

आयकर अपीलिय अधिकरण, 'ए' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH: CHENNAI

श्री वी. दुर्गा राव, माननीय न्यायिक सदस्य एवं
श्री जी. मंजूनाथा, माननीय लेखा सदस्य के समक्ष
BEFORE SHRI V. DURGA RAO, HON'BLE JUDICIAL MEMBER AND
SHRI G. MANJUNATHA, HON'BLE ACCOUNTANT MEMBER

ITA Nos.1224 & 1225/Chny/2003
Assessment Years: 1991-92 & 1992-93

ITA No.2366/Chny/2004
Assessment Year: 1993-94

ITA No.983/Chny/2003
Assessment Year: 1994-95

ITA Nos.2368 & 2369/Chny/2004
Assessment Years: 1995-96 & 1996-97

ITA Nos.1226 & 1227/Chny/2003
Assessment Years: 1997-98 & 1998-99

ITA Nos.882-885/Chny/2006
Assessment Years: 1999-2000 to 2002-03

The DCIT / ACIT,
Company Circle-II(3),
Chennai.

v. M/s.Indian Bank Ltd.,
66, Rajaji Salai,
Chennai-600 001.

(अपीलार्थी/**Appellant**)

[**PAN: AAACI 1607 G**]

(प्रत्यर्थी/**Respondent**)

Department by : Mr.R.Mohan Reddy, CIT
Assessee by : Mr. Sanjeev Aditiya, FCA
सुनवाई की तारीख/Date of Hearing : 13.12.2022
घोषणा की तारीख /Date of Pronouncement : 21.12.2022

आदेश / ORDER

PER BENCH:

These '12' appeals filed by the Revenue are directed against separate, but identical orders of the Commissioner of Income Tax

:: 2 ::

(Appeals)-11, Chennai, dated 13.03.2003, 17.03.2003, 05.07.2004, 28.02.2003, 05.07.2004, 10.03.2003, 11.03.2003, 28.12.2005, and pertains to assessment years 1991-92 to 2002-03 respectively. Since, facts are identical and issues are common, for the sake of convenience, these appeals were heard together and are being disposed off, by this consolidated order.

2. The brief facts of the case are that in all these assessment years, the assessee has claimed depreciation on assets taken over from Bank of Thanjavur Ltd., in pursuant to amalgamation of Bank of Thanjavur Ltd., with assessee's bank approved by Reserve Bank of India. The assessee's bank has claimed depreciation on assets taken over from Bank of Thanjavur Ltd., on the basis of value fixed in pursuant to arrangement between the assessee's bank and amalgamated bank on the ground that the value of assets has been determined by the Government of India for the purpose of taking over the banking business. The AO has allowed depreciation on assets taken over from Bank of Thanjavur Ltd., in pursuant to amalgamation in accordance with provisions of Explanation-7 to Sec.43(1) of the Act, and disallowed excess depreciation claimed by the assessee. The Ld.CIT(A) allowed depreciation claimed by the assessee on the ground that the value of

:: 3 ::

asset has been fixed by the Government of India in pursuant to agreement between the assessee's bank and Bank of Thanjavur Ltd., and thus, Explanation-7 to Sec.43(1) of the Act, has no application. The Revenue filed further appeals against the order of the Ld.CIT(A) before the Tribunal and the Tribunal vide its order dated 25.10.2007 has allowed appeals filed by the Revenue and reversed the findings of the Ld.CIT(A) on the issue of depreciation on assets taken over in pursuant to amalgamation of assessee's bank with Bank of Thanjavur Ltd., in light of Explanation-7 to Sec.43(1) of the Act. The assessee carried the matter in further appeals before the Hon'ble High Court of Madras, and the Hon'ble High Court of Judicature at Madras in their order dated 25.08.2022 in Tax Case (Appeal) Nos.441, 442, 443, 444, 445, 446, 448,449, 450, 451, 452 & 453 of 2018, has set aside the order of the Tribunal on the issue of depreciation on assets taken over in pursuant to amalgamation of Bank of Thanjavur Ltd., with assessee's bank in light of arguments of the Ld.Counsel for the assessee that Explanation-7 to Sec.43(1) of the Act, does not apply, because, even after amalgamation, the Bank of Thanjavur Ltd., is still functioning and only part of the business of the said bank was transferred with the assessee's bank. Therefore, present appeals were fixed for hearing in pursuant to directions of the Hon'ble High Court of Madras.

