IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	02.09.2022
Pronounced On	29.12.2022

CORAM :

THE HONOURABLE MR.JUSTICE **S.VAIDYANATHAN**

AND

THE HONOURABLE MR.JUSTICE **C.SARAVANAN**

T.C.A.No.94 of 2009

M/s.Ashok Leyland Finance Limited,
(A Division of M/s.Indus Ind Bank Ltd),
86, Chamiers Road, Chennai – 600 018.
Now at : 115 & 116, G.N.Chetty Road,
T.Nagar, Chennai – 600 017. ... Appellant

vs.

The Deputy Commissioner of Income Tax,
Company Circle 1(1),
Chennai – 600 034. ... Respondent

Appeal under Section 260A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, "A" Bench, Chennai dated 11th April 2008 in ITA.No.78/Mds/2007.

For Appellant : Mr.R.Vijayaraghavan

For Respondent : Mr.T.Ravikumar
Standing Counsel

J U D G M E N T

S.VAIDYANATHAN, J.
AND
C.SARAVANAN, J.

The assessee has filed this Tax Case Appeal under Section 260A of the Income Tax Act, 1961 [hereinafter referred to as '*Act*'] against the order dated 11.04.2008 passed by the Income Tax Appellate Tribunal [hereinafter referred to as "*Tribunal*"] in I.T.A.Nos.78/Mds/2007.

2. By the common order dated 11.04.2008, I.T.A.No.78/Mds/2007 filed by the appellant was partly allowed and the appeal filed by the respondent Income Tax Department in I.T.A.No.564/Mds/2007 was dismissed. Aggrieved by the same, the assessee has filed this appeal.

3. This appeal was heard along T.C.A No.1025 of 2009. T.C.A No. 1025 of 2009 is being disposed by a separate order. The order impugned in the said appeal arises out of the conclusion arrived by the Tribunal in

the impugned order of the Tribunal in this appeal. The present appeal is confined to issues answered against the appellant in I.T.A.No.78/Mds/2007 filed by the appellant.

4. At the time of admission, the following Substantial Questions of Law were framed:-

i. Whether on the facts and in the circumstances of the case the Tribunal was right in law in holding that the appellant is not entitled to deduction of the provision made in respect of Non-Performing Assets which are considered irrecoverable?

ii. Whether the appellate Tribunal was justified in not appreciating that the provision made in respect of Non Performing Assets if not allowable as a bad debt is allowable as a business loss?

iii. Whether on the facts and in the circumstances of the case the Tribunal was right in law in holding that the appellant is not entitled to deduction of diminution in value of investments?

iv. Whether on the facts and in the circumstances of the case the Tribunal was right in law in holding that the loss computed by the appellant on account of diminution in value of repossessed vehicles is only a notional and unascertained loss and hence cannot be allowed as a deduction?

5. The factual background of the case indicates that the appellant had filed a return of income on 01.12.2003 for the Assessment Year 2003-2004, declaring a total taxable income of Rs.78,65,45,000/- under Section 139 of the Income Tax Act, 1961.

6. A notice under Section 143(2) of the Act was issued to the appellant on 24.12.2004. The assessment was completed on 24.03.2006 under Section 143(3) of the Income Tax Act, 1961 for the Assessment Year 2003-2004. The total income of Rs.91,63,33,629/- was determined in the assessment order dated 24.03.2006.

7. Aggrieved by the order of the Assessing Officer dated 24.03.2006, the appellant preferred an appeal before the Commissioner of Income Tax (Appeals) [hereinafter referred to as "*Appellate Commissioner*"] on 24.04.2006 in I.T.A.No.176/2006-07/A.III. The Appellate Commissioner *vide* his order dated 11.12.2006 confirmed the order of the Assessing Officer dated 24.03.2006.

8. Against the order of the Appellate Commissioner dated 11.12.2006, both the appellant and the respondent Income Tax Department filed separate appeals before the Tribunal in I.T.A.No.78/Mds/2007 and I.T.A.No.564/Mds/2007 respectively.

