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IN THE HIGH COURT OF JUDICATURE AT MADRAS

**DATED: 09-12-2025**

**CORAM**

**THE HON'BLE DR.JUSTICE ANITA SUMANTH**

**AND**

**THE HON'BLE MR.JUSTICE MUMMINENI SUDHEER KUMAR**

**TCA No. 417 of 2009**

The Commissioner Of Income Tax  
Chennai.

..Appellant(s)

Vs

M/s.Apollo Infrastructure  
Projects Finance Co. Ltd.  
Jhaveer Plaza, III Floor,  
1-A Nungambakkam High Road,  
Chennai – 600 034.

..Respondent(s)

Prayer : Appeal filed under Section 260A of the Income-Tax Act, 1961 against the order of the Income Tax Appellate Tribunal Madras 'A' Bench, Chennai dated 17.11.2008 in ITA No.2075/Mds/2007 for Assessment Year (AY) 2003-04.

For Appellant(s): Mr.T.Ravikumar  
Senior Standing Counsel

For Respondent(s): Ms.R.Muthu Srinidhi  
for Mr.Rahul Balaji

**J U D G M E N T**

**(Judgment of the Court was delivered by Dr.Anita Sumanth J.)**

The substantial questions of law admitted on 23.06.2009 are as follows:



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*(1) Whether in the facts and circumstances of the case, the Tribunal was right in allowing the interest payable on monies borrowed for investment in shares of PPN Power Generating Company Ltd., even when the income earned by way of dividend the shares does not form part of total income as per Section 10(23G) of the Income Tax Act?*

*(2) Whether in the facts and circumstances of the case, the Tribunal was right in not considering the ground raised by the department with respect to levy of 234D interest?'*

2. This is Departmental appeal for Assessment Year (AY) 2003-04. The identical issue had arisen for AY 2002-03 in T.C.(A) No.567 of 2008, and have been answered against the Revenue by decision dated 23.01.2019 of the Tax Bench of this Court, to which one of us is a party (Dr.Anita Sumanth,J). The relevant portion of the decision reads as follows:

*11. Learned counsel for the Revenue, however, relying on a judgment of the Supreme Court in the case of Maxopp Investment Ltd. v. CIT [2018] 402 ITR 640 (SC), rendered on February 12, 2018, has submitted that since the equity shares in question were purchased out of the borrowed funds, the assessing authority was justified in disallowing the debenture interest and finance charges. The observations of the Hon'ble Supreme Court in the factual context of the assessee, viz., Maxopp Investment Ltd. are quoted below to the extent relevant, besides giving a brief of the facts as well:*

*"3)Though, it is clear from the plain language of the aforesaid provision that no deduction is to be allowed in respect of expenditure incurred by the assessee in relation to income which does not form part of the total income under the Act, the effect whereof is that if certain income is earned which is not to be included while computing total income, any expenditure incurred to earn that income is also not allowed as a deduction. It is well known that tax is leviable on the net income. Net income is arrived at after deducting the expenditures incurred in earning that income. Therefore, from the gross income,*



4) However, in these appeals, the question has arisen under varied circumstances where the shares/stocks were purchased of a company for the purpose of gaining control over the said company or as 'stock-in-trade'. However, incidentally income was also generated in the form of dividends as well. (Distinguishing Feature from the present case). On this basis, the assessee contends that the dominant intention for purchasing the share was not to earn dividend income but control of the business in the company in which shares were invested or for the purpose of trading in the shares as a business activity, etc. In this backdrop, the issue is as to whether the expenditure incurred can be treated as expenditure 'in relation to income', i.e., dividend income which does not form part of the total income. To put it differently, is the dominant or main object would be a relevant consideration in determining as to whether expenditure incurred is 'in relation to' the dividend income. In most of the appeals, including in Civil Appeal Nos. 104-109 of 2015, aforesaid is the scenario. Though, in some other cases, there may be little difference in fact situation. However, all these cases pertain to dividend income,



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*whether it was for the purpose of investment in order to retain controlling interest in a company or in group of companies or the dominant purpose was to have it as stock-in-trade.*

