

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED:07.12.2017
Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

and

The Honourable Mr.Justice K.RAVICHANDRABAABU

Tax Case Appeal No.588 of 2017

M/s.India Cements Capital and Finance Limited, Chennai-2.Appellant/Respondent

Vs

The Assistant Commissioner of Income Tax, Company Circle-II(3), Chennai.Respondent/Appellant

APPEAL under Section 260A of the Income Tax Act, 1961 against the order dated 11.8.2016 made in ITA.No.1626/Mds/2012 on the file of the Income Tax Appellate Tribunal, Madras 'C' Bench for the assessment year 2006-07.

For Appellant: Mr.R.Venkatanarayanan for
M/s.Subbaraya Aiyar Padmanabhan
For Respondent:Mr.Karthik Ranganathan, SSC

Judgment was delivered by T.S.SIVAGNANAM, J
Heard both. By consent, the above tax case appeal itself is taken up for final disposal.

2. This appeal is directed against the order passed by the Income Tax Appellate Tribunal, 'C' Bench, Chennai made in ITA.No.1626/Mds/2012 dated 11.8.2016, raising the following substantial questions of law :

"i. Whether on the facts and circumstances of the case, the Tribunal was right in law in holding that there is a remission of liability to the extent of Rs.43 Crores in favour of assessee company and has to be taxed under Section 41(1) of the Act while the entire assets and liabilities at book value was transferred to a special purpose vehicle M/s.Unique Receivable Management P. Ltd. and there being no waiver or benefit accruing to assessee on account of transfer ?

ii. Whether on the facts and circumstances of the case, the Tribunal was right in law in holding that there was a categorical finding of cessation/ remission of liability under Section 41(1) of the Act by the Tribunal in its earlier order dated 03.4.2012 in ITA.No.871/Mds/2011 without appreciating that the Commissioner of Income Tax (Appeals) in his order under Section 263 of the Act has not finally adjudicated the issues ?

iii. Whether on the facts and in the circumstances of the case, a passing remark by the Tribunal in its earlier order dated 03.4.2012 in ITA. No.871/Mds/2011 confirming the revision order under Section 263 can be construed as a categorical finding of cessation/remission of liability under Section 41(1) of the Act ? and

iv. Whether on the facts and in the circumstances of the case, the provisions of Section 41(1) of the Act are attracted in respect of waiver of loans, which have not been allowed as a deduction earlier ?"

3. The present appeal arose out of an order passed by the Income Tax Appellate Tribunal, by which, the Revenue's appeal was allowed and the deletion of addition made on account of cessation of bank liability to the extent of Rs.46.05 Crores, as ordered by the Commissioner of Income Tax (Appeals) vide order dated 25.5.2012, was set aside and the order passed by the Assessing Officer dated 13.12.2011 was affirmed.

4. The short issue, which falls for consideration, is as to whether the Tribunal had independently considered the correctness of the order passed by the Commissioner of Income Tax (Appeals) holding that there was a reduction on the liability in the hands of the assessee and the liability was on the transferee - the Special Purpose Vehicle (SPV), which is evident from Clause 5 of the agreement entered into between the parties. Thus, on a consideration of the terms and conditions stipulated in the tripartite agreement, the Commissioner of Income Tax (Appeals) held that there was no liability in the hands of the assessee, because the liability had been transferred to the SPV.

5. The reason for considering this issue arose on account of an earlier order passed by the Income Tax Appellate Tribunal in ITA.871/Mds/2011 dated 03.4.2012 in the assessee's own case. The said appeal was filed by the assessee relevant to the same assessment year namely 2006-07 challenging an order passed under Section 263 of the said Act dated 16.3.2011. In the said order, in paragraph 13, the Tribunal made the following observation,

which is as hereunder :

"Therefore, it is clear that prima facie, there is a remission of liability in favour of the assessee company. This paramount issue ought to have been examined by the Assessing Authority in the assessment order."