9. We have heard the learned counsel for the appellant and the learned counsel for the respondent Income Tax Department.

10. We shall deal with the issues that were answered against the appellant in I.T.A.No.78/Mds/2007, in respect of which the present appeal has been filed namely:-

i. The diminution in the value of investment in two unlisted companies for a sum of Rs.53,98,000/-,

ii. The deduction of provision disallowed towards Non-Performing Assets (NPA) for a sum of Rs.1,44,12,000/-, and

iii. The diminution in the value of re-possessed vehicles for a sum of Rs.4,18,63,000/-.

DIMINUTION IN THE VALUE OF INVESTMENT:

11. As far as the diminution in value of investment and the provision for Non-Performing Assets (NPA) are concerned, the Tribunal has dismissed the appeal of the appellant by placing reliance on the decision of the Income Tax Appellate Tribunal in the appellant's own case in I.T.A.No.181/Mds/2002 vide order dated 07.04.2006 for the Assessment Year 1998-1999 and the order of the Commissioner of Income Tax (Appeals) in I.T.A.No.131/05-06 for the Assessment Year 2002-2003.

12. In this appeal, the appellant has not stated whether the orders passed by the Income Tax Appellate Tribunal and Commissioner of Income Tax (Appeals) in the above two cases have been appealed against or not. Therefore, on this ground alone, the substantial question of law raised by the appellant has to be answered against the appellant.

13. A sum of Rs.53,98,000/- was claimed towards diminution in the value of investment in the shares of two unlisted companies. The appellant had deducted a sum of Rs.53,98,000/- in the profit and loss

account and claimed deduction. These shares did not have a market value as they were not traded in the stock market.

14. The Hon'ble Supreme Court in **Madhya Pradesh Co-Operative Bank Ltd.** Vs. **Additional Commissioner of Income Tax**, (1996) 218 ITR 438, held that the Government securities cannot be easily encashed and can be utilized only when certain contingencies arise and therefore Government securities cannot be considered to be 'Circulating Capital' or 'Stock-in-Trade'. Thus, investment in shares of the unlisted companies cannot be considered as 'Circulating Capital' or 'Stock-in-Trade'.

15. The investments of the appellant assessee in two unlisted companies are not 'Stock-in-Trade'. They are merely investments. Deductions are to be strictly in compliance with the provisions of the Income Tax Act, 1961. Loss in the value of investment will arise only when such shares are sold by the appellant. The appellant is therefore not entitled for deduction on account of alleged "diminution in the value of investment" due to the purported loss suffered by the said company on

such investment of the appellant. Therefore, the Question of Law No.1 is answered against the appellant assessee.

DEDUCTION ON ACCOUNT OF PROVISION FOR NON-PERFORMING ASSETS (NPA):

16. An extent of Rs.1,44,12,000/- was claimed as deduction in terms of RBI Guidelines due to provisioning and on the basis of the decision of the Income Tax Appellate Tribunal, Chennai Bench in **Overseas Sanmar Financial Ltd.** Vs. **Joint Commissioner of Income Tax**, 2003 86 ITD 602 Chennai. The decision of the Chennai Tribunal in **Overseas Sanmar Financial Ltd.** case referred to *supra*, was subject matter of an appeal before this Court.

17. A conflicting view has been taken by the Income Tax Appellate Tribunal, Bombay in **Rajasthan Bank** Vs. **Joint Commissioner of Income Tax**, 69 ITD Vol. 68. It has held that guidelines issued by the RBI which are to be followed by the Non Banking Finance Companies are not relevant for the purpose of income tax.

18. The Commissioner of Income Tax (Appeals) – II, Chennai in **M/s.First Leasing Company Ltd.**, in I.T.A.No.20/2000-01, dated 16.03.2001, has held that the provision for non-performing assets cannot be claimed as a deduction.

