

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.11.2018

CORAM:

THE HONOURABLE MR.JUSTICE **T.S.SIVAGNANAM**
and
THE HONOURABLE MR.JUSTICE **N.SATHISH KUMAR**

Tax Case Appeal No.1499 of 2008

M/s.Electronic Corporation of Tamilnadu
Limited (ELCOT)
II Floor, MHU Complex,
692, Anna Salai, Nandanam,
Chennai - 60 0035.

....Appellant

-VS-

The Deputy Commissioner of Income Tax
Company Circle II (1)
Chennai - 600 034.

.... Respondent

Tax Case Appeal filed under Section 260-A of the Income Tax Act, 1961
against the order of the Income Tax Appellate Tribunal "A" Bench, Chennai in
I.T.A.No.1112/MDS/2006 for the assessment year 2001-02.

For Appellant : Mr.A.S.Sriraman

For Respondent : Mr.D.Prabhu Mukundh
for Mr.Karthick Ranganathan

J U D G M E N T

(Judgment of the Court was delivered by
T.S.SIVAGNANAM,J.)

This appeal by the assessee, a wholly owned Government of Tamil Nadu undertaking has been filed under Section 260-A of the Income Tax Act, 1961 (hereinafter referred to as the "Act), challenging the order passed by the Income Tax Appellate Tribunal "A" Bench, in I.T.A.No.1112/MDS/2006 for the assessment year 2001-02.

2. The appeal has been admitted on 14.10.2008 on the following substantial questions of law:-

i) Whether the Appellate Tribunal is correct in law in sustaining the disallowance of investment write off claimed as a deduction in the computation of taxable total income in the assessment year under consideration, consequent to the admitted position of their diminution in value?

ii) Whether the Tribunal is correct in law in sustaining the loss incurred in the activity of promoting, establishing, running and supporting state owned electronic industries as a 'capital loss' even though the said activity was the main business activity?

3. The assessment for the year under consideration was framed on 29.10.2003 and the Assessing Officer held that the claim of loss accruing or arising as a result of sale of shares was a capital loss and not eligible for deduction in computation of business income. The assessee filed appeal before the Commissioner of Income Tax (Appeals) - XI (hereinafter referred to as CIT (A)). The appeal filed by the assessee was allowed by order dated 09.01.2006, wherein the CIT(A) held that the amounts written off by the assessee were basically advanced towards working capital of the ventures to whom these advances were made and the real character of the transaction was akin to those applicable to loans and not to equity investments per section.

4. Aggrieved by the same, the Revenue preferred appeal before the Tribunal. The Tribunal, by the impugned order allowed the Revenue's appeal and in doing so placed reliance on the decision of this Court in the case of ***Commissioner of Income Tax vs. R.Chidambaranatha Mudaliar*** (240 ITR 552).

5. Heard Mr.A.S.Sriraman, learned counsel for the appellant and Mr.D.Prabhu Mukundh, learned Standing Counsel for the respondent.

6. We are to test the correctness of the order passed by the

Tribunal on the substantial questions of law raised before us.

7. The Assessing Officer held that the assessee had acquired shares of certain companies and the same were shown as investments and dividend was earned and these investments are capital investments held wholly and exclusively for the purpose of business and the assessee is not doing the business of manufacturing electronic goods and is not involved in the business of purchase and sale of shares. Therefore, it held that the investments made under acquiring shares cannot be equated as a revenue expenditure on any account.

8. To examine as to whether the Assessing Officer was right in his observation, we had perused the Memorandum and Articles of Association of the assessee. We find therein that the main objects of the assessee was to promote, establish and run State Public Sector Enterprises for Electronic items; manage, supervise, finance, advise, assist, aid or collaborate with any association, firm, company, enterprise, undertaking, institution or scheme for the advancement and development of all branches of electronics and of industries and business concerns based on or relating to electronics. Thus, the main objects of the company are very widely couched and includes promotion

and finance of electronic based industries in the State.

9. The case of Revenue is that the investments made by the assessee in four companies were fixed investments and were not stock-in-trade.

