IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL (IT) NO. 256 OF 2016

L & T Finance Limited, Taxation ]
Department, Floor 5, City 2, Plot No.177 ]
CST Road, Kalina, Santacruz(E), ]
Mumbai 400098 ] …Appellant.

Vs.

DCIT, Circle 2(2), Room No.545, 5th Floor ]
Ayakar Bhavan, M.K.Road, ]
Mumbai 400 020 ] …Respondent.

INCOME TAX APPEAL (IT) NO. 267 OF 2016

L & T Finance Limited, Taxation ]
Department, Floor 5, City 2, Plot No.177 ]
CST Road, Kalina, Santacruz(E), ]
Mumbai 400 098 ] …Appellant.

Vs.

DCIT, Circle 2(2), Room No.545, 5th Floor ]
Ayakar Bhavan, M.K.Road, ]
Mumbai 400 020 ] …Respondent.

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Mr Niraj Sheth a/w Mr Atul K. Jasani for the appellant in both appeals.

Mr P.C.Chhotaray for the Respondent in both appeals.
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CORAM : S. C. DHARMADHIKARI &
B.P.COLABAWALLA, JJ.

RESERVED ON : 27th August, 2018 PRONOUNCED ON : 17th September, 2018 JUDGMENT [ Per B. P. Colabawalla J. ]:

1. By these two appeals filed under Section 260-A of the Income Tax Act, 1961 (for short “I. T. Act, 1961”), the appellant – assessee takes exception to the common Judgment and Order dated 5th May, 2015, passed by the Income Tax Appellate Tribunal (for short “ITAT”). The ITAT, by the impugned order, upheld the order of the CIT(A) who inter alia held the gain arising to the assessee on account of securitization of lease receivables and credited to the Profit & Loss Account of the assessee was a taxable receipt in the current assessment year. Income Tax Appeal No.256 of 2016 is with reference to A.Y. 2002-03 and Income Tax Appeal No.267 of 2016 is with reference to A.Y. 2003-04.

2. In the Memo of Appeal of Income Tax Appeal No.256 of 2016 what is submitted is that the impugned order gives rise to the following substantial questions of law, which read thus:

“(1) Whether on the facts and in the circumstances of the case and in law, the Tribunal was right in holding that the amount of Rs.1.69 Crores credited to the profit and loss account on account of securitization of lease rentals receivable in subsequent years is chargeable to tax in the assessment year 2002-03 ?.

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(2) Whether on the facts and in the circumstances of the case and in law, the Tribunal was right in holding that the amount of Rs.1.69 Crores is chargeable to tax merely because the same is credited to the profit and loss account of the Appellant?

(3) Whether on the facts and in the circumstances of the case and in law, the Tribunal was right in holding that the amount of Rs.1.69 Crores was chargeable to tax in assessment year 2002-03 when the whole amount of Rs.9.33 Crores has been offered and assessed to tax in subsequent years”

3. In the Memo of Appeal in Income Tax Appeal No.267 of 2016, identical questions are raised except that the Assessment Year is different and the amount mentioned therein is also different.

Barring this, the questions are identical. Since both the appeals are factually similar and common questions of fact and law arise in both the appeals, they are being disposed of by this common judgment. For the sake of convenience, we shall refer to the pleadings and facts as set out in Income Tax Appeal No. 256 of 2016.

4. Before dealing with the legal submissions, it would be apposite to refer to some necessary facts. The appellant – assessee is a company registered under the Companies Act and is registered as a non-banking Finance Company with the Reserve Bank of India inter alia engaged in the business of leasing, hire purchase and other financial activities. According to the appellant, for the financial years 2001-02 ( i.e. Assessment Year 2002-03) the appellant securitized rent receivables from April-2002 to March-2004. The total amount receivable during the aforesaid period was Rs.10.39 Crores which was securitized at the rate of 10.50% for the net present value at Rs.9.33 Crores. This amount of Rs.9.33 Crores was received by the appellant in financial year 2001-02 (A.Y. 2002-03) but which related to the financial years 2002-03 and 2003-04. According to the appellant, this amount of Rs.9.33 Crores received on securitization, was adjusted against the outstanding rent receivable of Rs.7.64 Crores in the books of accounts of the appellant and the balance amount of Rs.1.69 Crores was recognized as a profit on securitization of lease receivables in the profit and loss account of the appellant. The appellant, accordingly, filed its return of income for the A.Y. 2002-03 on 29th October, 2002.