19. Under Section 36(1)(viia) of the Income Tax Act, 1961, there is a special dispensation for Scheduled Bank, Non Scheduled Banks, Public Financial Institutions, State Financial Corporations and Industrial Investment Corporations and now Banking Financial Institutions.

20. Non Banking Financial Companies is specifically included in the list under Section 36(1)(viia)(d) of the Income Tax Act, 1961. Relevant portion of Section 36(1)(viia) of the Income Tax Act, 1961 is reproduced below:-

> **Other deductions.**
>
> **36.**(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—
>
> (i) ……
>
> ……

(*viia*)in respect of any provision for bad and doubtful debts made by—

(*a*) a **scheduled bank** not being a bank incorporated by or under the laws of a country outside India or a non-scheduled bank or a co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank, an amount not exceeding eight and one-half per cent of the total income (computed before making any deduction under this clause and Chapter VIA) and an amount not exceeding ten per cent of the aggregate average advances made by the rural branches of such bank computed in the prescribed manner :

Provided that a scheduled bank or a non-scheduled bank referred to in this sub-clause shall, at its option, be allowed in any of the relevant assessment years, deduction in respect of any provision made by it for any assets classified by the Reserve Bank of India as doubtful assets or loss assets in accordance with the guidelines issued by it in this behalf, for an amount not exceeding five per cent of the amount of such assets shown in the books of account of the bank on the last day of the previous year:

Provided further that for the relevant assessment years commencing on or after the 1st day of April, 2003 and ending before the 1st day of April, 2005, the provisions of the first proviso shall have effect as if for the words "five per cent", the words "ten per cent" had been substituted :

Provided also that a scheduled bank or a non-scheduled bank referred to in this sub-clause shall, at its option, be allowed a further deduction in excess of the limits specified in the foregoing provisions, for an amount not exceeding the income derived from redemption of securities in accordance with a scheme

framed by the Central Government:

Provided also that no deduction shall be allowed under the third proviso unless such income has been disclosed in the return of income under the head "Profits and gains of business or profession."

Explanation.—For the purposes of this sub-clause, "relevant assessment years" means the five consecutive assessment years commencing on or after the 1st day of April, 2000 and ending before the 1st day of April, 2005;

(*b*) **a bank**, being a bank incorporated by or under the laws of a country outside India, an amount not exceeding five per cent of the total income (computed before making any deduction under this clause and Chapter VI-A);

(*c*) **a public financial institution or a State financial corporation or a State industrial investment corporation,** an amount not exceeding five per cent of the total income (computed before making any deduction under this clause and Chapter VI-A) :

Provided that a public financial institution or a State financial corporation or a State industrial investment corporation referred to in this sub-clause shall, at its option, be allowed in any of the two consecutive assessment years commencing on or after the 1st day of April, 2003 and ending before the 1st day of April, 2005, deduction in respect of any provision made by it for any assets classified by the Reserve Bank of India as doubtful assets or loss assets in accordance with the guidelines issued by it in this behalf, of an amount not exceeding ten per cent of the amount of such assets shown in the books of account of such institution or corporation, as the case may be, on the last day of the previous year;

(*d*) **a non-banking financial company, an amount not**

exceeding five per cent of the total income (computed before making any deduction under this clause and Chapter VI-A).

Explanation.—For the purposes of this clause,—

(*i*) **"non-scheduled bank"** means a banking company as defined in clause (*c*) of section 5 of the Banking Regulation Act, 1949 (10 of 1949), which is not a scheduled bank;

(*ia*) "**rural branch**" means a branch of a scheduled bank or a non-scheduled bank situated in a place which has a population of not more than ten thousand according to the last preceding census of which the relevant figures have been published before the first day of the previous year;

(*ii*) "**scheduled bank**" means the State Bank of India constituted under the State Bank of India Act, 1955 (23 of 1955), a subsidiary bank as defined in the State Bank of India (Subsidiary Banks) Act, 1959 (38 of 1959), a corresponding new bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970), or under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 (40 of 1980), or any other bank being a bank included in the Second Schedule to the Reserve Bank of India Act, 1934 (2 of 1934);

