Vs. Commissioner of Income Tax and Anr.**, reported in (2017) 390 ITR 0001 (SC) allowing the Assessee's Appeal against the decision of the

Karnataka High Court Division Bench held in the case of *CIT Vs Siemens Public Communication Networks Limited.*, reported in (2014) 265 creditor (KAR) 0532, wherein the Hon'ble Supreme Court has held following the Judgement in the earlier case of *Sahney Steel & Press Works Limited., Vs. CIT* reported in (1997) 7 SCC 764 and *CIT Vs. Ponni Sugaars and Chemicals Limited* reported in (2008) 9 SCC 337, that unless the grant-in-aid received by the Assessee is utilised for acquisition of an asset, the same must be understood to be in the nature of a revenue receipt. The Court held that voluntary payments made by the parent company to its loss making Indian Company can also be understood to be payments made in order to protect the capital investment of the Assessee Company. If that is so, the payments made to the Assessee Company by the parent Company for the Assessment Years in question cannot be held to be revenue receipts.

4. The facts of the present case are that under the Letter of Intent, Royal and Sun Alliance Insurance Plc (RSA), a leading UK based Insurance Company entered into an Agreement with the present Assessee Company M/s. Sundaram Finance Limited., (SFL) to start a new joint venture M/s. Royal Sundaram Alliance Insurance Company Ltd., in the insurance sector

and initially for restraining the Assessee Company, not to enter in the Insurance Sector, the said UK Company agreed to pay a Non Compete fees of a lumpsum amount of 2.4 million pounds. It was also agreed that the start up capital shall be Rs.100 Crores, of which RSA shall subscribe 26% at par and SFL shall subscribe 50% at par and the balance by one or more mutually accepted by third parties. The said Letter of Intent further provided that if at the time of finalisation of Shareholders Agreement, it is found that SFL is required to further infuse equity during the initially agreed pay-back period, RSA will make a compensatory payment to SFL if, an amount to be mutually agreed, before the finalisation of the Shareholders Agreement.

5. The learned counsel Officer Assessee Mr.Vijayaraghavan submitted that during the Assessment year 2002-2003 in question, the Assessee under the said Agreement with RSA, received a capital subsidy of Rs.2,11,75,000/- to invest in the equity share capital in the joint venture Company known as M/s. Royal Sundaram Alliance Insurance Company Limited. He submitted that though the Assessing Authority found in the Assessment Order dated 28.03.2005 that the said amount of

Rs.2,11,75,000/- was received by the Assessee SFL Company from RSA, UK towards capital subsidy for subscribing to the share capital of the joint venture company and it was actually so invested or for subscription to capital of the said joint venture company, but still the Assessing Authority brought to tax the said capital subsidy received by the Assessee Company from RSA treating the same as Revenue Receipt in the said Assessment Order. The observations of the Assessing Authority in this regard are quoted below for ready reference:-

“The Assessee is taking the shelter of the specific clause in the Letter of Intent for claiming that the said receipt is a capital receipt/capital subsidy which is not taxable. However, how is it true? Is the payment really in pursuance of the said clause? Any prudent business house would not return back a part of the capital subscribed by the share holders. So far, this practice is unheard of. It is a very unusual payment. Therefore, the totality of the events need to be considered before deciding whether the said receipt is really in pursuance of the said clause. While considering so, from the above background discussed, it can be

easily inferred that the over-riding effect for making the payment is the business relationship which is mutually beneficial to both the parties and not only the specific clause pin-pointed by the assessee. What is needed to be considered here is that if the RSA of UK had made a alliance with any other Tom, Dick & Harry (from India, of course) would they have made a similar payment to them. If one would search for the answer of this question, one would realise that it would not had been so in that case.”

