



T.C.A.Nos.586 & 587 of 2011

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.07.2025

CORAM :

THE HON'BLE MR.K.R.SHRIRAM, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SUNDER MOHAN

T.C.A.Nos.586 & 587 of 2011

Sundaram Spinning Mills (P) Ltd.
310, Salem Main Road
Komarapalayam 636 183.

Appellant in
both TCAs.
..

Vs.

Commissioner of Income Tax
Tamil Nadu-V
Chennai.

Respondent in
both TCAs.
..

Prayer : Appeals under Section against the common order dated 28.09.2007 passed in ITA No.1394/Mds/2003 and ITA No.1376/Mds/2003 respectively on the file of the Income Tax Appellate Tribunal 'D' Bench, Chennai.

For Appellant : Mr.A.S.Sriraman

For Respondent : Mr.V.Mahalingam
Senior Standing Counsel



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JUDGMENT

(Judgment of the Court was delivered
by the Hon'ble Chief Justice)

On 04.01.2012, the following substantial questions of law were framed:

- (i) *Whether on the facts and in the circumstances of the case, the Tribunal was justified in holding that the Explanation 3 to Section 43(1) applies to the case of the assessee and thereby denying the claim of depreciation on the revalued assets? and*
- (ii) *Whether the Tribunal was justified in not following the decision of the Supreme Court in M/s. Jogta Coal Co. Ltd. [36 ITR 521] and in [Kalooram Govindram [57 ITR 335] which applies on all fours to the facts of the assessee's case?*

2. The assessee was incorporated on 15.12.1982. Assessee was admitted as a Partner in a firm on 19.01.1983. The two erstwhile partners JKK Sundararajah and JKS Manickam had 37.5% share each and assessee had 25% share in the firm. On 31.03.1984, a dissolution deed was executed by three partners, by which, the assessee took over the entire asset and liability of the firm as per the balance sheet figures as on 31.03.1984. The dissolution deed also provides for payment of compensation to other two



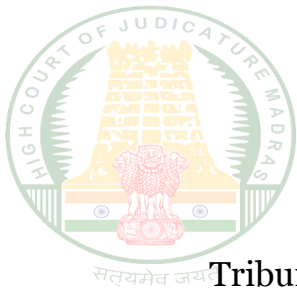
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partners within one year of the date of dissolution. Therefore, with effect from 01.04.1984, assessee had taken over the entire business of the erstwhile partnership firm.

3. For the year ending 31.03.1985, pertaining to assessment year 1985-86, assessee filed its return along with balance sheet and profit and loss account. Assessee claimed depreciation at the taken over cost of assets from the erstwhile firm. That cost was the actual cost paid to the erstwhile partners of the firm.

4. The value of the assets was on the basis of a valuation that was done in April, 1982 when the original partnership, which had five partners, was re-constituted. Originally there were five partners, three of whom retired and only the two partners, who retired in 1984, continued as the partners.

5. The Assessing Officer negated the claim of the assessee by invoking Explanation 1 to Section 43(6) of the Income Tax Act, 1961. The appeal by the assessee was dismissed and the Income Tax Appellate



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Tribunal also dismissed the appeal vide impugned order dated 28.09.2007.

6. The short issue for our consideration is whether the assessee was entitled to claim depreciation as it claimed.

7. Section 43(1) of the Act defines actual cost. It reads as under:

43. Definitions of certain terms relevant to income from profits and gains of business or profession.—

In section 28 to 41 and in this section, unless the context otherwise requires—

(1) “actual cost” means the actual cost of the assets to the assessee, reduced by that portion of the cost thereof, if any, as has been met directly or indirectly by any other person or authority:

Provided that where the actual cost of an asset, being a motor car which is acquired by the assessee after the 31st day of March, 1967, but before the 1st day of March, 1975, and is used otherwise than in a business of running it on hire for tourists, exceeds twenty-five thousand rupees, the excess of the actual cost over such amount shall be ignored, and the actual cost thereof shall be taken to be twenty-five thousand rupees:

Provided further that where the assessee incurs any expenditure for acquisition of any asset or part thereof in respect of which a payment or aggregate of payments made to a person in a day, otherwise than by an account payee cheque drawn on a bank or an account payee bank draft or use of electronic clearing system through a bank account, exceeds ten thousand rupees, such expenditure shall be ignored for the purposes of determination of actual cost.

