

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.02.2019

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

Tax Case Appeal Nos. 2674 to 2679 of 2006

M/s.Narasus Coffee Company
16, Court Road,
Salem.

Appellant in all T.C.A.'s

..Vs..

The Joint Commissioner of Income Tax,
Special Range
Salem.

Respondent in T.C.A.Nos.
2674 and 2676 of 2006

The Deputy Commissioner of Income Tax,
Company Circle I,
Salem

Respondent in T.C.A.No.
2675, 2677, 2678 and 2679
of 2006

Tax Case Appeals filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'D' Bench, Chennai, dated 16.06.2006 made in I.T.A.Nos.278/MDS/99, 523/Mds/1999, 782/Mds/2000, 1024/MDS/02, 1026/MDS/02 and 1027/MDS/2002.

For Appellant : Mr.S.Sridhar
(in all T.C.A.'s)
For Respondent : Mr.M.Swaminathan
(in all T.C.A.'s) Senior Standing counsel
Assisted by Ms.Premalatha

COMMON JUDGMENT

(Delivered by DR.VINEET KOTHARI,J)

The present Appeals have been filed by the Assessee M/s. Narasus Coffee Company, raising the Substantial Questions of law arising from the order of ITAT dated 16.06.2016 for Assessment years 1995-96 to 1998-1999 , dismissing the Assessee's appeal and allowing the cross appeal.

T.C.A.Nos.2674 to 2676 of 2006

2. The Appeals in T.C.A.Nos. 2674 and 2675 of 2006 were admitted on 22.12.2006 with the following substantial questions of law:

T.C.A.No.2674 of 2006:

"1. Whether the Tribunal is correct in confirming the order of the Commissioner of Income Tax (Appeals) in treating the Appellant as a exporter in processed goods as against the claim of exporter in trading goods for the purpose and in the context of computation and quantification of deduction under Section 80 HHC of the Act with reference to export of cured coffee?"

2. Whether the Tribunal is correct in concluding that the principles of Latin Maxim "qui per alium facit" per seipsum facere Videtur" would be applicable to the facts of the present case to further conclude that the Appellant engaged in export of cured coffee even though the raw coffee was cured by others with a view to re-compute the deduction under Section 80 HHC of the Act applying the statutory formula applicable to the exporter of processed goods as against the formula adopted by the Appellant applicable to the export of trading goods?

T.C.A.No.2675 of 2006

(i) Whether the Tribunal is correct in reversing the order of the First Appellate Authority in accepting the claim of bad debts deductible in the computation of taxable total income?

(ii) Whether the Tribunal is correct in concluding the interest income and lease income should not be reckoned in the computation of eligible profits in the ultimate quantification of deduction under Section 80 HHC of the Act on the ground of no direct nexus of the said deposits and the leasing activity to the business?

(iii) Whether the Tribunal is correct in concluding that the quantification of 'indirect cost', with reference to all costs as against the claim of the Appellant for

exclusion of cost not attributable to the activity of export in ascertaining such indirect cost in the computation of deduction under Section 80 HHC of the Act?

iv) Whether the Tribunal is correct in concluding that no separate books of account was maintained for export of trading goods even though separate ledger folios were maintained admittedly for the said export activity and as a corollary the quantification of indirect cost upon excluding the cost not relatable to export activity was wrong and not accurate on the facts and in the circumstances of the case?

v) Whether the Tribunal is correct in ignoring the decision of the Co-ordinate Bench rendered in the case of M/s.S.P.Textiles in ITA No.1454/Mds/2002 dated 21.10.2005 rendered under similar circumstances and further in not properly appreciating the Special Bench decision reported in 86 ITD 121 (SB) rendered in the context of the method and the manner of the ascertainment of 'indirect cost' in the computation of deduction under Section 80 HHC of the Act?

T.C.A.No.2676 of 2006

"(i) Whether the Tribunal is correct in concluding that the jurisdiction under section 263 of

the Act to revise the assessment order passed in terms of section 143 (3) of the Act was correctly and validly assumed in view of the twin conditions of 'error' and 'prejudice caused to the revenue' in the said assessment order passed by the Respondent/Assessing Officer?

(ii) Whether the Tribunal is correct in concluding that the direction in the revision order with reference to the quantification 'indirect cost' with reference to all costs as against the claim of the Appellant for exclusion of cost not attributable to the activity of export in the computation of deduction under Section 80 HHC of the Act?