10. We have perused the order passed by the CIT(A) and in our considered view, the reasoning given by the CIT(A) is just and proper. The CIT(A) has analysed the objects of the assessee as to why it was incorporated and the nature of activities done by them. On examining the factual matrix, the CIT(A) held that the finance provided by the assessee was provided by way of equity participation and it is akin to loan transaction or advances made and in such cases, if the loans are irrecoverable, then they are written off and precisely, that is what has been done by the assessee on their investments in those four companies. Further, on facts, the CIT(A) held that the amounts advanced by the assessee to those industries were towards working capital and the real character of the transaction are those akin to loans and not equity investments. Furthermore, the assessee had explained that the amounts which have been advanced by them are shown as equity and without the permission of the assessee, the share holding

pattern of the companies cannot be changed and the promoters will have to keep minimum interest in the companies' assets and transfer of shares without the consent of the assessee cannot be made.

11. On this issue, it would be beneficial to refer to a decision of the Hon'ble Supreme Court in the case of ***Investments Ltd. vs. Commissioner of Income Tax (1970) 77 ITR 0533***, wherein, the Court considered as to whether the shares and securities held by the assessee therein has to be treated as stock-in-trade and while considering the said question, it was held as follows:-

8. In the balance sheet, it is true, the securities and shares are valued at cost, but no firm conclusion can be drawn from the method of keeping accounts. A taxpayer is free to employ, for the purpose of his trade, his own method of keeping accounts, and for that purpose to value his stock-in-trade either at cost or market price. A method of accounting adopted by the trader consistently and regularly cannot be discarded by the Departmental authorities on the view that he should have adopted a different method of keeping account or of valuation. The method of accounting regularly employed may be discarded only if, in the opinion of the taxing authorities, income of the trade cannot be properly deduced therefrom. Valuation of stock at cost is one of the recognised methods. No inference may, therefore, arise from the employment by the company of the method of valuing stock at cost, that the stock valued was not stock-in-trade. Nor is the description of stock in the balance sheet as "investments" decisive.

12. As held in the above referred decision, no inference can be drawn with regard to description of the stock in the balance sheet as investments and this cannot be a decisive fact. In respect of more or less an identical case, the Division Bench in the case of ***Commissioner of Income Tax v. Tamilnadu Industrial Investment Corporation Ltd., [(2017) 394 ITR 0255 (Mad)]*** held the same in favour of the assessee. The question which fell for consideration was whether the Tribunal was right in holding that the shares are stock-in-trade of the assessee company. The Division Bench took note of the Memorandum and Articles of Association which spelt out the main activities of the assessee (TIIC Limited) and held that the assessee was incorporated solely for the purpose of ensuring and facilitating growth and development of industries in the State of Tamilnadu and investments by way of subscription of shares is solely on account of the under writing operations. Further, it held that the investments are in the nature of stock-in-trade and cannot be held otherwise. In our considered opinion the decision in the case of ***TIIC Limited*** (cited supra) would squarely cover the case on hand and the question framed for consideration is required to be answered in favour of the assessee.

Supreme Court in the case of ***Berger Paints India Ltd., vs. Commissioner of Income-Tax, Delhi-V*** [2017] 393 ITR 113. We have perused the said decision and we find that the said decision can have no application to the facts of the case as it was a case where the interpretation with regard to the premium amount collected by the assessee company on the share capital and how it has to be construed for the purpose of Section 35D(3)(b) of the Act. Therefore, the said decision in the case of ***Berger Paints*** (*cited supra*) can render no assistance to the case of the Revenue.

