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TCA No. 755 of 2009 etc. batch

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.06.2022

CORAM

THE HONOURABLE MR. JUSTICE R. MAHADEVAN
and
THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

Tax Case Appeal Nos. 755, 756, 883, 884, 885, 886,
1263, 1264, 1265 of 2009, 215 of 2011,
118, 119, 120, 278 and 279 of 2012,
371 & 622 of 2013
360, 361, 913, 914, 915 and 916 of 2014,
124, 125, 126, 127, 128, 129, 130, 131 and 717 of 2017 &
406, 407, 413, 414 and 416 of 2019

T.C.A.No.755 of 2009

Shriram Transport Finance Company Limited
No.123, Angappa Naicken Street
Chennai - 600 004

.. Appellant

Versus

Income Tax Officer (OSD)
Company Circle VI (2)
Chennai - 600 034

.. Respondent

Prayer:- Appeal filed under Section 260A of The Income Tax Act against the order dated 06.02.2009 in ITA No.570/Mds/2008 on the file of Income Tax Appellate Tribunal, Chennai "D" Bench.

T.C.A.No.756 of 2009

Shriram Investments Limited
(since amalgamated with Shriram Transport Finance Company Limited)
No.123, Angappa Naicken Street
Chennai - 600 001

.. Appellant

Versus



TCA No. 755 of 2009 etc. batch

Income Tax Officer (OSD)
Company Circle VI (2)
Chennai - 600 034

.. Respondent

Prayer:- Appeal filed under Section 260A of The Income Tax Act against the order dated 06.02.2009 in ITA No.571/Mds/2008 on the file of Income Tax Appellate Tribunal, Chennai "D" Bench.

T.C.A.No.883 of 2009

Shriram Overseas Finance Limited,
(Since Amalgamated with
Shriram Transport Finance Company Limited),
No.123, Angappa Naicken Street,
Chennai - 600 004.

.. Appellant

Versus

Joint Commissioner of Income Tax,
Range-I,
Madurai.

.. Respondent

Prayer:- Appeal filed under Section 260A of The Income Tax Act against the order dated 24.03.2009 in ITA No.1234/Mds/2008 on the file of Income Tax Appellate Tribunal, Chennai "C" Bench.

T.C.A.No.884 of 2009

Shriram Transport Finance Company Limited,
No.123, Angappa Naicken Street,
Chennai - 600 004.

.. Appellant

Versus

Income Tax Officer (OSD)
Company Circle VI (2)
Chennai - 600 034.

.. Respondent



TCA No. 755 of 2009 etc. batch

Prayer:- Appeal filed under Section 260A of The Income Tax Act against the order dated 06.05.2009 in ITA No.1944/Mds/2008 on the file of Income Tax Appellate Tribunal, Chennai "C" Bench.

T.C.A.No.885 of 2009

Shriram Investments Limited,
(Since Amalgamated with
Shriram Transport Finance Company Limited),
No.123, Angappa Naicken Street,
Chennai - 600 001.

.. Appellant

Versus

Income Tax Officer (OSD)
Company Circle VI (2)
Chennai - 600 034.

.. Respondent

Prayer:- Appeal filed under Section 260A of The Income Tax Act against the order dated 06.05.2009 in ITA No.1945/Mds/2008 on the file of Income Tax Appellate Tribunal, Chennai "C" Bench.

T.C.A.No.886 of 2009

Shriram City Union Finance Limited,
No.123, Angappa Naicken Street,
Chennai - 600 004.

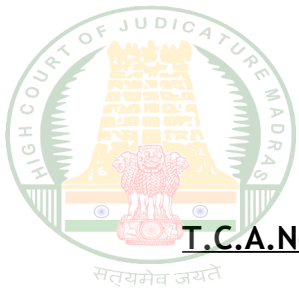
.. Appellant

Versus

Income Tax Officer (OSD)
Company Circle VI (2)
Chennai - 600 034.

.. Respondent

Prayer:- Appeal filed under Section 260A of The Income Tax Act against the order dated 06.05.2009 in ITA No.1946/Mds/2008 on the file of Income Tax Appellate Tribunal, Chennai "C" Bench.



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T.C.A.No.1263 of 2009

Shriram Investments Limited,
(Since Amalgamated with
Shriram Transport Finance Company Limited),
No.123, Angappa Naicken Street,
Chennai - 600 001.

.. Appellant

Versus

Additional Commissioner of Income Tax,
Company Rang VI,
Chennai-600 034.

.. Respondent

Prayer:- Appeal filed under Section 260A of The Income Tax Act against the order dated 16.07.2009 in ITA No.234/Mds/2009 on the file of Income Tax Appellate Tribunal, Chennai "C" Bench.

T.C.A.No.1264 of 2009

Shriram Transport Finance Company Limited,
No.123, Angappa Naicken Street,
Chennai - 600 004.

.. Appellant

Versus

Additional Commissioner of Income Tax,
Company Range VI,
Chennai-600 034.

.. Respondent

Prayer:- Appeal filed under Section 260A of The Income Tax Act against the order dated 16.07.2009 in ITA No.235/Mds/2009 on the file of Income Tax Appellate Tribunal, Chennai "C" Bench.

T.C.A.No.1265 of 2009

Shriram City Union Finance Limited,
No.123, Angappa Naicken Street,
Chennai - 600 004.

.. Appellant



TCA No. 755 of 2009 etc. batch

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Versus

Additional Commissioner of Income Tax,
Company Range VI,
Chennai-600 034.

.. Respondent

Prayer:- Appeal filed under Section 260A of The Income Tax Act against the order dated 16.07.2009 in ITA No.236/Mds/2009 on the file of Income Tax Appellate Tribunal, Chennai "C" Bench.

T.C.A.No.215 of 2011

Shriram Transport Finance Company Limited,
No.123, Angappa Naicken Street,
Chennai - 600 004.

.. Appellant

Versus

Additional Commissioner of Income Tax,
Company Range VI,
Chennai-600 034.

.. Respondent

Prayer:- Appeal filed under Section 260A of The Income Tax Act against the order dated 08.12.2010 and 08.04.2011 in ITA No.503/Mds/2010 on the file of Income Tax Appellate Tribunal, Chennai "A" Bench.

T.C.A.No.118 of 2012

Shriram Overseas Finance Limited,
(Since amalgamated with Shriram
Transport Finance Company Limited,
No.4, Mookambika Complex,
Lady Desika Road,
Mylapore, Chennai- 600 004.

.. Appellant

Versus

Deputy Commissioner of Income Tax,
Company Circle-I,
Madurai - 625 002.

.. Respondent



TCA No. 755 of 2009 etc. batch

Prayer:- Appeal filed under Section 260A of The Income Tax Act against the order dated 21.12.2011 in ITA No.1255/Mds/2011 on the file of Income Tax Appellate Tribunal, Chennai "A" Bench.

T.C.A.No.119 of 2012

Shriram City Union Finance Limited,
No.123, Angappa Naicken Street,
Chennai - 600 001.

.. Appellant

Versus

Additional Commissioner of Income Tax,
Company Range VI,
Chennai-600 034.

.. Respondent

Prayer:- Appeal filed under Section 260A of The Income Tax Act against the order dated 10.10.2011 & 08.11.2011 in ITA No.22/Mds/2011 on the file of Income Tax Appellate Tribunal, Chennai "A" Bench.

T.C.A.No.120 of 2012

Shriram Transport Finance Company Limited,
Mookambika Complex,
No.4, Lady Desika Road,
Mylapore, Chennai - 600 004.

.. Appellant

Versus

Additional Commissioner of Income Tax,
Company Range VI,
Chennai-600 034.

.. Respondent

Prayer:- Appeal filed under Section 260A of The Income Tax Act against the order dated 10.10.2011 & 08.11.2011 in ITA No.23/Mds/2011 on the file of Income Tax Appellate Tribunal, Chennai "A" Bench.

T.C.A.No.278 of 2012

Shriram City Union Finance Limited,
No.123, Angappa Naicken Street,
Chennai - 600 001.

.. Appellant



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Versus

Assistant Commissioner of Income Tax,
Company Circle VI (2),
121, M.G.Road,
Chennai - 600 034.

.. Respondent

Prayer:- Appeal filed under Section 260A of The Income Tax Act against the order dated 28.06.2012 in ITA No.702/Mds/2012 on the file of Income Tax Appellate Tribunal, Chennai "A" Bench.

T.C.A.No.279 of 2012

Shriram Transport Finance Company Limited,
Mookambika Complex,
No.4, Lady Desika Road,
Mylapore, Chennai - 600 004.

.. Appellant

Versus

Assistant Commissioner of Income Tax,
Company Circle VI (2),
121, M.G.Road,
Chennai - 600 034.

.. Respondent

Prayer:- Appeal filed under Section 260A of The Income Tax Act against the order dated 28.06.2012 in ITA No.701/Mds/2012 on the file of Income Tax Appellate Tribunal, Chennai "A" Bench.

T.C.A.Nos.371 and 622 of 2013

Commissioner of Income Tax,
Chennai.

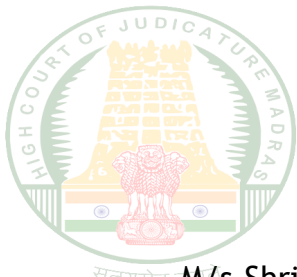
.. Appellant in both TCAs

Versus

M/s.Shriram Transport Finance Co. Ltd.,
Mookambika Complex, 3rd Floor,
No.4, Lady Desika Road,
Mylapore, Chennai - 600 004.

.. Respondent in
T.C.A.No.371 of 2013

PAN No. AAACS7018R
<https://www.mhc.tn.gov.in/judis>



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M/s.Shriram City Union Finance Co. Ltd.,
Mookambika Complex 3rd Floor,
No.4, Lady Desika Road,
Mylapore, Chennai - 600 004.

.. Respondent in
T.C.A.No.622 of 2013

Prayer in T.C.A.No.371 of 2013 - Appeals filed under Section 260A of The Income Tax Act against the order dated 02.08.2012 in ITA No.924/Mds/2012, on the file of Income Tax Appellate Tribunal, Chennai "B" Bench.

Prayer in T.C.A.No.622 of 2013 - Appeals filed under Section 260A of The Income Tax Act against the order dated 16.12.2010 in ITA No.726/Mds/2010, on the file of Income Tax Appellate Tribunal, Chennai "A" Bench.

T.C.A.Nos.360 and 361 of 2014

Commissioner of Income Tax,
Chennai.

.. Appellant in both TCAs'

Versus

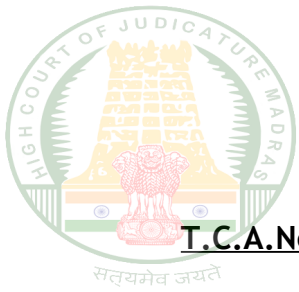
M/s.Shriram City Union Finance Co. Ltd.,
Mookambika Complex,
3rd Floor,
No.4, Lady Desika Road,
Mylapore, Chennai - 600 004.

.. Respondent in
T.C.A.No.360 of 2014

M/s.Shriram Transport Finance Co. Ltd.,
Mookambika Complex 3rd Floor,
No.4, Lady Desika Road,
Mylapore, Chennai - 600 004.

.. Respondent in
T.C.A.No.361 of 2014

Prayer in both TCAs:- Appeals filed under Section 260A of The Income Tax Act against the order dated 11.04.2013 in ITA Nos.1899/Mds/2012 and 1898/MDS/2012, on the file of Income Tax Appellate Tribunal, Chennai "B" Bench.



TCA No. 755 of 2009 etc. batch

T.C.A.Nos.913 and 914 of 2014

Commissioner of Income Tax,
Chennai.

.. Appellant in both TCAs'

Versus

M/s.Shriram City Union Finance Company Limited
Mookambika Complex, 3rd Floor
No.4, Lady Desika Road,
Mylapore,
Chennai - 600 004.

.. Respondent in TCA.No.913 of 2014

M/s.Shriram Transport Finance Co. Ltd.,
Mookambika Complex, 3rd Floor,
No.4, Lady Desika Road,
Mylapore, Chennai - 600 004.

.. Respondent in TCA.No.914 of 2014

Prayer : Appeals filed under Section 260A of The Income Tax Act against the order dated 10.10.2011 in ITA Nos.319 and 320/Mds/2011, on the file of Income Tax Appellate Tribunal, Chennai "A" Bench.

T.C.A.Nos.915 & 916 of 2014

The Commissioner of Income Tax,
Chennai.

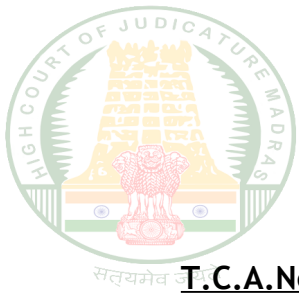
.. Appellant

Vs.

M/s.Shriram City Union Finance Co. Ltd.,
Mookambika Complex, 3rd Floor,
No.4, Lady Desika Road,
Mylapore, Chennai - 600 004.

.. Respondent

Prayer:- Appeals filed under Section 260A of The Income Tax Act against the order dated 10.10.2011 & 08.11.2011 in ITA Nos.22/Mds/2011 and 23/Mds/2011, on the file of Income Tax Appellate Tribunal, Chennai "A" Bench.



TCA No. 755 of 2009 etc. batch

T.C.A.Nos.125 and 127 of 2017

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Shriram Transport Finance Company Limited
Mookambika Complex,
No.4, Lady Desika Road,
Mylapore, Chennai - 600 004.
(PAN No.AAACS7018A)

.. Appellant in both TCAs'

T.C.A.Nos.129 and 131 of 2017

Shriram City Union Finance Limited
Mookambika Complex,
No.4, Lady Desika Road,
Mylapore, Chennai - 600 004.

.. Appellant in both TCAs'

Versus

Deputy Commissioner of Income Tax,
Corporate Circle 6 (1),
Chennai - 600 034.

.. Respondent in all TCAs'

Prayer:- Appeals filed under Section 260A of The Income Tax Act against the order dated 29.01.2016 in ITA Nos.870/Mds/2015, 871/Mds/2015, 868/Mds/2015 and 869/Mds/2015 on the file of Income Tax Appellate Tribunal, Chennai "B" Bench.

T.C.A.Nos.124, 126 and 717 of 2017

Shriram Transport Finance Company Limited
Mookambika Complex,
No.4, Lady Desika Road,
Mylapore, Chennai - 600 004.

.. Appellant in all TCAs'

T.C.A.Nos.128 and 130 of 2017

Shriram City Union Finance Limited
Mookambika Complex,
No.4, Lady Desika Road,
Mylapore, Chennai - 600 004.

.. Appellant in both TCAs'



TCA No. 755 of 2009 etc. batch

Versus

Deputy Commissioner of Income Tax,
Corporate Circle 6 (1),
Chennai - 600 034.

.. Respondent in all TCAs'

Prayer in Tax Case Appeal Nos.124, 126, 128, 130 of 2017:- Appeals filed under Section 260A of The Income Tax Act against the order dated 29.01.2016 in ITA Nos.711/Mds/2015, 712/Mds/2015, 714/Mds/2015 and 715/Mds/2015 on the file of Income Tax Appellate Tribunal, Chennai "B" Bench.

Prayer in Tax Case Appeal No.717 of 2017:- Appeal filed under Section 260A of The Income Tax Act against the order dated 24.08.2016 in ITA No.454/Mds/2016 on the file of Income Tax Appellate Tribunal, Chennai "B" Bench.

T.C.A.No.406 of 2019

Shriram City Union Finance Limited,
Mookambika Complex,
No.4, Lady Desika Road,
Mylapore, Chennai - 600 004.

.. Appellant

Versus

Deputy Commissioner of Income Tax,
Corporate Circle 6 (1),
Chennai - 600 034.

.. Respondent

Prayer:- Appeal filed under Section 260A of The Income Tax Act against the order dated 07.06.2017 in ITA No.506/Mds/2016 on the file of Income Tax Appellate Tribunal, Chennai "B" Bench.

T.C.A.No.407 of 2019

Shriram Transport Finance Company Limited
Mookambika Complex,
No.4, Lady Desika Road,
Mylapore, Chennai - 600 004.

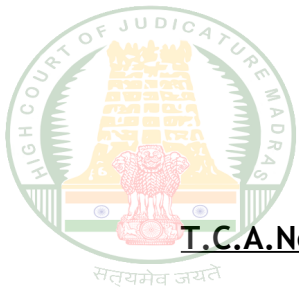
.. Appellant

Versus

Deputy Commissioner of Income Tax,
Corporate Circle 6 (1),
Chennai - 600 034.

.. Respondent

Prayer:- Appeal filed under Section 260A of The Income Tax Act against the order dated 24.05.2018 in ITA No.2636/Chny/2017 on the file of Income Tax Appellate Tribunal, Chennai "C" Bench.



TCA No. 755 of 2009 etc. batch

T.C.A.No.413 of 2019

Shriram Capital Limited,
Mookambika Complex,
No.4, Lady Desika Road,
Mylapore, Chennai - 600 004.

.. Appellant

Versus

Deputy Commissioner of Income Tax,
Corporate Circle 6 (1),
Chennai - 600 034.

.. Respondent

Prayer:- Appeal filed under Section 260A of The Income Tax Act against the order dated 01.05.2017 in ITA No.2407/Mds/2016 on the file of Income Tax Appellate Tribunal, Chennai "A" Bench.

T.C.A.No.414 of 2019

Shriram Transport Finance Company Limited
Mookambika Complex,
No.4, Lady Desika Road,
Mylapore, Chennai - 600 004.

.. Appellant

Versus

Deputy Commissioner of Income Tax,
Corporate Circle 6 (1),
121, M.G.Road,
Chennai - 600 034.

.. Respondent

Prayer:- Appeal filed under Section 260A of The Income Tax Act against the order dated 01.05.2017 in ITA No.2370/Mds/2016 on the file of Income Tax Appellate Tribunal, Chennai "A" Bench.

T.C.A.No.416 of 2019

Shriram City Union Finance Limited,
No.123, Angappa Naicken Street,
Chennai - 600 001.

.. Appellant

Versus

Deputy Commissioner of Income Tax,
Corporate Circle 6 (1),
121, M.G.Road,
Chennai - 600 034.

.. Respondent



TCA No. 755 of 2009 etc. batch

Prayer:- Appeal filed under Section 260A of The Income Tax Act against the order dated 01.05.2017 in ITA No.2406/Mds/2016 on the file of Income Tax Appellate Tribunal, Chennai "A" Bench.

For Appellant in TCA.Nos.755, 756,
883 to 886, 1263 to 1265 of 2009,
215 of 2011, 118 to 120 of 2012
and 278 & 279 of 2012

: Mr.R.V.Eswar, Senior Advocate
For Mr.R.Sivaraman

For Respondent in TCA.Nos.755, 756,
883 to 886, 1263 to 1265 of 2009,
215 of 2011, 118 to 120 of 2012
and 278 & 279 of 2012

: Mr.J.Narayana Swamy
Senior Standing Counsel

For Appellant
in TCA Nos.371 & 622 of 2013,
360 & 361, 913 to 916 of 2014

: Mr.J.Narayana Swamy
Senior Standing Counsel

For Respondent
in TCA Nos.371 & 622 of 2013,
360 & 361, 913 to 916 of 2014

: Mr.R.V.Eswar,
Senior Advocate
For Mr.R.Sivaraman

For Appellant in
TCA.Nos.124 to 131, 717 of 2017,
406, 407, 413, 414 & 416 of 2019

: Mr.R.V.Eswar, Senior Advocate
For Mr.R.Sivaraman

For Respondent in
TCA.Nos.124 to 131, 717 of 2017,
406, 407, 413, 414 & 416 of 2019

: Mr.J.Narayana Swamy
Senior Standing Counsel

COMMON JUDGMENT

R. MAHADEVAN, J.

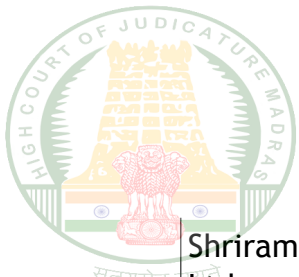
1. All these tax case appeals numbering 37, emanate from the different orders of the Income Tax Appellate Tribunal, out of which, 8 appeals are filed by the Revenue and the remaining 29 appeals are filed by the assesseees. Inasmuch as



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the issues involved herein are inter-linked and interconnected, all the appeals were clubbed together and are decided by this common judgment. The details of the cases are tabulated below:

Tax Case Appeals		
Appeals filed by the assesseees		Appeals filed by the Revenue
Shriram Transport Finance Company Ltd It is a domestic company, doing the business of hire purchase financing & leasing of commercial vehicles.	TCA.755/2009 (AY 2003-04)	TCA.371/2013 (AY 2008-09) (Shriram Transport Finance Company Ltd)
	TCA.884/2009 (AY 2004-05)	
	TCA.1264/2009 (AY 2005-06)	
	TCA.215/2011 (AY 2006-07)	TCA.622/2013 (AY 2006-07) (Shriram City Union Finance Ltd)
	TCA.120/2012 (AY 2007-08)	
	TCA.279/2012 (AY 2008-09)	TCA.360/2014 (AY 2009-10) (Shriram City Union Finance Ltd)
	TCA.124/2017 (AY 2010-11)	
	TCA.125/2017 (AY 2010-11)	TCA.361/2014 (AY 2009-10) (Shriram City Union Finance Ltd)
	TCA.126/2017 (AY 2011-12)	
	TCA.127/2017 (AY 2011-12)	
	TCA.717/2017 (AY 2012-13)	TCA.913/2014 (AY 2007-08) (Shriram City Union Finance Ltd)
	TCA.407/2019 (AY 2014-15)	
	TCA.414/2019 (AY 2013-14)	



TCA No. 755 of 2009 etc. batch

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Shriram Investments Ltd It is a domestic company doing the business of hire purchase financing and leasing	TCA.756/2009 (AY 2003-04)	
	TCA.885/2009 (AY 2004-05)	
	TCA.1263/2009 (AY 2005-06)	
Shriram Overseas Finance Limited It is involved in the business of hire purchase finance, leasing and investments	TCA.883/2009 (AY 2005-06)	
	TCA.118/2012 (AY 2004-05)	
Shriram City Union Finance Ltd It is a domestic company, doing the business of hire purchase financing & leasing	TCA.886/2009 (AY 2004-05)	TCA.914/2014 (AY 2007-08) (Shriram Transport Finance Co. Ltd)
	TCA.1265/2009 (AY 2005-06)	
	TCA.119/2012 (AY 2007-08)	
	TCA.278/2012 (AY 2008-09)	TCA.915/2014 (AY 2007-08) (Shriram City Union Finance Ltd)
	TCA.128/2017 (AY 2010-11)	
	TCA.129/2017 (AY 2010-11)	
	TCA.130/2017 (AY 2011-12)	TCA.916/2014 (AY 2007-08) (Shriram Transport Finance Ltd)
	TCA.131/2017 (AY 2011-12)	
	TCA.406/2019 (AY 2012-13)	
Shriram Capital Limited It is in the business of investment promotion	TCA.416/2019 (AY 2013-14)	

2.All these tax case appeals were admitted by this court on the following substantial questions of law:

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TCA Nos.755, 756, 883 to 886, 1263 to 1265 of 2009, 215 of 2011 and 118 of 2012:

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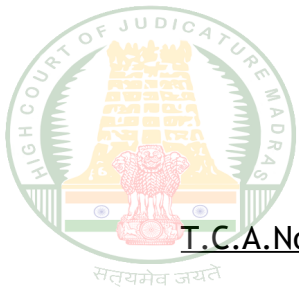
(i) *Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that there has been no diversion of income by overriding charge in respect of amount transferred to Statutory Reserve Fund in compliance with the mandatory provisions of Section 45 IC read with Section 45Q of the RBI Act?*

(ii) *Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the amount transferred to Reserve Fund in compliance with the provisions of the Reserve Bank of India Act, 1934, by the appellant from its income, is not an allowable deduction in computing the assessable income under the provisions of the Income Tax Act, 1961?"*

TCA Nos.119, 120, 278 and 279 of 2012:

(i) *Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that there has been no diversion of income by overriding charge in respect of amount transferred to Statutory Reserve Fund in compliance with the mandatory provisions of Section 45 IC read with Section 45Q of the RBI Act?*

(ii) *Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the amount transferred to Reserve Fund in compliance with the provisions of the Reserve Bank of India Act, 1934, by the appellant from its income, is not an allowable deduction in computing the assessable income under the provisions of the Income Tax Act, 1961 both in regular computation and under section 115 JB?"*



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T.C.A.No.371 of 2013:

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"(i) Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the claim for bad debts to the extent of Rs.37,89,85,000/- is allowable as a deduction in computing the income of the assessee?