(iii) Whether the Tribunal is correct in concluding that no separate books of account was maintained for export of trading goods even though separate folios were maintained admittedly for the said export activity and as a corollary the quantification of 'indirect cost' upon excluding the cost not relatable to export activity was wrong and not accurate on the facts and in the circumstances of the case?"

5. The learned counsel for the Assessee Mr.Sridhar has mainly raised the two contentions in support of the present appeals, filed by the Assessee. The learned counsel submitted that the Revisional proceedings undertaken by the Commissioner of Income Tax

(Administration) under Section 263 of Income Tax Act (for short "The Act") for A.Y.1996-1997 (T.C.A.No.2676 of 2006) were not justified because the bifurcation of direct and indirect costs were not properly computed by Assessee while computing the benefit u/s 80HHC, whereas Assessee submitted that the same was accepted by the Assessing Authority as well as CIT (Appeals). Therefore, the view of the CIT (Administration), while issuing impugned Revision notice under Section 263 of the Act was just another possible view and therefore where two views are possible, the order passed by the assessing authority cannot be said to be erroneous.

6. The learned Tribunal has upheld the order of the Assessing Officer vide para 13 of the impugned Order of the Tribunal. The relevant para 12 to 14 are quoted below for ready reference.

"12. ITA.No.782/Mds/2000: This appeal by the Assessee is against the order of Commissioner of Income Tax under Section 263 of the I.T.Act. The controversy here relates to deduction under Sec.80HHC with reference to determination of direct cost and indirect cost.

13.The facts leading to this controversy are that the Assessee claimed a sum of Rs.58,54,116/- as

deduction under Sec.80HHC of the Act. The assessment was completed under Sec.143(3) allowing the entire claim. Later, the Administrative Commissioner on perusal of the records came to the conclusion that the claim of the Assessee was allowed in excess, **since indirect cost works out to Rs.9,52,932/- instead of Rs.2,89,563/-** adopted in the assessment order. Further, with regard to export incentives, deduction has been wrongly allowed without considering the provisions to sub sec.(3) of sec.80HHC. Hence, in the opinion of the CIT, the Assessing order was erroneous and prejudicial to the interest of the Revenue. Accordingly, after calling for objection from the Assessee, the CIT directed the Assessing Officer to recompute the deduction under Sec.80HHC. Aggrieved the Assessee is in appeal before us.

14. The contention of the Assessee is that the **assessment was made under Sec.143(3) after scrutinizing the entire books of accounts.** The Assessing Officer has applied his mind to the issue relating to computation of deduction under Sec.80HHC. The pre-requisite for the exercise of jurisdiction under Section 263 by the CIT is that the order of the Assessing Officer is erroneous in so far as it is prejudicial to the interest of Revenue. The CIT has to satisfy twin conditions viz., that the order of the Assessing Officer sought to be revised is erroneous and it is prejudicial to the interest of the

Revenue. If one of these conditions is absent, he cannot exercise his jurisdiction. The other type of mistake or error committed by the Assessing officer need not be prejudicial to the interest of the Revenue. If due to an erroneous act of the Assessing Officer, the Revenue was lost by way of tax collections which shall be payable by the Assessee, it should be prejudicial to the interest of the Revenue. When the Assessing Officer has followed one possible view when two views are possible, the decision taken by the Assessing Officer cannot be said to be erroneous even if there was a loss to the Revenue unless the decision of the Assessing Officer is unsustainable in law. The learned counsel for the Assessee relied on the judgment of the Hon'ble Bombay High Court in the case of CIT V. Gabriel India Ltd (203 ITR 108). "

6. The other contention raised by the learned counsel for the Assessee is that the Assessee is the exporter of coffee in two forms viz., to purchase of the coffee from the market and export it as such. Secondly, the export of cured coffee for which the processing was undertaken on behalf of the Assessee by the third parties i.e. by the sister concerns Viz.M/s.K.R.Ramanujam and Co. and M/s.Sarathy Coffee Co. The learned counsel for the Assessee Mr.Sridhar contended that such processing on behalf of the Assessee by the third party did

not change the character of cured coffee as 'traded goods' and Assessee was entitled to benefit under Section 80HHC(3)(B) with regard to said cured coffee also as traded goods.

7. On the other hand, the learned counsel for the Revenue supported the order passed by the learned Tribunal on both these aspects of the matter.