The above observation made by the Tribunal ultimately led to the impugned order, which has been passed by the Tribunal.

6. The Commissioner of Income Tax (Appeals) was satisfied with the assessee's contention and had allowed the appeal. Thus, it is to be seen as to whether the finding rendered by the Commissioner of Income Tax (Appeals) was just and proper. Paragraph 7 of the impugned order has dealt with the said issue in the following lines :

"In our opinion, since there is a categorical finding of the Tribunal that there was a cessation/ remission of liability under Section 41(1) of the Act on earlier occasion confirming the order of the learned Commissioner of Income Tax passed under Section 263 of the Act, wherein the learned Commissioner of Income Tax directed the Assessing Officer to verify from the assessment records whether interest/depreciation/hire charges or any other expenditure related to bank liability has been claimed and allowed by the Assessing Officer in the earlier years and if 'yes', the taxability of the remission of bank liability should be examined by the Assessing Officer under relevant provisions of the Act. The learned Assessing Officer, consequent to this, examined the issue and observed that there is remission of bank liability accrued to the assessee at Rs.46.05 Crores. Contrary to this, learned Commissioner of Income Tax (Appeals) observed that there was no cessation of liability in the hands of the assessee and it was only in the hands of URMP (SPV) and if any cessation is to be considered in the hands of URMP, we are not in a position to uphold the argument of the learned authorized representative as held by the Tribunal on earlier occasion. There is a remission of liability in favour of assessee company and the liability payable to the bank has been reduced to Rs.43 Crores and it has to be brought to tax in the hands of

assessee only under Section 41(1) of the Act. Accordingly, the ground raised by the Revenue is allowed."

7. From the above extracted paragraph, it is evident that the Tribunal, after noting the finding rendered by the Assessing Officer, observed that the Commissioner of Income Tax (Appeals) held that there was no cessation of liability in the hands of the assessee and it was only in the hands of the SPV and that if any cessation is to be considered, it has to be in the hands of the SPV. However, the Tribunal, while holding that the said finding of the Commissioner of Income Tax (Appeals) is not proper, did not render an independent finding, but was rather guided by the finding rendered by it in its earlier order dated 03.4.2012 referred above.

8. On a reading of paragraph 13 of the earlier order, which we have extracted above, we find that the Tribunal did not render a final finding, but it was of the prima facie view that there is a remission of liability in favour of the assessee company and that this is the paramount issue, which the Assessing Officer has to examine. Thus, the Assessing Officer, having examined and held against the assessee, which decision was reversed by the Commissioner of Income Tax (Appeals), the Tribunal should consider as to whether the Commissioner of Income Tax (Appeals) was justified in rendering a finding to the effect that there was reduction on the liability in the hands of the assessee. However, the Tribunal did not do so, but was solely guided by the observations made by it in the earlier order. We are of the considered view that as the earlier order was of the prima facie view, the Tribunal is required to consider independently as to whether the finding rendered by the Commissioner of Income Tax (Appeals) is proper or not and that the matter should be remanded to the Tribunal for a fresh consideration.

9. Accordingly, the above tax case appeal is allowed, the impugned order is set aside and the matter is remanded to the Tribunal for a fresh consideration uninfluenced by the observations made in paragraph 13 of the earlier order passed by the Tribunal dated 03.4.2012. Since we have remanded the matter for a fresh consideration, it is open to both parties to raise all factual and legal contentions before the Tribunal. No costs.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1 The Income Tax Appellate Tribunal, Madras 'C' Bench.

2 The Commissioner
Income Tax Appeals III,
121, Mahatma Gandhi Road,
Chennai-34.

3 The Assistant Commissioner of
Income Tax, Company Circle-II(3),
Chennai.

+2cc to Mr.Karthik Ranganathan, Advocate SR.No.87811 & 87465

+1cc to Mr.Subbaraya Aiyar, Advocate SR.No.87050

TCA.No.588 of 2017

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