2023:DHC:5346-DB

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision: 20.07.2023*

\+ **ITA 536/2022**

STANDARD CHARTERED GRINDLAYS BANK LTD. .... Appellant

Through: Ms Shashi M Kapila, Adv.

versus

ASSISTANT COMMISSIONER OF INCOME TAX INTERNATIONAL TAXATION CIRCLE-3(1) (2) & ORS. ..... Respondents

Through: Mr Aseem Chawla, Sr Standing Counsel with Ms Pratishtha Chaudhary, Mr Rishabh Nangia, Ms Anuja Pethia, and Mr Aditya Gupta, Advs.

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER
HON'BLE MR. JUSTICE GIRISH KATHPALIA

[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J. (ORAL):

1. We have heard the counsels for the parties for some time. According to us, the appeal requires to be admitted.

1.1 It is ordered accordingly.

2. The following question of law is framed for the consideration by this court:

(i) Whether the Income Tax Appellate Tribunal [in short, "Tribunal"] misdirected itself on facts and in law in disallowing the deduction of Rs.10,78,12,465/- [sic. Rs.10,78,12,469/-], to the appellant/assessee, for

Assessment Year (AY) 2003-04, under Section 36(1)(vii) of the Income Tax Act, 1961 [in short, "Act"]?

3. Since there is no dispute with regard to the facts and circumstances and the question of law, in substance, is a pure question of law, we have heard the counsels for the parties and proceeded to, straightaway, hear arguments, with the consent of the counsels for the parties.

4. In order to adjudicate the present appeal, the following broad facts are required to be noticed:

4.1 The appellant/assessee had filed the return for the Assessment Year(AY) 2003-04 [which is the AY we are concerned with] on 24.11.2003. The appellant/assessee had declared a taxable income amounting to Rs.205,74,29,670/-.

4.2 The appellant/assessee was subjected to scrutiny assessment and its income was pegged by the Assessing Officer (AO) at Rs.306,89,79,738/-. An order dated 24.03.2006 was passed to that effect under Section 143(3) of the Act.

4.3. *Inter alia*, the AO made an addition by disallowing deduction *qua* bad debts to the extent of Rs.10,78,12,469/-.

4.4. Apart from this, the AO has also made an addition with regard to 1/5th of the amortized expenses, amounting to Rs.59,32,163/-, incurred by the appellant/assessee with respect to the Early Retirement Scheme, *qua* which the appellant/assessee had claimed a deduction under Section 35DDA of the Act. The record shows that insofar as this aspect is concerned, the appellant/assessee gave up its claim.

4.5 Continuing with the narrative, since the appellant/assessee was

aggrieved by the aforementioned addition made *qua* bad debts by the AO, it preferred an appeal with the Commissioner of Income Tax (Appeals) [in short, "CIT(A)"]. CIT(A), *via* the order dated 31.10.2018, sustained the assessment order.

5. The appellant/assessee carried the matter in appeal to the Tribunal. The Tribunal, *via*, the impugned order dated 01.08.2022, sustained the decision of the CIT(A).

6. It is in these circumstances that the appellant/assessee has preferred the present appeal under Section 260A of the Act.

7. Ms Shashi M. Kapila, who appears on behalf of the appellant/assessee, has submitted that the authorities below have committed factual and legal errors.

7.1. In this context, Ms Kapila has drawn our attention to paragraph 14 of the impugned order passed by the Tribunal, which alludes to the fact that in the previous AY i.e., AY 2002-03, the profit determined was Rs.215,62,49,368/-.

8. Ms Kapila says that the appellant/assessee had, in fact, filed a loss return. The AO *via* the order dated 18.03.2005 had disallowed the loss claimed and, that the said issue is presently pending adjudication in an appeal [i.e., ITA 87/2020] lodged in this Court.

9. This apart, Ms Kapila says that the authorities below have failed to appreciate the scope and ambit of the provisions in issue, i.e., Section 36(1)(vii), read with Section 36(2) and Section 36(1)(viia) of the Act. It is Ms Kapila's submission that these provisions are independent of each other.

10. Ms Kapila submits that since the appellant/assessee had not created any provision for bad debts in the AY in issue i.e., AY 2003-04, it could straightaway claim, in law, the entire irrecoverable bad debt crystallized for the AY in issue. In support of her plea, Ms Kapila has relied upon the following judgments:

(i) ***Principal Commissioner of Income-tax vs. Khyati Realtors Pvt. Ltd.*** [2022] 447 ITR 167 (SC);

(ii) ***Catholic Syrian Bank Ltd. vs. Commissioner of Income-Tax*** [2012] 343 ITR 270 (SC);

(iii) ***Southern Technologies Ltd. vs. Joint Commissioner of Income-Tax*** [2010] 320 ITR 577 (SC).