6. Similarly the learned Tribunal also negated the claim of the Assessee with the following observations:-

“6. We have considered the rival submission carefully in the light of the material on record. We are unable to agree with the submissions of the learned counsel for the Assessee because he has failed to impress us as to why a third party should pay any money when the Assessee Company was contributing to the capital of the joint venture in the pre determined ratio. The Assessing Officer has clearly noted that

originally, initial capital indicated by joint venture partners was Rs.100 crores. No capital subsidy was received by the Assessee from the joint venture partner RSA at this point of time. Then why the Assessee firm should receive the subsidy of Rs.2.11 crores when again total capital contribution made by the joint venture partners was Rs.100 crores, out of which Sundaram Finance Group's share was only Rs.7.4 crores and that of the Assessee was Rs.4.80 crores. It is a common knowledge that in an insurance sector, foreign investment has been allowed to the extent of 26%. That is why RSA has been contributing only at 26% of the joint venture capital and the balance has been contributed by the Assessee along with other Sundaram Finance Group companies. Para 5 of the Indent Letter quoted by the learned counsel for the Assessee reads as under:-

“The joint venture will look to RSA to contribute its insurance underwriting, claims handling and management expertise and its access to the international RSA Group network.”

The above paragraph clearly shows that

RSA wanted to utilise management expertise of Assessee Company. In any case, no details for working out this capital subsidy were filed before the lower authorities or even before us. In this regard, para B9 of the Assessment Order which is reproduced below is important:-

“This view is confirmed because the Letter of Intent does not specify the amount payable and also the Assessee has failed to give the basis of the working of the amount received by it. In view of this, it is presumed that the quantum of Insurance business generated through the broad clientele base of the Assessee and the utilisation of the Assessee's existing branch office net work, knowledge, markets, distribution techniques etc., is driving factor and the consideration for the payment made by the RSA of UK to the Assessee of Rs.2,11,75,000/-.”

7. The Hon'ble Supreme Court in the case of CIT vs. T.V.Sundaram Iyengar & Sons Limited., (222 ITR 345) has observed that:-

“if a commonsense view of the matter were taken, the Assessee, because of the trading

operation, had become richer by the amount which it transferred to its profit and loss account. The moneys had arisen out of ordinary trading transactions. Although the amounts received originally were not of income nature, the amounts remained with the Assessee for a long period unclaimed by the trade parties. By lapse of time, the claim of the deposit became time-barred and the amount attained a totally different quality. It became a definite trade surplus. The Assessee itself had treated the money as its own money and taken the amount to its profit and loss account. The amounts were assessable in the hands of the Assessee.”

Similarly, the Hon'ble Delhi High Court in the conviction and sentence of CIT vs. State Trading Corporation of India Ltd., (247 ITR 114) has held that even receipt of forfeited Security Deposit was to be treated as revenue receipt. Similar view was taken by the Hon'ble jurisdictional High Court in the case of CIT v. Sundaram Industries Limited., (253 ITR 396) where when customers' sundry credit balance was written back the same was held to be revenue receipt. Therefore, we set aside the order of the

CIT (Appeals) and restore that of the Assessing Officer on this issue.”

7. The learned counsel for the Assessee therefore submitted that the authorities below have erred in treating the said capital subsidy received by the Assessee for investing in the share capital of the joint venture company as a Revenue Receipt and submitted that the appeal of the Assessee therefore deserves to be allowed.

8. However, the learned counsel for the Revenue has opposed the submissions and urged before this Court that since the Assessee failed to submit the details before the Assessing Authority including the shareholders agreement, the authorities below were justified in treating the said receipt as a revenue receipt taxable in the hands of the Assessee Company.