8. We have heard the learned counsels at length and perused the materials placed on record.

9. Section 80HHC3 (a) and (b) is quoted below for ready reference:

"(3) For the purposes of Sub-Section (1)-

(a) Where the export out of India is goods or merchandise manufactured[or processed] by the assessee, the profits, derived from such export shall be the amount which bears to the profits of the business, the same proportion as the export turnover in respect of such goods bears to the total turnover of the business carried on by the assessee;

(b) Where the export out of India is of trading goods the profits derived from such export shall be the export turnover in respect of such trading goods

as reduced by the direct costs and indirect costs attributable to such export;"

10. As far as the computation of deduction amount under Section 80HHC is concerned, the said provisions makes distinction between the goods or merchandise manufactured or processed by the Assessee and the export of trading goods. The computation method of these two categories of export of Assessee is given in clause (a) and (b) under Section 80HHC quoted above. The stand of the Revenue is that the process of coffee by the sister concern on job work and the request or on behalf of the Assessee amounts to 'processing' by Assessee and therefore the clause (a) will apply whereas, the contention of the Assessee, is that such job work done by the third party cannot be said to be on behalf of the Assessee and therefore even if such processing is done, cured coffee will remain "trading goods", covered by clause (b) of Section 80 HHC (3) of the Act.

11. We are unable to accept the contention raised on behalf of the Assessee. The words 'Manufacture' or 'Processing' by the Assessee are wide enough to cover the processing of coffee undertaken by the third party on behalf of the Assessee also. The job work was assigned to the third party by the Assessee undoubtedly and therefore the same cannot be said to have purchased such cured coffee from the sister

concerns. Therefore the sub clause (a) will apply and not the sub clause (b) as contended by the Assessee.

12.As far as another contention with regard to Section 263 of the Act is concerned, we do not find merit in the contention raised by the learned counsel for the Assessee, because in view of the clear definition of direct and indirect costs in the Explanation (d) & (e) in Section 80HHC of the Act. The said bifurcation by Assessing authority would not bind the CIT (Administration) to invoke his revisional powers under Section 263 of the Act. The learned CIT (Administration) has clearly given reason in the Show cause notice u/s. 263 issued by him that the Assessing Authority has adopted indirect cost as per the clause (b) to the extent of Rs.2,89,563/- only as against Rs.9,52,932/- and therefore excess deduction u/s. 80 HHC to that extent has been allowed by the Assessing Authority. Hence, Section 263 was invoked by CIT (Administration) to revise the said assessment order. Upon the query made by the Court about the working of two figures of indirect costs i.e., sum of Rs.2,89,563/- as taken by the Assessee and a sum of Rs.9,52,932/- as taken by the CIT (Administration), the learned counsel for the Assessee was unable to give the details with regard to the same, except submitting that the Assessee has maintained separate Books of Accounts for both type of

goods and therefore the figures of indirect costs as disclosed by the Assessee and accepted by the Assessing Authority, ought to have been accepted by the CIT (Administration) as well. We are not impressed by the said submission made on behalf of the Assessee. On the contrary, we feel that the computation of exact amount of deduction under Section 80HHC is a fact finding exercise. Section 260 A enables the High Court to decide only the substantial questions of law and not return any finding of facts, which are arrived at by the Tribunal, which is the final fact finding body. Unless the finding of facts are shown to be perverse, the High Court cannot hold such findings to be erroneous, in any manner and they are binding on the High Court. We do not find any such perversity in the findings by the learned Tribunal and hence these Appeals filed by the Assessee in T.C.A.Nos.2674 to 2676 of 2006 are liable to be dismissed and the same are accordingly dismissed and the Questions of law framed above are answered in favour of the Revenue and against the Assessee.

14. The Questions of Law Nos. (ii) to (iv) raised in T.C.A.Nos.2677 to 2679 of 2006 are the same as raised in T.C.A.No.2675 of 2006 in Question of Law Nos. (iii) to (V) and therefore they are answered as of above..

15. The first question of law raised in T.C.A.Nos. 2677 to 2679 of 2006 (admitted on 22.12.2006) is extracted hereunder:

"(i). Whether the Tribunal is correct in concluding that interest income and lease income should not be reckoned in the computation of eligible profits in the ultimate quantification of deduction under Section 80 HHC of the Act on the ground of no direct nexus of the said deposits and the leasing activity of the business?"