11. Mr Aseem Chawla, learned senior standing counsel, who appears on behalf of the respondent/revenue, says he cannot but accept that patent errors of fact have been made by the Tribunal.

12. It is Mr Chawla's contention that, therefore, the matter could be remitted to the AO for correction of errors and the consequent result would follow thereafter.

13. We have heard the learned counsels for the parties and perused the material on record.

14. The following facts are not in dispute:

(i) In AY 2002-03, the appellant/assessee had filed a loss return.

(ii) The AO had passed an order dated 18.03.2005, whereby the loss claimed by the appellant/assessee for AY 2002-03 was disallowed.

(iii) There was clearly no provision made for bad debts available in the succeeding period i.e., AY 2003-04.

(iv) In the AY 2003-04, the appellant/assessee had claimed bad debts amounting to Rs.12,67,00,000/-.

15. Given these facts and the state of the law, as expounded by the Supreme Court in ***Catholic Syrian Bank Ltd.***, in our opinion, the appellant/assessee is entitled to straightaway claim deduction towards irrecoverable bad debts under Section 36(1)(vii) of the Act. There is no dispute that the conditions prescribed under Section 36(2) of the Act stand fulfilled.

15.1. Section 36(1)(vii) and Section 36(1)(viia) of the Act are distinct and independent provisions. An assessee, which includes a scheduled and non-scheduled bank, is entitled to claim deduction of any bad debt or a part thereof which is written off as irrecoverable in the period in issue. The first proviso appended to Section 36(1)(vii) of the Act applies to an assessee to which clause (viia) applies. It is when clause (viia) of sub-section(1) of Section 36 becomes appliable, that the deduction relating to any bad debt or part thereof gets limited to the amount by which such debt or part thereof exceeds the credit balance in the provision made for bad and doubtful debts in the books of accounts of the assessee.

15.2 In this case, the first proviso appended to Section 36(1)(vii) has no applicability, as there was no provision made for bad and doubtful debts. As is well recognised, ordinarily, the Act does not allow for deduction on account of a mere provision for bad and doubtful debts in computation of taxable profits.

15.3. However, the legislature gave this leeway, *inter alia*, to banks and public financial institutions and Non-Banking Financial Companies(NBFCs)

referred to, *inter alia*, in various sub-clauses of clause (viia) of Section 36(1), *albeit*, up to a specified percentage. Illustratively, sub-clause (a) incudes, *inter alia*, scheduled and non-scheduled banks and cooperative banks whose rural branches have given advances. Likewsie, sub-clause (b) of clause (viia) of Section 36(1) alludes to a bank incorporated by or under laws of a country outside India. Since the appellant/assessee was incorporated under laws of the UK, it would thus, fall under the aforementioned sub-clause.

15.4. Notably, Sub-section 2(v) states that where a debt or part of debt relates to advances made by an assessee to which clause (viia) of Section 36(1) applies, no such deduction would be allowed unless the assessee has debited the amount of such debt or part of the debt in the previous year in issue, to the provision made for bad and doubtful debts in the accounts of the assessee. Thus, as would be evident, the scheme of the aforementioned provisions would exclude the applicability of the first proviso appended to Section 36(1)(vii) of the Act, as there was no provision for bad debts available in the AY in issue i.e., AY 2003-04.

16. The roundabout manner which the Tribunal has followed, appears to be predicated on the fundamental errors of fact. As noticed above, the Tribunal wrongly noted that in AY 2002-03, the profit determined *qua* the AY amounted to Rs.215,62,49,368/-.

16.1 Based on this, it calculated that a provision for bad debts could be created at the rate of 5%, which was Rs.10,78,12,465/-[sic. Rs.10,78,12,469/-].

16.2 Having regard to this supposed credit balance, the Tribunal allowed a

deduction of Rs.1,88,87,531/- [i.e., the difference between Rs 12,67,00,000 and Rs 10,78,12,469] and thus, disallowed deduction claimed *qua* the remaining amount, which was Rs.10,78,12,469/-.

16.3. In this regard, it must be emphasized that the flawed formula adopted by the AO would run into rough weather if the appellant/assessee's appeal for AY 2002-03 were to be allowed; which would result in its loss return being accepted.

17. According to us, this roundabout manner of arriving at the addition was flawed, both on facts and in law.

18. Having regard to the aforesaid, the question of law, as framed, is answered in favour of the appellant/assessee and against the respondent/revenue.

19. The appeal is disposed of, in the aforesaid terms.

RAJIV SHAKDHER, J

GIRISH KATHPALIA, J

JULY 20, 2023/pmc