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5. Thereafter, the appellant's return was selected for scrutiny. After scrutinizing the return filed by the appellant, the Assessing Officer (for short "A.O."), vide his assessment order under Section 143(3) of the I. T. Act, 1961 added an amount of Rs.1.69 Crores as an income of the appellant on the ground that the appellant- assessee itself had credited this amount to its profit and loss account. He held so, taking into consideration, that the gain related to the business of the appellant and also arose in the normal course of business carried on by the appellant. The A.O. also relied upon a decision of the Supreme Court in the case of CIT Vs T.V.Sunderam Iyengar & Sons Ltd. (222 ITR 344) to hold that this amount of Rs.1.69 Crores was a revenue receipt and hence was taxable in the hands of the appellant.

6. Being aggrieved by the order of the A.O. passed under Section 143(3) of the I.T.Act, 1961, the appellant filed an appeal before the Commissioner of Income Tax (Appeals) [for short "CIT(A)"]. After hearing the appellant, the CIT(A) vide his order dated 7th April, 2010 inter alia confirmed the addition of Rs.1.69 Crores as a gain received on account of securitization of lease receivables. The CIT(A) rejected the argument of the appellant that the gain represented only a notional income by holding that this contention was contrary to the effect given by the appellant themselves in the profit and loss account, where the said amount was credited. The CIT(A) further held that the appellant had entered into a business transaction of securitization of lease receivables, and accordingly, the amount of Rs.1.69 Crores was chargeable to tax.

7. Being dis-satisfied with the order of the CIT(A), the appellant approached the ITAT. The ITAT vide its order dated 5th May, 2015 also confirmed the addition of Rs.1.69 Crores for the reasons stated therein. This is how both these appeals have come up before us.

8. We have carefully gone through the papers and proceedings in the present appeals including the orders passed by the A.O., CIT(A) as well as the impugned order of the ITAT. The A.O. in his order, has inter alia recorded that in the return of income filed by the assessee it reduced from its profit, as per the profit and loss account, the gain on account of securitization of lease receivables amounting to Rs.1.69 Crores (approximately). For this, the assessee was asked a question by the A.O., why the same amount should not be taxed treating it as a revenue receipt. To this the assessee's reply was that this amount represents a notional gain arising on account of an accounting entry and not real income. It further contended that income tax can be levied only on the amount of real income and not on hypothetical income. In support of this proposition, the assessee relied upon several judgments before the A.O. Over and above this, the assessee also contended that this notional income was in the nature of a capital receipt, and therefore, could not be subjected to tax.

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9. After considering the submissions of the assessee, the A.O. held that this gain of Rs.1.69 Crores related to the business of the assessee and also arose in the normal course of its business. This gain arose to the assessee in view of its contractual right with the banking company with whom transaction was entered into. Furthermore, the assessee himself had credited the receipt of this amount to its profit and loss account. Taking all this factual material into consideration, the A.O. came to the conclusion that the receipt of Rs.1.69 crores was taxable as it was a revenue receipt in view of the decision of the Supreme Court in the case of T.V. Sunderam Iyengar (supra).

10. As far as the order of the CIT(A) is concerned, after considering the factual aspects of the matter in paragraphs 6 and 7 therein, the CIT(A) in paragraph 8 held that he found no merit in the contentions canvassed by the appellant. The CIT(A) recorded that the appellant himself had accounted for such receipts as an income in the books of accounts which is contrary to the claim of the assessee that the said sum of Rs.1.69 crores was only

a notional income. The CIT(A) gave a categorical finding that the approach of the appellant is contradictory to say the least. The CIT(A) found that the appellant, by entering into the securitization of lease receivables with Development Credit Bank availed of finance for its business purpose. As a result, there was a gain to the appellant representing the difference between the amount financed and the amount shown as outstanding in the Loans and Advance account. The appellant had deferred such gains over a period of two years and credited the sum of Rs.1.69 crores to the profit and loss account of the year under consideration (A.Y. 2002-03). It was not the case of the appellant that said sum represented a capital receipt being not taxable. In these circumstances, the CIT(A) came to the conclusion that the A.O. had rightly pointed out that the said income had been earned in the course of the regular business activities carried on by the appellant and was, therefore, revenue in nature. The order of the A.O., was accordingly upheld.

