

(2005) 10 MAD CK 0020

In the Madras High Court

Case No : T.C. No's. 1012 and 1013 of 2005

T.N. Power Finance and Infrastructure Development
Corporation Ltd.

APPELLANT

Vs

The Joint Commissioner of Income Tax, Special Range-X

RESPONDENT

Date of Decision : 26-10-2005

Acts Referred:

Income Tax Act, 1961 — Section 143(1), 154, 28, 36, 36(1)

Citation : (2007) 213 CTR 610 : (2006) 280 ITR 491 : (2006) 153 TAXMAN 466

Hon'ble Judges : P.D. Dinakaran, J;N. Kannadasan, J

Bench : Division Bench

Advocate : P.P.S. Janarthana Raja, for the Appellant;

Final Decision : Dismissed

Judgement

P.D. Dinakaran, J.—Against the order of the Appellate Tribunal in ITA.Nos. 1864 & 1865/Mds/2000, dated 27.11.2001, the assessee has

preferred the appeals and raised the following common substantial question of law:

Whether the Tribunal is correct in upholding the order of the Commissioner of Income Tax (Appeals) in disallowing provisions for non-

performing assets which was debited to profit and loss account?

2. The assessee is the appellant. The assessment year involved is 1998-99. The assessee engaged in the business of providing long term finance for

infrastructure development, in the return for the assessment year 1998-99 , admitted a total income of Rs. 5,16,48,010/- which was processed u/s

143(1)(a) of the Income Tax Act. The assessing officer issued a notice u/s 154 of the Act calling upon the assessee to show-cause as to why the

provision for non-performing assets which is debited to profit and loss account

should not be disallowed in view of Explanation to Section 36(vii)

(a) of the Act. Even though the assessee filed a reply, the assessing officer held that any provision debited to profit and loss account cannot be

allowed as a deduction unless it is an ascertained liability as the provision made by the assessee is only contingent in nature. On appeal, the

Commissioner of Income Tax (Appeals) held that non-performing assets related to capital goods/assets whereas bad and doubtful debts were

revenue in nature/trade related and the direction of the Reserve Bank of India could not override the mandatory provisions of the Act. Even in the

rectification petition filed by the assessee, the Commissioner (Appeals) held that the fact that the debts of the assessee doing the business of

financial investments in power sector, etc., were revenue in nature had already been considered and accordingly, rejected the plea of the assessee

for rectification. The Appellate Tribunal confirmed the order of the Commissioner (Appeals). The said order of the Appellate Tribunal is put in

issue in the present appeals.

3. Section 36(1)(vii) of the Income Tax Act reads as follows:

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--

xxxx

xxxx

(vii) subject to the provisions of Sub-section (2), the amount of any debt, or part thereof, which is established to have become a bad debt in the

previous year;

Provided that in the case of an assessee to which clause (vii) applies, the amount of the deduction relating to any such debt or part thereof shall be

limited to the amount by which such debt or part thereof exceeds the credit balance in the provision for bad and doubtful debts account made

under that clause.

Explanation:- For the purpose of this clause, any bad debt or part thereof written off as irrecoverable in the accounts of the assessee shall not

include any provision for bad and doubtful debts made in the account of the assessee.

4. Even though the assessee has raised a ground to the effect that the debts have been incurred in the course of business and the purpose for which

the finance was used by the other party is not relevant for allowing the deduction of debts written off and hence, Section 36(1)(vii) would apply,

the learned Counsel appearing for the assessee has fairly submitted that the assessee is not entitled to deduction, in view of Explanation to Section

36(1)(vii) which says that the provision for bad and doubtful debts made in the accounts of the assessee is not an allowable deduction.

5. Further, the Commissioner (Appeals), on the facts of the case, found that merely because the Reserve Bank of India has directed the assessee

to provide for non-performing assets, that direction cannot override the mandatory provisions of Income Tax Act contained in Section 36(1)(viiia)

which stipulate for deduction not exceeding 5% of the total income only in respect of provision for bad and doubtful debts which are the

predominately revenue in nature or trade related and not for provision for non-performing assets which are of predominately capital nature, and

held that the assessing officer was right in disallowing the provision of Rs. 30 lakhs debited in the profit and loss account of the assessee towards

non-performing assets.

6. In this view of the matter, we are of the view that the Appellate Tribunal was right in upholding the order of Commissioner of income

tax(Appeals) in disallowing provisions for non-performing assets which was debited to profit and loss account. Accordingly, the question of law is

answered in the affirmative, against the assessee and in favour of the Revenue. The appeals are dismissed. No costs.