(*iii*) "**public financial institution**" shall have the meaning assigned to it in section 4Aof the Companies Act, 1956 (1 of 1956);

(*iv*) "**State financial corporation**" means a financial corporation established under section 3 or section 3A or an institution notified under section 46 of the State Financial Corporations Act, 1951 (63 of 1951);

(*v*) "**State industrial investment corporation**" means a Government company within the meaning of section 617 of the Companies Act, 1956 (1 of 1956),

engaged in the business of providing long-term finance for industrial projects and eligible for deduction under clause (*viii*) of this sub-section;

(*vi*) "**co-operative bank**", "primary agricultural credit society" and "primary co-operative agricultural and rural development bank" shall have the meanings respectively assigned to them in the *Explanation* to sub-section (4) of section 80P;

(*vii*) "**non-banking financial company**" shall have the meaning assigned to it in clause (*f*) of section 45-I of the Reserve Bank of India Act, 1934 (2 of 1934);

(*viii*) in respect of any special reserve created and maintained by a specified entity, an amount not exceeding twenty per cent of the profits derived from eligible business computed under the head "Profits and gains of business or profession" (before making any deduction under this clause) carried to such reserve account:

Provided that where the aggregate of the amounts carried to such reserve account from time to time exceeds twice the amount of the paid up share capital and of the general reserves of the specified entity, no allowance under this clause shall be made in respect of such excess.

Explanation.—In this clause,—

(*a*) "specified entity" means,—

(*i*) a financial corporation specified in section 4A of the Companies Act, 1956 (1 of 1956);

(*ii*) a financial corporation which is a public sector company;

(*iii*) a banking company;

(*iv*) a co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank;

(*v*) a housing finance company; and

(*vi*) any other financial corporation including a public company;

(*b*) "eligible business" means,—

(*i*) in respect of the specified entity referred to in sub-clause (*i*) or sub-clause (*ii*) or sub-clause (*iii*) or sub-clause (*iv*) of clause (*a*), the business of providing long-term finance for—

(*A*) industrial or agricultural development;

(*B*) development of infrastructure facility in India; or

(*C*) development of housing in India;

(*ii*) in respect of the specified entity referred to in sub-clause (*v*) of clause (*a*), the business of providing long-term finance for the construction or purchase of houses in India for residential purposes; and

(*iii*) in respect of the specified entity referred to in sub-clause (*vi*) of clause (*a*), the business of providing long-term finance for development of infrastructure facility in India;

(*c*) "banking company" means a company to which the Banking Regulation Act, 1949 (10 of 1949) applies and includes any bank or banking institution referred to in section 51 of that Act;

(*d*) "co-operative bank", "primary agricultural credit society" and "primary co-operative agricultural and rural development bank" shall have the meanings respectively assigned to them in the *Explanation* to sub-section (4) of section 80P;

(*e*) "housing finance company" means a public company formed or registered in India with the main object of carrying on the business of providing long-term finance for construction or purchase of houses in India for residential purposes;

(*f*) "public company" shall have the meaning assigned to it in section 3 of the Companies Act, 1956 (1 of 1956);

(*g*) "infrastructure facility" means—

(*i*) an infrastructure facility as defined in the *Explanation* to clause (*i*) of sub-section (4) of section 80-IA, or any other public facility of a similar nature as may be notified by the Board in this behalf in the Official Gazette and which fulfils the conditions as may be prescribed;

(*ii*) an undertaking referred to in clause (*ii*) or clause (*iii*) or clause (*iv*) or clause (*vi*) of sub-section (4) of section 80-IA; and

(*iii*) an undertaking referred to in sub-section (10) of section 80-IB;

(*h*) "long-term finance" means any loan or advance where the terms under which moneys are loaned or advanced provide for repayment along with interest thereof during a period of not less than five years;

21. The Tribunal has upheld the order of the Commissioner of Income Tax (Appeals), based on the decision of the Income Tax Appellate Tribunal, Chennai, in the appellant's own case in I.T.A.No.181/Mds/2002 dated 07.04.2006, for Assessment Year 1998-1999 and Commissioner of Income Tax (Appeals) in I.T.A.No.131/05-06 for the Assessment Year 2002-2003.