16. As far as the said question of law in respect of T.C.A.Nos. 2677 to 2679 of 2006 is concerned, the findings of the Income tax Appellate Tribunal on the interest income and lease income are quoted below for ready reference:

"31. We have heard the rival submissions are perused the material on record. To treat income as business income, there should be direct nexus between the export and interest income. The contention of the Assessee is that interest was earned on deposits which were made at the insistence of the Bankers to sanction credit facilities. But we find no merit to support that there was a compulsion or insistence by the Bank to make deposits against sanction of credit facilities. The Assessee has not

brought on record anything to show that the Bank has insisted to make deposit to grant credit facilities. **If the deposits made with bank were for the convenience and benefit of the Assessee with a view to derive income, that cannot be treated as business income.** The bank's decision to extend credit facilities was linked more to the business prospects of the Assessee and confidence of the Bank in the integrity of the Assessee and the Assessee's capacity to run the business. In the case of **Acit V. Madras Motors Ltd. (257 ITR 60)(Mad.)** in the context of interest received from Bank deposit made for obtaining letters of credit, the Hon'ble Madras High Court has held that **there was no nexus of income with the industrial undertaking and as such, it cannot also be taken into account in computing the special deduction.** When a plain meaning has to be given to the opening part of the section, it is clear that the word "business" means the business relating to the goods to which the section applies and the thrust is on the work "exclusively". The sub section considers the situation where the Assessee's business is of exports and the Assessee's business has to be only in respect of goods or merchandise to which the section applies. In the case of **Nanji Topanbhai & Co (243 ITR 192)(Ker)**, the Kerala High Court has held that the nature of the business carried on by the Assessee was export business as such interest received by the Assessee

from the fixed deposit could not be treated **as business income, but only income from other sources. Hence, the claim of deduction under Sec.80HHC was denied.**

32. It was held in the case of South India Shipping Corporation Ltd. Vs. CIT (240 ITR 24) that interest received from bank deposit has to be treated as income from other sources. Similarly in the case of Tuticorin Alkali Chemicals & Fertilizers Ltd. V. CIT (227 ITR 172), the Hon'ble Apex Court has held the above view. Further, the Hon'ble Jurisdictional High Court has held in the case of CIT V.A.S.Nitzar Ahmed & Co. (259 ITR 244) that deposit kept by the in the was to Assessee's own advantage in as much as it provided return. That was in the nature of an additional source of income to the Assessee which was not in any way linked to the business that it was carrying on. In the case of K.S.Subbiah Pillai & Co. V. CIT (260 ITR 204), the Hon'ble Jurisdictional High Court has held that:-

"Clause (baa) under the Explanation to Section 80HHC defines profits of the business as computed under the head "Profits and gains of business or profession". The deductions to be made are from the amount of profit so computed and not from the amount computed under any other head of income of that assessee. The reference to "such profits" in Sub-clause (1) of Clause (baa) can only be to the profits of the business computed under the

head "Profits and gains of business or profession". Addition of prefix "the" to "profits" in Clause (baa), while referring to the profits and gains of business or profession makes it clear that it is only the amounts already included in that computation which are now to be reduced to the extent of **90 per cent., of those items are included in Sub-clause (1) of that definition.**

Interest paid and claimed as deduction in the computation of profits and gains for business, cannot be set off against interest received and computed under income from "other sources". **What has been said about interest is equally applicable to rent and commission included in the computation under the head "Profits and gains of business or profession".**

33. In the light of the above discussion, we hold that the directions of the CIT (Appeals) to consider interest income as business income simply for the reasons that it was done so in the earlier year is without application of mind. Each Assessment Year is independent and the earlier year's decision cannot be correlated while completing the Assessment of another year. The direction is further aggravated for the reason that it is against the provisions governing the issue.

34. In our opinion, the interest received on

deposits has to have direct nexus with the business of the Assessee to say that interest income is attributable to the export business. Hence, we have no hesitation in reversing his orders on this issue. The ground taken by the Revenue is allowed.

35. Further, with regard to the argument that **lease income as business income, we observe that there is no evidence to show that the Assessee took a decision to carry out leasing of machinery as the business activity of the Assessee.** Hence, the plea of the Assessee at this stage that the business of the Assessee is leasing which is permitted by the Partnership Deed, cannot be accepted. Admittedly, the business of the Assessee is export of coffee and not leasing of machinery. In the present case, the Assessee claims leasing business as one of the businesses of the Assessee, but the Department challenges the claim of the Assessee that the leasing business was one of the businesses of the Assessee, in the absence of any tangible evidence to carry out leasing business. Under Sec.80HHC, the Assessee who is engaged in export of business is allowed in computing the total income a deduction out of income derived by the Assessee export of such goods. Therefore, unless the Assessee is able to show that the income received by way of leasing the machinery is income derived from the export business, it will not be entitled for

deduction under Section 80HHC."