(ii) Whether on the facts and circumstances of the case, the Tribunal was right in holding that the write off of diminution in the value of investments to the extent of Rs.1,05,752/- is allowable as a deduction in computing the business income of the assessee?

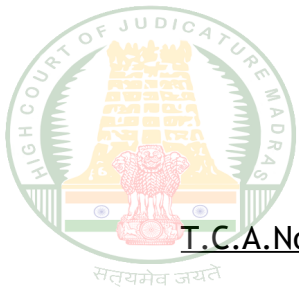
(iii) Whether on the facts and circumstances of the case, the Tribunal was right in holding that the loss on sale of investments to the extent of Rs.2,76,120/- is allowable as a deduction in computing the business income of the assessee?

(iv) Whether on the facts and circumstances of the case, the Tribunal was right in holding that the loss arising out of derivatives / hedging transactions in foreign exchange to the extent of Rs.15,02,136/- is allowable as a deduction in computing the business of the assessee?"

T.C.A.No.622 of 2013:

"(i) Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the claim for bad debts to the extent of Rs.3,12,60,000/- is allowable as a deduction in computing the income of the assessee?

(ii) Whether under the facts and circumstances of the case, the Income Tax Appellate Tribunal was correct in holding that the payment of royalty is not towards acquisition of intangible asset and is revenue expenditure?"



TCA No. 755 of 2009 etc. batch

T.C.A.Nos.360 and 361 of 2014:

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"(i) Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the claim of the assessee for bad debts is allowable as a deduction in computing the income of the assessee?

(ii) Whether under the facts and circumstances of the case, the Income Tax Appellate Tribunal was correct in holding that the payment of royalty is not towards acquisition of intangible asset and is revenue expenditure?

(iii) Whether under the facts and circumstances of the case, the Income Tax Appellate Tribunal was correct in holding that the loss arising out of derivative transactions in foreign exchange is allowable in computing income from non-speculation business of the assessee?

(iv) Whether under the facts and circumstances of the case, the Income Tax Appellate Tribunal was correct in holding that the assessee's claim for deduction of ESOP expenses is an allowable deduction?"

T.C.A.No.913 of 2014:

"(i) Whether under the facts and circumstances of the case, the Income Tax Appellate Tribunal was correct in holding that the payment of royalty is not towards acquisition of intangible asset and is revenue expenditure?

(ii) Whether the Income Tax Appellate Tribunal was correct in stating that the method of calculation of the disallowance set forth in Rule 8 D would be applicable only for assessment year 2008-09 and subsequent assessment years?

(iii) Whether the Income Tax Appellate Tribunal was right in not holding that the method adopted by the assessing officer to



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compute the expenditure attributable to income not includable in total income is scientific and therefore, the disallowance under Section 14 A is to be sustained?"

T.C.A.No.914 of 2014:

"(i) Whether the Income Tax Appellate Tribunal was correct in stating that the method of calculation of the disallowance set forth in Rule 8 D would be applicable only for assessment year 2008-09 and subsequent assessment years?

(ii) Whether the Income Tax Tribunal was right in not holding that the method adopted by the assessing officer to compute the expenditure attributable to income not includable in total income is scientific and therefore, the disallowance under Section 14A is to be sustained?

(iii) Whether under the facts and circumstances of the case, the Income Tax Appellate Tribunal was correct in holding that loss arising out of derivatives / hedging transactions in foreign exchange is allowable as deduction in computing business income of the assessee?

(iv) Whether under the facts and circumstances of the case, the loss arising out of derivatives / hedging transactions in foreign exchange is not a loss in speculation business which cannot be allowed in computing income from regular business of the assessee?

(v) Whether under the facts and circumstances of the case, the Income Tax Appellate Tribunal erred in allowing the claim for deduction of provision for diminution in value of investments and the same is not capital loss?

(vi) Whether under the facts and circumstances of the case, the Income Tax Appellate Tribunal erred in allowing the claim of



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the assessee in respect of provision for diminution in value of investments and giving relief in respect of writeback of investments, though the assessee did not make claims through any valid return of income?"

T.C.A.Nos.915 and 916 of 2014:

"Whether on the facts and circumstances of the case, the Tribunal was right in holding that the claim for bad debts is allowable as a deduction in computing the income of the assessee?"

TCA Nos.125, 127, 129 & 131 of 2017:

"(i) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in remitting back to the Assessing Officer, the issue of claim of bad debts to verify whether the debt is actually written off in the audited books of accounts passing enough entries towards the written off to the individual accounts and to verify the requirement of Section 36(2)?

(ii) Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in not following its own orders in the earlier years on same issue?

(iii) Whether the Appellate Tribunal was right in not allowing the bad debts claimed?"

T.C.A.Nos.124, 126, 128 and 130 of 2017 and 416 of 2019:

"(i) Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that there has been no diversion of income by overriding charge in respect of amount



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transferred to Statutory Reserve Fund in compliance with the mandatory provisions of Section 45 IC read with Section 45Q of the RBI Act?

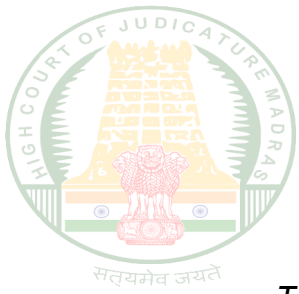
(ii) Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the amount transferred to Reserve Fund in compliance with the provisions of Reserve Bank of India Act, 1934, by the appellant from its income, is not an allowable deduction in computing the assessable income under the provisions of the Income Tax Act, 1961 both in Regular Computation and under Section 115JB?

(iii) Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the interest charged under Section 234D is not allowable as deduction while computing the business income"

T.C.A.No.717 of 2017:

"(i) Whether on the facts and circumstances of the case, the Tribunal was right in holding that there has been no diversion of income by overriding charge in respect of amount transferred to Statutory Reserve Fund in compliance with the mandatory provisions of Section 45 IC read with Section 45Q of the Reserve Bank of India Act?

(ii) Whether on the facts and circumstances of the case, the Tribunal was right in holding that the amount transferred to Reserve Fund in compliance with the provisions of Reserve Bank of India Act, 1934, by the appellant from its income, is not an allowable deduction in computing the assessable income under the provisions of Indian Income Tax Act, 1961 both in Regular Computation and under Section 115JB?



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(iii) *Whether, on the facts and circumstances of the case, the Tribunal was right in holding that the interest charged under Section 234D is not allowable as deduction while computing the business income?*

(iv) *Whether on the facts and circumstances of the case, the Tribunal was right in upholding the disallowance made under Section 14A read with Rule 8D?"*

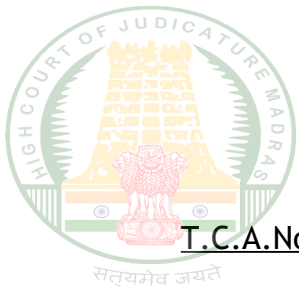
T.C.A.No.406 of 2019:

"(i) Whether, on the facts and circumstances of the case, the Tribunal was right in holding that there has been no diversion of income by overriding charge in respect of amount transferred to Statutory Reserve Fund in compliance with the mandatory provisions of Section 45 IC read with Section 45Q of RBI Act?

(ii) Whether, on the facts and circumstances of the case, the Tribunal was right in holding that the amount transferred to Reserve Fund in compliance with the provisions of Reserve Bank of India Act, 1934, by the appellant from its income, is not an allowable deduction in computing the assessable income under the provisions of Indian Income Tax Act, 1961 both in regular computation and under Section 115JB?

(iii) Whether, on the facts and circumstances of the case, the Tribunal was right in holding that the interest charged under Section 234D is not allowable as deduction while computing the business income? and

(iv) Whether on the facts and circumstances of the case, the Tribunal was right in confirming the disallowance made under Section 40(a)(ia)?"



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T.C.A.Nos.407 of 2019:

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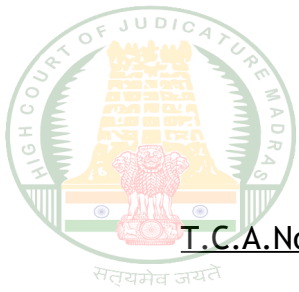
"(i) Whether, on the facts and circumstances of the case, the Tribunal was right in holding that there has been no diversion of income by overriding charge in respect of amount transferred to Statutory Reserve Fund in compliance with the mandatory provisions of Section 45 IC read with Section 45Q of the RBI Act?

(ii) Whether, on the facts and circumstances of the case, the Tribunal was right in holding that the amount transferred to Reserve Fund in compliance with the provisions of Reserve Bank of India Act, 1934, by the appellant from its income, is not an allowable deduction in computing the assessable income under the provisions of the Income Tax Act, 1961 both in regular computation and under Section 115JB?

(iii) Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the interest charged under Section 234D is not allowable as deduction while computing the business income?

(iv) Whether on the facts and circumstances of the case, the Tribunal was right in upholding the disallowance made under Section 14A read with Rule 8D? and

(v) Whether, on the facts and circumstances of the case, the Tribunal was right in not directing the Assessing Officer to allow depreciation on the royalty amounts disallowed in earlier years (This question of law is taken without prejudice to the appellant's ground in the earlier years that royalty amount is allowable as revenue expenditure)?"



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T.C.A.No.413 of 2019:

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"(i) Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in remitting back the issue of disallowance under Section 14A r/w Rule 8D to the Assessing Officer to find out whether interest bearing borrowed funds were used to acquire the shares in the companies or making advances to the subsidiary companies?

(ii) Whether on the facts and in the circumstances of the case, the Appellate Tribunal ought to have deleted the entire addition u/s.14A r/w Rule 8D, as the appellant was in the business of investment promotion and the appellant have made strategic investments in shares of group companies for acquiring controlling interest?"

T.C.A.No.414 of 2019:

"(i) Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that there has been no diversion of income by overriding charge in respect of amount transferred to Statutory Reserve Fund in compliance with the mandatory provisions of Section 45 IC read with Section 45Q of the Reserve Bank of India Act?

(ii) Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the amount transferred to Reserve Fund in compliance with the provisions of Reserve Bank of India Act, 1934, by the appellant from its income, is not an allowable deduction in computing the assessable income under the provisions of the Income Tax Act, 1961 both in regular computation and under Section 115JB?



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(iii) *Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the interest charged under Section 234D is not allowable as deduction while computing the business income?*

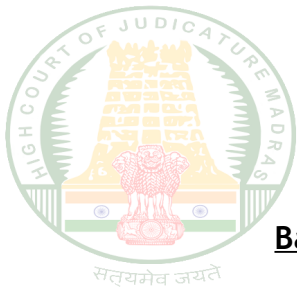
(iv) *Whether on the facts and in the circumstances of the case, the Tribunal was right in remitting back the issue of disallowance made under Section 14A r/w Rule 8D to the Assessing Officer?"*

3. For the sake of convenience, the aforesaid substantial questions of law arisen for consideration in all these appeals are categorised under the following heads:

Statutory Reserve Fund

(i) *Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that there has been no diversion of income by overriding charge in respect of amount transferred to Statutory Reserve Fund in compliance with the mandatory provisions of Section 45 IC read with Section 45Q of the RBI Act?*

(ii) *Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the amount transferred to Reserve Fund in compliance with the provisions of Reserve Bank of India Act, 1934, by the appellant from its income, is not an allowable deduction in computing the assessable income under the provisions of the Income Tax Act, 1961 both in regular computation and under Section 115-JB?"*



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Bad debts

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(i) Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the claim for bad debts is allowable as a deduction in computing the income of the assessee?

(ii) Whether on the facts and circumstances of the case, the Income Tax Appellate Tribunal was right in remitting back to the Assessing Officer, the issue of claim of bad debts to verify whether the debt is actually written off in the audited books of accounts passing enough entries towards the written off to the individual accounts and to verify the requirement of Section 36(2)?

Royalty

(i) Whether under the facts and circumstances of the case, the Income Tax Appellate Tribunal was correct in holding that the payment of royalty is not towards acquisition of intangible asset and is revenue expenditure?"

(ii) Whether, on the facts and circumstances of the case, the Tribunal was right in not directing the Assessing Officer to allow depreciation on the royalty amounts disallowed in earlier years (This question of law is taken without prejudice to the appellant's ground in the earlier years that royalty amount is allowable as revenue expenditure)?"

ESOP expenditure

Whether under the facts and circumstances of the case, the Income Tax Appellate Tribunal was correct in holding that the assessee's claim for deduction of ESOP expenses is an allowable deduction?



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Loss on sale of investments / Diminution in value of investments

(i) Whether on the facts and circumstances of the case, the Tribunal was right in holding that the loss on sale of investments is allowable as a deduction in computing the business income of the assessee?

(ii) Whether on the facts and circumstances of the case, the Tribunal was right in holding that the write off of diminution in the value of investments is allowable as a deduction in computing the business income of the assessee?

Loss arising out of derivatives / hedging transactions in foreign exchange

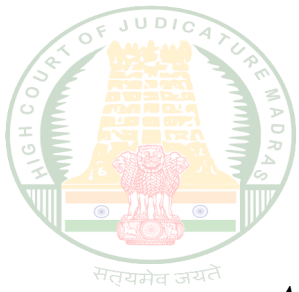
Whether on the facts and circumstances of the case, the Tribunal was right in holding that the loss arising out of derivatives / hedging transactions in foreign exchange is allowable as a deduction in computing the business of the assessee?

Section 14A r/w Rule 8D

(i) Whether on the facts and circumstances of the case, the Tribunal was right in upholding the disallowance made under Section 14A read with Rule 8D?"

(ii) Whether the Income Tax Appellate Tribunal was correct in stating that the method of calculation of the disallowance set forth in Rule 8 D would be applicable only for assessment year 2008-09 and subsequent assessment years?

(iii) Whether the Income Tax Appellate Tribunal was right in not holding that the method adopted by the assessing officer to compute the expenditure attributable to income not includable in total income is scientific and therefore, the disallowance under



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(vi) *Whether, on the facts and circumstances of the case, the Appellate Tribunal was right in remitting back the issue of disallowance under Section 14A r/w Rule 8D to the Assessing Officer to find out whether interest bearing borrowed funds were used to acquire the shares in the companies or making advances to the subsidiary companies?*

(v) *Whether on the facts and circumstances of the case, the Appellate Tribunal ought to have deleted the entire addition u/s.14A r/w Rule 8D, as the appellant was in the business of investment promotion and the appellant have made strategic investments in shares of group companies for acquiring controlling interest?"*

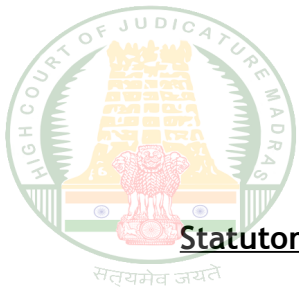
Interest u/s. 234D

Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the interest charged under Section 234D is not allowable as deduction while computing the business income?

Section 40(a)(ia)

Whether on the facts and circumstances of the case, the Tribunal was right in confirming the disallowance made under Section 40(a)(ia)?"

4. Now, this court proceeds to discuss the issues headwise, without narrating the facts.



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Statutory Reserve Fund

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5.1. The assesseees are Non-Banking Financial Companies. They had transferred certain amount to a statutory reserve under section 45 IC of the Reserve Bank of India Act, 1934 (hereinafter shortly referred to as the "RBI Act") and claimed deduction in computing the income under the provisions of the Income Tax Act, 1961 (hereinafter shortly referred to as "the Act") under the regular computation and under section 115 JB, as the case may be. During the course of assessment proceedings, the assessing officer disallowed the said claim on the premise that the assesseees received income which was kept in the reserve fund as mandated under the provisions of the RBI Act and hence, it is only an application of income. The said finding of the assessing officer was also affirmed by both the appellate authorities. Therefore, the assesseees are before this court by raising the issue, as to whether the Tribunal was right in holding that there has been no diversion of income by overriding charge in respect of the amount transferred to statutory reserve fund in compliance with the provisions of the RBI Act; and raised a consequential issue, as to whether the Tribunal was right in holding that the amount transferred to reserve fund in compliance with the RBI Act by the assesseees, is not an allowable deduction in computing the assessable income under the provisions of the Income Tax Act, 1961.

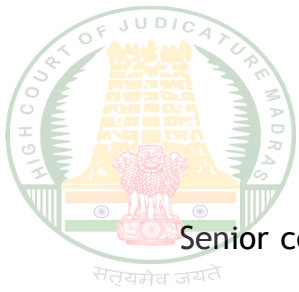
5.2. The learned senior counsel appearing for the appellants / assesseees would contend that the Tribunal has erred in confirming the disallowance with respect to transfer of reserve fund under Section 45-IC of the RBI Act. As per



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Section 45-IC of the RBI Act, 20% of the net profits of the company cannot form part of the real income of the company. The company loses control over this part of the income from the commencement of the business and that, a part of the corpus of the right of the company to have the entire income is sliced away at the threshold itself. The Tribunal also did not consider that there is no divergence of funds since the transfer is not through any other obligation created by the company out of its own volition or gratuitously. Thus, according to the learned senior counsel, it is an expenditure laid out wholly and exclusively for the purpose of commencement or carrying out the business and the business of the assessee cannot survive without complying with the mandatory provisions of the RBI Act and hence, it is an admissible deduction under section 37 of the Income Tax Act.

5.3. Adding further, the learned senior counsel appearing for the appellants / assessee submitted that the assessee is Non-Banking Financial Companies (NBFC) which fall under Chapter III-B of the RBI Act. As per Section 45-IC of the RBI Act, the assessee companies are mandated to create a reserve fund and transfer certain amount to such reserve. Further, Section 45Q of the RBI Act gives an overriding effect to Chapter III-B in respect of all other laws and therefore, Section 45-IC of the RBI Act creates an overriding charge and it cannot be disallowed under the Income Tax Act. Alternatively, the learned Senior counsel submitted that the NBFCs have no control over the reserve fund created under section 45-IC of the RBI Act and they have to wait for the directives to be issued by the Reserve Bank of India from time to time. Therefore, the learned



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Senior counsel submitted that the amount so transferred to the statutory reserve is only an application of income and the deduction claimed by the assesseees for the same, cannot be disallowed by the authorities below. To strengthen his submissions, the learned senior counsel placed reliance on the following decisions:

(i) Commissioner of Income Tax v. Travancore Sugar & Chemicals Ltd [(1973) 3 SCC 274];

(ii) Commissioner of Income Tax v. M/s. Vasisth Chay Vyapar Ltd [(2019) 13 SCC 747];

(iii) Commissioner of Income Tax v. Salem Cooperative Sugar Mills Limited [(1998) 229 ITR 285 (Madras)]; and

(iv) Keshkal Co-operative Marketing v. Commissioner of Income Tax [(1987) 165 ITR 437 (MP)].

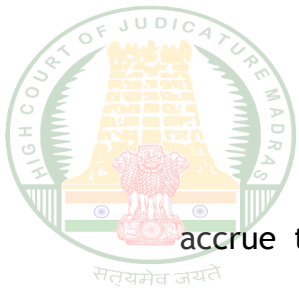
5.4. Per contra, the learned Senior Standing Counsel for the respondent / Revenue submitted that the assesseees being Non-Banking Financial Companies had transferred certain amount to the statutory reserve fund as mandated by the Reserve Bank of India Regulations as well as Section 45-IC of the RBI Act, however, the said transfer to statutory reserve cannot be termed as an expenditure at all, as the same is under the control of the assesseees and the amount continues to be in the reserve. Further, the assesseees had merely transferred the monies to the statutory reserve fund from the gross income



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shown. Therefore, the income was not diverted at source by overriding title to qualify for deduction and the said reserve fund can be allowed to be used by the assesseees as per the Government Orders/RBI Regulations. It is further stated by the learned senior standing counsel that the Assessing Officer, after scrutinizing the nature of transaction and by applying the decisions of the Apex Court in ***Dalmia Cements Limited [237 ITR 517]*** and in ***Sitaldas Tirathdas [41 ITR 367]*** on explaining the meaning of 'Diversion of income by overriding title', held that the assesseees are not entitled for deduction. The Tribunal also, as a fact finding authority, found that the assesseees had not transferred the income at source by overriding title and consequently, held that the deduction is not allowable.

5.5. Elaborating further, the learned Senior Standing Counsel appearing for the respondent / Revenue submitted that if the funds are diverted at source, they shall not be included in the taxable income. Whereas, if they are diverted later, it must be included as a taxable income. In any event, such a diversion of funds is a question of fact and not of law. The Commissioner of Income Tax (Appeals) as well as the Income Tax Appellate Tribunal have dealt with the factual dispute at length, while rejecting the claim of the assesseees and hence, the same need not be interfered with by this Court. The learned Senior Standing Counsel also placed reliance on Section 45Q of the RBI Act and submitted that money in reserve fund only goes to the depositors and hence, it will not be allowed to be deducted for the purpose of arriving at taxable income. Adding further, it is submitted that when the income is diverted at source, it does not



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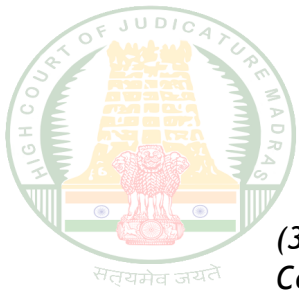
accrue to the assesseees and in that case, it is not really the income of the assesseees and it shall be deductible. On the other hand, when the income is required to be applied to discharge an obligation after the income reaches the assesseees, it is merely an application of income and thus, liable to be taxed. To substantiate his contentions, the learned senior standing counsel referred to the decisions in (i) *Associated Power Co Ltd. V. CIT*, [218 ITR 195 (SC)]; (ii) *SREI Infra Structure Finance Limited v. CIT* [54 Tax Man 254 (Del)] and (iii) *Seshasayee Paper Boards Limited v. CIT* [237 ITR 488 (Mad)]. Thus, the learned senior standing counsel prayed for dismissal of the appeals filed by the assesseees.

5.6. This court considered the rival submissions and case laws relied upon by both sides. It could be seen that for the assessment years under consideration, the assesseees claimed deduction for the amount transferred to statutory reserve fund created under section 45 IC of the RBI Act, which reads as follows:

(1) Every non-banking financial company shall create a reserve fund and transfer therein a sum not less than twenty per cent of its net profit every year as disclosed in the profit and loss account and before any dividend is declared.

(2) No appropriation of any sum from the reserve fund shall be made by the non-banking financial company except for the purpose as may be specified by the Bank from time to time and every such appropriation shall be reported to the Bank within twenty-one days from the date of such withdrawal:

Provided that the Bank may, in any particular case and for sufficient cause being shown, extend the period of twenty-one days by such further period as it thinks fit or condone any delay in making such report.



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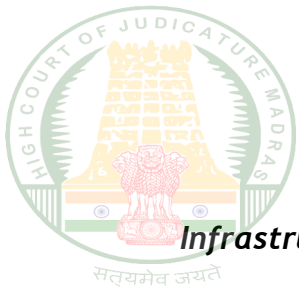
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(3) Notwithstanding anything contained in sub-section(1), the Central Government may, on the recommendation of the Bank and having regard to the adequacy of the paid-up capital and reserves of a non-banking financial company in relation to its deposit liabilities, declare by order in writing that the provisions of sub-section (1) shall not be applicable to the non-banking financial company for such period as may be specified in the order:

Provided that no such order shall be made unless the amount in the reserve fund under sub-section (1) together with the amount in the share premium account is not less than the paid-up capital of the non-banking financial company.”