22. The appellant is a non-banking financial company within the

meaning of Section 45-I of the Reserve Bank of India Act, 1934 (2 of 1934) as made applicable to Section 36(1) of the Income Tax Act, 1961. The expression "non-banking financial company" has the same meaning assigned to it in clause (*f*) of section 45-I of the Reserve Bank of India Act, 1934 (2 of 1934). Provision for bad and doubtful debts made by a non-banking financial company cannot exceed five per cent of the total income computed before making any deduction under Section 36 Chapter VI-A of the Act.

23. Therefore, the Appellant cannot claim deduction beyond the amount that is statutorily recognized. This view was affirmed by this Court in **T.N.Power Finance & Infrastructure Development Corporation Limited** vs. **Joint Commissioner of Income Tax**, (2005) 73 CCh 0933 ChenHC; (2006) 153 TAXMAN 0466. Therefore, the Substantial Question of Law is answered against the appellant.

DIMINUTION IN VALUE OF REPOSSESSED STOCK OF VEHICLES:

24. As far as the diminution in value of repossessed stock of

vehicles is concerned, we have answered the Substantial Questions of Laws in T.C.A.No.1025 of 2009 against the appellant *vide* separate order passed today. Operative portion of the said order reads as under:-

> *8. We have considered the arguments advanced by the learned counsel for the appellant and the respondent.*
>
> *9. Wherever defaults were committed by lessees, the appellant re-possessed the vehicles. The appellant treated the amount due from the defaulting lessees as "receivable" in its books of account.*
>
> *10. A further sum was reduced from the aforesaid amount as diminution in the value based on the prevailing market value of the seized vehicle. The appellant appears to have compared the book value of the repossessed vehicle with the prevailing market value. If the estimated market value was less than the book value at the time of the repossession of the leased asset (vehicle), the appellant reduced the value and transferred it to its profit and loss account.*
>
> *11. If the vehicles were sold before the closes of the financial year, entries made towards diminution in the value were reversed on the actual loss arrived from the sale and suitable adjustments were made in the book. This method adopted by the appellant allowed it to reduce the value of the asset and thereby the income tax payable.*
>
> *12. The appellant thus claimed a deduction under Section 36 of the Act based on the estimated*

market value it determined at the time of repossession. This deduction was sought to be denied. Income tax is payable on the "income" as defined in Section 2(24) of the Act.

13. Section 36(1)(vii) of the Act allows deduction of amount towards any "bad debt" or part thereof which is written off as irrecoverable in the books of accounts of the assessee for the previous year. Deduction is subject to Section 36(2) of the Act. Sub-Section (1)(vii) and (2) to Section 36 of the Act which are relevant for the purpose of this case are reproduced below:-

Section 36 (1)(vii)	***Section 36(2)***
(1) The deduction 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 – *(vii)subject to the provisions of sub-section (2), the amount of any bad debt or part thereof which is written off as irrecoverable in the accounts of the assessee for the previous year:* ***Provided** that in the case of an assessee to which clause (viia) applies, the*	*2. In making any deduction for a bad debt or part thereof, the following provisions shall apply-* *i. no such deduction shall be allowed unless such debt or part thereof has been taken into account in computing the income of the assessee of the previous year in which the amount of such debt or part thereof is written off or of an earlier previous year, or*

