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T.C.A.Nos.368 & 369 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 05.06.2025

PRONOUNCED ON : 09.06.2025

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THE HONOURABLE MR.K.R.SHRIRAM, CHIEF JUSTICE
AND
THE HONOURABLE MR.JUSTICE SUNDER MOHAN

T.C.A.Nos.368 and 369 of 2011

The Commissioner Of Income Tax (Appeals)-VIII,
Chennai

Appellant in both cases

Vs

M/s Bharat Promoters
No.238 Manis Mansion Gandhi Road Vellore-4

Respondent in both cases

Prayer: Appeals filed under Section 260A of the Income Tax Act, 1961
against the order of Income Tax Appellate Tribunal, Madras "C" Bench,
Chennai, dated 16.12.2010 passed in I.T.A.Nos.993 and 1199/Mds/2010.

For Appellant : Mr.J.Narayanaswamy
in both cases

For Respondent : Mr.A.S.Sriraman
in both cases



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COMMON JUDGMENT

(Delivered by SUNDER MOHAN, J)

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On 10.10.2011, while admitting the captioned Tax Case Appeals, this Court had framed the following five substantial questions of law.

“1. Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal is right in law deleting the addition made by the assessing officer in respect of development expenditure for levelling and filling to the tune of Rs.2,96,67,138/-, even though the assessee could not establish the expenditure at any stage not proved on the basis of facts and evidences is valid?

2. Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in deleting the addition made by the assessing officer in respect of Road Development Expenses to the tune of Rs.1,92,56,890/- even though the assessee could not establish the expenditure at any stage not proved on the basis of facts and evidences is valid?

3. Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in deleting the addition made by the assessing officer in respect of Repairing of Compound Wall to the tune of Rs.40,17,590/-, even though the assessee could not establish the expenditure at any stage not proved on the basis of facts and evidences is valid?

4. Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in deleting the addition made by the assessing officer in respect of repairing of old damaged well and over head tank to the tune of Rs.90,18,834/- even though the assessee could not establish the expenditure at any stage not proved on the



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basis of facts and evidences is valid?

5. Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in deleting the addition made by the assessing officer in respect of Commission paid to Brokers to the tune of Rs.80,55,895/- even though the assessee could not establish the expenditure at any stage not proved on the basis of facts and evidence is valid?"

2. The facts leading to the filing of the above appeals are as follows:

(a) Respondent/assessee furnished the return of its income on 31.07.2007 declaring a taxable income of Rs.8,96,80,430/-, which included a declared short term capital gain of Rs.8,92,83,958/- and income from other sources of Rs.3,86,472/-. The assessing officer processed the return under Section 143 of the Income Tax Act, 1961 [hereinafter referred to as '**the Act**'] and passed an order on 29.12.2009, determining the taxable income at Rs.17,17,89,870/- and the tax payable at Rs.3,94,05,743/-.

(b) Aggrieved by the assessment order dated 29.12.2009, respondent filed an appeal before the Commissioner of Income Tax (Appeals)-IX, Chennai, [hereinafter referred to as '**CIT (A)**'] on the ground that the assessing officer had disallowed the expenditures and deductions under the



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following heads.

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- (i) Expenses towards development of the land – Rs.6,97,78,544/-
- (ii) Payment of commission to broker – Rs. 80,55,898/-
- (iii) Interest on capital account – Rs.1,01,75,000/-

According to the respondent, they had incurred the expenses of Rs.6,97,78,544/- for the development of land in the following manner.

- (i) Expenses for levelling/filling of land purchased by them : Rs.2,96,67,138/-
- (ii) Road Development Expenditure : Rs.1,92,56,890/-
- (iii) Repairing of compound wall : Rs. 40,17,590/-
- (iv) Repairing of old damaged well and overhead tank, pipeline, diesel motor and electrification : Rs. 90,18,834/-
- (v) Salary, wages, travel expenses, rent, electricity charges, etc. : Rs. 78,17,673/-

(c) CIT (A) allowed the appeal in part, allowing a portion of the expenditure shown in the return under the head development expenses and the commission paid to the brokers. It had fully allowed deductions under the head, "Interest on the capital account" to the extent of Rs.1,01,75,000/-



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claimed by respondent.