5.7. The Assessing Officer disallowed the deduction so claimed by the assessee, on the premise that it is only an application of income. It was further pointed out by the assessing officer that the said deduction is not an expenditure incurred by the assessee companies and is an income accrued to the assessee during the financial year under consideration and hence, it cannot be allowed as deduction under section 37 of the Act. It was also observed that the creation of reserve under the RBI Act is only a prudential effort to safeguard the interest of the shareholders of a NBFC company and it cannot be interpreted as an authorization to create a notional income and hence, the same cannot be claimed as a deduction from the total income computed for the purpose of computing the income tax. After having found that the assessee companies have created statutory reserve for 20% of the profits, by way of appropriation, the assessing officer held that the creation of statutory reserve is nothing but an application of income after the profit has been earned by the assessee companies and not a diversion of income as claimed and hence, such profit needs to be taxed.

<https://www.mhc.tn.gov.in/> Referring to the decisions of this court in **Tamil Nadu Power Finance and**



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Infrastructure Development Corporation Ltd v. JCIT [280 ITR 491] and the

Hon'ble Supreme Court in **Southern Technologies Ltd v. JCIT [320 ITR 577]**, the

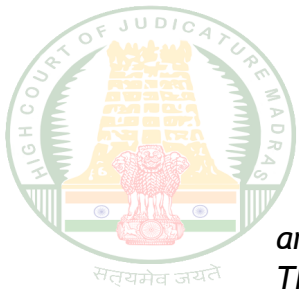
assessing officer was of the view that the directive of the RBI cannot override the statutory provisions of the Act. Accordingly, the assessing officer held that the amount transferred to the statutory reserve is not an allowable deduction and the same has to be added back to the total income of the assessee in both the regular computation and the computation of book profits under section 115 JB of the Act, as the case may be.

5.8. When the aforesaid orders of the assessing officer were put to challenge by the assessee before the appellate authorities viz., CIT(A) and ITAT, the same ended in failure. For better appreciation, the findings of the Tribunal in ITA Nos.570, 571, 806 & 807 /Mds/2008 dated 6th February, 2009, relating to the AY 2003-04 in respect of two assessee viz., Shriram Transport Finance Co. Ltd and Shriram Investments Ltd, are quoted below:

"2.5 We have heard both the counsels and perused the relevant records. We find that the transfer to reserve in this case is only an appropriation of the profits. It is settled law that appropriations are not a change to the profits and cannot be deducted in computation of business income. Moreover, the amount transferred to a reserve is as per Reserve Bank of India Act but the purpose for which the reserve has to be utilized has not been specified. Hence, the purposes for which reserve has been made can only be considered contingent as of present. Moreover, the funds representing the reserve are very much under the control of the assessee. There is no directive that amount equivalent to this reserve should be earmarked to a specific mode of investment.

.....

2.11. Now, we examine the present case on the anvil of above. By no stretch of imagination, it can be said that the



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amount sought to be deducted has in fact reached the assessee. The amount involved is only an appropriation out of company's own profits before declaration of dividend. The amount has very much reached and is in the business of the assessee. RBI has not attached any obligation that the fund be kept in any earmarked security nor the purpose of utilization of the fund has been specified. Even if some obligation is subsequently attached for specific appropriation of the fund, it will only be an application of income, which will need to be dealt with as per relevant tax law. The transfer of reserve fund in this can certainly not be called a diversion of income by overriding charge.

2.12. From the above, it is clear that the decisions referred to by the assessee's counsel are in a different context and are not applicable. On the other hand, the ratio from the Hon'ble Apex Court in the case of CIT vs. Sitaldas Tirathdas and Hon'ble Jurisdictional High Court in the case of Seshasayee Paper & Boards Limited is clearly applicable in this case. The Companies Act, 1956 also mandates transfer to reserve fund a certain percentage of the profits before declaration of dividend. The Hon'ble High Court in the case of Seshasayee Paper & Boards Ltd. had held that in such a case, there is no diversion of income by overriding title nor can the amount set apart be claimed as expenditure and it cannot also be stated that it was loss. The ratio from this decision is very much applicable in this case, because as per the Reserve Bank of India Act, the Assessee has to create a Transfer Fund and to transfer therein certain percentage of its profits before any dividend is declared. This transfer to Reserve Fund was to be utilised for such purposes as specified by the Reserve Bank of India from time to time. No such specification of utilisation of that fund had been issued by the Reserve Bank of India. Hence, it cannot be said that there was any diversion of income by overriding title nor can the amount set apart be claimed as expenditure and it also cannot be stated that it was a loss.

.....

2.17....Upon careful consideration, we do not see any reason to hold that this decision is helpful to the case of the assessee. The ratio from the Hon'ble Madras High Court decision in the case of T.N.Power Finance and Infrastructure Development Corporation Ltd. vs. JCIT clearly applies to the facts of the case. Moreover, as discussed earlier, this is only an appropriation of profits for purposes which have not yet been specified. Moreover, amount involved is very much under the control of the assessee and is lying in its business. Hence, in the background of aforesaid



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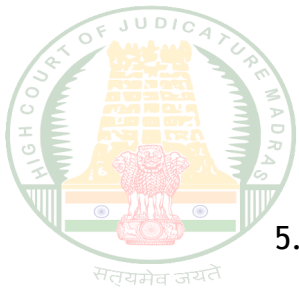
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discussion and precedents, we uphold the well reasoned order of the learned Commissioner of Income Tax (Appeals) in this regard and decide the issue against the assesseees."

The aforesaid order was followed by the Tribunal, while deciding the cases relating to the subsequent assessment years as well.

5.9. In ***Salem Co-operative Sugar Mills Ltd*** case, referred to on the side of the appellants, it was concluded by this court that the Tribunal was correct in holding that a portion of sale proceeds of molasses, which was accounted for and kept separately for the construction of storage tanks, cannot be included in the assessee's income for taxation, on the premise that there was diversion of income by overriding title at source. However, as rightly pointed out by the learned senior standing counsel appearing for the Revenue, such reserve was created as per the provisions of the Molasses Control (Amendment) Order and hence, the same would not be applicable to the facts of the present case.

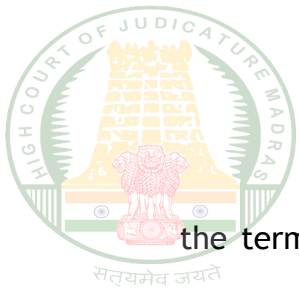
5.10. Similarly, in ***Keshkal Co-operative Marketing*** case, relating to transfer of amount to reserve fund under section 43(2) of the Madhya Pradesh Co-operative Societies Act, the question raised was, whether it is allowable as deduction as business expenditure or as having been diverted by an overriding title. The Madhya Pradesh High Court held that the amount diverted for statutory reserve funds is deductible under section 37(1) of the Act. The said judgment will also not be applicable to the appellants' case, as the amount was transferred according to the provisions of the Madhya Pradesh Co-operative Societies Act.



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5.11. The Delhi High Court in ***Vasisth Chay Vyapar Ltd*** case, while considering the issue relating to addition of unrealized interest income on Inter Corporate Deposits (ICD) by the assessing officer, when the same had to be declared by the assessee (NBFC) as an NPA as per the directions of the RBI, dealt with section 45Q of the RBI Act and held that the provisions of the RBI Act override the provisions of the Income Tax Act and decided the issue in favour of the assessee. The judgment of the Delhi High Court was affirmed by the Apex Court. However, the said decision is not applicable to the facts of the present case as the interest as held by the High Court and confirmed by the Apex Court was never received by the Assessee therein and held that interest income had not accrued. The present case concerns the amount sought to be deducted by the assessee while computing the taxable income, which is already a part of the total income and transferred to reserve fund and therefore, the said decision may not be helpful to the case of the appellants.

5.12. In ***Travancore Sugar and Chemicals Ltd*** case, the issue that arose for consideration was, whether payment of fixed percentage of profits apart from cash consideration, in lieu of takeover of three undertakings of the government is deductible under section 10(2)(xv) of the Act. It was ultimately concluded by the Hon'ble Supreme Court that the assessee did not have any choice since its inception and therefore, the amount paid according to the terms of agreement with the Government, had to be deducted. That decision will also render no support to the appellants' case, as the amount was paid by the assessee, as per



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the terms of the agreement with the Government and in the present case, it is only kept as reserve.

5.13. On the other hand, in the decisions relied on the side of the respondent / Revenue in *Associated Power Co. Ltd* case, the Hon'ble Supreme Court was of the categorical view that the amount kept under contingency reserve as per the provisions of Electricity (Supply) Act and Sixth Schedule under it, must not be allowed as deduction and must be taxed. In *Seshasayee Paper Boards Ltd* case, this court, while considering the issue, whether the amount transferred to general reserve as required under section 205(2A) of the Companies Act, can be claimed as deduction, at the time of computing the total income, ultimately held that the amount transferred was out of its own profits and there was no diversion at source by overriding title even if the statute mandates the same; section 205(2A) merely restricts the declaration of entire profits as dividends and there are no other restrictions; and therefore, the amount transferred out of the income of the assessee, is not entitled to deduction of the money transferred to the reserve. Applying the ratio laid down in those decisions to the present case, wherein, the amount transferred by the assessee herein, to the reserve fund as mandated under the provisions of the RBI Act, is out of profits earned by them and hence, the same has to be treated as appropriation of profits. Furthermore, the amount so transferred is not a diversion of income at source by overriding effect, nor can the amount set apart be claimed as expenditure and it cannot be stated that it was a loss. It is relevant



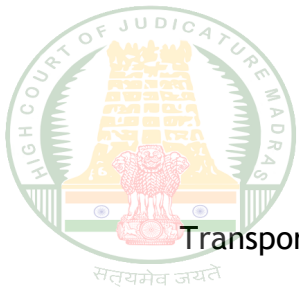
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to refer to para no.22 of the judgment in **Travancore Case** (Supra) relied upon by the Appellants/Assesseees, wherein the Apex Court has clearly held that only when the income is diverted at source, it can be deducted and the same reads as follows:

“Where income which accrues to the assessee is not his income the question of admissible deductions would not arise. Therefore, where income is diverted at source so that when it accrues it is really not his income but is somebody else's income the question as to whether that income falls under sub-section (2) of Section 10 does not arise. Again, income can be said to be diverted only when it is diverted at source so that when it accrues it is really not the income of the assessee but is somebody else's income. It is thus clear that where by the obligation income is diverted before it reaches the assessee, it is deductible. But where the income is required to be applied to discharge an obligation after such income reaches the assessee it is merely a case of application of income to satisfy an obligation of payment and is therefore not deductible.”

In view of the above, we are of the firm view that when the income by way of profit, as in the present case, is received and then reflected as part of the total income, deduction is not permissible. Therefore, the authorities below were justified in disallowing the deduction claimed by the assesseees for the amount transferred to reserve fund in compliance with the mandatory provisions of the RBI Act, which do not call for any interference by this court. Accordingly, the main issue stands answered against the assesseees.

5.14. As regards the consequential issue raised by the assesseees, it is to be noted that the assessing officer added the fund transferred to the statutory reserve to the total income of the assesseees, while computing the taxable income under section 115JB, which was also affirmed by the appellate authorities. For better appreciation, the finding recorded by the Tribunal in the case of Shriram



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Transport Finance Company Limited relating to the AY 2012-13, is reproduced

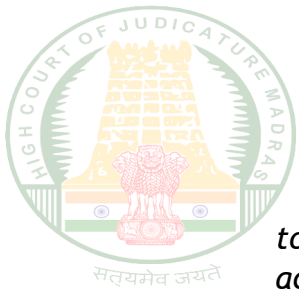
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below:

"For the purpose of section 115 JB of the Act, the book profit has to be computed as per the provisions of the companies Act and further addition or deduction has to be made as provided under Explanation to section 115JB of the Act. It is not the case of the assessee that the amount transferred to statutory reserve is an item to be reduced from the book profit computed as per the provisions of companies Act. In the absence of any provision in Explanation to section 115JB of the Act to reduce the amount transferred to statutory reserve as per the guidelines of Reserve Bank of India, this Tribunal is of the considered opinion that the CIT(Appeals) has rightly confirmed the order of the Assessing Officer by placing his reliance on the order of this Tribunal in the assessee's own case for the assessment year 2009-10. Therefore, this Tribunal do not find any reason to interfere with the order of the lower authority and accordingly the same is confirmed."

5.15. Section 115JB states that for computing the book profit, the amount meeting out the liabilities other than ascertained liabilities, has to be added. The statutory reserve fund based on the RBI guidelines, is not based on any ascertained liabilities and hence, it has to be added for arriving at the book profit under section 115 JB. At this juncture, it would be relevant to refer to the decision of the Delhi High Court in ***SREI Infrastructure Finance Ltd v. Additional Commissioner of Income Tax***, wherein, an identical question of law as raised herein i.e., whether the reserve created under section 45 IC of the RBI Act will have to be included while computing book profits u/s 115 JB of the Act, was considered and it was observed as follows:

"14. In the present case, we are concerned with clause (b)

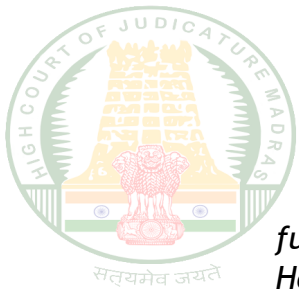


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to Explanation 1 which states that book profit prepared in accordance with Part II and III of Schedule VI of the Companies Act, 1956 will be increased by the amount carried to any reserve by whatever name called, other than a reserve specified under section 33AC of the Act. The legislature in express, lucid and categorical terms has stipulated that the book profit shall be increased by the amounts carried to any reserve. The word “any”, it is obvious, refers to all kinds of reserves and encompasses all types and categories without exception. The legislature did not stop and has thereafter used the expression “reserve by whatever name called”. There could not have been more clarity and articulateness in the language of clause (b) to Explanation (1). The intention is unambiguous, i.e, book profit would include all amounts carried to any reserve by whatever name called, except the reserve specified under section 33AC of the Act. The nature and type of reserve or its character would not affect operation of clause (b) to Explanation (1). Only reserves specified in Section 33AC of the Act have to be excluded. Guidance Note on revised Schedule VI to the Companies Act, 1956 by the Institute of Chartered Accountants of India would indicate that reserves and surplus are generally classified as; (a) capital reserve; (b) capital redemption reserve; (c) securities premium reserve; (d) debenture redemption reserve; and (e) revaluation reserve or other reserves. In addition, there can be share options outstanding account and surplus, i.e, the balance in the statement of profit and loss disclosing allocations and appropriations such as dividend, bonus shares and transferred to /from reserves, etc.”

Further, the Delhi High Court did not agree with the applicability of cases concerning Molasses Storage Fund and observed that reserve under section 45 IC is created out of profits earned and it cannot be said to be the diversion of income at source. Ultimately, it was held as follows:

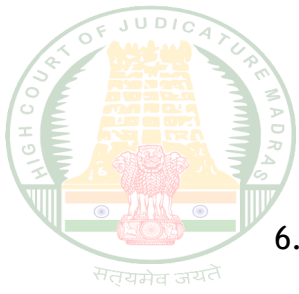
“32.As noticed above, 'provision' and 'reserves' are different accounting terms. A provision created to meet a known liability is a charge against the profit. Hence, it is debited to the profit and loss account and reduces the profit. Provisions should be created, even if there is insufficient profit. Provision is not, therefore, invested. On the other hand, 'reserve' is only appropriation of profit and therefore, it is not debited to the profit and loss account. The purpose of reserve is to strengthen the financial position and to meet unforeseen liabilities which may arise in



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future. The reserves are created out of adequate profits. However, once reserve is created, it reduces divisible profit. This is the amount of profit which is retained for use in business when difficulty arises. Reserves can be invested. The said investments can be even outside the business and in such cases the reserve is called the reserve fund. Reserves are shown on the liability side of the balance sheet and are generally treated as belonging to the proprietor just as capital. It is a sum owned by the business to the proprietor. Reserves themselves are not assets but represent a portion of the assets which the proprietor is free to utilise for business as one likes, i.e, the assets equalling the reserves that are not required to pay liabilities. Generally reserves are created at the discretion of the management as a matter of prudence, but in certain cases a statute can direct creation of special reserves. For the purpose of section 115JB of the Act, statutory reserves are treated alike and in a similar manner as other reserves.”

5.16. In the light of the aforesaid decision of the Delhi High Court, wherein, it was clearly stated that the reserve is the amount of profit which is retained for use in business, when difficulty arises and on the basis of our earlier findings and from the very language of section 45 IC, this court comes to a conclusion that the amount transferred by the assessee herein, to the statutory reserve as mandated under the provisions of the RBI Act, is not an allowable deduction in computing the assessable income under the provisions of the Act under the regular computation and computation of book profits under section 115JB, as the case may be and therefore, the orders of the authorities below, do not call for any interference. Accordingly, the consequential issue is also decided against the assessee.



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6.1. The assessee had claimed bad debts that were written off as deduction under section 36(1)(vii) of the Act for the assessment years under consideration. However, the assessing officer disallowed certain amount treating it as mere provision for bad debts, by holding that according to section 36(1)(vii), bad debts that are actually written off alone, can be allowed as deduction. On appeals, the CIT(A) deleted the disallowances made by the assessing officer and directed the assessing officer to allow the bad debts written off by the assessee. The said findings of the CIT(A) were affirmed by the Tribunal. However, in respect of the cases of assessee viz., Shriram Transport Finance Company Ltd and Shriram City Union Finance Limited relating to the AYs 2010-11 and 2011-12, the Tribunal was of the view that the assessing officer had not examined as to whether the bad debt was actually written off in the accounts of the assessee and hence, remanded the matter to the AO for de novo consideration. Aggrieved by the separate orders so passed by the Tribunal, the Revenue preferred TCA Nos.622/2013, 371/2013, 360 & 361/2014 and 915 & 916/2014, whereas the assessee preferred TCA Nos.125, 127, 129 and 131 of 2017 before this court.

6.2. The learned Senior Standing counsel for the Revenue would contend that admittedly, the assessee is entitled for deduction only on actual bad debts written off and not on mere provision for bad debts. Whereas, in the present cases, the assessee had not written off the bad debts in the statutory books maintained by them and had merely made provision. However, the Tribunal without proper verification of records, erred in holding that the claim for bad



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debts is allowable as a deduction in computing the income of the Assessee. In support of the said contention, the learned senior standing counsel placed reliance on the decision of the Supreme Court in ***Southern Technologies Ltd. v. CIT [(2010) 2 SCC 548]***, wherein, it was held that mere 'provisions for bad debts' will not be entitled to deduction u/s. 36(1)(vii) of the Act after 1.04.1989. Thus, according to the learned senior standing counsel, deduction can be allowed only when the bad debts are actually written off and not the provision for bad debts.

6.3. Adding further, the learned senior standing counsel appearing for the revenue fairly submitted that the identical issue was the subject matter for consideration in T.C.A.No.621 of 2013, in respect of the assessee viz., Shriram Transport Finance Company Limited and the said case was decided on 23.12.2016 in favour of the assessee, after analysing the entire facts in the light of the legal proposition. Referring to paragraph no.9 of the said order, the learned Senior Standing Counsel submitted that the issue involved herein is a question of fact and hence, the matters have to be remanded to the authority concerned to verify whether the bad debts are actually written off and passing orders afresh.

6.4. Per contra, the learned Senior counsel appearing for the assessee would contend that the assessee maintained two sets of books of accounts i.e., one in accordance with the provisions of the Companies Act as mandated by the RBI and another under the provisions of the Income Tax Act. In finalising the corporate accounts, the assessee made a provision in respect of debts advanced



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by them that were not realisable. For the purpose of income tax, the bad debts were written off in the profit and loss account and claimed as deduction under section 36(1)(vii) of the Act. Accordingly, the assessee had claimed deduction in their returns for the assessment years under consideration. However, the assessing officer disallowed part of the sum claimed as bad debts on the ground that in the books of account maintained under the provisions of the Act, the entire bad debts had been written off, but in the books maintained under the Companies Act, only a part of debt had been written off; there cannot be a provision for the purpose of statutory books and actual write off for income tax purpose; and if the amount is written off, it should be the same in both the accounts. However, the Tribunal following its earlier order passed in respect of the assessee's own case, rightly deleted the disallowances made by the assessing officer. Yet, in respect of the assessee viz., Shriram Transport Finance Company Ltd and Shriram City Union Finance Ltd, for the assessment years 2010-11 and 2011-12, the Tribunal erred in remanding the matters to the assessing officer for fresh consideration.

6.5. The learned senior counsel appearing for the assessee further contended that there is no wrong / illegality in the maintenance of two separate sets of books, one for the purposes of the Companies Act and the other for income-tax; and this issue was for the first time raised by the Revenue relating to the assessment year 2006-07 and the same was also decided in favour of the assessee by the judgement of this court dated 23.12.2016 in TCA No.621 of 2013,

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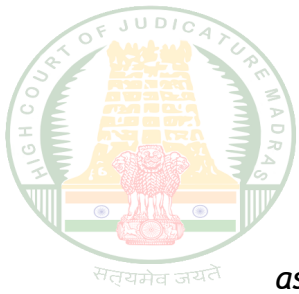


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in respect of the assessee viz., Shriram Transport Finance Company limited.

Stating so, the learned senior counsel prayed to decide this issue in favour of the assesseees.

6.6. This court considered the rival submissions. On perusal of the records, it could be seen that the assessing officer disallowed the claim for deduction of bad debts on the premise that the assesseees maintained two sets of accounts; the amount, which was written off as bad debts, was not same in both the books of accounts; and hence, the assesseees had made only a provision and not a write off as required under the provisions of the Act. However, by order dated 16.12.2020, which is impugned in TCA No.622/2013, the Tribunal, following its earlier order dated 21.04.2006 passed in respect of the assesseees' own case, deleted the disallowances made by the assessing officer. Subsequently, referring to the said earlier orders dated 21.04.2006 and 16.12.2020, the Tribunal by separate orders dated 02.08.2012, 11.04.2013 and 28.11.2011, deleted the disallowances made by the assessing officer in respect of the claim of bad debts and these orders are also impugned in TCA Nos.371/2013, 360 & 361/2014 and 915 & 916/2014, respectively. Whereas in the order dated 29.01.2016, which is also under challenge in TCA Nos.125, 127, 129 and 131 of 2017, the Tribunal remanded the matters to the assessing officer for denovo consideration as to whether the debt has in fact been written off, in the accounts of the assesseees. For better understanding, the findings of the Tribunal in ITA Nos.711-717/Mds/2015 dated 29.01.2016, are quoted below:



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“14. We have heard both sides. The main contention of the assessee is that the issue has already been decided by the Tribunal by order cited (supra) and it has to be followed. However, we observed from the order of the Assessing Officer that he has given a finding that in the account prepared for the purpose of Income Tax, the assessee has claimed Rs.11659.84 lakhs as bad debt written off and the amount of Rs.3236.89 lakhs, which was shown as provision in statutory books was taken as written off for the purpose of income tax. From this, it is not clear to us as to whether this amount has been actually written off in the books of accounts maintained and got audited by the assessee under statute by crediting each individual debit account, then, it could be allowed as bad debt as held by the Hon'ble Supreme Court in the case of TRF Ltd v. CIT 323 ITR 397, wherein, the Hon'ble Supreme court has held that after 01.04.1989, it is not necessary for the assessee to establish that the debt, in fact, has become irrecoverable. It is enough if the bad debt is written off as irrecoverable in the accounts of the assessee. Further, in the present case, the Assessing Officer has not examined as to whether the debt has, in fact, been written off, in the accounts of the assessee. This exercise has not been undertaken by the Assessing Officer. Hence, the matter is remitted back to the Assessing Officer for denovo consideration of the above mentioned aspect only, that too only to the extent of written off. Moreover, in our opinion, the facts of the assessee's case squarely fit into the ratio laid down by the above judgement of the Hon'ble Supreme Court rather than the order of the Tribunal in assessee's own case cited (supra). Being so, in our view, it is appropriate to remit back the entire issue to verify whether the debt is actually written off in the Audited books of accounts passing enough entries towards written off to the individual account and then only the assessee is entitled for deduction as bad debt provided the assessee fulfils the condition such as satisfaction of Income Tax Act as contemplated under section 36(2) of the Act. We, therefore, direct the Assessing Officer to verify the requirement of section 36(2) and decide thereupon. Accordingly, this issue raised by the Revenue is remitted back to the assessing officer for fresh consideration.”

