

**(2011) 10 MAD CK 0099**

**Madras High Court**

**Case No:** TAX Case. No's. 656 of 2004 and 387 of 2005

Commissioner of Income Tax  
Chennai. IX

APPELLANT

Vs

Shri K. Eswarappa (Deceased)  
and Others

RESPONDENT

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**Date of Decision:** Oct. 31, 2011

**Acts Referred:**

- Direct Tax Laws (Amendment) Act, 1987 - Section 36(1)
- Income Tax Act, 1961 - Section 36(1), 36(2), 43(B)

**Hon'ble Judges:** P.P.S. Janarthana Raja, J; P. Jyothimani, J

**Bench:** Division Bench

**Advocate:** Patty B. Jaganathan in both TCAs, for the Appellant; B. Balachandran for M/s. Sridhar in both TCAs, for the Respondent

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**Judgement**

P. Jyothimani, J.

The appeal in TCA 656 of 2004 filed by the Revenue was admitted on the following substantial questions of law:

1. Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the claim of interest payable to State Bank of India of Rs. 1,15,26,000/- was allowable on actual payment basis overlooking the fact that no payment had been made, and in not reversing the finding of the Commissioner of Income Tax that the claim was allowable u/s 36(1)(iii) even though the liability was not ascertainable and enforceable, the assessee had denied the liability and the business for which moneys were borrowed had been discontinued?
2. Whether on the facts and in the circumstances of the case that the Income Tax Appellate Tribunal was right in relying on irrelevant material and incorrect statement filed by the assessee at the appellate stage and disregarding relevant evidence discovered in the search as discussed in the order of the assessment and

deleting the disallowance of Rs. 17,15,000/- being the peak of money lending investments?

3. Whether on the facts and circumstances of the case that the Income Tax Appellate Tribunal was right in holding that the claim of bad debts amounting to Rs. 7,60,000/- was allowable on the ground that the books have been written off as irrecoverable, disregarding the fact that the assessee had not maintained books of accounts and thus, had not complied with the basic requirement of Section 36(1)(vii) and 36(2) of the Income Tax Act?

4. Whether on the facts and in the circumstances of the case that the Income Tax Appellate Tribunal was right in deleting the disallowance of Rs. 17,51,172/- being unexplained cash and bank balances found at the time of search even though the assessee was not able to prove that the said balances came out of the realisation from debtors and stock of the discontinued/luminium metal business and the assessee had no other proper explanation for the source of the said balances?

2. The appeal in TCA 387 of 2005 filed by the Revenue was admitted on the following substantial question of law:

Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the claim of interest payable to State Bank of India of Rs. 1,15,26,000/- was allowable on actual payment basis overlooking the fact that no payment had been made, and in not reversing the finding of the Commissioner of Income Tax that the claim was allowable u/s 36(1)(iii) even though the liability was not ascertainable and enforceable, the assessee had denied the liability and the business for which moneys were borrowed had been discontinued?

3. The assessee is doing mainly lodging business at the premises called Geethalayam apart from financing and letting out the building at Ranipet. An action was taken by the Intelligence Wing of the Department by way of search. A sum of Rs. 17,08,672/- and jewelry worth 2302 grams were seized. The assessee came forward with the disclosure of Rs. 54.77 lakhs. Certain incriminating documents were also available. Ultimately, the Assessing Authority, after giving notice, has arrived at a conclusion that the total undisclosed income comes to Rs. 1,04,54,542/- and tax has been imposed to the extent of Rs. 62,72,724/- along with the interest. It was against the said order of the Assessing Authority, the assessee filed an appeal before the Commissioner of Income Tax (Appeals) and the same came to be allowed partly. Being not satisfied with the same, the assessee has filed a further appeal before the Income Tax Appellate Tribunal. The Tribunal again has allowed the said appeal partly, but dismissed the appeal filed by the department. As against the said order, the revenue has filed these two appeals.

4. As far as the first and second questions of law, which relate to the claim in respect of the interest payable to the State Bank of India to the extent of Rs. 1,15,26,000/- and deleting the disallowance of Rs. 17,15,000/- as peak of money lending

investments, the Assessing Authority in his order was unable to arrive at a conclusion as to whether the assessee has followed the mercantile system or cash system of accounting. Even though it has been the case of the assessee that what was followed was mercantile system while the revenue's case was that the system followed was cash system. It is relevant to extract some of the portions of the Assessing Authority's order, which is not conclusive in our considered view, which are as follows:

c. It is also not known from the records whether Lodging expenses and receipts are maintained on cash or mercantile basis.

d. Also from the returns filed for A.Y. 1995-96 and 1996-97, from the balance sheet, the system of accounting followed by the assessee does not appear to be on mercantile system but on cash basis. However, in the block return filed the assessee had followed mercantile system. He had claimed huge bank interest outstanding towards his metal business which is closed long back.

5. A reading of the above stated versions, would show that the Assessing Authority himself has not decided the method of accounting followed by the assessee. Unfortunately, the Commissioner of Income Tax Appeal as well as the Tribunal, has not chosen to deal with in respect of the block assessment for the period from 01.04.1988 to 11.12.1997 and give a specific finding regarding the method of account followed by the assessee. However, by applying the provisions of Section 43(B) of the Income Tax Act, the Tribunal in this regard only referred as follows:

The interest paid on term loan, bridge loan and working capital loan that is on actual payment basis of Rs. 1,15,26,000/- was allowable. The fact that the loan was borrowed and utilised for purpose of business and was paid during the year not having been controverted, the deletion made by the CIT(A) is upheld.

Thus, the Tribunal has not given a clear finding in respect of the substantial question No. 1 in TCA. No. 387 of 2005 and substantial question Nos. 1 and 2 in T.C.A. No. 656 of 2004 and therefore, the order of the Tribunal is set aside and the matter is remanded to the Tribunal for fresh disposal.

6. In respect of the substantial question No. 3 in T.C.A. No. 656 of 2004, which relates to the claim of bad debts amounting to Rs. 7,60,000/- , for the assessment year 1998-99 on the basis of a suit filed by the assessee against the debtors, taking note of the fact that the suit was filed in the year 1998 and not during the block period and also considering the fact that the account books were not proper and complete, the CIT(A) has disallowed the said claim, however, by referring to Section 36(1)(vii) of the Act, which was amended by Direct Laws (Amendment) Act effective from 01.04.1989. The Commissioner of Income Tax Appeals allowed the deduction in regard to any bad debts written off. It was in those circumstances, taking note of the fact that the departmental representative could not place any material to suggest that the suits were decreed in favour of the assessee, the Tribunal, in our considered

view, has correctly passed orders refusing to interfere with the findings of the Commissioner of Income Tax Appeals. Therefore, the third substantial question of law is answered in favour of the assessee.

7. Insofar as the fourth substantial question of law in T.C.A. No. 656 of 2004 is concerned, which relates to deleting of the disallowance of Rs. 17,51,172/- being unexplained cash and bank balances found at the time of search, the Tribunal has found that the plea of the assessee that telescoping is called for with the addition made on account of unexplained sources is reasonable and it was in those circumstances, the claim of the assessee was upheld by the Tribunal with a direction to the Assessing Authority to give credit to the assessee to the extent of the addition made on account of unexplained sourced of income. We are of the view that the said finding does not warrant any interference and accordingly the said substantial question of law also answered in favour of the assessee.

8. To sum up, while substantial questions of law 3 and 4 in TCA. No. 656 of 2004 are answered in favour of the assessee, with regard to the first question of law in both the appeals and the second question of law in T.C.A. No. 656/04, the matters are remanded back to the Tribunal to render a clear and fresh finding. The appeals are, thus, disposed of. No costs.