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 purposes 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 accounts of the assessee.*	*represents money lent in the ordinary course of the business of banking or money- lending which is carried on by the assessee;* ii. *if the amount ultimately recovered on any such debt or part of debt is less than the difference between the debt or part and the amount so deducted, the deficiency shall be deductible in the previous year in which the ultimate recovery is made;* iii. *any such debt or part of debt may be deducted if it has already been written off as irrecoverable in the accounts of an earlier previous year (being a previous year relevant to the assessment year commencing on the 1st day of April, 1988, or any earlier assessment year), but theAssessing Officer had not allowed it to be deducted on the*

	ground that it had not been established to have become a bad debt in that year; *iv. where any such debt or part of debt is written off as irrecoverable in the accounts of the previous year (being a previous year relevant to the assessment year commencing on the 1st day of April, 1988, or any earlier assessment year) and the Assessing Officer is satisfied that such debt or part became a bad debt in any earlier previous year not falling beyond a period of four previous years immediately preceding the previous year in which such debt or part is written off, the provisions of sub-section (6) of section 155 shall apply;* *v. where such debt or part of debt relates to advances made*

	by an assessee to which clause (viia) of sub- section (1) applies, no such deduction shall be allowed unless the assessee has debited the amount of such debt or part of debt in that previous year to the provisions for bad and doubtful debts account made under that clause.

14. By Circular No.12/2016, dated 30.05.2016, the Income Tax Department clarified that claim for any debt or part thereof in any previous year, shall be admissible under Section 36(1)(vii) of the Act, if it is written off as "irrecoverable" in the Books of Accounts of the assessee for that previous year and it fulfils the conditions stipulated in Sub-Section (2) to Section 36 of the Act.

15. The above clarification was issued in the light of the decision of the Honourable Supreme Court in case of ***T.R.F. Ltd.*** *Vs.* ***Commissioner of Income Tax, Ranchi****, (2010) 13 SCC 532, wherein, it was clarified that "After 1.4.1989, for allowing deduction for the amount of any bad debt or part thereof under section 36(1)(vii) of the Act, it is not necessary for the assessee to establish that the debt, in fact has become irrecoverable; it is enough if bad debt is written off as irrecoverable in the Books of Accounts of the assessee".*

16. In the present case, the appellant has not written off the receivables as bad debt. On the other hand, the appellant has reduced the amount from the receivable as diminution in the value of the re-possessed assets which were repossessed from the defaulting lessees based on its projected market value at the time of re-possession.

17. In RBI Circular dated 01.01.2002 bearing reference Ref.DNBS(PD). CC.No.18/02.01/2001-02, a reference was made to previous clarification of RBI dated 27.06.2001 bearing reference Ref DNBS (PD).CC.No.16/2001-01. A new procedure for accounting of repossessed assets for NBFC's and a revised guideline for accounting of the repossessed assets was given by RBI vide RBI Circular dated 01.01.2002 bearing reference Ref.DNBS(PD).CC.No.18/02.01/2001-02. Relevant portion of the RBI Circular dated 01.01.2002 bearing reference Ref.DNBS(PD). CC.No.18/02.01/2001-02 reads as follows:-

Existing Guidelines	***Revised Guidelines***
In case the asset is taken as part of fixed asset for own use *i. The repossession of the least or hire purchase asset should be treated as foreclosure of the contract of lease or hire purchase finance;* *ii. The accounting adjustment should be done in these*	*A) The repossessed assets should be shown as distinct from "assets on lease" or "stock on hire" under the "Fixed Assets" of*

Existing Guidelines	*Revised Guidelines*
cases by taking the assets at its book value; *iii. In Case of Hire Purchase Assets, in arriving at the book value, the asset value should be depreciated by 20% per annum of the cost on the straight-line method;* *iv. The releasable value has to be arrived at after deducting the expenditure likely to be incurred on the sale of the assets;* *The provision in regard to deficit between book value and the realisable value should be made in the current year itself.* *In case the asset is still treated as part of Lease /hire purchase portfolio* *The asset should continue to be treated as non-performing and provision should be made according to the provisioning norms on the line of those applicable to the scheduled contracts.*	*"Current Asset" as the case may be.* *B) Valuation of assets may be done as per accounting standards of ICA!.*

18. The above clarification does not clearly spell out the relevant Accounting Standard which is to be followed by a NBFC. The valuation has to be in accordance with the Accounting Standard (AS) 19 "Accounting for Leases" for all lease agreements

(Financial Leases) executed on or after April 1, 2001.