9. Having heard the learned counsel for the parties, we are satisfied that the Appeal of the Assessee on the aforesaid question No.I quoted above deserves to be allowed. The Agreement between the two parties in question clearly stipulated that both intended to set up a new joint

venture company to enter into the insurance sector and since, for making the investment in the share capital, the Indian Company SFL the Assessee before us fell short of money, the UK Company RSA gave the capital subsidy to the Assessee Company to contribute its share in the share capital of the joint venture company in terms of the Letter of Intent. It may be noted here that 74% of the total subscription share capital was to be invested by the Indian Companies including the Assessee company and only 26% of share capital was to be invested by the RSA (UK Company). There is no material on record to show that the said capital subsidy received by the Assessee Company during the year in question was diverted by the Assessee company for any other purpose except for being invested in the share capital of the joint venture company. This money has not been utilised as subscribing the share capital of the UK Company, RSA itself though the Assessee Company SFL. There is no evidence on record brought by Revenue to establish that the insurance business of the joint venture company had already started and the said remittance of Rs.2,11,75,000/- was made by the UK company RSA against any such services rendered by the Assessee Company SFL to the said UK based Company RSA. Therefore, we are unable to accept the contention of the

learned counsel for the Revenue that the said subsidy or remittance was received for any business link or services rendered by the Assessee to the UK based Company RSA. It is undoubtedly, a capital receipt in the hands of the Assessee Company and cannot be brought to tax as Revenue Receipt, particularly in the face of the finding of the Assessing Authority himself that the subsidy or remittance so received from RSA had been invested by the Assessee Company in the share capital of the joint venture Company M/s. Royal Sundaram Alliance Insurance Company Limited.

10. Therefore, the question No.I framed above is answered in favour of the Assessee and against the Revenue. Accordingly, the Appeal of the Assessee is allowed. No order as to costs.

(V.K., J.) (C.V.K.J.)
06.03.2019

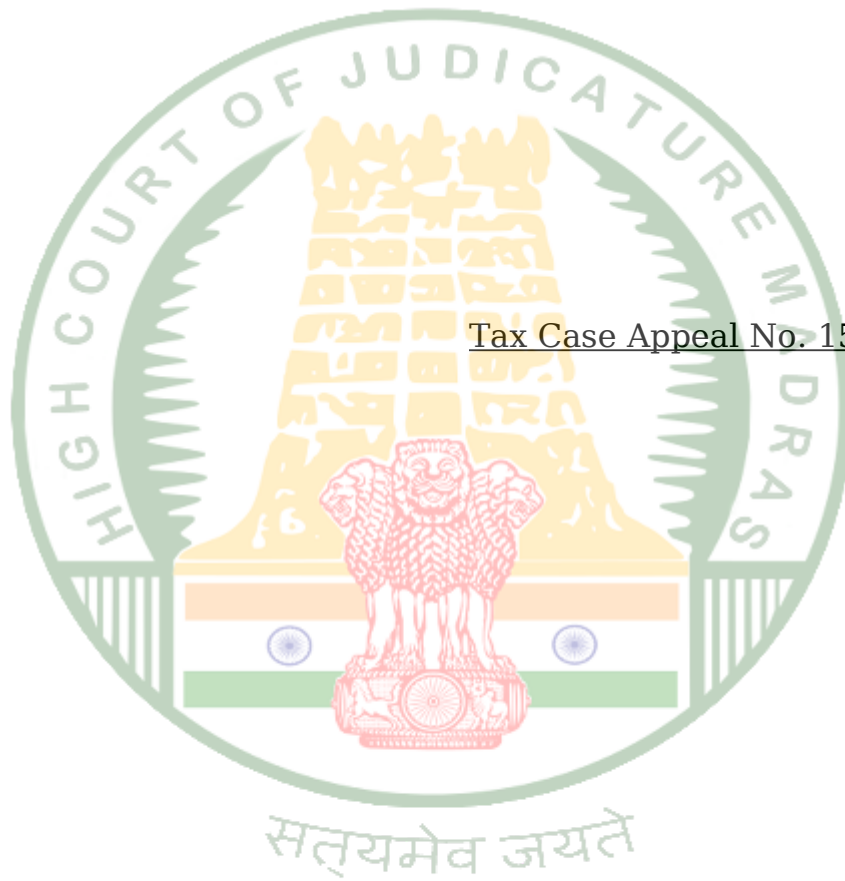
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