17. The learned counsel for the Assessee Mr.S.Sridhar urged before us the said interest income and lease rental income is part of the usual business of the Assessee and therefore the same would form part of the export profit and entitled to deduction under Section 80HHC of the Act. He urged before us that if the Court comes to the conclusion that they are not form part of export profit and they would be covered by the definition of 'profit of the business" as per the definition of *Clause (baa) under the Explanation to [Section 80HHC](#)* , which is extracted hereunder:

"Profits of the business" means the profits of the business as computed under the head " Profits and gains of business as profession" as reduced by-

(1) ninety percent of any sum referred to in clauses (iia) , (iib), (iic), (iid) and (iie) of Section 28 or of any receipts by way of brokerage, commission, interest, rent, charges or any other receipt of a similar nature included in such profits; and

(2) the profits of any branch, office, warehouse or any other establishment of the assessee situate outside India;"

18. This Court in a recent Judgment in the case of **M/s.AVM Cine Products Vs. The Deputy Commissioner of Income Tax** in **T.C.A.Nos.884 & 885 of 2005** rendered on **22.02.2019**, while dealing with the provisions of Section 56 in Chapter VI of the Act and Sections 80 IA, 80IB of the Act held that "Income from Other Sources" is only that income which cannot be brought to tax under any of the specified heads of Income in the provisions preceding Section 56 of the Act in the said Chapter IV of the Act, namely, under the Head of "Salary", "Income from Business or Profession", "Income from House Property" and "Income from Capital Gains". Paragraphs 22 to 25 are quoted for ready reference.

"22. In our considered opinion, we find a considerable force in the contention raised by the learned counsel for the Assessee and the cases relied upon by him. The Scheme of computing the total income under various heads in Chapter IV of the Act and an analysis of Section 56 of the Act itself would clearly reveal that **"Income from Other Sources" is only that income which cannot be brought to tax under any of the specified heads of Income in the provisions preceding Section 56 of the Act in the said Chapter IV**

of the Act, namely under the Head of "Salary", "Income from Business or Profession", "Income from House Property" and "Income from Capital Gains". The Head "Income from Other Sources" is like a residuary clause and the income which cannot be attributed or related to any specified and defined Head of income, then only such income can be brought to tax under **Section 56 of the Act, which itself provides both an inclusive and exclusive definition.** It is a long provision and enumerates several such incomes which can be included therein and within such inclusions, the exclusions are also made.

23. As far as the interest income is concerned, Clause (id) of Sub-section (2) of Section 56 clearly provides that income by way of interest on securities will be taxable under Section 56, if only such interest income is not chargeable to income tax under the head "Profits and gains of business or Profession". **Thus, Interest Income earned in the ordinary course of business is excluded from Section 56 of the Act.** An interest income earned by the Assessee or received by the Assessee during the year in question, in the ordinary and regular course of business is an integral part of business

income itself. **Like hundreds of business decisions taken by the Assessee in its business, the deposit of money with the bank either under compulsion like maintaining the margin money with the Bank or for opening of foreign letter of credit** or for obtaining the loan itself or cash credit facility or the voluntary deposits made by it of the surplus funds, which would otherwise be lying idle, the Assessee, in its own business or commercial prudence, makes a deposit in Bank and incidentally earns an interest through it or interest from staff loans or customers on the belated payments and such interest income is nothing but its regular business income.

"24. Section 56 of the Act, providing for "Income from Other Sources", cannot be applied at all to such interest income. The income from Business need not be directly related only to sale of goods or services. It can be from the sources like Bank deposits, which are idle or inactive sources and do not involve any actual trading or manufacturing activity on the part of the Assessee. Therefore, interest income earned by the Assessee in the ordinary course of business, cannot be said to be excluded from the head "Income from Business or Profession" in Part D, comprising of Sections 28 to 44DB in Chapter IV, which deals with computation of the total income in the Heads of Income as per Section 14 of the Act. If by no stretch of imagination, such interest income could be included under the Head "Profits and gains of business or

profession" only then it could fall in the residuary clause of "Income from Other Sources" under Section 56 of the Act and not otherwise.