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*40) We note from the facts in the State Bank of Patiala case that the Assessing Officer, while passing the assessment order, had already restricted the disallowance to the amount which was claimed as exempt income by applying the formula contained in rule 8D of the Rules and holding that section 14A of the Act would be applicable. In spite of this exercise of apportionment of expenditure carried out by the Assessing Officer, Commissioner of Income-tax (Appeals) disallowed the entire deduction of expenditure. That view of the Commissioner of Income-tax (Appeals) was clearly untenable and rightly set aside by the Income-tax Appellate Tribunal. Therefore, on facts, the Punjab and Haryana High Court has arrived at a correct conclusion by affirming the view of the Income-tax Appellate Tribunal, though we are not subscribing to the theory of dominant intention applied by the High Court. It is to be kept in mind that in those cases where shares are held as 'stock-in-trade', it becomes a business activity of the assessee to deal in those shares as a business proposition. Whether dividend is earned or not becomes immaterial. In fact, it would be a quirk of fate that when the investee company declared dividend, those shares are held by the assessee, though the assessee has to ultimately trade those shares by selling them to earn profits. The situation here is, therefore, different from the case like Maxopp Investment Ltd. where the assessee would continue to hold those shares as it wants to retain control over the investee company. In that case, whenever dividend is declared by the investee company that would necessarily be earned by the assessee and the assessee alone. Therefore, even at the time of investing into those shares, the assessee knows that it may generate dividend income as well and as and when such dividend income is generated that would be earned by the assessee. In contrast, where the shares are held as stock-in-trade, this may not be necessarily a situation. The main purpose is to liquidate those shares*



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*whenever the share price goes up in order to earn profits. In the result, the appeals filed by the Revenue challenging the judgment of the Punjab and Haryana High Court in State Bank of Patiala also fail, though law in this respect has been clarified hereinabove."*

*12. Per contra, learned counsel for the Respondent-Assessee supported the order passed by the learned Tribunal and urged that in the absence of any actual dividend income earned by the assessee during the year in question, there was no question of any disallowance of debenture interest and finance charges to be made under section 14A of the Act, as no expenditure can be said to have been incurred at all in relation to the income, which did not form part of the total income.*

*13. Having heard the learned counsel for the parties, we are of the clear opinion that there is no merit in this appeal filed by the Revenue and the entire edifice of the argument of the Revenue is without any foundation. The assessing authority misapplied the provisions of section 14A of the Act, which, in clear terms, stipulates that no deduction can be allowed in respect of expenditure incurred in relation to income, which does not form part of total income under the Act.*

*14. In view of the clear fact found in the present case that the assessee did not earn any exempted income or dividend income on the equity shares held by it during this year, there was no question of disallowing any part of the debenture interest or finance charges, since the provisions under section 14A of the Act were not attracted at all.*

*15. The facts of the judgments cited at the Bar by the learned counsel for the Revenue are totally distinguishable. The assessee, i.e., Maxopp Investment Ltd. invested the borrowed funds in Maxopp India for gaining and retaining the control over the investee company and held the shares in question as a stock-in-trade. No such facts are available in the present case. While dealing with that peculiar situation, the observation was made by the hon'ble Supreme Court in paragraph 40, quoted above, that in such cases, where equity shares are purchased as stock-in-trade to gain control over the investee company, whether the dividend is actually declared by the investee company or not, would not make a difference. These contextual observations of the hon'ble Supreme Court in the case of*



*Maxopp India, are, therefore, of little help to the Revenue in the present case.*

*16. On the contrary, the controversy in hand before us is squarely covered by the two decisions cited above of the Co-ordinate Benches of this court and one of which has been affirmed by the hon'ble Supreme Court itself with dismissal of the special leave petition, after the aforesaid decision in the case of Maxopp India was rendered.*

*17. Therefore, we are of the considered opinion that the appeal filed by the Revenue deserves to be dismissed and the substantial question of law framed above for our consideration deserves to be answered in favour of the assessee and against the Revenue.*

*18. This appeal of the Revenue is, accordingly, dismissed. There shall be no order as to costs.*

3. In light of the aforesaid decision, on admittedly identical facts and legal position, the first substantial question of law is answered adverse to the Revenue. In such circumstances, the question of levy of interest under Section 234D of the Income Tax Act, 1961 does not arise. Hence, the second substantial question of law is also answered adverse to the Revenue and this Tax Case (Appeal) is dismissed. No costs.

**(A.S.M.,J.) (M.S.K.,J.)**

**09-12-2025**

Index: Yes/No

Speaking order

Neutral Citation: Yes

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**Dr.ANITA SUMANTH,J.  
AND  
MUMMINENI SUDHEER KUMAR,J.**

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