19. Paragraphs 26 to 38 of the Accounting Standard (AS) 19 deals with leases in the Financial Statement of lessors. The appellant has not explained the same.

20. In ***Vijaya Bank*** *Vs.* ***Commissioner of Income Tax****, (2010) 323 ITR 166, it was clarified that after the amendment to Section 36 of Act with effect from 01.04.1989, a distinct dichotomy has been brought. Consequently, a mere provision for bad debt is not sufficient to claim deduction unless there is a write-off in full or part. Explaining the concept, the Court gave an illustration. If an assessee debits an amount of doubtful debt to the Profit and Loss Account and credits the asset like sundry debtors account, it would constitute write-off of an actual debt. However, if an assessee debits "provision for doubtful debt" to the Profit and Loss Account and makes a corresponding credit to the "current liabilities and provisions" on the liability side of the balance sheet, then it would constitute a provision for doubtful debt. In the latter case, it would not be entitled to deduction after 01.04.1989.*

21. The loss from the repossessed vehicles can be ascertained only after they are resold. Till such time, loss cannot be determined. Estimated loss based on the difference between the receivable and the projected market value would not entitle the appellant to reduce the value of the asset to reduce the market value unless provided in the relevant Accounting Standard. We have also not been informed about any Accounting Standard as per which the diminution in the value is allowed.

22. There are also no materials before us to interfere with the finding of the Tribunal in the impugned order. Further, the balance amount, if any, will be recovered from the defaulter. Merely because there is erosion in the value based on the estimates would not ipso facto entitle diminution to claim deduction. Therefore, we answer the Substantial Question of Law No.2 against the appellant.

23. As far as the Substantial Question of Law No.1 is concerned, the issue as to whether the Commissioner of Income Tax was entitled to invoke Section 263 of the Income Tax Act, 1961 or not, we are of the view that it has to be also answered against the appellant in view of our answer to Substantial Question of Law No.2.

24. The appellant had wrongly debited a sum of Rs.338.92 lakhs under the headings 'provision and write-off' as the diminution in the value of the repossessed stock. It was not allowable expenditure. Thus, it is evident that the order passed by the Assessing Officer was not only erroneous but also prejudicial to the interest of the revenue. Therefore, Substantial Questions of Law raised in this appeal are answered against the appellant.

25. Thus, the assessment made on 31.05.2005 under Section 143(3) of the Income Tax Act, 1961 was not only erroneous but had also passed in a manner which was prejudicial to the interest of the revenue. Therefore, the Commissioner of Income Tax Act, 1961 correctly invoked the power under Section 263 of the Income Tax Act, 1961.

26. Therefore, this Tax Case Appeal is liable to be dismissed and is accordingly dismissed. No cost.

25. Therefore, the Substantial Question of Law No.3 is also answered against the appellant. Since these substantial questions of law in the present appeal are answered against the appellant, this appeal deserves to be dismissed

26. This Tax Case Appeal is accordingly dismissed. No cost.

[S.V.N., J.] [C.S.N., J.]
29.12.2022

(2/2)

Internet : Yes
Index : Yes / No
Jen/rgm

To

1. Income Tax Appellate Tribunal, “A” Bench,
   Chennai.

2. The Deputy Commissioner of Income Tax,
   Company Circle I(1),

Chennai – 600 034.

S.VAIDYANATHAN, J.
and
C.SARAVANAN, J.

Jen/rgm

Pre-Delivery Judgment
in
T.C.A.No.94 of 2009

29.12.2022

(2/2)