Feeling aggrieved, the Revenue and the assessee are before this court with the tax case appeals to set aside the orders passed by the Tribunal in deleting the disallowances made by the assessing officer and in remanding the matters to the



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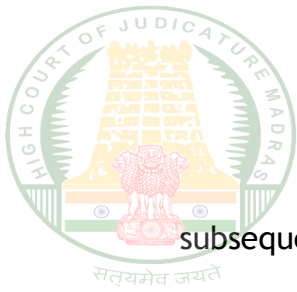
assessing officer for fresh consideration.

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6.7. It is an accepted principle that the bad debt written off as per the income tax books, has to be allowed, even if the assessee has been maintaining two sets of accounts, once it is written off in the profit and loss account. In this connection, it would be appropriate to refer to the judgment of this court dated 23.12.2016 in TCA No.621 of 2013, in which, in paragraph no.7, it was observed as follows:

"We have heard the learned counsel and applied our mind to the facts and legal position involved. We are of the view that the maintenance of two separate sets of books, one for purposes of the companies Act and the other for income-tax, is perfectly in order and there is no embargo against the same. The books maintained for the purposes of the companies Act duly approved by the Board of Directors and placed before the shareholders at the annual general body meeting of the company being contain inter alia the profit and loss account for the relevant previous year prepared in accordance with the provisions of Part II - III of Schedule VI to the Companies Act 1956 will form the basis of an assessment in terms of Chapter XII B Special Provisions relating to certain companies, that provide for an assessment of Minimum Alternate Tax (MAT). The Income Tax Act requires for the assessee to follow a parelly consistent method of accounting in accordance with section 145 thereof. The books maintained for the purposes of the Income tax Act shall comply with the provisions of section 145 and shall form the basis for an assessment thereunder. The error in the order of assessment is the juxtaposition of the two books by the assessing officer. The creation of a provision for bad debts in the corporate accounts thus does not, in any way, impact the claim of bad debt u/s 36(1)(vii) of the Act in the regular computation of income. The submission of the department stands rejected."

6.8. It cannot be disputed that each assessment is distinct. The revenue or the assessee is not barred from raising a question of law in a dispute relating to



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subsequent year, when it was not carried in appeal on earlier occasion. It will be useful to refer to the Larger Bench Judgment of the Apex Court in *C.K.*

Gangadharan v. CIT [(2008) 8 SCC 739 : 2008 SCC OnLine SC 11], wherein it was held as follows:

“By order dated 13-3-2008, a reference was made to larger Bench and that is how these cases are before us. The order, of reference, inter alia, reads as follows:

In view of the aforesaid position, we are of the opinion that matter requires consideration by a larger Bench to the extent whether Revenue can be precluded from defending itself by relying upon the contrary decision.

We make it clear that we are not doubting the correctness of the view taken by this Court in Union of India v. Kaumudini Narayan Dalal [(2001) 10 SCC 231 : (2001) 249 ITR 219] , CIT v. Narendra Doshi [(2004) 2 SCC 801] and CIT v. Shivsagar Estate [(2004) 9 SCC 420] to the effect that if the Revenue has not challenged the correctness of the law laid down by the High Court and accepted it in the case of one assessee, then it is not open to the Revenue to challenge its correctness in the case of other assessees, without just cause.

Registry is directed to place the papers before the Hon'ble Chief Justice of India for appropriate orders.”

2. In terms of the reference what is required to be decided is whether Revenue can be precluded from defending itself by relying upon the contrary decisions. It is to be noted that various High Courts have taken contrary views. While some of the Courts have decided in favour of the assessee, other High Courts have decided in favour of the Revenue.

4. In BSNL v. Union of India [(2006) 3 SCC 1] it was noted as follows: (SCC pp. 21-22, paras 20 & 22)

“20. The decisions cited have uniformly held that res judicata does not apply in matters pertaining to tax for different assessment years because res judicata applies to debar courts from entertaining issues on the same cause of action whereas the cause of action for each assessment year is distinct. The courts will generally adopt an earlier pronouncement of the



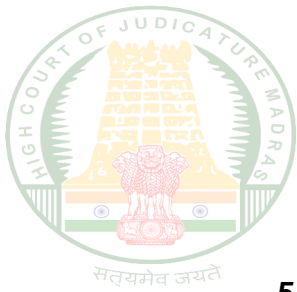
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law or a conclusion of fact unless there is a new ground urged or a material change in the factual position. The reason why the courts have held parties to the opinion expressed in a decision in one assessment year to the same opinion in a subsequent year is not because of any principle of *res judicata* but because of the theory of precedent or the precedential value of the earlier pronouncement. Where facts and law in a subsequent assessment year are the same, no authority whether quasi-judicial or judicial can generally be permitted to take a different view. This mandate is subject only to the usual gateways of distinguishing the earlier decision or where the earlier decision is *per incuriam*. However, these are fetters only on a coordinate Bench which, failing the possibility of availing of either of these gateways, may yet differ with the view expressed and refer the matter to a Bench of superior strength or in some cases to a Bench of superior jurisdiction.

22. A decision can be set aside in the same *lis* on a prayer for review or an application for recall or under Article 32 in the peculiar circumstances mentioned in *Rupa Ashok Hurra v. Ashok Hurra* [(2002) 4 SCC 388] . As we have said, overruling of a decision takes place in a subsequent *lis* where the precedential value of the decision is called in question. No one can dispute that in our judicial system it is open to a court of superior jurisdiction or strength before which a decision of a Bench of lower strength is cited as an authority, to overrule it. This overruling would not operate to upset the binding nature of the decision on the parties to an earlier *lis* in that *lis*, for whom the principle of *res judicata* would continue to operate. But in tax cases relating to a subsequent year involving the same issue as an earlier year, the court can differ from the view expressed if the case is distinguishable or *per incuriam*. The decision in *State of U.P. v. Union of India* [(2003) 3 SCC 239] related to the year 1988. Admittedly, the present dispute relates to a subsequent period. Here a coordinate Bench has referred the matter to a larger Bench. This Bench being of superior strength, we can, if we so find, declare that the earlier decision does not represent the law. None of the decisions cited by the State of U.P. are authorities for the proposition that we cannot, in the circumstances of this case, do so. This preliminary objection of the State of U.P. is therefore rejected.”



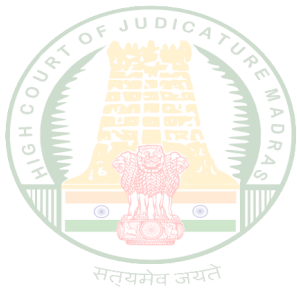
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5. In *State of Maharashtra v. Digambar* [(1995) 4 SCC 683] , the position was highlighted by this Court as follows: (SCC p. 691, para 16)

“16. We are unable to appreciate the objection raised against the prosecution of this appeal by the appellant or other SLPs filed in similar matters. Sometimes, as it was stated on behalf of the State, the State Government may not choose to file appeals against certain judgments of the High Court rendered in writ petitions when they are considered as stray cases and not worthwhile invoking the discretionary jurisdiction of this Court under Article 136 of the Constitution, for seeking redressal therefor. At other times, it is also possible for the State, not to file appeals before this Court in some matters on account of improper advice or negligence or improper conduct of officers concerned. It is further possible, that even where SLPs are filed by the State against judgments of the High Court, such SLPs may not be entertained by this Court in exercise of its discretionary jurisdiction under Article 136 of the Constitution either because they are considered as individual cases or because they are considered as cases not involving stakes which may adversely affect the interest of the State. Therefore, the circumstance of the non-filing of the appeals by the State in some similar matters or the rejection of some SLPs in limine by this Court in some other similar matters by itself, in our view, cannot be held as a bar against the State in filing an SLP or SLPs in other similar matter(s) where it is considered on behalf of the State that non-filing of such SLP or SLPs and pursuing them is likely to seriously jeopardise the interest of the State or public interest.”

6. In *Govt. of W.B. v. Tarun K. Roy* [(2004) 1 SCC 347 : 2004 SCC (L&S) 225] reference was made to the judgment in *Digambar* case [(1995) 4 SCC 683] and *State of Bihar v. Ramdeo Yadav* [(1996) 3 SCC 493 : 1996 SCC (L&S) 756] . It was noted as follows: (*Tarun K. Roy* case [(2004) 1 SCC 347 : 2004 SCC (L&S) 225] , SCC p. 358, paras 28-29)

“28. In the aforementioned situation, the Division Bench of the Calcutta High Court manifestly erred in refusing to consider the contentions of the appellants on their own merit, particularly, when the question as regards difference in the grant of scale of pay on the ground of different educational qualification stands concluded by a judgment of this Court



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in *Debdas Kumar [State of W.B. v. Debdas Kumar, 1991 Supp (1) SCC 138 : 1991 SCC (L&S) 841 : (1991) 17 ATC 261]* . If the judgment of *Debdas Kumar [State of W.B. v. Debdas Kumar, 1991 Supp (1) SCC 138 : 1991 SCC (L&S) 841 : (1991) 17 ATC 261]* is to be followed, a finding of fact was required to be arrived at that they are similarly situated to *Debdas Kumar [State of W.B. v. Debdas Kumar, 1991 Supp (1) SCC 138 : 1991 SCC (L&S) 841 : (1991) 17 ATC 261]* which in turn would mean that they are also holders of diploma in Engineering. They admittedly being not, the contention of the appellants could not be rejected. Non-filing of an appeal, in any event, would not be a ground for refusing to consider a matter on its own merits. (See *State of Maharashtra v. Digambar[(1995) 4 SCC 683]* .)

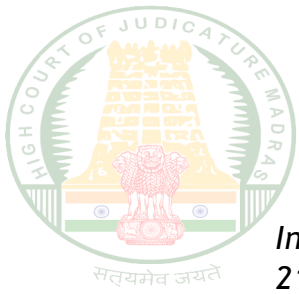
29. In *State of Bihar v. Ramdeo Yadav [(1996) 3 SCC 493 : 1996 SCC (L&S) 756]* wherein this Court noticed *Debdas Kumar [State of W.B. v. Debdas Kumar, 1991 Supp (1) SCC 138 : 1991 SCC (L&S) 841 : (1991) 17 ATC 261]* by holding: (*Ramdeo Yadav case [(1996) 3 SCC 493 : 1996 SCC (L&S) 756]* , SCC p. 494, para 4)

‘4. Shri B.B. Singh, the learned counsel for the appellants, contended that though an appeal against the earlier order of the High Court has not been filed, since larger public interest is involved in the interpretation given by the High Court following its earlier judgment, the matter requires consideration by this Court. We find force in this contention. In the similar circumstances, this Court in *State of Maharashtra v. Digambar[(1995) 4 SCC 683]* and in *State of W.B. v. Debdas Kumar [State of W.B. v. Debdas Kumar, 1991 Supp (1) SCC 138 : 1991 SCC (L&S) 841 : (1991) 17 ATC 261]* , had held that though an appeal was not filed against an earlier order, when public interest is involved in interpretation of law, the court is entitled to go into the question.’ ”

8. In *CCE v. Hira Cement [(2006) 2 SCC 439]* at para 24 the position was reiterated.

9. In *Govt. of A.P. v. V.J. Cornelius [(1981) 2 SCC 347 : 1981 SCC (L&S) 394]* it was observed that equity is not the relevant factor for the purpose of interpretation.

10. It will be relevant to note that in *Karamchari Union v. Union of India [(2000) 3 SCC 335 : (2000) 243 ITR 143]* and *Union of*



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India v. Kaumudini Narayan Dalal [(2001) 10 SCC 231 : (2001) 249 ITR 219] this Court observed that without a just cause Revenue cannot file the appeal in one case while deciding not to file appeal in another case. This position was also noted in CIT v. Shivsagar Estate [(2004) 9 SCC 420] .

11. The order of reference would go to show that same was necessary because of certain observations in Berger Paints India Ltd. v. CIT [(2004) 12 SCC 42] . The decision in Union of India v. Kaumudini Narayan Dalal [(2001) 10 SCC 231 : (2001) 249 ITR 219] was explained in Hemalatha Gargya v. CIT [(2003) 9 SCC 510] , at SCC para 14. It has been stated in the said case that the fact that different High Courts have taken different views and some of the High Courts are in favour of the Revenue constituted “just cause” for the Revenue to prefer an appeal. This Court took the view that having not assailed the correctness of the order in one case, it would normally not be permissible to do so in another case on the logic that the Revenue cannot pick and choose. There is also another aspect which is the certainty in law.

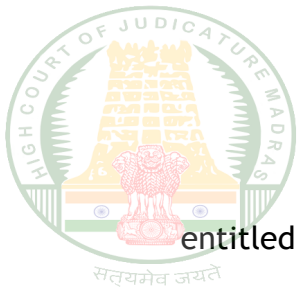
12. If the assessee takes the stand that the Revenue acted mala fide in not preferring appeal in one case and filing the appeal in other case, it has to establish mala fides. As a matter of fact, as rightly contended by the learned counsel for the Revenue, there may be certain cases where because of the small amount of revenue involved, no appeal is filed. Policy decisions have been taken not to prefer appeal where the revenue involved is below a certain amount. Similarly, where the effect of decision is revenue neutral, there may not be any need for preferring the appeal. All these certainly provide the foundation for making a departure.

13. In answering the reference, we hold that merely because in some cases the Revenue has not preferred appeal that does not operate as a bar for the Revenue to prefer an appeal in another case where there is just cause for doing so or it is in public interest to do so or for a pronouncement by the higher court when divergent views are expressed by the Tribunals or the High Courts.”

6.9. In the judgement in TCA No.621 of 2013 dated 23.12.2016 rendered

by a co-ordinate Bench of this Court, it has been clearly held that the assessee is

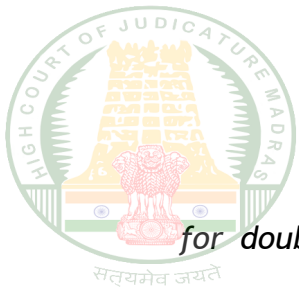
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entitled to maintain two sets of books of accounts. The judgment of the Tribunal is not binding on us, but certainly the judgment of the co-ordinate bench, unless we take a different view or the facts are different. The method of accounting as per the provisions of the Act is contemplated under Section 145 and deduction for bad debts under the Act is provided under Section 36. All that the assessee is required to do is to write off the bad debts in the profit and loss account and such amount must be reflected in the books of accounts as contemplated under section 145 of the Act. Therefore, this court is of the opinion that the Tribunal was earlier justified in accepting the methodology adopted by the assessee in maintaining two sets of books of accounts and the entries made in the income tax books for the purpose of computation.

6.10. It is settled law that as per section 36(1)(vii) of the Act, bad debts actually written off are only to be allowed as deduction. In ***Vijaya Bank v. Commissioner of Income Tax [(2010) 5 SCC 416]***, the Hon'ble Supreme Court, following its earlier judgment in ***Southern Technologies Limited v. Joint Commissioner of Income Tax [(2010) 320 ITR 577]***, has held that "after April 1, 1989, a mere provision for bad debt would not be entitled to deduction under section 36(1)(vii). To understand the above dichotomy, one must understand how to write off. If an assessee debits an amount of doubtful debt to the profit and loss account and credits the asset account like sundry debtor's account, it would constitute a write off of an actual debt. However, if an assessee debits 'provision



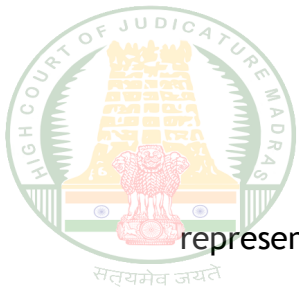
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for doubtful debt' to the profit and loss account and makes a corresponding credit to the 'current liabilities and provisions' on the liabilities side of the balance sheet, then it would constitute a provision for doubtful debt. In the latter case, the assessee would not be entitled to deduction after April 1, 1989".

It was further observed that *"the issue cannot be decided on the basis of apprehensions / desirability and it is always open to the assessing officer to call for details of individual debtor's account if the Assessing Officer has reasonable grounds to believe that assessee has claimed deduction twice over".*

6.11. Such being the settled legal position, the dispute that arises for consideration herein is, whether the bad debts claimed by the assesseees are actually written off in the books of accounts maintained by them or mere provision for bad debts has been made. It is not the case of the department that the assessee has not debited the doubtful debt in the profit and loss account or assessee has not written off in the books maintained for the purpose of income tax. But, it is the case of the revenue that though the amount has been written off as bad debts in the profit and loss account, it is either fully or partially reflecting as provision for bad debts in the books of accounts maintained for the purpose of the Companies Act and no corresponding entry is made to individual account. According to this court, the assessee is entitled to deduction on writing off bad debts, if the provisions under Section 36 (1) (vii) and 36 (2) of the Act are satisfied. The assessee can write off the debt only if it forms part of computation of the income in the previous assessment year or earlier previous year or



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represents money lent in the ordinary course of business. Similarly, the debt already written off, but not accepted by the Assessing officer earlier for the reason that the same had not been bad in that year, can be deducted in the subsequent year. Thus, the maintenance of books of accounts is one thing and writing off the doubtful debt as bad is completely different. For the purpose of Income Tax Act, the *sine qua non* for claiming deduction is that the bad debts must be written off in the profit and loss account. The entry in the books of accounts maintained for the purpose of Companies Act, as only a provision, is relevant, only for the purpose of verification and not for the purpose of deduction. A conjoint reading of Sections 145 and 36 (2) would show that the object sought to be achieved is to verify, whether such debt has become irrecoverable in that particular year to treat it as bad and write off. At this juncture, it is relevant to refer again to the relevant portion of the judgment of the Apex Court in **Vijaya Bank case** (Supra), which lays down as to what constitutes a write off under the provisions of the Income Tax Act:

“11. One point needs to be clarified. According to Shri Bishwajit Bhattacharya, learned Additional Solicitor General appearing for the Department, the view expressed by the Gujarat High Court in Vithaldas H. Dhanjibhai Bardanwala [(1981) 130 ITR 95 (Guj)] was prior to the insertion of the Explanation vide the Finance Act, 2001, with effect from 1-4-1989, hence, that law is no more a good law. According to the learned counsel, in view of the insertion of the said Explanation to Section 36(1)(vii) with effect from 1-4-1989, a mere debit of the impugned amount of bad debt to the profit and loss account would not amount to actual write-off. According to him, the Explanation makes it very clear that there is a dichotomy between actual write-off on the one hand and a provision for bad and doubtful debt on the other. He submitted that a mere debit to the profit and loss account would constitute a provision for bad and

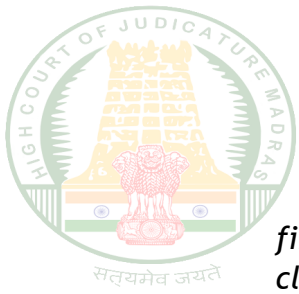


doubtful debt, it would not constitute actual write-off and that was the very reason why the Explanation stood inserted. According to him, prior to the Finance Act, 2001, many assessees used to take the benefit of deduction under Section 36(1)(vii) of the 1961 Act by merely debiting the impugned bad debt to the profit and loss account and therefore, Parliament stepped in by way of Explanation to say that mere reduction of profits by debiting the amount to the profit and loss account per se would not constitute actual write-off.

12. To this extent, we agree with the contentions of Shri Bhattacharya. However, as stated by the Tribunal, in the present case, besides debiting the profit and loss account and creating a provision for bad and doubtful debt, the assessee Bank had correspondingly/simultaneously obliterated the said provision from its accounts by reducing the corresponding amount from loans and advances/debtors on the asset side of the balance sheet and, consequently, at the end of the year, the figure in the loans and advances or the debtors on the asset side of the balance sheet was shown as net of the provision “for impugned bad debt”.

14. Coming to the second question, we may reiterate that it is not in dispute that Section 36(1)(vii) of the 1961 Act applies both to banking and non-banking businesses. The manner in which the write-off is to be carried out has been explained hereinabove. It is important to note that the assessee Bank has not only been debiting the profit and loss account to the extent of the impugned bad debt, it is simultaneously reducing the amount of loans and advances or the debtors at the year end, as stated hereinabove. In other words, the amount of loans and advances or the debtors at the year end in the balance sheet is shown as net of the provisions for impugned debt.

15. However, what is being insisted upon by the assessing officer is that mere reduction of the amount of loans and advances or the debtors at the year end would not suffice and, in the interest of transparency, it would be desirable for the assessee Bank to close each and every individual account of loans and advances or debtors as a precondition for claiming deduction under Section 36(1)(vii) of the 1961 Act. This view has been taken by the assessing officer because the assessing officer apprehended that the assessee Bank might be taking the benefit of deduction under Section 36(1)(vii) of the 1961 Act, twice over. [See the order of CIT(A) at pp. 66, 67 and 72 of the paper book, which refers to the apprehensions of the assessing officer.] In this context, it may be noted that there is no



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finding of the assessing officer that the assessee had unauthorisedly claimed the benefit of deduction under Section 36(1)(vii), twice over. The order of the assessing officer is based on an apprehension that, if the assessee fails to close each and every individual account of its debtor, it may result in the assessee claiming deduction twice over.

18. Before concluding, we may refer to an argument advanced on behalf of the Department. According to the Department, it is necessary to square off each individual account failing which there is likelihood of escapement of income from assessment. According to the Department, in cases where a borrower's account is written off by debiting profit and loss account and by crediting loans and advances or debtors accounts on the asset side of the balance sheet, then, as and when in the subsequent years if the borrower repays the loan, the assessee will credit the repaid amount to the loans and advances account and not to the profit and loss account which would result in escapement of income from assessment. On the other hand, if bad debt is written off by closing the borrower's account individually, then the repaid amount in subsequent years will be credited to the profit and loss account on which the assessee Bank has to pay tax.

19. Although, *prima facie*, this argument of the Department appears to be valid, on a deeper consideration, it is not so for three reasons. Firstly, the head office accounts clearly indicate, in the present case, that, on repayment in subsequent years, the amounts are duly offered for tax. Secondly, one has to keep in mind that, under the accounting practice, the accounts of the rural branches have to tally with the accounts of the head office. If the repaid amount in subsequent years is not credited to the profit and loss account of the head office, which is ultimately what matters, then, there would be a mismatch between the rural branch accounts and the head office accounts. Lastly, in any event, Section 41(4) of the 1961 Act, *inter alia*, lays down that, where a deduction has been allowed in respect of a bad debt or a part thereof under Section 36(1)(vii) of the 1961 Act, then, if the amount subsequently recovered on any such debt is greater than the difference between the debt and the amount so allowed, the excess shall be deemed to be profits and gains of business and, accordingly, chargeable to income tax as the income of the previous year in which it is recovered. In the circumstances, we are of the view that the assessing officer is sufficiently empowered to tax such subsequent repayments under Section 41(4) of the 1961 Act and, consequently, there is no merit in



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the contention that, if the assessee succeeds, then it would result in escapement of income from assessment.”

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6.12. Therefore, it is clear that once the bad debts are written off by debiting the same in the profit and loss account and by giving a corresponding credit in the loans and advances/debtors on the asset side of the balance sheet, the requirement under law is satisfied. It is not necessary to make corresponding entry towards each individual account separately to qualify as a valid write off. The department has not disputed the entries in the profit and loss account and balance sheet. However, the Tribunal failed to see that once the sums written off in the books maintained for the purpose of Income Tax Act and debited in the profit and loss account and satisfied the other requirement as held by the Apex Court, it is suffice to hold that the assesseees are entitled to the allowance. In such view of the matter, we are of the opinion that the Tribunal rightly deleted the disallowances made by the assessing officer, by the orders impugned in TCA Nos.622/2013, 371/2013, 360 & 361/2014 and 915 & 916/2014, whereas, the Tribunal in the order dated 29.01.2016, which is impugned in TCA Nos.125, 127, 129 and 131 of 2017, instead of remanding the matter, ought to have allowed the appeals by placing reliance on the decision of the CIT(A). Therefore, the order of the Tribunal dated 29.01.2016 is liable to be set aside and is set aside. Accordingly, the issue relating to bad debts is decided in favour of the assesseees.