:: 4 ::

3. The Ld.Counsel for the assessee, at the time of hearing, fairly agreed that the assessee does not want to continue the litigation on the issue of depreciation on assets taken over in pursuant to take over of banking business of Bank of Thanjavur Ltd., because, the sole premise on which the Hon'ble Madras High Court set aside the appeals to the file of the Tribunal is that the Bank of Thanjavur Ltd. is still functioning even after amalgamation and only part of its business of the said bank was merged with the assessee's bank. However, facts remain that after amalgamation, the Bank of Thanjavur Ltd., cease to exist. Therefore, as per the provisions of Explanation-7 to Sec.43(1) of the Act, the assessee can claim depreciation on written down value of assets taken over from the amalgamating bank. Therefore, appeals may be decided in accordance with law.

4. The Ld.DR, on the other hand, submitted that the Tribunal has rightly decided the issue in light of provisions of Explanation-7 to Sec.43(1) of the Act. However, the Hon'ble Madras High Court has set aside the issue on the basis of submissions of the Ld.Counsel for the assessee that the Bank of Thanjavur Ltd., is still continuing its banking business even after transfer of part of business to assessee's bank. But, as admitted by the Ld.Counsel for the assessee, after amalgamation, the

:: 5 ::

Bank of Thanjavur Ltd., cease to exist and thus, the Tribunal has rightly held that the assessee cannot claim depreciation on value assigned in terms of agreement between the parties, but can only claim depreciation as per provisions of Explanation-7 to Sec.43(1) of the Act, and thus, there is no reason to take a different view on the issue.

5. We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. The sole dispute arise from these appeals is with regard to depreciation on assets taken over in pursuant to amalgamation of Bank of Thanjavur Ltd., with assessee's bank. As we have already stated in our earlier part of this order, the Bank of Thanjavur Ltd., is amalgamated with assessee's bank in pursuant to amalgamation sanctioned by a Court of law. The assessee had claimed depreciation on assets taken over from Bank of Thanjavur Ltd., on the basis of value assigned in terms of agreement between parties on the ground that said value has been determined by the Government of India. The AO has allowed depreciation on assets taken over from the Bank of Thanjavur Ltd., on written down value of assets taken over from said Bank in light of provisions of Explanation-7 to Sec.43(1) of the Act. The matter reached to the Tribunal and the Tribunal has concurred with the findings of the AO and held that the

:: 6 ::

transferor bank i.e. Bank of Thanjavur Ltd. consequent upon the amalgamation cease to exist and as such the case of the assessee clearly comes within the scope of Explanation-7 to Sec.43(1) of the Act, and thus, the AO has rightly allowed depreciation on written down value of assets taken over in pursuant to amalgamation. The assessee challenged the order of the Tribunal before the Hon'ble Madras High Court and contended that even after amalgamation, the Bank of Thanjavur Ltd., continue to carry on the banking business and thus, provisions of Explanation-7 to Sec.43(1) of the Act, does not apply to the present cases and on this premise, the Hon'ble Madras High Court has set aside the issue to the file of the Tribunal to reconsider the issue in light of arguments of the Ld.Counsel for the assessee. The Ld.Counsel for the assessee, during the course of hearing fairly agreed that the Bank of Thanjavur Ltd., cease to exist consequent upon amalgamation and thus, the findings recorded by the Tribunal in light of provisions of Explanation-7 to Sec.43(1) of the Act, is in accordance with law and the Bank does not want to continue the litigation. In this view of the matter and also considering the facts and circumstances of the cases, we are of the considered view that there is no error in the findings given by the Tribunal in upholding the action of the AO in allowing depreciation on assets taken over in pursuant to amalgamation of Bank of Thanjavur

:: 7 ::

Ltd., with assessee's bank and thus, we are of the considered view that the decision rendered by the Tribunal in their order dated 25.08.2022 does not call for any interference and thus, we reverse the findings of the Ld.CIT(A) and restore the order of the AO on the issue of depreciation on assets taken over from the Bank of Thanjavur Ltd. in pursuant to amalgamation.

6. In the result, appeals filed by the Revenue in all assessment years are allowed in terms of our observations given hereinabove.

Order pronounced on the 21st day of December, 2022, in Chennai.

Sd/-

(वी. दुर्गा राव)

(V. DURGA RAO)

न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 21st December, 2022.

TLN

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)

Sd/-

(जी. मंजूनाथा)

(G. MANJUNATHA)

लेखा सदस्य/**ACCOUNTANT MEMBER**

4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF