IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.07.2015

CORAM:

THE HONOURABLE MR.JUSTICE R.SUDHAKAR
AND
THE HONOURABLE MS.JUSTICE K.B.K.VASUKI

T.C.A Nos.1034 of 2014 and 644 to 646 of 2015

M/s.Tamil Nadu Urban Finance &
Infrastructure Development Corporation Ltd
No.460/1-2 Anna Salai,
Nandanam, Chennai 600 035. ... Appellant
in TCA.1034/2014

M/s.Tamil Nadu Urban Finance &
Infrastructure Development Corporation Ltd
No.84, TTK Road, Alwarpet,
Chennai 600 018. ... Appellant
in TCA.644 to 646/2015

Vs

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

Prayer in TCA.1034 of 2014:- Tax Case Appeal is filed under Section 260(A) of the Income Tax Act 1961 against the order dated 20.6.2014 made in ITA No.360/MDS/2014 passed by the Income Tax Appellate Tribunal, Chennai 'B' Bench for assessment year 2009-2010 against the order of the Commissioner (appeals)-III, Chennai-34, dated 25.10.2013 and made in ITA No.1412/2013-14 for the Assessment year 2009-10 against the order of the Assistant Commissioner of Income Tax Company Circle-III (1), Chennai-34 dated 15.12.2011 and made in GIR No./PAN:AAACT/1259R/31023-T for the4 Assessment year 2009-10 in T.C.A.No.1034 of 2014.

Prayer in TCA.644 to 646 of 2015:- Tax Case Appeals are filed under Section 260(A) of the Income Tax Act 1961 against the common order dated 11.9.2012 made in ITA Nos.5/Mds/2010, 6/Mds/2010 and 603/Mds/2011 respectively passed by the Income Tax Appellate Tribunal, Chennai 'D' Bench for the assessment year 2005-2006, 2006-2007, 2007-2008 respectively against the order of the Commissioner of Income Tax(A)-III, Chennai dated 30.10.2009 and 5.1.2011 made in

ITA Nos	for Assessment year
452/07-08A.III	2005-06
163/08-09/A.III	2006-07
571/09-10/A.III	2007-08

against the order of the Assistant Commissioner of Income-Tax, Company Circle-III (1), Chennai dated 29.11.2007 28/11/2008, 16/12/2009 for the assessment year 2005-06, and made in

AAACT1259R/31023-T for the Assessment year 2005-06, 2006-07, 2007-08, respectively in TCA Nos.644 to 646 of 2015.

For Appellant : Mr.G.Ashokapathy for M/s.Pass Associates
For Respondent : Mr.S.Swaminathan

COMMON JUDGMENT
(Judgment was delivered by K.B.K.VASUKI, J.)

All the four appeals are filed by the assessee M/s.Tamil Nadu Urban Finance and Infrastructure Development Corporation Limited. While TCA.Nos.644 to 646 of 2015 relating to the Assessment Years 2005-06, 2006-07 and 2007-08 are arising out of the common order passed in the six appeals filed by the assessee as well as by the Revenue, TCA.No.1034/2014 is arising out of the order relating to the Assessment Year 2009-2010. One of the issues involved in all the four appeals is regarding the claim for deduction under Section 36(1) (viii) of the Income Tax Act in respect of the income derived from short term deposits and other issue involved in TCA Nos.644 and 645/2015 is relating to the claim for exemption under Section 10(23G) of the Income Tax Act.

2.The substantial questions of law that arise for consideration in all the four Tax Case Appeals are as follows:

TCA.1034/2014 and 646/2015:

Whether on the facts and circumstances of the case, the Tribunal was right in law in holding that the respondent is not entitled to claim deduction under Section 36(1)(viii) of the Income Tax Act, 1961 in respect of income from short term deposit?

TCA.644 and 645 of 2015:

(i)Whether on the facts and circumstances of the case, the Tribunal was right in law in holding that the respondent which is a wholly owned Government company has to compulsorily obtain permission from the Central Government to avail exemption under section 10(23G)?

(ii)Whether on the facts and circumstances of the case, the Tribunal was right in law in holding that the respondent is not entitled to claim deduction under Section 36(1)(viii) of the Income Tax Act, 1961 in respect of income from short term deposit?

3.The learned counsel for the appellant would vehemently argue before this court that considering the sole purpose for which the assessee Corporation was setup and the sole business of the assessee for providing long term finance for infrastructure development, when there are surplus funds lying idle, pending for use for long term finance and they are kept in short term deposits in bank, such interest is only incidental to the activity of the assessee Corporation and it forms part of the assessee's business, as such, it is to be treated as business income and is entitled for deduction under section 36(1)(viii) of the Act and disallowing such deduction by treating the same as income from other sources is by misinterpreting the relevant provisions of law.

4.Whereas, the learned standing counsel for the Revenue would vehemently oppose the contention so raised on the side of the assessee. The learned standing counsel would defend the correctness of the orders impugned herein, by reiterating the same grounds based on which, the impugned orders came to be passed.

5.Heard the rival submissions made on both sides and perused the records.