Royalty

7.1. The assessee companies claimed royalty paid to the holding company

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M/s. Shriram Chits and Investments Pvt Ltd as revenue expenses. The assessing officer disallowed the royalty amount and allowed depreciation at 25% by holding that the expenditure incurred is for acquiring intangible asset and would thus amount to capital expenditure. However, the CIT(A) directed the assessing officer to allow the royalty payment in full as revenue expenditure, which was also affirmed by the Tribunal. Feeling aggrieved, the Revenue preferred the appeals viz., TCA Nos. 622/2013, 360 & 361/2014 and 913/2014. Whereas, in the case of Shriram Transport Finance Co. Ltd relating to AY 2014-15, the assessee claimed royalty amount of Rs. 20,93,93,838/- paid to Shriram Ownership Trust, which was disallowed, after allowing depreciation @ 25% on Rs. 20,93,93,838/- by the assessing officer. The said order of the assessing officer was put to challenge before the CIT(A), by filing appeal, in which, both the grounds relating to disallowance of royalty for AY 2014-15 and depreciation on royalty amount disallowed in the earlier assessment years 2008-09 to 2013-14, were raised by the assessee. Though the CIT(A) decided royalty issue in favour of the assessee, he directed the AO to withdraw the depreciation granted at 25% on the royalty payment. The said finding of the CIT(A) was also confirmed by the Tribunal. Therefore, the assessee is before this court by filing TCA.No.407/2019, raising a substantial question of law, whether the Tribunal was right in not directing the assessing officer to allow depreciation on the royalty amounts disallowed in the earlier years, without prejudice to the ground raised in the earlier years that royalty amount is allowable as revenue expenditure.



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7.2. The learned Senior Standing Counsel appearing for the Revenue would contend that the parent company of Shriram Group of Companies is in the trade of finance and investments and they had built a good will and reputation over several years of operation. The parent company also had large data base of its existing and past clients, who had investments and had financial transactions with them. While so, the assessee companies, with the help of the parent company, started business by making investment in land, building etc., and claimed depreciation. In addition, the assessee companies also invested for use of trademark on the parent company, which has to be treated as investment in capital asset. Further, the assessee companies were allowed to use the data base of the parent company to tap them for development of business. Continuing further, the learned senior standing counsel submitted that the customers are attracted not only through trust and good will, but also by the trade mark of the parent company. Therefore, by allowing the assessee companies to use the trademark of the parent company, they had the same effect of investing in the capital assets viz., land, building etc., and the said investment/expenditure is towards the profit making apparatus; and the use of the said trademark had enabled the assessee companies to get immediate market presence and commence their business. Thus, according to the learned Senior Standing Counsel, the expenditure incurred by the assessee companies in this regard, has to be treated as capital expenditure and they are entitled to claim depreciation



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alone. In other words, the royalty payment being acquiring an intangible asset, the assessee companies are entitled only for depreciation under Section 32 of the Act and the depreciation table expressly provides for 25% depreciation and therefore, the assessee companies cannot claim it to be revenue expenditure and get 100% deduction. It is also submitted that the license to use the trademark is given only to two companies and hence, the claim of the assessee companies that it is not an exclusive use, is liable to be rejected; and the further contention of the assessee companies that the agreement is only for one year, is also liable to be rejected, as the said agreement is being renewed for several years. Placing reliance on the decision of the Apex Court in ***Honda Siel Cars (India) Limited v. CIT [(2017) 8 SCC 170]***, the learned senior standing counsel ultimately submitted that without applying the test as to whether the investment on licence to use trade name and trade mark is capital or revenue in nature, in the light of the documentary evidence, especially license agreement, which concedes that the royalty is paid for capitalizing the good will of the parent company, the authorities below erroneously deleted the disallowance made by the assessing officer by treating the expenses as revenue in nature and hence, the appeals will have to be allowed by setting aside the orders of the authorities below.

7.3. Per contra, the learned Senior counsel appearing for the assessee companies would submit that M/s. Shriram Chits & Investments Private Limited is



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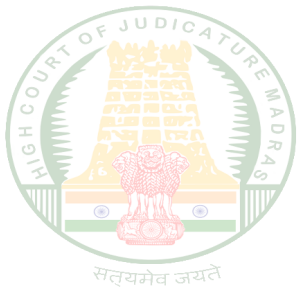
the owner of the logo and its absolute ownership can be recognised from the registered trademark. The assessee companies had obtained permission only to use the logo and the permission so granted is non-transferable and non-exclusive. Elaborating further, the learned senior counsel submitted that as per the agreement between the parties, no proprietary or exclusive interest has been acquired by the assessee companies and in the absence of any ownership in respect of the logo covered by the trademark, the provisions of section 32(1)(ii) of the Act are not at all attracted. Further, the document under which the permission was granted to the assessee companies can be terminated for breach of contract by either party by giving 60 days notice. Even the payment made by the companies is not in the capital field and no asset or advantage of an enduring nature has been acquired by them and therefore, the expenditure in the form of payment to the principal is a proper debit in the profit and loss account even after the introduction of section 32(1)(ii). It is also pointed out that in this case, royalty is being paid annually from 01.04.2003, which shows that there is no acquisition of any asset and the payment is only for the use of the asset without acquiring any interest therein. To substantiate his contention, the learned senior counsel referred to the decision of the Hon'ble supreme court in ***CIT v. Wavin India Limited [236 ITR 314]***. The learned senior counsel further submitted that only the owners are entitled for depreciation. Whereas in the present case, the license agreement confers only the right to use and also imposes restrictions on such use; and it is non-transferable and must be renewed after the expiry of 5



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years. In this regard, reference was made to the decision of the Hon'ble supreme court in *CIT v. Ciba of India Ltd. [(1968) 2 SCR 696]*. With these averments, the learned senior counsel submitted that the royalty expenditure is revenue in nature and the same cannot be included in taxable income.

7.4. The learned senior counsel for the assessee companies also pointed out certain instances, wherein the department accepted the plea of the assesseees and treated the royalty payment as revenue expenditure, viz., (i) in the case of Shriram Chits Tamil Nadu Private Limited for the assessment year 2001-02, the CIT dropped the proceedings under section 263 accepting the objections raised to treat the royalty payment as capital expenditure; and for the assessment years 2004-05 and 2005-06, the CIT(A) accepted the claim of the company by holding the expenditure as revenue in nature, which was also accepted by the department and no further appeal was filed before the ITAT; (ii) in the case of Shriram City Union Finance Limited, for the assessment years 2004-05 & 2005-06, the assessing officer accepted the claim of deduction in respect of royalty expenditure and did not add the same in the respective assessment orders; and (iii) in the case of Shriram Transport Finance Company for the assessment years 2004-05, 2005-06, 2006-07 and 2007-08, the assessing officer did not add the royalty expenditure claimed in the respective assessment orders. Therefore, according to the learned senior counsel, the orders of the Tribunal do not require any interference by this court.



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7.5. In respect of depreciation on royalty disallowed in the earlier assessment years from 2008-09 to 2013-14, the learned senior counsel appearing for the assessee in TCA No.407/2019, without prejudice to the contention that royalty claimed is allowable as revenue expenditure, submitted that the assessing officer disallowed royalty claimed from AY 2008-09 onwards, treating it as capital expenditure and allowed depreciation in the assessment year in which the royalty payment was disallowed, against which, appeals were filed and are pending at different stages. As such, it is contended that in case royalty paid is not allowed as revenue expenditure, the cumulative payments made in the past years and the amounts payable will constitute the cost of acquisition of the asset and therefore, depreciation is allowable on that sum. However, the assessing officer did not allow depreciation on the written down value (WDV) in the subsequent years, as a result of which, a ground was raised in this regard by the assessee, in the appeal filed relating to the assessment year 2014-15 before the CIT(A). The CIT(A) in his order dated 28.08.2017 dismissed the said ground as infructuous as the issue of royalty was decided in the assessee's favour. The ITAT also did not decide this issue. Therefore, the learned senior counsel sought to consider the same and pass appropriate orders in favour of the assessee.

7.6. This court considered the rival submissions and perused the materials placed before the same. It is borne out from the records that the



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assessee companies had paid royalty to the parent company for using its logo, based on the turnover and claimed deduction treating the said expenses as revenue in nature. Whereas, the assessing officer rendered a finding that in view of the amendment made to section 32 with effect from 1.4.1999, the deduction for royalty payment construing it as revenue expenditure, has to be disallowed and depreciation at 25% has to be allowed by treating it as capital expenditure. It was further observed that though the royalty is paid for the use of logo for one year, the same is made for acquisition of intangible asset; and the mode, methodology and duration of payment is irrelevant. Accordingly, the claim of the assessee companies under the head 'royalty' was disallowed and depreciation at 25% was allowed. However, following the earlier orders of the Tribunal as well as the decision of the Hon'ble supreme court in *CIT v. Wavin (India) Ltd (supra)*, the CIT(A) allowed the claim of the assessee companies, which was affirmed by the Tribunal as well. Therefore, the appeals viz., TCA Nos.622/2013, 360 & 361/2014 and 913/2014 at the instance of the Revenue.

7.7. It is an admitted fact that the assessee companies had entered into licence agreement with the parent company viz., M/s.Shriram Chits & Investments Pvt. Ltd., for use of its logo, on payment of royalty based on turnover and the same is renewable. As already stated, it is the claim of the assessee companies that the license agreement confers the right to use the logo with restrictions viz., non-transferable and non-exclusive; there is no acquisition and there is only the right to use and not ownership; and therefore, the royalty



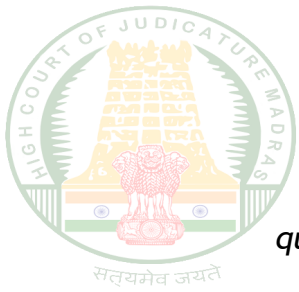
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payment which is revenue in nature, falls within the general provisions of section 37(1) and not under section 32(1)(ii).

7.8. This court is bound by the legal proposition laid down in the decision in *CIT v. Ciba of India Ltd, (supra)* referred to on the side of the assessee companies. In that case, the Hon'ble supreme court answered the question, whether the payment made by the assessee to the swiss company towards technical and research contribution for the use of its Indian patents and /or trade marks, in pursuance of an agreement, is an admissible deduction, in favour of the assessee. Such a conclusion was arrived at, after a detailed analysis of the terms of the agreement, nature of the expenditure incurred and the other relevant factors. The following passage extracted from the said judgment is important:

In the case in hand, it cannot be said that the swiss company had wholly parted with its Indian business. There was also no, attempt to part with the technical knowledge absolutely in favour of the assessee.

“The following facts which emerge from the agreement clearly show that the secret processes were not sold by the swiss company to the assessee:(a) the licence was for a period of five years, liable to be terminated in certain eventualities even before the expiry of the period; (b)the object of the government was to obtain the benefit of the technical assistance for running the business; (c)the licence was granted to the assessee subject to rights actually granted or which may be granted after the date of the agreement to other persons; (d)the assessee was expressly prohibited from divulging confidential information to third parties without the consent of the swiss company; (e)there was no transfer of the fruits of research once for all: the swiss company which was continuously carrying on research and had agreed to make it available to the assessee; and (f) the stipulated payment was recurrent dependent upon the sales, and only for the period of the agreement. We agree with the High Court that the first



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question was rightly answered in favour of the assessee.”

However, it is imperative for this court to apply the law laid down by the Apex Court to the facts of the present case, to determine the nature of the royalty payment made by the assessee companies i.e., whether it is revenue or capital expenditure.

7.9. At this juncture, it is apposite to refer to the decision of the Hon'ble supreme court in ***CIT v. Wavin (I) Ltd. (supra)*** which was referred to by the Tribunal, while passing the orders impugned herein and it was held by the Hon'ble Supreme court as follows:

“The expenditures were incurred to obtain benefit of research and development made by the foreign company. The technical information given to the Indian company was "non-exclusive" and "non-transferable". In other words, this is not an out and out sale of technical know-how. The assessee was merely given a non-exclusive and non-transferable right of user of the technical information. Expenditures in these facts cannot be said to be for acquisition of any asset at all.”

7.10. Furthermore, in the judgment of the Supreme Court in ***Honda Siel Cars India Ltd v. CIT (supra)***, it was held that while deciding, whether royalty payment for technical know-how is capital or revenue expenditure, the enduring benefit test has to be applied; and the conditions to be satisfied for treating the expenditure under technical collaboration, as capital in nature, are (i)there is no existing business and (ii)agreement is crucial for setting up a new manufacturing plant. The relevant passage of the said judgment of the supreme court is usefully



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extracted below:

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“19. If the aforesaid factors are taken in isolation, probably the claim of the assessee may be justified. Distinction between capital and revenue expenditure with reference to acquisition of technical information and know-how has been spelled out by this Court as well as High Courts in a series of cases. Primary test which is adopted to differentiate between capital and revenue expenditure remains the same, namely, the enduring nature test. It means where the expenditure is incurred which gives enduring benefit, it will be treated as capital expenditure. In contradistinction to the cases where expenditure of concurrent and reoccurring nature is incurred and the later would belong to revenue field. Technical information and know-how are intangible. They have a different and distinct character from tangible assets. When the expenditure is incurred to acquire a tangible asset, determination as to whether the said acquisition of tangible asset is of capital nature or the expenditure is of revenue nature, may not pose a problem. However, in case of technical information and know-how, having regard to their unique characteristic, the questions that need to be posed for determining the nature of such an expenditure are also of different nature. In case where there is a transfer of ownership in the intellectual property rights or in the licences, it would clearly be a capital expenditure. However, when no such rights are transferred but the arrangement facilitates grant of licence to use those rights for a limited purpose or limited period, the Courts have held that in such a situation, the royalty paid for use of such technical information or know-how would be in the nature of revenue expenditure as no enduring benefits is acquired thereby. This was so held in a classic case, entitled CIT v. Ciba India Limited (AIR 1968 SC 1131).”

7.11. Thus, it is crystal clear from the aforesaid decisions of the Hon'ble supreme court that royalty payment made by the assessee, for use of logo or trademark for a particular period, for improvement / expansion of business,



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would qualify as revenue expenditure. The Judgment in ***Honda Siel Cars India***

Ltd (supra) is of no assistance to the revenue as in that case, the technical know-how was shared pursuant to technical collaboration agreement and not only technical information was transferred, but on field complete assistance was given pursuant to the joint venture agreement. Further, in that case, the very same business was set up by the transferee company. However, in the present case, it is not the case. The grant of licence to use the intellectual property of the parent company for limited purpose, cannot be treated as transfer of ownership or title. Though the licence is renewed periodically, it by itself does not guarantee the renewal. Similarly, the parent company is always at liberty to not only cancel the license, but also grants such rights to any other organization. Further, the findings of the Apex Court in the above judgment that when the intellectual property right is not transferred, but permitted to be utilized for a particular period, would have to be treated as revenue expenditure, on application to the facts of this case, tilts the balance in favour of the assessee. Every expenditure incurred to acquire some right over intangible asset, cannot be *ipso facto* termed as capital expenditure. The nature of the assets, right, information or technical know-how that is transferred, must be such that without which the transferee could never commence the business. As rightly contented by the learned senior counsel appearing for the assessee, the benefit granted by the licensor is not enduring in nature in the present cases. The assessing officer without appreciating the terms of the licence agreement and ascertaining the



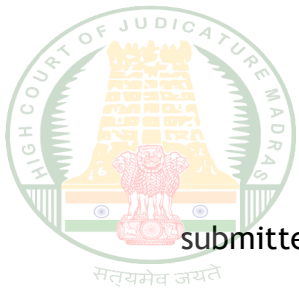
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nature of the expenditure incurred by the assessee companies, disallowed the deduction of royalty payment and allowed the depreciation at 25% treating it as capital expenditure. However, the appellate authorities, while deleting the disallowances made by the assessing officer, have rightly treated the royalty payment as revenue expenditure. Once the payment of royalty is treated as revenue expenditure, automatically, it goes without saying that the assesseees would be entitled to 100% deduction. Therefore, we need not interfere with the orders passed by appellate authorities. Accordingly, the substantial questions of law relating to royalty, are answered in favour of the assesseees.

Employees Stock Option Plan (ESOP) expenditure

8.1. In the assessment year 2009-10, the assesseees / respondents in TCA Nos.360 and 361 of 2014, had claimed ESOP expenses for deduction, by debiting the same under the head 'salaries and allowances' / 'Personnel Expenses' in the profit and loss account. The assessing officer disallowed the said claim and added the same back to the total income of the assessee companies. However, the appellate authorities reversed the orders of the assessing officer by holding that the ESOP expenditure is allowable as revenue expenditure. Aggrieved over the same, the Revenue is before this court, by raising this substantial question of law, as to whether the finding of the Tribunal that the assesseees' claim for deduction of ESOP expenses is an allowable deduction, was correct.

8.2. The learned Senior Standing Counsel appearing for the Revenue



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submitted that the assessee companies had declared their shares to the employees as Employee Stock Option Scheme (ESOP) and erroneously claimed the said expenditure as revenue expenditure, whereas such expenditure must be treated as capital expenditure as the shares of the companies are capital assets. In this context, strong reliance was placed on the judgment of the Hon'ble Supreme Court in **Brooke Bond India Ltd. v. CIT [(1997) 10 SCC 362]**. Adding further, the learned Senior Standing Counsel referred to Section 37 of the Act and submitted that if the assessees claimed the expenses incurred towards ESOP as revenue expenditure, they must prove that it is not in the nature of capital expenditure or that, it is the personnel expenses of the assessees as provided in sub-section (1) of section 37. It is also submitted that the contention of the assessees that ESOP is treated as perquisite in the hands of the employees, is liable to be rejected, as the nature of expenditure cannot be ascertained from the angle of the recipient. Thus, the learned senior standing counsel prayed that the orders of the Tribunal in allowing the claim of the assessee companies as revenue expenditure, warrant interference by this court.

8.3. Per contra, the learned Senior Counsel appearing for the assessees would contend that ESOP is a compensation given to the employees for rendering their services to the company and is not a bounty / gratuitous expense; it partakes the character of salary / perquisite and is aimed at retaining and encouraging the employees; and thus, ESOP expenses are employees' compensation expenses and the same have to be viewed as employee



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remuneration and debited in the profit and loss account. Continuing further, the learned senior counsel submitted that the ESOP expenditure has been incurred only to facilitate and promote the business of the assessee and the same does not bring any enduring benefit or advantage or asset and hence, there is no capital asset created for the company in such transaction. The learned senior counsel also submitted that the ESOP scheme is controlled by SEBI guidelines which mandate that the difference between the market prices and the price at which the option is exercised by the employee, is to be debited in the Profit and Loss Account as expenditure. Adding further, the learned senior counsel submitted that the shares are taxed under section 17 (2) (vi) of the Act as “perquisite” in the hands of the employees, who are allotted such shares. Therefore, according to the learned Senior Counsel, ESOP is only an expenditure to retain the employees for the business purpose. In support of the same, reliance was placed on the decision of this court in ***CIT v. PVP Ventures Ltd [(2012) 211 Taxman 554 (Mad)]***. It is also submitted that the assessing officer allowed the ESOP expenditure as revenue in nature, for the assessment years 2006-07, 2007-08 and 2008-09 and hence, the same has to be applied for the AY 2009-10 as well.

8.4. This court considered the rival submissions. On a close reading of the orders passed by the assessing officer, it could be seen that the assessee companies classified the ESOP expenses under the head 'salaries and allowances' /

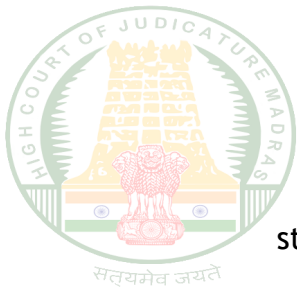


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'personnel expenses', and debited the same in the profit and loss account and claimed deduction for the same. The assessing officer disallowed the said expenditure on the premise that it is in the nature of capital expenditure. While so, the assessing officer was of the opinion that share premiums obtained on issue of shares are items of capital receipts and when such premium is foregone by issue of shares at lower cost to the employees, it can only be treated as capital expenditure; the ESOP expenditure debited was not incurred towards satisfaction of any trade liability as the employees have not given anything to procure employees stock option and hence, they are not debited in the profit and loss account; and the incentive of ESOP scheme is to give a stake to the employees in the organisation and it gives enduring benefit to the company by making the employees as stake holders and hence, the benefit of expenditure related to such scheme, can only be capital expenditure.

8.5. However, the CIT(A) accepted the contention of the assessee and deleted the disallowances made by the assessing officer, on the following grounds:

- As per the notification no.323/2001 (F.No.142/48/2001-TPL) dated 11.10.2001 issued by CBDT, the assessee companies have to follow the SEBI guidelines.
- As per the SEBI guidelines 1999, the accounting value of options shall be treated as another form of employees' compensation and in the financial



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statements, the assessee companies treated the difference between the exercise price of share and the market rates as employees' compensation.

- The ESOP expenditure is a compensation paid to the employees for their work and is in the nature of perquisite, which aspect has been recognised in the provisions relating to salary and Fringe Benefit Tax under the Act.
- The ESOP scheme is an employee welfare measure and the income referable to the employees' effort is recognised in the profit and loss account under the head 'personnel expenses'.
- The grant of ESOP stimulates the employees to put their best effort, which will increase the output and profit of the company. Therefore, the ESOP expenditure is commercial expediency. In this context, the CIT(A) referred to the decision of the Hon'ble supreme court in ***SA Builders Ltd [288 ITR 1]***.
- The orders of the ITAT, Chandigarh in ***ACIT v. M/s.Spray Engineering Devices Limited (ITA No.701/chd/2009 dated 22.06.2012)***, wherein, it was held that '*the value of shares allotted to the employees under the sweat equity scheme is allowable*', and ITAT, Chennai in ***SSI Ltd v. DCIT (85 TTJ 1049)***, in which, it was held that '*the ESOP discount is a revenue and allowable business expenditure*'; and the order of this court in ***CIT v. PVP Ventures Limited [(2012) 211 Taxman 554 (Mad)]***, were relied upon by the CIT(A).



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The aforesaid reasons were accepted and the orders of the CIT(A) were affirmed by the Tribunal, by holding that the ESOP expenditure is an allowable revenue expenditure, in favour of the assessee. Therefore, TCA Nos.360 and 361 of 2014 at the instance of the Revenue.

8.6. Admittedly, the ESOP scheme is a voluntary scheme launched by the employer to issue shares to their employees, with an intent to give a stake to the employees in the organisation as incentives for performing better. Such an expenditure is incurred to facilitate and promote the business and there is no enduring benefit or advantage or creation of asset to the company, rather it is to earn more revenue and the expenses incurred for such purpose is nothing but revenue expenditure. It is a general principle that any expenditure incurred for the purpose of business is a deductible expenditure and the amount spent by an assessee for labour / employees' welfare, would be deductible as revenue expenditure. In ***Dalmia Jain & Co. Ltd v. CIT [81 ITR 754]***, the Hon'ble supreme court held that “*expenditure incurred for maintenance of business is revenue in nature*”.

8.7. According to the assessee, the ESOP benefit is taxable in the hands of employees as 'perquisite' under section 17(2) of the Act and it was brought within the purview of Fringe Benefit Tax, which is an employee related expenditure. It is further pointed out by the assessee that similar claim of ESOP expenses for deduction raised for the assessment years 2006-07, 2007-08 and 2008-09, was allowed by the assessing officer. However, the same was disallowed



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by the assessing officer relating to the assessment year 2009-10, by placing reliance on the decision of the Hon'ble supreme court in **Brooke Bond India Ltd v. CIT** (cited supra), wherein, it was held that *“though the increase in capital results in expansion of the capital base of the company and incidentally that would help in the business of the company and may also help in the profit making, the expenses incurred in that connection still retain the character of a capital expenditure since the expenditure is directly related to the expansion of the capital base of the company”*. Whereas the learned senior counsel appearing for the assessee submitted that the decision in **Brooke Bond India Ltd**, does not relate to ESOP expenditure and it was a plain case of increase in authorised capital and therefore, the said decision cannot be applicable to the facts of the present case, wherein, the grant of ESOP is a benefit given to the employees and not to the public.

8.8. This court agrees with the contentions so raised on the side of the assessee. Importantly, it is to be noted here that the issue involved herein is squarely covered by the decision of this court in **CIT v. PVP Ventures Ltd.** (cited supra) which was followed by the Tribunal while passing the orders impugned herein. In the said decision, this court held the order of the Tribunal allowing the deduction of ESOP expenditure, as an ascertained expenditure. The following passage is relevant and is extracted below:

“11. As regards the second issue which is now canvassed before this Court viz., on the issue of expenditure of 66.82 lakhs towards the issue of shares to the Employees Stock Option is concerned, the Tribunal pointed out that the shares were issued to the



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employees only for the interest of the business of the assessee to induce employees to work in the best interest of the assessee.

The allotment of shares was done by the assessee in strict compliance of SEBI regulations, which mandate that the difference between the market prices and the price at which the option is exercised by the employees is to be debited to the Profit and Loss Account as an expenditure. The Tribunal pointed out that what had been adopted was not notional or contingent as had been submitted by the Revenue. Pointing out to the Employees Stock Option Plan, the Tribunal in its order stated that it was a benefit conferred on the employee. So far as the company is concerned, once the option was given and exercised by the employee, the liability in this behalf got ascertained. This was recognised by SEBI and the entire Employees Stock Option Plan was governed by guidelines issued by SEBI. On the facts thus found, the Tribunal held that it was not a case of contingent liability depending on the various factors on which the assessee had no control. The expenditure in this behalf was an ascertained liability, thus the expenditure incurred being on lines of the SEBI guidelines, there could be no interference in the relief granted by the Assessing Authority for the expenditure arising on account of Employees Stock Option Plan. This expenditure incurred as per SEBI guidelines and granted by the Officer could not be considered as erroneous one calling for exercise of jurisdiction under Section 263 of the Act.”

8.9. It is also to be noted at this juncture that as against the aforesaid decision of this Court, SLP (C) No. 9091 of 2014 was filed and it was ultimately, dismissed on 28.03.2014, as a result of which the judgment of this Court thus, attained finality.

8.10. Further, in the decision of the Karnataka High Court in *CIT v.*

Biocon Ltd. [(2020) 121 taxmann.com 351 (Karnataka)], the question as to



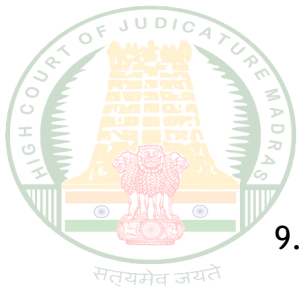
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whether the expenditure towards ESOP is allowable as deduction under section 37(1) of the Act, was considered and was ultimately decided that the same amounted to definite legal liability, which has to be allowed as deduction, after considering the definition of "employees stock option" under section 2(15A) of the Companies Act, 1956. The new provision under section 2(37) of the Companies Act, 2013 also is in similar lines.

8.11. In the light of the aforesaid legal proposition, this court comes to a conclusion that the Tribunal was correct in holding that the ESOP expenditure is revenue in nature and the assessee is entitled for deduction. Accordingly, the orders passed by the Tribunal in deleting the disallowances of ESOP expenses by the assessing officer, do not require any interference in these appeals. Resultantly, this issue stands answered in favour of the assessees.

Loss on sale of investments / Diminution in value of investments

9.1. The assessees claimed deduction for the value of investments written off due to fall in their value / loss on sale of investments, which was disallowed by the assessing officer on the ground that it is capital in nature. However, the appellate authorities deleted the disallowances made by the assessing officer. Therefore, the Revenue is before this court by raising a question, whether the Tribunal was right in holding that the loss on sale of investments / diminution in value of investments, is an allowable deduction in computing the business income of the assessees.



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9.2. According to the learned senior standing counsel appearing for the Revenue, the assessee companies had deployed monies in securities which were shown as investments in the balance sheet and therefore, the same had to be disallowed as capital expenditure. The learned senior standing counsel further submitted that the contention of the assesseees that the securities were traded and therefore, the same have to be treated as stock-in-trade; and that since the value of the said stock fell, they are eligible for deduction, is liable to be rejected. It is also submitted that the assesseees had earned dividend income by investing in the securities, which is exempt under section 10(34), but they came forward with the theory of stock-in-trade only for claiming deduction.

9.3. Adding further, the learned Senior Standing Counsel for the Revenue submitted that the purchase of government securities should be treated as 'investment' and not 'stock-in-trade' as claimed by the assesseees. Once it is treated as an investment, it can only be disallowed as capital expenditure and cannot be allowed as deduction treating it as normal business expenditure. Moreover, it is a mere provision written off and not an actual loss. It is also submitted that the assesseees had claimed the same without filing the revised return and therefore, the same cannot be allowed as deduction.

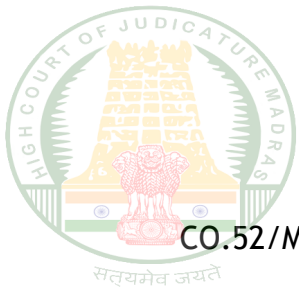
9.4. Per contra, the learned Senior Counsel for the assesseees contended that the assesseees deployed funds in securities to earn profits and therefore, hold it as 'stock-in-trade'. It is further submitted that the securities were held by the assesseees to comply with Statutory Liquidity Ratio (SLR) requirements of Non



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Banking Finance Companies and hence, they are stock-in-trade. With respect to the diminution value of investment written off, the learned senior counsel submitted that the said claim is not a fresh one; and what was offered in the previous year, has only been claimed for deduction. The learned senior counsel also placed reliance on the decision of this court in **Lakshmi Vilas Bank v. CIT [(2006) 284 ITR 93 (Mad)]**, wherein, it was held that “*the assessee Bank having all along treated the Government securities as its stock-in-trade and the Revenue having accepted this position in the earlier years, fall in market value of the securities was allowable as deduction*”. Therefore, the loss on sale of investments and diminution in value of investments written off, should be allowed as deduction, treating the investments as stock-in-trade.

9.5. Heard both sides. On a perusal of the orders passed by the authorities below, it could be seen that the assessing officer disallowed the deduction claimed by the assesseees and added back the loss on sale of investments and diminution in value of investments written off to the income of the assesseees, on the premise that the government securities were shown as investments in the balance sheet and the assesseees came forward with the theory that the said investments are stock-in-trade, only for claiming deduction. However, the CIT(A) following the decisions of the Hon'ble Supreme Court in **UCO Bank v. CIT [240 ITR 355]** and **Chainrup Sampathram case [24 ITR 481]** as well as the earlier orders of the Tribunal dated 16.12.2010 in ITA.No.725/Mds/2010 and dated 10.10.2011 in ITA No.320/Mds/2011



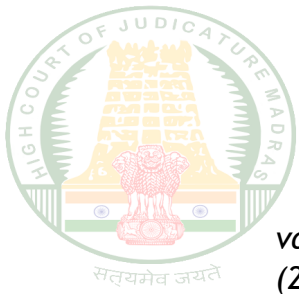
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CO.52/Mds/2011 relating to the respective assessment years 2006-07 and 2007-08, deleted the disallowances made by the assessing officer, by holding that the loss arising on sale of Government securities is business loss and is allowable. The said findings of the CIT(A) were accepted by the Tribunal, by observing that the Government securities held by the assesseees are not as investments, but to comply with the SLR requirements applicable to the Non-Banking Financial Companies. Accordingly, the Tribunal deleted the disallowances made by the assessing officer, as done by the CIT(A).

9.6. Admittedly, the assesseees are Non-Banking Financial Companies. It is the specific case of the assesseees that they have to comply with the SLR requirements as mandated by the RBI, for which, they made investments in government securities and hence, the same have to be treated as stock-in-trade and hence, the loss on sale of investments / diminution in value of investments is an allowable deduction. At this juncture, it is apropos to refer to the decision of this court in **Lakshmi Vilas Bank Ltd v. CIT [(2006) 284 ITR 93 (Mad)]**, wherein, after following the various decisions of the supreme court as well as the High Courts, it was held that the Government securities held by the assessee were stock-in-trade. The relevant passage of the same is extracted below:

6. The learned counsel for the assessee relies on the recent judgment of the Supreme Court in United Commercial Bank Vs. Commissioner of Income-tax, [1999] 240 ITR 355, wherein the Apex Court, after reiterating that the principles applicable in valuation of stock are:

"(1) that for valuing the closing stock, it is open to the assessee to



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value it at the cost or market value, whichever is lower;

(2) In the balance-sheet, if the securities and shares are valued at cost, from that no firm conclusion can be drawn. A taxpayer is free to employ for the purpose of his trade, his own method of keeping accounts, and for that purpose, to value stock-in-trade either at cost or market price;

(3) A method of accounting adopted by the taxpayer consistently and regularly cannot be discarded by the Departmental authorities on the view that he should have adopted a different method of keeping accounts or of valuation;

(4) The concept of real income is certainly applicable in judging whether there has been income or not, but, in every case, it must be applied with care and within recognised limits;

(5) Whether the income has really accrued or arisen to the assessee must be judged in the light of the reality of the situation;

(6) Under section 145 of the Act, in a case where accounts are correct and complete but the method employed is such that in the opinion of the Income-tax Officer, the income cannot be properly deduced therefrom, the computation shall be made in such manner and on such basis as the Income-tax Officer may determine, held that,

"... the appellant followed the mercantile system of accounting both for book keeping purpose as well as for tax purposes. The appellant consistently and for over 30 years prior to the assessment year in dispute (1982-83) had been valuing its stock-in-trade (investments) "at cost" in the balance-sheet whereas for the same period of time the appellant had been valuing the very same investment "at cost or market value whichever is lower" for income-tax purposes. That practice was accepted by the Department and there was no justifiable reason for not accepting the same. From the form of the prescribed balance-sheet under the Banking Regulation Act it was evident that scheduled nationalised banks were directed to put the value of shares and securities at cost and if the market value was lower, it was to be shown separately in brackets. Preparation of the balance-sheet in accordance with the statutory provision would not disentitle the assessee in submitting income-tax return on the real taxable income in accordance with a method of accounting adopted by the assessee consistently and regularly. That could not be discarded by the Departmental authorities on the ground that the assessee was maintaining the balance-sheet in the statutory form on the basis of the cost of the investments. In such cases, there was no question of following two different methods for valuing its stock-in-trade (investments) because the bank was required to prepare the



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balance-sheet in the prescribed form and it had no option to change it. For the purpose of income-tax what is to be taxed is the real income which is to be deduced on the basis of the accounting system regularly maintained by the assessee and that was done by the assessee in the present case."

7. This Court, in the case of Commissioner of Income-tax Vs. Karur Vysya Bank Ltd. [2005] 273 ITR 510, to which one of us is a party (P.D.Dinakaran, J.), held that the Government Securities held by the assessee-Bank have to be treated as stock-in-trade and not investment by following the Supreme Court judgment in Karnataka State Co-operative Apex Bank's case [1999] 240 ITR 255. In view of the above reasoning of the Supreme Court, we are of the view that the Government Securities held by the assessee are stock-in-trade.

8. Further, we have seen from the order of the Tribunal that for the earlier year, the Tribunal decided the case in favour of the assessee. When the Tribunal decided the case in favour of the assessee on identical facts, it is not proper for the Tribunal to take a different view for the subsequent years. In the case of Commissioner of Income-tax Vs. Ramamurthi (L.G.), [1977] 110 ITR 453, it is held as follows:

"No Tribunal of fact has any right or jurisdiction to come to a conclusion entirely contrary to the one reached by another Bench of the same Tribunal on the same facts. It may be that the members who constituted the Tribunal and decided on the earlier occasion were different from the members who decided the case on the present occasion. But what is relevant is not the personality of the officers presiding over the Tribunal or participating in the hearing but the Tribunal as an institution. If it is to be conceded that simply because of the change in the personnel of the officers who manned the Tribunal, it is open to the new officers to come to a conclusion totally contradictory to the conclusion which had been reached by the earlier officers manning the same Tribunal on the same set of facts, it will not only shake the confidence of the public in judicial procedure as such, but it will also totally destroy such confidence. The result of this will be conclusions based on arbitrariness and whims and fancies of the individuals presiding over the courts or the tribunals and not reached objectively on the basis of the facts placed before the authorities.

If a Bench of a Tribunal on the identical facts is allowed to come to a conclusion directly opposed to the conclusion reached by another Bench of the Tribunal on an earlier occasion, that will be destructive of the institutional integrity itself. That is the reason



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why in a High Court, if a single judge takes a view different from the one taken by another judge on a question of law, he does not finally pronounce his view and the matter is referred to a Division Bench. Similarly, if a Division Bench differs from the view taken by another Division Bench it does not express disagreement and pronounce its different views, but has the matter posted before a Fuller Bench for considering the question. If that is the position even with regard to a question of law, the position will be a fortiori with regard to a question of fact. If the Tribunal wants to take an opinion different from the one taken by an earlier Bench, it should place the matter before the President of the Tribunal so that he could have the case referred to a Full Bench of the Tribunal consisting of three or more members for which there is provision in the Income Tax Act itself.

9. In the light of the aforesaid decision of this court, it is clear that the Tribunal completely erred in coming to the conclusion it did, at variance with and opposed to the conclusion of the Tribunal on the earlier occasion.”

9.7. That apart, it is to be pointed out here that the identical issue was decided in favour of the assessee by the Karnataka High Court in *CIT v. Karnataka Bank Ltd [110 taxmann.com 128]*, however, against this, the Revenue preferred an SLP to the Supreme Court and the same is pending.

9.8. In the light of the aforesaid decisions, which are squarely applicable to the facts of the present case, this court is of the opinion that Government securities are only stock-in-trade and not capital investment and the loss, if any, on sale of them cannot be treated as capital loss and hence, the assessee is entitled for deduction of loss on sale of investments / diminution in value of investments. Therefore, the Tribunal was right in deleting the disallowances made by the assessing officer and the same need not be interfered with.



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Accordingly, the issue raised by the Revenue *qua* loss on sale of investments/ diminution in value of investments, stands answered in favour of the assesseees.

Loss arising out of Derivatives / hedging transactions in foreign exchange

10.1. The Revenue in TCA Nos.371/2013, 360, 361 and 914 of 2014, raised an issue, whether the Tribunal was right in holding that the loss arising out of derivatives / hedging transactions in foreign exchange, is an allowable deduction in computing the business income of the assesseees.

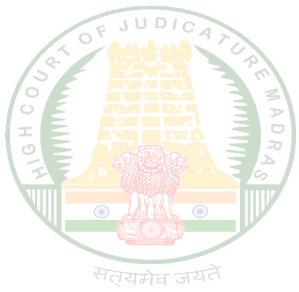
10.2. The learned Senior Standing Counsel appearing for the appellant / Revenue submitted that admittedly, the assessee had entered into the transaction of derivatives / hedging in foreign exchange and incurred loss; and had claimed the same as business loss for the purpose of deduction. Considering the nature of the transaction carried on by the Assesseees, the Assessing Officer concluded that it is a speculative loss that could be set off only against speculative gain. However, the Appellate Authority as well as the Tribunal without examining the speculative nature of the transaction, erroneously held that it was a revenue loss as per the accounting standards and thereby allowed the setoff against business income. Adding further, the learned Senior Standing Counsel submitted that under the provisions of the Income tax Act, the income is classified into various heads of income, such as, salary, business, speculation etc. and therefore, if the transaction is of speculative nature, it is to be set off only as speculative loss by applying the provisions of section 73 of the Act and not as



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business loss. That apart, in this case, as many as 21 transactions were entered into by the assesseees which are of speculative nature, but they were not taken note of by the Tribunal. It is also submitted that the assesseees' contention that they had engaged in incidental hedging transaction in the course of main business to reduce / avoid the loss, is liable to be rejected, since incidental activity cannot change the real speculative nature of income / transaction. In this context, reliance was placed on the judgment of the Calcutta High Court in **CIT v. Ganga Prasad Birla, [1993 199 ITR 173 Cal]** and submitted that even if the main business is something else and there is a speculative transaction, it will nevertheless be considered as speculative loss. Paragraph Nos. 11 and 12 of the said judgment of the Calcutta High Court read as follows:

“11. It is well-settled that even a single transaction may constitute business under the definition of the word "business" in Section 2(13). But a single transaction will not be a trading adventure unless it bears clear indicia of trade. (Narain Swadeshi Weaving Mills v. CEPT). Whether a single plunge is enough to constitute an adventure in the nature of trade or not has to be decided having regard to the surrounding circumstances of the case. This view expressed by Lord President Clyde, in the case Balgownie Land Trust Ltd. v. IRC [1929] 14 TC 684, 691, was quoted with approval by the Supreme Court in the case of G. Venkataswami Naidu and Co. v. CIT [1959] 35 ITR 594, 615. Therefore, the facts of the case will have to be looked into to decide whether a transaction is of business nature or not. Whether a transaction is of speculative nature or not does not make any difference to this principle. If a single plunge in trade may constitute business, the transactions will be an adventure in the nature of trade. If such a transaction was settled without the transfer of the contracted commodity, then the transactions will be an adventure in the nature of speculation business.



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12. Moreover, as was observed by Lawrence LJ. in the case of *Leeming v. Jones* [1930] 15 TC 333, 354 (HL), where, in a case of isolated transaction of acquisition and sale of property, there is really no middle course open, it is either an adventure in the nature of trade or else it is simply a case of sale and resale of a capital asset. This view was also approved by the Supreme Court in the case of *G. Venkataswami Naidu and Co. v. CIT.*”

10.3. By referring to section 43(5)(d) of the Act, it is contended by the learned Senior Standing Counsel appearing for the appellant / Revenue that there was no actual physical delivery of the commodity traded and the assesseees had not traded in any recognised stock exchange and therefore, the assesseees' transaction is to be treated as a speculative transaction leading to speculative loss. Further, the main business of the assesseees is money lending and the foreign currency is a commodity and hence, the transaction in foreign currency is to be treated as speculative in nature. It is also submitted that the assesseees had entered into series of transactions with banks and on scrutiny of the balance sheet, it is clear that the assesseees had made a provision for hedging transactions, which proves that they are in the hedging transactions on year to year basis and therefore, it cannot be accepted that the transactions were merely incidental. However, the appellate authorities neither considered the factual aspects relating to the speculative transactions nor the legal provisions, but merely followed the decision of the High Court of Delhi in *CIT v. Industrial Finance Corporation of India Ltd [(2009) 185 Taxman 296 (Delhi)]*, which does not deal with the issue of speculative aspect of the matter, and allowed the



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claim of the assesseees. Therefore, the learned senior standing counsel sought to allow these appeals by setting aside the orders of the appellate authorities and remanding the matters to the assessing officer for reconsideration to go into the speculative aspect and passing orders afresh.

10.4. On the contrary, the learned Senior counsel appearing for the Assesseees submitted that under section 43(5), speculative transaction is a transaction in which purchase or sale of any commodity is settled otherwise than by actual delivery. Accordingly, the derivative contracts entered into by the assesseees are nothing but interest swap transactions and not for any commodity and therefore, section 43(5) is not at all applicable. Continuing further, the learned senior counsel submitted that the underlying securities of the derivative transactions are foreign currencies vis-a-vis indian currency; the expression 'commodity' is not defined under the Act and hence, the same has to be given the meaning as understood in common parlance. As per Black's dictionary (Eighth edition), the expression 'commodity' means an article of trade or commerce, which is tangible in nature. Accordingly, the derivative transaction where the underlying security is currency, cannot come under the definition of commodity / goods. Hence, the proviso to section 43(5) of the Act is not applicable to the derivative transactions done by the assesseees.

10.5. Elaborating further, the learned senior counsel appearing for the assesseees submitted that as already stated, the transaction made by the assesseees



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is in currency, which cannot be considered as commodity or goods and therefore, the same does not fall under the category of speculative transaction as mentioned in section 43(5). In these circumstances, the swap transaction entered into by the assessee is not a speculative transaction as defined in section 43(5) of the Act and hence, the loss has to be allowed for deduction as business loss. It is also pointed out by the learned senior counsel that in the case of Shriram City Union Finance Limited, for the assessment year 2007-08, the assessing officer did not assess the derivative income from hedging contracts as speculative income. Similarly, in the case of Shriram Transport Finance Company, for the assessment year 2009-10, the CIT(A) remitted back the issue to the assessing officer for verification; and the assessing officer after verification, allowed the loss on hedging transaction and did not treat it as speculative loss.

10.6. Furthermore, it is contended by the learned Senior Counsel appearing for the appellant / Revenue that section 73 of the Act provides for losses in speculation business, which prohibits the assessee from setting off the losses against any profit or gains other than that of speculative business. While these are applicable to 'speculative transactions', the hedging transactions that the assessee engaged in are different from speculative transactions. The Appellate Authority as well as the Tribunal have given concurrent findings that the assessee had indulged in hedging transactions to hedge against a possible loss from fluctuating rate of interest. Such transactions to hedge against the possible losses in the normal course of business, are allowable to be set off against



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business gains. In this context, the learned Senior counsel placed reliance on the decision of this Court in *CIT v Celebrity Fashion Ltd. [(2020) 119 taxmann.com 429 (Madras)]* which is applicable to the facts of the present case, as it is merely a hedge against loss and does not amount to speculative transaction. The learned Senior counsel also referred to the judgment of the Gujarat High Court in *CIT v. Panchmahal Steel Ltd. [(2013) 33 taxmann.com 10 (Gujarat)]* which relied on the judgment of the Calcutta High Court in *CIT Vs. Sooraj Mull Nagarmull [(1981) 129 ITR 1691]* in which, it was held that the expenditure in forward contracts in order to cover losses that may arise due to differences in foreign exchange valuation, is revenue expenditure and it does not amount to speculative transactions. The learned senior counsel also emphasised that hedging stands on different footing and the provision is very clear on this aspect and there is no need for verification by the department as the CIT(A) had already remanded it for verification and on such remand, the Assessing Officer had also allowed it as revenue expenditure only, based on verification. Therefore, the learned senior counsel sought for dismissal of these appeals, as the orders of the appellate authorities are perfectly correct and the same do not warrant any interference.

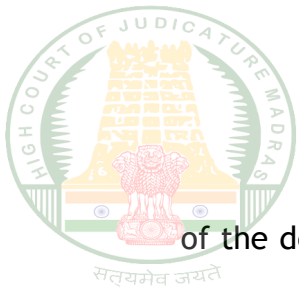
10.7. This court considered the rival submissions and perused the materials available on record, including the orders passed by the authorities below. The assessing officer did not consider the claim of the assessee on the ground that the loss claimed is only a notional loss and contingent in nature and therefore, is not allowable; and that, they did not file any revised return claiming



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the derivative loss and hence, the same cannot be considered for deduction, in the light of the decision of the Hon'ble supreme court in **Goetz (India) Ltd v. CIT [284 ITR 323]**. It was contended by the assesseees before the CIT(A) that the derivative contracts and foreign exchange swap transactions are hedging transactions against fluctuations in interest rates affecting the business of the assessee companies; the derivative loss worked out on market to market basis, is an ascertained loss of the year according to Accounting Standards; and hence, the same is an allowable deduction as business loss; and the decision of the Hon'ble supreme court in **Goetz India Ltd** case is not applicable to the facts of the present case, as the assesseees claimed the loss in the original return, but withdrew the same in the revised return in the light of instruction no.3/2010 dated 23.03.2010 by the CBDT, subject to its right to agitate the same in the assessment and appeal proceedings for the year. The CIT(A) followed the earlier orders of the Tribunal in respect of the assesseees' own cases relating to the assessment year 2007-08, wherein, the decision of the Delhi High Court in **CIT v. Industrial Finance Corporation of India** was relied upon, and allowed the derivative loss claimed by the assesseees. The said orders of the CIT(A) were also affirmed by the ITAT. Therefore, these appeals by the Revenue.

