**SUPREME COURT OF INDIA**

Sundaram Finance Ltd.

Vs.

Assistant Commissioner of Income Tax, Chennai

C.A.No.5895 of 2008

(S.H.Kapadia and Madan B.Lokur,JJ.)

11.09.2012

**ORDER**

**S.H. Kapadia,J.**

1. This civil appeal is filed by the assessee. Assessee is a Non Banking Finance Company. This civil appeal concerns assessment year 1998-99. Assessee had filed its return of income for assessment year 1998-99 for total income of Rs. 50,38,16,950/-. The substantial questions of law which arise for determination in this civil appeal are as follows:

> " 1.Whether on the facts and in the circumstances of the case, the Appellate 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?
>
> 2. 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?
>
> 3. Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in treating the amount of Rs. 36,47,585/- collected as contingent deposit as Income of the Appellant?"

2. At the outset, Shri Preetesh Kapur, learned counsel appearing for the assessee, fairly stated that questions 1 and 2 have been answered by this Court in favour of the Department vide judgment dated 11.01.2010 in the case of Southern Technologies Ltd. v. Joint Commissioner of Income Tax (320 ITR 577).

3. The only question which this Court is required to answer is whether the Tribunal was right in treating the amount of Rs. 36,47,585/- collected by the assessee as contingent deposit, as

income of the assessee under Section 28 of the Income Tax Act, 1961? Assessee is engaged in the business of hire purchase financing, equipment leasing and allied activities.

4. The only question which this Court needs to answer is whether the aforestated contingent deposit is income of the assessee. Assessee has been collecting certain sums as "contingent deposit" from the leasing/hire purchase customers with a view to protect themselves from sales tax liability.

5. These amounts have been collected on ad-hoc basis. Assessee did not offer such sums to tax as income on the ground that such sums were collected as contingent deposits. The case of the assessee before us was that the said collection was in anticipation of sales tax liability, which was disputed. For assessment years 1997-98 to 2000-01 orders were passed by Sales Tax Authorities levying lease tax on inter-State and import lease transactions executed in various States, (as deemed sales pursuant to the Forty-sixth Amendment to the Constitution) against which the assessee herein had filed appeals, which even today are pending before the High Court (some appeals, however, are pending before the Tribunal). For the assessment years 1986-87 to 1996- 97, the Tribunal has disallowed the assessee's appeals against which the assessee has filed appeals before the High Court, which are also pending. These facts concern disputes raised by the assessee concerning its sales tax liabilities with which we are not concerned in this civil appeal. According to the assessee, in order to safeguard itself against, inter alia, the said sales tax liabilities, the assessee received Rs.36,47,585/- ascontingent deposits from its customers which were "refundable" if the assessee was to succeed in its challenge to the levy of the said sales tax. According to the assessee the sum of Rs. 36,47,585/- is, therefore, an imprest with a liability to refund, that the said sum bears the character of "deposits" and hence not taxable in the year of receipt but is taxable only in the year in which the liability to refund the sales tax ceases (in case the assessee fails in the pending sales tax appeals). It is now well settled that in determining whether a receipt is liable to be taxed, the taxing authorities cannot ignore the legal character of the transaction which is the source of the receipt. The taxing authorities are bound to determine the true legal character of the transaction. In the present case, the assessee received Rs. 36,47,585/- in the assessment year 1998¬99. As per the statement made by learned counsel for the assessee in Court on 6.09.2012 (which statement is ordered to be taken on record and marked "X"), the said sum of Rs. 36,47,585/- was not kept in a separate interest bearing bank account but it formed part of the business turnover. In view the said statement, we see no reason to interfere with the impugned judgment. Applying the substance over form test, we are satisfied that in the present case the said sum of Rs. 36,47,585/- constituted income. The said amount was part of the turnover. The said amount was collected from the

customers. The said amount was collected towards sales tax liability. The said amount formed part of the turnover.

6. For the aforestated reasons, the judgment of this Court in the case of *CIT v. Bazpur Co-operative Sugar Factory Ltd. reported in*[1] is not applicable. That judgment concerns Loss Equalisation Fund created by co-operativesociety carrying on business of manufacture and sale of sugar. In cases of sugar co-operative societies principle of mutuality applies. Such principle does not apply to the present case. In the circumstances, the judgment of this Court in the case of Bazpur Co-operative Sugar Factory Ltd. (supra) has no application to this case. The civil appeal of the assessee is, accordingly, dismissed with no order as to costs. Civil Appeal No.6388/2012 arising out of SLP(C ) No . 11552/2009 and Civil Appeal No.6389/2012 (arising out of SLP(C ) No. 11191/2009).

*Judgment Referred*

[1] *(1988) 3 SCC 0533*