14. Furthermore, we find that the CIT(A) relied upon the decision in the case of **Tamil Nadu Industrial Development Corporation (TIDCO)** and in the said decision also, the investments made by the TIDCO was in the form of equity shares including share application deposit and the profit made on the sale of shares was held to be in the nature of business profit and not as long term capital gains. Further, the loss on investments was treated as bad debts and claims were written off as business expenditure which goes to show that the investments on such shares are in the course of primary business activities of the company. In the case of TIDCO, the CIT(A) relied upon a decision of the ITAT, Chennai B Bench in the case of ***M/s.V.D.Swami***

and Company Ltd., Vs. DCIT in ITA No.2592/MDS/95. As pointed out by us earlier, the objects for which the assessee company had been established by the Government of Tamil Nadu is no different from the purpose for which TIIC and TIDCO were established. Therefore, the CIT(A) was fully justified in relying upon the decision in the case of TIDCO. The Tribunal relied on a decision in the case of **R.Chidambaranatha Mudaliar** (cited supra). We find that the reliance placed on the decision is thoroughly misconceived as in the said case, the loss was under different connotation namely with regard to Section 45 of the Act. Furthermore, in the said case, the head of income was never in dispute. Therefore, the Tribunal erred in relying upon the decision in the case of **R.Chidambaranatha Mudaliar**. Thus, for all the above reasons, the order passed by the Tribunal reversing the order passed by the CIT(A) is not sustainable.

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15. In the result, the appeal filed by the assessee is allowed. The order passed by the Tribunal dated 11.01.2008 is set aside and the order passed by the CIT(A) dated 09.01.2006 is restored. The substantial questions of law are answered in favour of the assessee. No costs.

(T.S.S.,J.) (N.S.K.,J.)

12.11.2018

Speaking / Non-Speaking Order

Index : Yes/No

svki/mrm

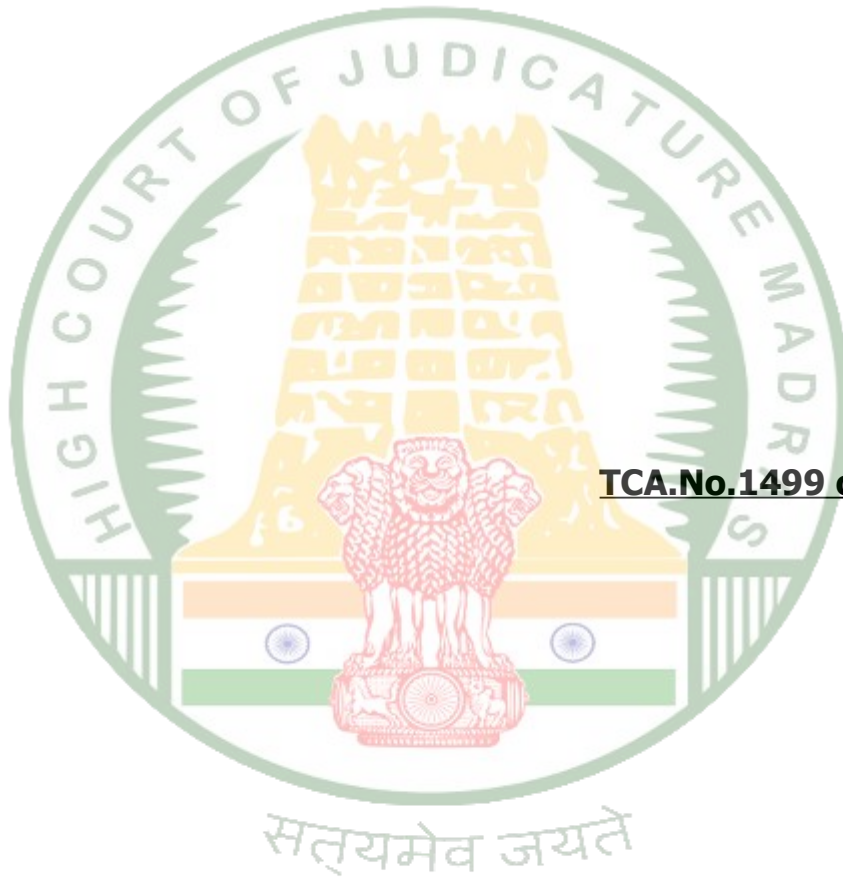
To

1.The Deputy Commissioner of Income Tax
Company Circle II (1)
Chennai - 600 034.

2. The Income Tax Appellate Tribunal "A" Bench, Chennai

**T.S.SIVAGNANAM,J.
and
N.SATHISH KUMAR,J.**

(svki)



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