11. When this order of the CIT(A) was carried in appeal before the ITAT, the ITAT in the impugned order took note of the factual aspects of the matter and in paragraph 13 recorded that the appellant – assessee himself had accounted for receipt of the sum of Rs.1.69 Crores as an income in its books, whereas it was contended that it was notional income. After noting the factual aspects, the ITAT, having regard to the facts and circumstances of the case came to the conclusion that it found no infirmity in the order passed by the CIT(A) and hence confirmed the same.

12. Looking to all these facts, we fail to see how the questions of law reproduced by us above, give rise to any substantial question of law. The finding given by the A.O. as well as CIT(A) and the ITAT are purely based on the factual aspects of the matter. As noted by the authorities below, the appellant – assessee itself treated the receipt of Rs.1.69 Crores as an income in their profit and loss account. It was their contention before the authorities below that this receipt was a capital receipt and hence not taxable. This was answered by the authorities below, and in our view correctly so by relying upon the decision of the Supreme Court in the case of the Commissioner of Income Tax Vs. T.V. Sunderam Iyanger & Sons Ltd. reported in 222 ITR 344. This being the case, we do not find that the questions of law as proposed by Mr Sheth, the learned counsel appearing on behalf of the appellant, raise any substantial question of law that require any consideration by us.

13. Faced with this situation, Mr Sheth sought to argue before us, for the first time, that the appellant was entitled in law to spread over this income of Rs.1.69 crores over a period from years 2002 to 2004 on the basis of the “Matching Concept”. He submitted that notwithstanding that the entire amount was received in the current year, this spread over could be allowed and should be allowed otherwise it would lead to a distorted picture of the profit of a particular year. He submitted that if the “matching concept” was not applied, then the profit would get wholly distorted which was not in the interest either of the Revenue or of the assessee. In this regard Mr Sheth relied upon a decision of this Court in the case Taparia Tools Ltd. Vs. Joint C.I.T. reported in (2003) 260 ITR 102 (Bom).

14. We are unable to accept this submission. Whether the “matching concept” ought to have been applied in the present case is a mixed question of fact and law, the foundation of which has never been laid by the appellant – assessee before the authorities below. If the factual foundation for this argument has not been laid before the authorities below, no substantial question of law can arise therefrom. We, therefore, reject this argument at the very outset on this ground alone.

15. Be that as it may, we must mention that as far as the decision of this Court in the case of Taparia Tools Ltd. (supra) is concerned, the same did not deal with applying the “matching concept” to “income” but rather to “expenditure”. Whether the same would apply to the income also, is a wholly different matter and which we are not considering in this Judgment. We must also take note of the fact that the decision of this Court in Taparia Tools

Ltd.(supra) was carried in appeal to the Hon'ble Supreme Court and the order of this Court was set aside by the Supreme Court vide its decision dated 23rd March, 2015.

This decision of the Supreme Court is reported in (2015) 372 ITR 605 (SC). The Supreme Court, while setting aside the decision of this Court, inter alia held that there is no concept of deferred revenue expenditure in the I.T.Act, 1961 except under specified sections, i.e., where amortization is specifically provided for such as in section 35D of the Act. The Supreme Court also held that, normally, the ordinary rule is that revenue expenditure incurred in a particular year is to be allowed in that year.

Thus, if the assessee claims the expenditure in that year, the Department cannot deny it. However, in a case where the assessee himself wants to spread the expenditure over a period of ensuing years, it can be allowed only if the principle of the "matching concept" is satisfied, which up to now has been restricted only to cases of debentures. This being the case, we find that the decision of this Court in Taparia Tools Ltd. (supra) being subsequently set aside by the Supreme Court, no reliance can be placed on the said Pg 11 of Judgment by Mr Sheth. As mentioned earlier, whether the 'matching concept' would also apply to "income" is wholly a different matter and which would be considered in an appropriate case, as and when it so arises, provided the factual foundation is laid for the same.

16. In the facts of the present case, there was no factual foundation laid by the appellant – assessee for contending that the "matching concept" was not applied by the authorities below. In fact, on going through the orders passed by the authorities below, the "matching concept" was never even argued or raised before them. We, therefore, find that this argument can never give rise to a substantial question of law in the facts and circumstances of the present case.

17. In view of the foregoing discussion, we find that the present appeals do not give rise to any substantial question of law. They are accordingly dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs.

(B.P.COLABAWALLA J.) (S.C.DHARMADHIKARI J.)