10.8. Concededly, insofar as the derivatives carried on by the assesseees are concerned, the underlying security is 'currency', which is not covered by any



of the definitions in section 43(5)(d) of the Act. As per section 43(5), 'speculative transaction' means a transaction, in which a contract for the purchase or sale of any commodity, including stocks and shares, is periodically or ultimately settled otherwise than by the actual delivery or transfer of the commodity or scrips. As such, the derivative contracts entered into by the assessee are not for any commodity and therefore, the same do not fall under section 43(5) of the Act.

For better appreciation, section 43(5) is extracted below:

“43. Definitions of certain terms relevant to income from profits and gains of business or profession. _ *In sections 28 to 41 and in this section, unless the context otherwise requires—*

(5) "speculative transaction" means a transaction in which a contract for the purchase or sale of any commodity, including stocks and shares, is periodically or ultimately settled otherwise than by the actual delivery or transfer of the commodity or scripts;

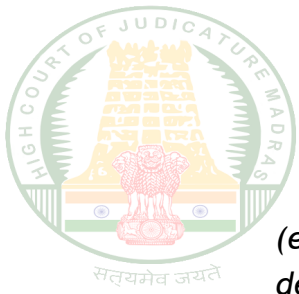
Provided that for the purposes of this clause—

(a) a contract in respect of raw materials or merchandise entered into by a person in the course of his manufacturing or merchanting business to guard against loss through future price fluctuations in respect of his contracts for actual delivery of goods manufactured by him or merchandise sold by him; or

(b) a contract in respect of stocks and shares entered into by a dealer or investor therein to guard against loss in his holdings of stocks and shares through price fluctuations; or

(c) a contract entered into by a member of a forward market or a stock exchange in the course of any transaction in the nature of jobbing or arbitrage to guard against loss which may arise in the ordinary course of his business as such member; [or]

(d) an eligible transaction in respect of trading in derivatives referred to in clause (ac) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956) carried out in a recognised stock exchange; [or]



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(e) an eligible transaction in respect of trading in commodity derivatives carried out in a recognised association, which is chargeable to commodities transaction tax under Chapter VII of the Finance Act, 2013 (17 of 2013), shall not be deemed to be a speculative transaction.”

10.9. It is to be pointed out here that the expression 'speculative transaction' finds place only at Explanation 2 to section 28 of the Act, which treats it as distinct and separate category and reads thus:

“Explanation 2 - Where speculative transactions carried on by an assessee are of such a nature as to constitute a business, the business (hereinafter referred to as "speculation business") shall be deemed to be distinct and separate from any other business.”

10.10. It is evident from the orders passed by the authorities below for the assessment year under consideration that the assessing officer having considered the submissions and based on the records, was of the view that since the derivative transactions undertaken by the assessee companies are not eligible transactions as defined under section 43(5) of the Act and are not carried out through any stock exchanges, they do not come under clause (d) of section 43(5), but they fall within the purview of speculative transactions as defined under section 43(5) of the Act. While so, the assessing officer disallowed the assessee's claim of loss on derivatives / hedging transactions in foreign exchange, treating it as speculation loss under section 43(5) of the Act and thereby not allowing it to be set off against the other business income of the year. The basis for such an order is by treating the transaction as speculative. However, the orders of the



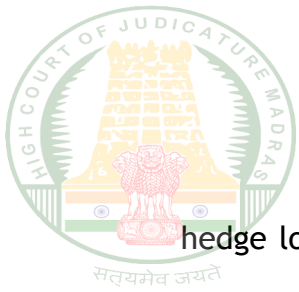
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assessing officer were reversed by the appellate authorities by treating the transactions as hedging transactions to hedge against the possible loss from fluctuating rate of interest and the claim of the assessee companies was allowed.

10.11. In *CIT v. Industrial Finance Corporation of India Ltd* (supra) which was relied upon by the appellate authorities while passing the orders impugned herein, the Delhi High Court, after having found that in a forward contract, the assessee enters into a contract for the purchase of foreign currency on a future date at predetermined rates, in which, the determination of the swapping cost was at the time of execution of the contract and did not get postponed and it accrued on the date of entering into the contract, held that though it is to be discharged on a future date, it can be allowed as a deduction as it crystallizes on the date of entering into the contract.

10.12. In *CIT v. Panchmahal Steel Ltd* case (supra), the issue raised for consideration was, whether the loss claimed due to cancellation of forward contract, falls within the definition of speculative transaction and the ratio laid down by the Gujarat High Court was that 'the assessee had booked the foreign exchange in forward contracts only to hedge against the losses and it cannot be said to be a speculative transaction and must be allowed as deduction'.

10.13. In *CIT v. Celebrity Fashion Ltd* case, the assessee not being a dealer in foreign exchange, booked foreign exchange in the forward market to



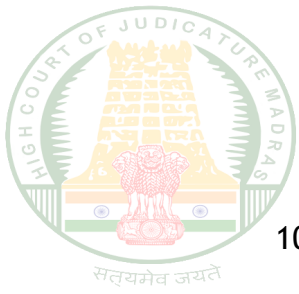
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hedge losses and the issue raised was, whether the losses incurred on account of cancellation of forward contracts will be business losses or speculative losses; and it was held by this court that the booking of foreign exchange contracts was only to hedge against the losses and therefore, should be allowed as a deduction.

Paragraph 29 of the said judgment is relevant and is extracted below:

“29. It will be beneficial to refer to the decision of the Bombay High Court in the case of CIT Vs. Badridas Gauridu Pvt. Ltd.[reported in (2003) 261 ITR 256]. In that case, the assessee was not a dealer in foreign exchange, but was an exporter of cotton as in the case before us. The assessee therein booked foreign exchange contracts, which were held to be only incidental to the assessee's regular course of business. While testing the correctness of the order of the Tribunal, which held that the transaction was not a speculative transaction, it was observed as follows :

“3. The assessee was not a dealer in foreign exchange. The assessee was a cotton exporter. The assessee was an export house. Therefore, foreign exchange contracts were booked only as incidental to the assessee's regular course of business. The Tribunal has recorded a categorical finding to this effect in its order. The Assessing Officer has not considered these facts. Under section 43(5) of the Income-tax Act, "speculative transaction" has been defined to mean a transaction in which a contract for the purchase or sale of a commodity is settled otherwise than by the actual delivery or transfer of such commodity. However, as stated above, the assessee was not a dealer in foreign exchange. The assessee was an exporter of cotton. In order to hedge against losses, the assessee had booked foreign exchange in the forward market with the bank. However, the export contracts entered into by the assessee for export of cotton in some cases failed. In the circumstances, the assessee was entitled to claim a deduction in respect of Rs. 13.50 lakhs as a business loss. This matter is squarely covered by the judgment of the Calcutta High Court with which we agree, in the case of CIT Vs. Sooraj Mull Nagarmull [1981] 129 ITR 1691.”



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10.14. Applying the ratio in the aforesaid decisions to the facts of

the present case, wherein, the assessee companies had entered into hedging transactions to hedge against the possible loss from fluctuating rate of interest, this court is of the opinion that such transactions cannot be construed as speculative transactions to be set off only against the speculative gains. Further, Currency is nothing but cash or money. It cannot be treated as stock or shares. As per section 2 (7) of the Sale of goods Act, “goods means every kind of movable property other than actionable claims and money; and includes stock and shares, growing crops, grass, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale;” Further, no person other than the authorised dealer can deal with foreign currency except with the permission of the RBI under section 8 of the Foreign Exchange Regulations Act, 1973 or Section 3 of the Foreign Exchange Management Act, 1999. In view of the same, as the foreign currency cannot be called as “commodity” as well, the hedging contracts are not speculative and hence, Section 43(5) is not applicable. Though the assessing officer examined the issue in detail, he erred in treating the transactions done by the assesseees as speculative transactions and disallowing the claim made by them. On the other hand, the appellate authorities rendered concurrent findings in favour of the assesseees, to the effect that the derivative contracts, foreign exchange swap transactions against fluctuations in interest rate are hedge transactions and the loss arising out of the same is allowable as business loss. Such findings of the appellate



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authorities cannot be found fault with and therefore, the same are hereby confirmed. Accordingly, this issue stands answered against the Revenue.

Disallowance under Section 14A r/w Rule 8 D

11.1. Heard both sides. On a perusal of the records, it could be seen that the assessee invested in shares of associate and other companies as well as in government securities, received dividend income from such investments and claimed deduction of certain expenditure attributable to earn the exempt income under section 10(34) of the Act. However, the assessing officer disallowed the said claim and added back to the total income of the assessee, stating that disallowance under section 14A is to be made by applying the procedural provisions laid down under Rule 8D as against the adhoc disallowance made by the assessee. On appeals, the CIT(A) following the judgment of the Bombay High Court in ***Godrej & Boyce Mfg. Ltd. v Deputy Commissioner of Income Tax [(2010) 322 ITR 81 (Bombay)]***, deleted the disallowances made by the assessing officer relating to the assessment year 2007-08 in respect of the assessee viz., Shriram City Union Finance Ltd and Shriram Transport Finance Co. Ltd. The said orders of the CIT(A) were also affirmed by the Tribunal, by order dated 10.10.2011, which is impugned in TCA Nos.913 and 914 of 2014 by the Revenue.

11.2. In ***Godrej & Boyce Mfg. Ltd. Case (supra)***, among other things, the constitutionality of sub sections (2) and (3) of section 14A and Rule 8D as inserted



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in the year 2008 was challenged and it was held by the Bombay High Court that

'Rule 8D which came into effect with effect from 24.03.2008, is prospective in application and applicable only from the assessment year 2008-2009 onwards'. In the light of the said decision and as agreed by the learned counsel appearing for both sides, the orders so passed by the appellate authorities, relating to the assessment year 2007-08, which are impugned in TCA Nos.913 and 914 of 2014, need not be interfered with, by this court, in respect of the applicability of Rule 8D.

11.3. According to the assessees in TCA Nos.717/2017, 407/2019, 413 & 414 of 2019, the primary objective of the investment in the group companies is to contribute to the capital, have controlling stake and guide them to grow in their respective businesses; they made investment in these companies on the ground of commercial expediency with a view to strengthen the capital base of the investing companies; and therefore, the income from dividend is incidental to the main activity of investment promotion. It was further stated that the expenses incurred by the company were for the purpose of their business of investment promotion and not for earning exempted income and hence, section 14A is not applicable to the assessee companies. It was also stated that even otherwise, as per section 14A(2), the assessing officer can apply Rule 8D only if he is not satisfied with the claim of the assessees in respect of such expenditure in relation to income which does not form part of the total income under the Act. However, in the present case, the assessing officer has not stated as to why he was not



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satisfied with the amount claimed as deduction by the assesseees and hence, the disallowance under section 14A r/w Rule 8D is not attracted in the assesseees' case. Stating so, the assesseees approached the CIT(A) by filing appeals.

11.4. The CIT(A) in respect of the appeal filed by the assessee in TCA No.717/2017 rendered the following findings:

“In the instant case there is no dispute that investment had been made in the subsidiary companies stated aforesaid which the AO has while computing disallowance of expenditure relating to exempt income taken into account, which is not in consonance with the judgments relied on by the AR, more particularly, the case of EIH Hotel Ltd of the Chennai ITAT quoted supra. Further, it is also seen that the AO has taken into account the unquoted investments with subordinated debts of Yes Bank Ltd of Rs.50 crores as on 1.4.2012.

Respectfully following the ratio of the above cited judgment, the AO is directed to exclude the investments made by the appellant in subsidiary companies after proper verification from the appellant's books of accounts, from the calculations as specified in Rule 8D(2) r.w.s. 14 of the Act. Similarly the investment made by the appellant in the unquoted investments with subordinated debts of Yes Bank Ltd of Rs.50 crores as on 1.4.2012 needs to be also excluded while computing the disallowance under Rule 8D(2) as income from the aforesaid investment is taxable and therefore would not come within the ambit of section 14A itself. The AO is therefore directed accordingly. Accordingly, this ground is partly allowed.”

The said finding of the CIT(A) was confirmed by the Tribunal, by the order dated 24.08.2016.

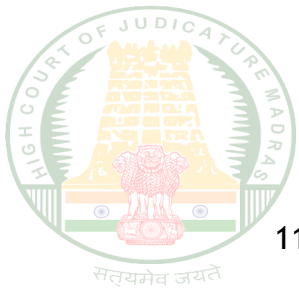
11.5. The CIT(A) in respect of the appeal filed by the assessee in TCA No.407 of 2019 found that the assessee had claimed deduction under section 14A



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for Rs.50,000/- while filing its return of income, whereas in the assessment order, the AO applied Rule 8D and made a disallowance of Rs.1.52 crores. It was contended on the side of the assessee that they had received a dividend income of Rs.3 lakh only which was exempt. Taking note of the same, the CIT(A) directed the AO to verify the assessee's submission and to restrict the allowance upto the exempt income. The said finding of the CIT(A) was affirmed by the Tribunal.

11.6. As regards the case of the assessee in TCA Nos.413 and 414 of 2019, the assessing officer made section 14A disallowance by applying the procedure as given in Rule 8D, as against the deduction made by the assessee, on the premise that the assessee incurred administrative expenditure and there will also be indirect expenditure to maintain and monitor the investments. It was contended by the assessee before the CIT(A) that the assessing officer erred in taking the value of entire investments instead of taking the value of investments which have earned exempt income during the year, while computing the amount to be disallowed under section 14A r/w Rule 8D(2)(ii) and (iii). On the other hand, the CIT(A) without adopting any formula, following the earlier order of the Tribunal in ITA Nos.512 & 513/Mds/2015 dated 26.06.2015, directed the AO to disallow Rs.15 lakhs. However, the Tribunal following the order of the High Court, remitted the issue to the file of the AO to consider the disallowance u/s 14A r/w Rule 8D to find out whether interest bearing borrowed funds were used to acquire the shares in the companies or making advance to the subsidiaries.

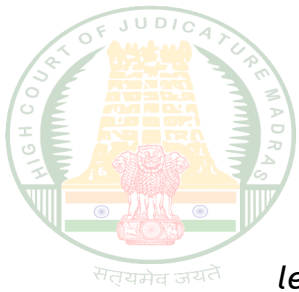


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11.7. Aggrieved over the orders so passed by the Tribunal, the assesseees are before this court with TCA Nos.717/2017, 407/2019, 413 & 414/2019.

11.8. At the outset, it would be relevant to refer to the following decisions of the Hon'ble Supreme court and this court, wherein, it was categorically held that while applying Rule 8D, the assessing officer has to follow the mandatory procedure under section 14A(2) and record that he is not satisfied with the claim made by the assessee in respect of such expenditure in relation to income which does not form part of total income under the Act. In **South Indian Bank Ltd. v. Commissioner of Income-tax [(2021) 130 taxmann.com 178(SC)]**, it was held by the Hon'ble Supreme Court as follows:

“19. In HDFC Bank Ltd. Vs. Dy CIT [(2016) 67 taxmann.com 42 / 383 ITR 529 (Bom.)] the assessee was a Scheduled Bank and the issue therein also pertained to disallowance under Section 14A. In this case, the Bombay High Court even while remanding the case back to Tribunal for adjudicating afresh observed (relying on its own previous judgment in same assessee's case for a different Assessment Year) that, if assessee possesses sufficient interest free funds as against investment in tax free securities then, there is a presumption that investment which has been made in tax free securities, has come out of interest free funds available with assessee. In such situation Section 14A of the Act would not be applicable. Similar views have been expressed by other High Courts in CIT v. Suzlon Energy Ltd. [(2013) 33 taxmann.com 157/ 215 Taxman 272/ 354 ITR 630 (Guj)], CIT v. Microlabs Ltd. [(2017) 79 taxmann.com 365 / (2016) 383 ITR 490 (Kar)] and CIT v. Max India Ltd. [(2016) 75 taxmann.com 268 / 388 ITR 81 (Punj & Har.)]. Mr. S.Ganesh the learned Senior Counsel while citing these cases from the High Courts have further pointed out that those judgments have attained finality. On reading of these judgments, we are of the considered opinion that the High Courts have correctly interpreted the scope of Section 14A of the Act in their decisions favouring the assesseees.



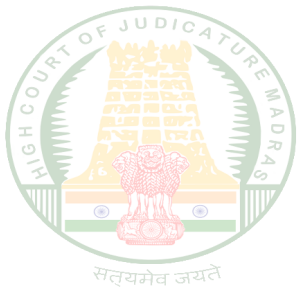
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20. Applying the same logic, the disallowance would be legally impermissible for the investment made by the assessee in bonds/shares using interest free funds, under Section 14A of the Act. In other words, if investments in securities is made out of common funds and the assessee has available, non-interest-bearing funds larger than the investments made in tax-free securities then in such cases, disallowance under Section 14A cannot be made.

21....

22. The High Court herein endorsed the proportionate disallowance made by the Assessing Officer under Section 14A of the Income Tax Act to the extent of investments made in tax-free bonds/securities primarily because, separate account was not maintained by assessee. On this aspect we wanted to know about the law which obligates the assessee to maintain separate accounts. However, the learned ASG could not provide a satisfactory answer and instead relied upon *Honda Siel Power Products Ltd. v. DCIT* [(2012) 20 taxmann.com 5/ 206 Taxman 33 (Mag.) / 340 ITR 64 (SC)] to argue that it is the responsibility of the assessee to fully disclose all material facts. The cited judgment, as can be seen, mainly dealt with re-opening of assessment in view of escapement of income. The contention of department for re-opening was that the assessee had earned tax-free dividend and had claimed various administrative expenses for earning such dividend income and those (though not allowable) was allowed as expenditure and therefore the income had escaped assessment. On this, suffice would be to observe that the action in *Honda Siel Power Products Ltd* (supra) related to re-opening of assessment where full disclosure was not made. An assessee definitely has the obligation to provide full material disclosures at the time of filing of Income Tax Return but there is no corresponding legal obligation upon the assessee to maintain separate accounts for different types of funds held by it. In absence of any statutory provision which compels the assessee to maintain separate accounts for different types of funds, the judgment cited by the learned ASG will have no application to support the Revenue's contention against the assessee.

23. It would now be appropriate to advert in some detail to *Maxopp Investment Ltd. v. CIT* [(2018) 91 taxmann. Com 154 / 254 Taxman 325/ 402 ITR 640 (SC)]. This case interestingly is relied by both sides' counsel. Writing for the Bench, Justice Dr. A.K. Sikri noted the objective for incorporation of Section 14A in the Act in the following words: -



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“3..... The purpose behind Section 14-A of the Act, by not permitting deduction of the expenditure incurred in relation to income, which does not form part of total income, is to ensure that the assessee does not get double benefit. Once a particular income itself is not to be included in the total income and is exempted from tax, there is no reasonable basis for giving benefit of deduction of the expenditure incurred in earning such an income.....”

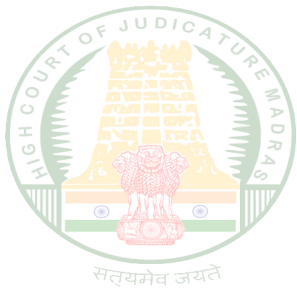
The following was written explaining the scope of Section 14-A(1):

“41. In the first instance, it needs to be recognised that as per Section 14-A(1) of the Act, deduction of that expenditure is not to be allowed which has been incurred by the assessee “in relation to income which does not form part of the total income under this Act”. Axiomatically, it is that expenditure alone which has been incurred in relation to the income which is includible in total income that has to be disallowed. If an expenditure incurred has no causal connection with the exempted income, then such an expenditure would obviously be treated as not related to the income that is exempted from tax, and such expenditure would be allowed as business expenditure. To put it differently, such expenditure would then be considered as incurred in respect of other income which is to be treated as part of the total income.”

Adverting to the law as it stood earlier, this Court rejected the theory of dominant purpose suggested by the Punjab & Haryana High Court and accepted the principle of apportionment of expenditure only when the business was divisible, as was propounded by the Delhi High Court.

....

The learned Judge then considered the implication of Rule 8D of the Rules in the context of Section 14-A(2) of the Act and clarified that before applying the theory of apportionment, the Assessing Officer must record satisfaction on Suo Moto disallowance only in those cases where, the apportionment was done by the assessee. The following is relevant for the purpose of this judgment:



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“51.It will be in those cases where the assessee in his return has himself apportioned but the AO was not accepting the said apportionment. In that eventuality, it will have to record its satisfaction to this effect.....”

24. Another important judgment dealing with Section 14A disallowance which merits consideration is *Godrej and Boyce Manufacturing Company Ltd. V. DCIT [(2017) 1 SCC 421]*. Here the assessee had access to adequate interest free funds to make investments and the issue pertained to disallowance of expenditure incurred to earn dividend income, which was not forming part of total income of the Assessee. Justice Ranjan Gogoi writing the opinion on behalf of the Division Bench observed that for disallowance of expenditure incurred in earning an income, it is a condition precedent that such income should not be includible in total income of assessee. This Court accordingly concluded that for attracting provisions of Section 14A, the proof of fact regarding such expenditure being incurred for earning exempt income is necessary. The relevant portion of Justice Gogoi's judgment reads as follow:

“36. what cannot be denied is that the requirement for attracting the provisions of Section 14-A (1) of the Act is proof of the fact that the expenditure sought to be disallowed/deducted had actually been incurred in earning the dividend income.....”

25. Proceeding now to another aspect, it is seen that the Central Board of Direct Taxes (CBDT) had issued the Circular no. 18 of 2015 dated 02.11.2015, which had analyzed and then explained that all shares and securities held by a bank which are not bought to maintain Statutory Liquidity Ratio (SLR) are its stock-in-trade and not investments and income arising out of those is attributable, to business of banking. This Circular came to be issued in the aftermath of *CIT Vs. Nawanshahar Central Cooperative Bank Ltd. [(2007) 160 Taxman 48 / 289 ITR 6 (SC)]* wherein this Court had held that investments made by a banking concern is part of their banking business. Hence the income earned through such investments would fall under the head Profits & Gains of business. The Punjab and Haryana High Court, in the case of *Pr. CIT v. State Bank of Patiala [(2017) 88 taxmann. com 667 / 393 ITR 476 (Punj & Har)]* while adverting to the CBDT Circular, concluded correctly that shares and securities held by a bank are stock in trade, and all income received on such shares and securities must



be considered to be business income. That is why Section 14A would not be attracted to such income.

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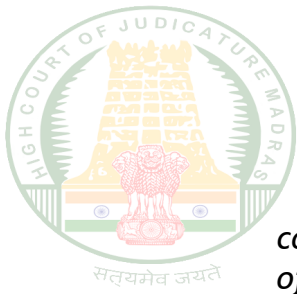
26. Reverting back to the situation here, the Revenue does not contend that the Assessee Banks had held the securities for maintaining the Statutory Liquidity Ratio (SLR), as mentioned in the circular. In view of this position, when there is no finding that the investments of the Assessee are of the related category, tax implication would not arise against the appellants, from the said circular.

27. The aforesaid discussion and the cited judgments advise this Court to conclude that the proportionate disallowance of interest is not warranted, under Section 14A of Income Tax Act for investments made in tax free bonds/ securities which yield tax free dividend and interest to Assessee Banks in those situations where, interest free own funds available with the Assessee, exceeded their investments. With this conclusion, we unhesitatingly agree with the view taken by the learned ITAT favouring the assesseees.”

11.9. In *Marg Ltd. v Commissioner of Income Tax, Chennai, (2020) 120*

Taxmann.com 84 (Madras), it was held by this court as follows:-

“21. We cannot approve even the larger disallowance proposed by the Assessee himself in the computation of disallowance under Rule 8D made by him. These facts are akin to the case of *Pragati Krishna Gramin Bank (supra)* decided by Karnataka High Court. The legal position, as interpreted above by various judgments and again reiterated by us in this judgment, remains that the disallowance of expenditure incurred to earn exempted income cannot exceed exempted income itself and neither the Assessee nor the Revenue are entitled to take a deviated view of the matter. Because as already noted by us, the negative figure of disallowance cannot amount to hypothetical taxable income in the hands of the Assessee. The disallowance of expenditure incurred to earn exempted income has to be a smaller part of such income and should have a reasonable proportion to the exempted income earned by the Assessee in that year, which can be computed as per Rule 8D only after recording the satisfaction by the Assessing Authority that the apportionment of such disallowable expenditure under section 14A made by the Assessee or his claim that no expenditure was incurred is validly rejected by the Assessing Authority by recording reasonable and



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cogent reasons conveyed to Assessee and after giving opportunity of hearing to the Assessee in this regard.