25. We do not find any such occasion to artificially bifurcate and dissect the interest income earned by the Assessee in the present case in its ordinary course of business, so as to take it out of the ambit of Deduction available to it under Section 80IA of the Act. The efforts on the part of the Revenue Authorities to create such artificial compartments in the "Business income" of the Assessee, merely to reduce the quantum of Deduction available to the Assessee under Section 80IA of the Act of which the eligibility of the Assessee is not even in doubt, is nothing but a whimsical and the arbitrary view of the Revenue Authorities and the same is opposed to common sense and business prudence of a common business man.

19. Having perused the aforesaid findings of the Tribunal and the materials placed on record, we are of the opinion that though the lease rental income earned by the Assessee cannot be taxed as "income from other sources" under Section 56 of the Act, but the lease rent in the hands of the Assessee cannot be said to be income derived from export business of the Assessee. However, the definition of *Clause (baa)* under the Explanation to [Section 80HHC](#) , includes such other receipts by way of brokerage, commission, interest, rent, charges or any other receipt of a similar nature are included in such

export profits to the extent of 10% by excluding 90% thereof by the deeming fiction viz., clause (baa) of the Explanation.

20. We do not find any reason to deprive the Assessee before us in the present case of the said benefit to the extent of 10% by applying clause (baa) as quoted above. Therefore, to that extent only the aforesaid question is answered in favour of the Assessee and against Revenue.

21. In the result, the Appeals in T.C.A.Nos. 2674 to 2676 of 2006 are dismissed and the Appeals in T.C.A.Nos.2677 to 2679 are partly allowed. No order as to costs.

(V.K.,J.) (C.V.K.,J.)
26.02.2019

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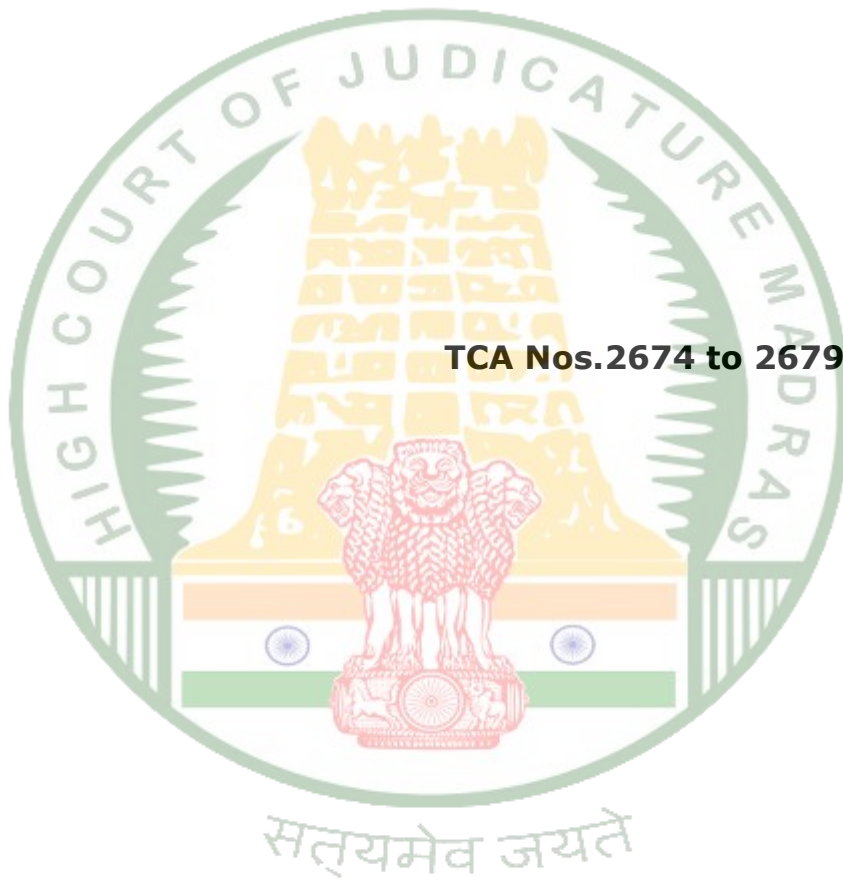
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Income Tax Appellate Tribunal,
Madras 'D' Bench, Chennai.

DR.VINEET KOTHARI, J.
and
MR.C.V.KARTHIKEYAN, J.

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TCA Nos.2674 to 2679 of 2006

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