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(d) Aggrieved by the order passed by CIT (A), both respondent and appellant filed appeals before the Income Tax Appellate Tribunal [hereinafter referred to as **ITAT**]. Appellant filed ITA No.1199/Mds/2010. Respondent filed ITA No.993/Mds/2010. Appeal filed by respondent was allowed. Appeal filed by appellant was dismissed. The instant appeals have been filed challenging the common order passed by ITAT in both the appeals.

3. Mr.Narayanaswamy for appellant submitted;

(a) that CIT (A) and ITAT had erroneously allowed the assessee's claim of expenditure under the head development for levelling the land at Rs.2,96,67,138/- though there were discrepancies noticed in some of the bills produced by the contractors and there were no bills for most of the expenses claimed under this head;

(b) that ITAT ought not to have allowed the expenses towards road development to the tune of Rs.1,92,56,890/-, since respondent had not



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produced any details of work carried out or details of permits from the government authorities;

(c) that respondent had not produced accounts in respect of expenses relating to salary, wages and rent; and

(d) that both ITAT and CIT (A) had erroneously accepted assessee's claim with regard to the expenditures under various heads and had set aside the assessment order without any basis and therefore their findings are perverse and sought for setting aside the same.

4. Mr.Sriraman, appearing for respondent *per contra* submitted that both CIT (A) and ITAT had appreciated the facts in the correct perspective and on the basis of the documents relied upon by respondent

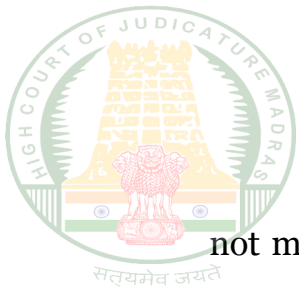
found the claim of respondent to be genuine. He would further submit that in any case, the appeals do not raise any question of law much less a substantial question of law, warranting interference with the impugned order under Section 260A of the Income Tax Act.



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6. Similarly the existence of the road is not disputed by appellant. In fact the physical verification confirmed the said fact. Even under this head, ITAT found that the payments were made to the contractors by cheques and all the contractors had filed their return of income on time. Appellant has



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not made out any ground to interfere in the factual finding of CIT (A) and ITAT that respondent had in fact incurred expenses towards road development.

7. As regards the expenses incurred for repairing the compound wall, ITAT once again found that the physical verification confirmed that the compound wall which was originally damaged was repaired.

8. Similarly, as regards the expenditure incurred towards repairing of an old damaged well and overhead tank at Rs.90,18,834/-, ITAT found that the expenses incurred towards such repair have not been disputed and therefore, allowed the entire claim of the said amount to be treated as expenses.

9. Thus, we find that ITAT had rightly allowed the expenses under the above-referred heads, as admittedly development work had taken place and all the contractors who were engaged in the development work admitted the receipt of money and the work done by them. It had also found that CIT (A) was not justified in allowing only a portion of the expenses claimed



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by respondent.

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10. Apart from stating that the factual findings are not supported by any evidence, appellant has not raised any substantial question of law to interfere in the factual findings, which, according to us, do not suffer from any infirmity. Therefore, we see no reason to interfere in these findings. Accordingly, the substantial questions of law Nos.1 to 4 are answered in the affirmative.

11. As regards the expenses towards the commission paid to the broker to the tune of Rs.80,55,898/-, we agree with the finding of ITAT that the broker, viz., one Maruthanayagam, had confirmed in his letter dated 26.12.2009 of having received the brokerage of Rs.80,55,898/-. This has been confirmed by the purchaser also in his sworn statement dated 09.12.2009. In view of the above evidence before CIT (A) and ITAT, we find that the factual findings rendered by both the authorities that respondent incurred expenses towards brokerage cannot be faulted. Hence, substantial question of law No.5 is also answered in the affirmative.



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12. Since we have answered all the substantial questions of law raised

in the affirmative, the Tax Case Appeals are liable to be dismissed.

13. Accordingly, both the Tax Case Appeals are dismissed. There shall be no order as to costs.

(K.R.SHRIRAM, C.J.)

(SUNDER MOHAN, J.)

09.06.2025

Index: Yes

Neutral Citation : Yes

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To
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1. The Income Tax Appellate Tribunal,
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2. The Commissioner of Income Tax (Appeals)- IX,
Chennai.
3. The Assistant Commissioner of Income Tax,
Circle-I, Vellore.



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THE HON'BLE CHIEF JUSTICE

AND

SUNDER MOHAN, J.

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Pre-delivery common judgment in
T.C.A.Nos.368 and 369 of 2011

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