6.As far as the claim for deduction under section 36(1)(viii) of the Act is concerned, the order disallowing the same is, by relying on the principle laid down by the Hon'ble Supreme Court in the decision reported in 262 ITR 278 (SC) (Pandian Chemicals Ltd. v. CIT). For better appreciation, the findings of the Tribunal in paras 15 to 17 of the common order made in ITA Nos.5/Mds/2010, 6/Mds/2010 and 603/Mds/2011 relating to the Assessment Years 2005-06, 2006-07 and 2007-08 are extracted hereunder:

> "15.We do not agree with the contentions of the counsel for the assessee on this issue. The income earned from deposits with the bank etc. cannot be treated as income from business. The said interest income has to be treated as "income from other sources". By no stretch of imagination the income earned from interest on short term deposits can be considered as part of business income, even if the same is utilized for advancing funds under the instructions from the Government. A plain reading of the provisions of section 36(1)(viii) shows that the deduction is available in computing the income from business (under section 28) by the financial corporation including a public company and a Government company which is engaged in providing "long term finance" for industrial or agricultural development or development of infrastructure facility in India.
>
> The legislature in unequivocal words have stated that deduction under section 36 is available only in respect of income computed under the head "Profit and Gains of Business or Profession" under section 28. Interest from short term deposits are not taken into consideration in computing the income referred to in section 28. Rules of interpretation would come into play only if there is any doubt with regard to the express language used. Where the words are unequivocal there is no scope for imparting the rule of liberal interpretation. Our view on this issue is fortified by the judgment of the Hon'ble Supreme Court of India in Pandian Chemicals Ltd. v. CIT reported as 262 ITR 278 (SC). Therefore, interest income on short term deposits is not eligible for deduction under section 36(1)(viii) of the Act. There is no force in the submissions of the counsel for the assessee on this issue, resultantly this ground of appeal of the assessee is dismissed."

7.As far as ITA No.360/Mds/2014 relating to Assessment Year 2009-10 is concerned, the Tribunal disallowed the claim for deduction under section 36(1)(viii) of the Act by relying on the decision of the Income Tax Appellate Tribunal in ITA.No.1667/Mds/2004 for the

Assessment Year 2002-03 dated 20.7.2007 relating to the same issue held against the same assessee company. For better appreciation, the finding of the Tribunal in para 4 of the order made in ITA.360/Mds/2014 is reproduced hereunder:

> "4.After hearing the both sides and perusing the order of the Ld.CIT(A), we find that Ld. CIT (A) has decided the issue following the decision of Tribunal cited supra by the ld. DR. The relevant para of the order of the Ld. CIT(A) is reproduced herein below for reference:-
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> > 6.1. Regarding the next issue of deduction U/s. 36(1)(viii), the AR stated that the matter went up to the Hon'ble Tribunal wherein the Hon'ble Tribunal considered the issue threadbare in ITA No.1667/Mds/04 for the assessment year 2002-03 dated 20th July, 2007 and also held it against the appellant company. Respectfully, following the said decision of the Hon'ble ITAT, Chennai in the appellant's own case, the order of the AO on deduction of 36(1)(viii) is upheld and the ground is dismissed."

8.We find no reason to interfere with such findings of the Tribunal, which are based on the decision of the Hon'ble Supreme court and the earlier decision of the Tribunal for the Assessment Year 2002-03 in respect of the same assessee and the substantial question of law raised in TCA.1034/2014 and 646/2015 and the second substantial question of law raised in TCA.644 and 645/2005 is hence answered against the assessee.

9.Regarding other issue relating to exemption under section 10 (23G) of the Act, the same is dealt with in para 13 of the common order made in ITA Nos.5 & 6/Mds/2010 and 603/Mds/2011 and is also decided against the assessee by the Tribunal by relying on its earlier orders dated 20.7.2007 made in ITA.1667/Mds/2004 for the Assessment Year 2003-04 and dated 8.2.2008 made in ITA.No.352/Mds/2007 for the Assessment Year 2004-2005 in respect of the same assessee. For better appreciation, para 13 of the common order is extracted below:

> "13.The D.R. Submitted that the issue with regard to the claim of the assessee under section 10(23G) has already been decided by the Tribunal against the assessee in assessee's own case relevant to the assessment year 2003-04 in ITA No.1667/Mds/2004 vide order dated 20th July 2007 as well as for assessment year 2004-05 in ITA NO.352/Mds/2007 vide order dated 8.2.2008. Since the orders have not been challenged by the assessee in the higher forum, the same have attained finality. The counsel for the assessee could not place any document on record to controvert the submissions made by the D.R. It is evident from record that the assessee has not obtained approval from CBDT for the purpose of claiming exemption under section 10 (23G). Therefore, this issue is decided against the assessee."

10.Here also, we agree with the findings of the Tribunal and we find no reason to interfere with the same and the first substantial question of law raised in TCA.Nos.644 and 645 of 2015 is hence answered against the appellant.

11.In the result, all the Tax Case Appeals are dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To
1.Income Tax Appellate Tribunal, Chennai B Bench
2.Income Tax Appellate Tribunal, Chennai D Bench
3.The Commissioner (Appeals)-III,Chennai-34.

4. The Commissioner of Income Tax Company Circle-III(1), Chennai-34.

5. The Assistant Commissioner of Income Tax, Company Circle-III(1), Chennai.

+ 3 ccs to M/s. Pass Associates, Advocate Sr.38901, 38902 & 38904

T.C.A Nos.1034 of 2014 and 644 to 646 of 2015

JSV(CO)
Eu 11.08.15