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22. We, therefore, dispose of the present appeal by answering question of law in favour of the Assessee and against the Revenue and by holding that the disallowance under rule 8D of the IT Rules read with Section 14A of the Act can never exceed the exempted income earned by the Assessee during the particular assessment year and further, without recording the satisfaction by the Assessing Authority that the apportionment of such disallowance expenditure made by the Assessee with respect to the exempted income is not acceptable for reasons to be assigned the Assessing Authority, he cannot resort to the computation method under Rule 8D of the Income-tax Rules, 1962.”

11.10. In the judgment dated 07.07.2020 rendered by a Co-ordinate Bench of this Court in T.C.A.Nos.509 & 510 of 2018 in the case of CIT v. Tamil Nadu Industrial Development Corporation Limited, similar questions of law were raised for consideration and it was held thus:

“13.We have heard the learned counsel for the parties at great length. The principle underlying Section 14A and the procedure therein has been succinctly explained by the High Court of Bombay in the case of **Godrej & Boyce Manufacturing Company Limited, Mumbai** (cited supra). It is pointed out that the principles that emerge from Section 14A are

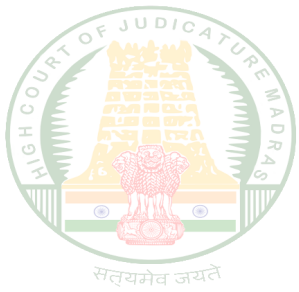
(a) the mandate of Section 14A is to prevent claims for deduction of expenditure in relation to income which does not form part of the total income of the assessee;

(b) Section 14A(1) is enacted to ensure that only expenses incurred in respect of earning taxable income are allowed;

(c) The principle of apportionment of expenses is widened by Section 14A to include even the apportionment of expenditure between taxable and non taxable income of a indivisible business;

(d) The basic principle of taxation is to tax a net income. This principle applies even for the purposes of Section 14A and expenses towards non-taxable income must be excluded;

(e) Once a proximate cause for disallowance is established which is the relationship of the expenditure with income which does not form part of total income - a disallowance has to be effected.



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14. It is further pointed out that under sub section 2 of Section 14A, the Assessing Officer is required to determine the amount of expenditure incurred by the assessee in relation to such income, which does not form part of the total income under the Act in accordance with such method as may be prescribed.

15. It is further pointed out that the jurisdiction of the Assessing Officer to determine the expenditure incurred in relation to such income which does not form part of the total income under the Act, in accordance with the prescribed method, arises if the Assessing Officer is not satisfied with the correctness of the claim of the assessee in respect of the expenditure which the assessee claims to have incurred in relation to income which does not form part of the total income.

16. Further, the satisfaction of the Assessing Officer has to be arrived at, having regard to the accounts of the assessee. It was further held that sub section 2 of Section 14A does not enable the Assessing Officer to apply the method prescribed by the rules straightaway without considering whether the claim made by the assessee in respect of the expenditure incurred in relation to the income which does not form part of the total income, is correct. Therefore, at the first instance, the Assessing Officer has to determine whether the claim of the assessee in that regard is correct and that the determination must be made having regard to the accounts of the assessee.

17. The satisfaction of the Assessing Officer must be arrived at on an objective basis and it is only when the Assessing Officer is not satisfied with the claim of the assessee, that the legislature directs him to follow the method that may be prescribed.

18. Therefore, what we are required to see for the assessment year 2011-12, is whether such procedure was followed by the Assessing Officer. The Assessing Officer on considering the return of the income failed to note that the assessee has received income by way of dividend from Indian companies amounting to Rs.24,83,08,996, which the assessee claimed to be exempted from tax.

19. Notice dated 27.08.2013 was issued to the assessee calling upon them to file the working sheet of the working done by them under Rule 8D for disallowance of the said sum under Section

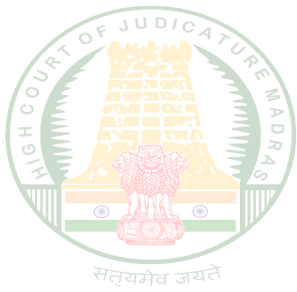


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14A. The assessee in response to such notice, submitted a letter dated 03.10.2013 giving the working under Rule 8D. The Assessing Officer after going through the submission made by the petitioner pointed out that the assessee had computed the disallowance of dividend by invoking the provisions of Rule 8D, but while doing so, ignored sub rule iii of the said rule. It appears that this was pointed out to the assessee. However, the assessee though filed a response on 09.01.2014, the Assessing Officer states that the assessee did not address the issue of computation of the third limb of Rule 8D.

20. The finding recorded by the Assessing Officer is sufficient and a clear indication of his compliance of the procedure under Section 14A(2), the Assessing Officer at the first instance has considered whether the claim of the assessee is correct and thereafter only has proceeded to determine the amount by adopting the procedure under Rule 8D. Therefore, so far as the assessment for the year 2011-12, is concerned, it cannot be stated to be the case where there is a failure to follow the procedure under Section 14A (2) of the Act. Having held so, we need to point out that the tribunal committed an error in not only allowing the appeal of the assessee on the said ground, but also directed the Assessing Officer to accept the figure mentioned by the assessee in their returns viz., Rs.2,64,14,439/-. If the tribunal was of the view that this figure is liable to be accepted, then the correctness of the petition should have been directed to be decided by the Assessing Officer for which purpose the matter should have been remanded. This in our view is one more error committed by the tribunal.

21. So far as the order passed for the assessment year 2012-13 is concerned, we were also of the same view as expressed by Mr.R.Vijayaraghavan, learned Senior Counsel for the respondent/assessee and wondered as to why the revenue has preferred the appeal. However, on a closer reading of paragraph No.7.3 of the impugned order, we find that though the tribunal directs the assessee to work out the expenditure component towards administrative and managerial aspect so that the same shall be disallowed in the computation of income, but has not issued any specific directions to the Assessing Officer as to what has to be done after the assessee files the working sheet. Therefore, to that extent the tribunal has committed an error. Hence, we are of the considered view that the matter should be remanded for fresh consideration of the Assessing Officer in accordance with law.

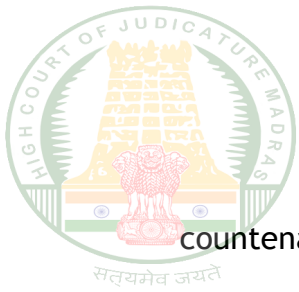


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22. For the above reasons, the Tax Case Appeals are allowed and the Substantial Questions of Law are answered in favour of the revenue and the matters for both the Assessment years viz., 2011-12 and 2012-13, are remitted to the Assessing Officer for fresh consideration in accordance with law. No Costs."

11.11. Admittedly, the assessee made investments in the subsidiary companies by way of shares and they claimed deduction under section 14A relating to the assessment years under consideration. It cannot be disputed that subsequent to the introduction of Rule 8D by the Income Tax (Fifth Amendment) Rules, 2008 vide notification no.25/2008 dated 24.03.2008, disallowance is to be made only by following procedure and the same is also mandatory. While making disallowance under section 14A, by applying Rule 8D, the assessing officer has to comply with the statutory requirement of section 14A(2) of the Act and specify as to why he is not satisfied with the claim made by the assessee in respect of the expenditure in relation to income which does not form part of total income under the Act. In the instant cases, the assessing officer made disallowances under section 14A r/w Rule 8D, but there was no reason recorded by him, as to why he was not satisfied with the claim made by the assessee. Further, there was no examination by the assessing officer about the nature of investment by the assessee in their subsidiary companies and expenditure incurred by them. The CIT(A)/Tribunal pointed out certain errors committed by the assessing officer, accepted the contentions raised by the assessee and directed the assessing officer to modify the disallowances under section 14A, by the orders impugned herein. Such course adopted by the appellate authorities cannot be



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countenanced, when the mandatory procedure envisaged under section 14A r/w Rule 8D has not been complied with. Without holding that, in the absence of specific findings and reasons, the question cannot be addressed. Though, it is trite law that any question of law affecting the rights of the parties would not by itself be a substantial question of law, this court is of the opinion that in the absence of specific findings on fact and adherence to the procedure, the substantial questions of law on the issue ought not to be decided.

11.12. Therefore, this Court, applying the ratio laid down in the aforesaid decisions of the Hon'ble Supreme Court as well as this court, sets aside the orders of the appellate authorities and remands the matter to the assessing officer. The assessing officer shall decide the issue relating to disallowance under section 14A and ancillary issues raised herein afresh, taking note of the observations made in the aforesaid decisions and pass appropriate orders, on merits and in accordance with law, within a period of three months from the date of receipt of a copy of this judgment. It is needless to state that such an exercise shall be completed by the Assessing officer, after providing a reasonable opportunity to the assessee to place their oral and documentary evidences. This issue stands answered accordingly.

Interest under section 234D

12.1. During the course of assessment proceedings, the assessing officer

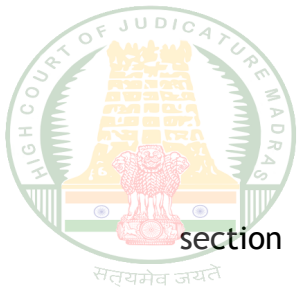


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noticed that the assessee while arriving at profits from business, had excluded the interest charged under section 234D and the same is not acceptable as the interest charged is penal in nature and is not an allowable deduction. The said orders of the assessing officer were also affirmed by both the appellate authorities. Therefore, the assessee is before this court.

12.2. According to the learned senior counsel for the appellants / assessee, interest under section 234D has been charged while withdrawing the refund already granted under section 143(1) of the Act. Since the assessee had utilised the refund amount for the purpose of business and while withdrawing the refund, interest has been charged, the refund amount takes the character of loan availed by the assessee and hence, interest under section 234D has to be allowed for deduction as business expenditure. However, the Tribunal erred in confirming the disallowance of interest levied under section 234D.

12.3. On the other hand, the learned senior standing counsel appearing for the respondent / Revenue submitted that the interest charged on the excess amount refunded to the assessee, while processing returns under section 143(1) of the Act, cannot be treated as expenditure for earning the income or for business purpose. Further, the interest paid by the assessee on the amount refunded by the department cannot be equated to the interest paid on the loan borrowed by the assessee and thus, what was collected from the assessee is the tax, which was otherwise expected to be paid by the assessee. Since the assessee enjoyed the money due to the department, interest was charged under



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section 234D of the Act and hence, the same was not allowable expenditure, while computing the taxable income. Thus, according to the learned senior standing counsel, the disallowance of deduction made by the assessing officer as also affirmed by the appellate authorities does not call for any interference by this court.

12.4. It is evident from the materials available on record that the assessing officer found that the assessee claimed deduction for the interest charged under section 234D, however, the said deduction was disallowed as the same was penal in nature and was added to the returned income. On appeals, the CIT(A) affirmed the findings of the Assessing officer, on the ground that the refund received from the department is not similar to the loan taken from the Government for the purpose of business, whereas the amount was wrongly refunded to the assessee while processing the returns under section 143(1) and hence, the interest levied is not allowable under section 36(1)(iii) as claimed by the assessee, besides rejecting the claim of deduction under section 37 of the Act. The Tribunal also affirmed the orders of the CIT(A) by holding that while proceeding under section 143(1) of the Act, the amount refunded to the assessee was considered as non-payment of tax and hence, interest was charged for the period, for which the assessee was holding the amount. Further, the Tribunal in ITA Nos.711-717/Mds/2015, by order dated 29.01.2016 while rejecting the contentions of the assessee, held that interest under section 234D is on par with the interest charged under section 234A or 234B or 234C of the Act and that, the



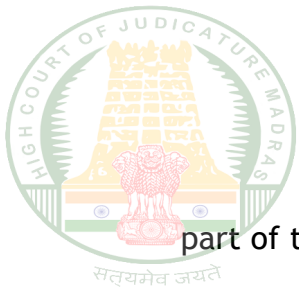
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Government has not advanced any money to the assesseees so as to call it as a loan; the interest levied on the assesseees is compensatory and it cannot be allowed as a business deduction, while computing the business income.

12.5. This court finds no reason much less valid reason to interfere with the findings so rendered by the authorities below, as the interest was levied on the amount refunded to the assesseees, which they are not legally entitled to and for the period during which they were holding the same and hence, the same is not eligible for deduction. Therefore, this issue relating to disallowance of interest under section 234D, is decided against the assesseees.

Disallowance made under section 40(a)(ia)

13.1. During the financial year 2011-12, relevant for the assessment year 2012-13, without deducting tax at source, the appellant / assessee in TCA No.406 of 2019, paid a sum of Rs.40,62,15,300/- for utilising the services of some of the employees of Shriram Chits Private Limited, Hyderabad, Shriram Chits (Tamil Nadu) Private Limited, Shriram Chits (Karnataka) Private Limited, Shriram Chits (Maharashtra) Private Limited, Shriram Sales & Marketing Development Private Limited, Shriram Financial Products Solutions Chennai Private Limited and Shriram Life Insurance Company Limited and claimed the said expenditure for deduction. However, the assessing officer disallowed the same by operation of the provisions of section 40(a)(ia) r/w section 194C, as there was a failure on the



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part of the assessee to deduct TDS as required under the Act. On appeal, the said order of the assessing officer was confirmed by both the appellate authorities. Hence, the assessee is before this court challenging the order of the Tribunal disallowing the sum of Rs.40,62,15,300/- under section 40(a)(ia) of the Act.

13.2. After hearing both sides and upon perusal of the orders passed by the authorities below, it could be seen that the assessing officer during the course of assessment proceedings, found that the assessee had made the following payment without deduction of tax at source:

S.No.	Reimbursement of incentive paid to	Amount (Rs)
1	Under the head commission: Reimbursements of salary cost to Group companies	39,47,30,811
2	Under the head business promotion: Reimbursement of incentive paid	1,14,84,489

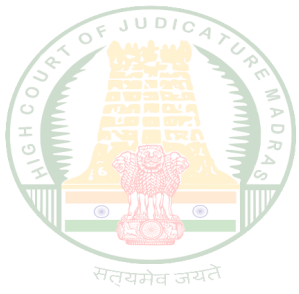
Subsequently, the assessing officer called the assessee to show cause as to why the said amount cannot be disallowed as per the provisions of section 40(a)(ia). Pursuant to the same, the assessee filed its reply dated 26.02.2015, wherein, it was stated that the amounts were paid as reimbursement of the exact amount of salary disbursed by the said companies, which does not attract the element of income; incentive payments were made directly to such employees; and hence, no TDS was deducted. However, no evidence was produced by the assessee to prove that payments made to group companies are reimbursement of actual expenditure and there was no profit element involved in the amount representing incentive paid to the employees. Therefore, the assessing officer disallowed the



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said expenditure claimed for deduction, by observing that the nature of expenditure is subject to the provisions of TDS and the same is not an allowable deduction, unless TDS is deducted and remitted. The stand of the assessee that the group companies deducted TDS wherever applicable, was also rejected by the assessing officer by stating that the same does not in any way affect the applicability of TDS provisions to the case of the assessee. Further, it was observed by the assessing officer that as per section 40a(ia), it is the responsibility of the assessee who claims deduction of expenses, to deduct TDS; and if someone else deducts TDS on the payments made on behalf of the assessee, it will not exonerate the assessee from its liability of deducting TDS and remitting the same to the Government. In the absence of any evidence to substantiate the contentions raised by the assessee, the reasons and the findings so rendered by the assessing officer were accepted by the CIT(A) by holding that the assessee committed a default in not deducting the tax at source under section 194C of the Act. Accordingly, the CIT(A) dismissed the assessee's appeal by confirming the addition made by the assessing officer under section 40(a)(ia). The Tribunal also affirmed the view of the CIT(A) by observing that it was consistently followed that in case the assessee has deducted the tax at source, but not remitted, or tax was not deducted on the payments which attract TDS, the disallowance under section 40(a)(ia) is attracted; and accordingly, in this case, the assessee has to deduct the tax at source, but failed to deduct the TDS amount, which is required to be deducted under section 194C of the Act.



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13.3. Having regard to the admitted position that the assessee did not adduce any evidence to support their claim and also in view of the settled legal position that the liability to deduct tax at source is mandatory and a person who does not adhere to the said statutory obligation, has to suffer the consequences which are stipulated in the Act itself, this court does not find any reason much less valid reason to disagree with the findings so rendered by the authorities below, *qua* disallowance under section 40(a)(ia) of the Act.

13.4. As regards the alternative plea that the amount disallowable is only 30% of the expenditure in view of the amendment to section 40(a)(ia) by Finance (No.2) Act, 2014, it was contended by the assessee before the appellate authorities that the said amendment being curative in nature, was introduced to ameliorate the hardships faced by the assessees; and hence, it deserves to be applied retrospectively and from the date of introduction of sub clause (ia) to section 40(a) of the Act. On the other hand, it was contended on the side of the Revenue that the assessee had made the payments without deduction of tax at source to the extent of Rs.40.60 crores and hence, the assessing officer rightly made addition under section 40(a)(ia) of the Act for non-deduction of tax at source, thereby attracting the provisions of section 194C. That apart, the proviso to section 40(a)(ia) of the Act as inserted by the Finance Act, 2014 does not apply to the case at hand pertaining to the assessment year 2012-13 and hence, the contention of the assessee for curative benefit with reference to the said proviso



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does not hold good. Having considered the rival contentions, the Tribunal was of the view that the amendment restricting the disallowance to 30% of the expenditure, came into effect only with effect from 01.04.2015 and the assessment year under consideration was 2012-13 and hence, the said amendment was not applicable to the case of the assessee. Accordingly, the alternative plea raised by the assessee was rejected by the Tribunal. The said view of the Tribunal appears to be just and proper and it needs no interference by this court, in the light of the judgment of the Hon'ble Supreme Court in ***Shree Choudhary Transport Company v. Income Tax Officer [(2020) 426 ITR 289]***, wherein, it was clearly observed that the amendment to section 40(a)(ia) by the Finance No.2 Act 2014 with effect from 01.04.2015, is applicable only from the assessment year 2015-16. The relevant passage of the said judgment can be quoted below for ready reference:

“19. In yet another alternative attempt, learned counsel for the appellant has argued that by way of Finance (No.2) Act, 2014, disallowance under Section 40(a)(ia) has been limited to 30% of the sum payable and the said amendment deserves to be held retrospective in operation. This line of argument has been grafted with reference to the decision in CIT v. Calcutta Export Company [(2018) 404 ITR 654] wherein, another amendment of Section 40(a)(ia) by the Finance Act of 2010 was held by this Court to be retrospective in operation. The submission so made is not only baseless but is bereft of any logic. Neither the amendment made by the Finance (No.2) Act 2014 could be stretched anterior the date of its substitution so as to reach the assessment year 2005-2006 nor the said decision in Calcutta Export Company has any correlation with the case at hand or with the amendment made by the Finance (No.2) Act of 2014.

19.1. By the amendment brought about in the year 2014, the legislature reduced the extent of disallowance under Section 40(a)(ia) of the Act and limited it to 30% of the sum payable. On



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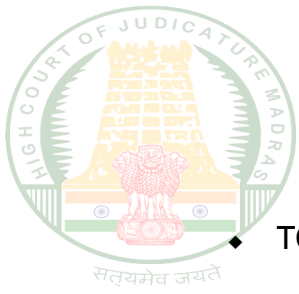
the other hand, by the Finance Act of 2010, which was considered in the case of Calcutta Export Company (supra), the proviso to Section 40(a)(ia) of the Act was amended so as to provide relief to a bonafide assessee who could not make deposit of deducted tax within prescribed time. In fact, even before the year 2010, the said proviso was amended by the Finance Act 2008 and that amendment of the year 2008 was provided retrospective operation by the legislature itself.

19.2. The aforesaid amendment by the Finance (No.2) Act of 2014 was specifically made applicable w.e.f. 01.04.2015 and clearly represents the will of the legislature as to what is to be deducted or what percentage of deduction is not to be allowed for a particular eventuality, from the assessment year 2015-2016.”

13.5. In such view of the matter, the order impugned in TCA No.406/2019 does not warrant any interference by this court. The issue relating to disallowance under section 40(a)(ia) of the Act, stands answered against the assessee.

14. In view of the foregoing discussion and analysis, this court disposes of all these tax case appeals in the following terms:

- ♦ TCA Nos.755, 756, 883 to 886, 1263 to 1265 of 2009, 215 of 2011 and 118 of 2012 filed by the assesseees are dismissed.
- ♦ TCA Nos.119, 120, 278 and 279 of 2012 filed by assesseees are dismissed.
- ♦ TCA No.371 of 2013 filed by the Revenue stands dismissed.
- ♦ TCA No.622 of 2013 filed by the Revenue, stands dismissed.
- ♦ TCA Nos.360 and 361 of 2014 filed by the Revenue stand dismissed.
- ♦ TCA No.913 of 2014 filed by the Revenue, stands dismissed as regards the substantial question of law nos.(i) and (ii). The third question of law is left



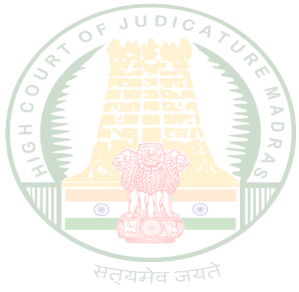
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◆ TCA No.914 of 2014 filed by the Revenue, stands dismissed in respect of substantial question of law nos.(i), (iii), (iv), (v) and (vi). The second question of law is left open.

- ◆ TCA Nos.915 and 916 of 2014 filed by the Revenue stand dismissed.
- ◆ TCA Nos.125, 127, 129 & 131 of 2017 filed by the assesses stand allowed.
- ◆ TCA Nos.124, 126, 128 and 130 of 2017 and 416 of 2019 filed by the assesses, are dismissed.
- ◆ TCA No.717 of 2017 filed by the assessee stands dismissed as regards the substantial question of law nos.(i) to (iii). In respect of the fourth question of law, relating to disallowance u/s. 14A r/w Rule 8D, the appeal stands disposed of by remanding the matter to the assessing officer for fresh consideration.
- ◆ TCA No.406 of 2019 filed by the assessee stands dismissed.
- ◆ TCA No.407 of 2019 filed by the assessee, stands dismissed in respect of question of law nos.(i) to (iii). As regards the fourth question of law, the appeal stands disposed of, by remanding the matter to the assessing officer for fresh consideration. The fifth question of law is left open.
- ◆ TCA No.413 of 2019 stands dismissed. In view of upholding the remand, the second question of law need not be answered.
- ◆ TCA No.414 of 2019 filed by the assessee, stands dismissed.

No costs.



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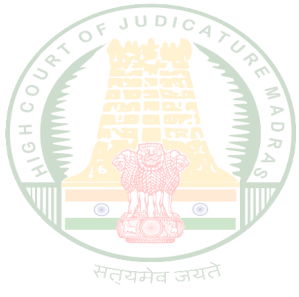
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Index : Yes / No

Internet : Yes / No

To

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- 2.The Income Tax Appellate Tribunal, Chennai A Bench, Chennai.
- 3.The Income Tax Appellate Tribunal, Chennai B Bench, Chennai.
- 4.The Income Tax Appellate Tribunal, Chennai C Bench, Chennai.
- 5.The Commissioner of Income Tax, Chennai.
- 6.The Joint Commissioner of Income Tax, Company Range VI, Chennai - 34.
- 7.The Deputy Commissioner of Income Tax, Corporate Circle 6(1), Chennai.
- 8.The Additional Commissioner of Income Tax, Company Range VI, Chennai - 34.



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R. MAHADEVAN, J.
and
J.SATHYANARAYANA PRASAD, J.

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Tax Case Appeal Nos. 755, 756, 883, 884, 885, 886,
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