Explanation 1.—Where an asset is used in the business after it ceases to be used for scientific research related to that business and a deduction has to be made under clause (ii) of sub-



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section (1)] of section 32 in respect of that asset, the actual cost of the asset to the assessee shall be the actual cost to the assessee as reduced by the amount of any deduction allowed under clause (iv) of sub-section (1) of section 35 or under any corresponding provision of the Indian Income-tax Act, 1922 (11 of 1922).

Explanation 1A.—Where a capital asset referred to in clause (via) of section 28 is used for the purposes of business or profession, the actual cost of such asset to the assessee shall be the fair market value which has been taken into account for the purposes of the said clause.

Explanation 2.—Where an asset is acquired by the assessee by way of gift or inheritance, the actual cost of the asset to the assessee shall be the actual cost to the previous owner, as reduced by—

- (a) the amount of depreciation actually allowed under this Act and the corresponding provisions of the Indian Income-tax Act, 1922 (11 of 1922), in respect of any previous year relevant to the assessment year commencing before the 1st day of April, 1988; and*
- (b) the amount of depreciation that would have been allowable to the assessee for any assessment year commencing on or after the 1st day of April, 1988, as if the asset was the only asset in the relevant block of assets.*

Explanation 3.—Where, before the date of acquisition by the assessee, the assets were at any time used by any other person for the purposes of his business or profession and the Assessing Officer is satisfied that the main purpose of the transfer of such assets, directly or indirectly to the assessee, was the reduction of a liability to income-tax (by claiming depreciation with reference to an enhanced cost), the actual cost to the assessee shall be such an amount as the Assessing Officer may, with the previous approval of the Joint Commissioner, determine having regard to all the circumstances of the case.

Explanation 4.—Where any asset which had once belonged to the assessee and had been used by him for the purposes of his business or profession and thereafter ceased to be his property by reason of transfer or otherwise, is re-acquired by him, the actual cost to the assessee shall be—

- (i) the actual cost to him when he first acquired the asset as reduced by—*



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- (a) *the amount of depreciation actually allowed to him under this Act or under the corresponding provisions of the Indian Income-tax Act, 1922 (11 of 1922), in respect of any previous year relevant to the assessment year commencing before the 1st day of April, 1988; and*
- (b) *the amount of depreciation that would have been allowable to the assessee for any assessment year commencing on or after the 1st day of April, 1988, as if the asset was the only asset in the relevant block of assets; or*
- (ii) *the actual price for which the asset is re-acquired by him, whichever is less.*

Explanation 4A.—Where before the date of acquisition by the assessee (hereinafter referred to as the first mentioned person), the assets were at any time used by any other person (hereinafter referred to as the second mentioned person) for the purposes of his business or profession and depreciation allowance has been claimed in respect of such assets in the case of the second mentioned person and such person acquires on lease, hire or otherwise assets from the first mentioned person, then, notwithstanding anything contained in Explanation 3, the actual cost of the transferred assets, in the case of first mentioned person, shall be the same as the written down value of the said assets at the time of transfer thereof by the second mentioned person.

Explanation 5.—Where a building previously the property of the assessee is brought into use for the purpose of the business or profession after the 28th day of February, 1946, the actual cost to the assessee shall be the actual cost of the building to the assessee, as reduced by an amount equal to the depreciation calculated at the rate in force on that date that would have been allowable had the building been used for the aforesaid purposes since the date of its acquisition by the assessee.

Explanation 6.—When any capital asset is transferred by a holding company to its subsidiary company or by a subsidiary company to its holding company, then, if the conditions of clause (iv) or, as the case may be, of clause (v) of section 47 are satisfied, the actual cost of the transferred capital asset to the transferee-company shall be taken to be the same as it would have been if the transferor-company had continued to hold the capital asset for the purposes of its business.



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Explanation 7.—Where, in a scheme of amalgamation, any capital asset is transferred by the amalgamating company to the amalgamated company and the amalgamated company is an Indian company, the actual cost of the transferred capital asset to the amalgamated company shall be taken to be the same as it would have been if the amalgamating company had continued to hold the capital asset for the purposes of its own business.

Explanation 7A.—Where, in a demerger, any capital asset is transferred by the demerged company to the resulting company and the resulting company is an Indian company, the actual cost of the transferred capital asset to the resulting company shall be taken to be the same as it would have been if the demerged company had continued to hold the capital asset for the purpose of its own business: Provided that such actual cost shall not exceed the written down value of such capital asset in the hands of the demerged company.

Explanation 8.—For the removal of doubts, it is hereby declared that where any amount is paid or is payable as interest in connection with the acquisition of an asset, so much of such amount as is relatable to any period after such asset is first put to use shall not be included, and shall be deemed never to have been included, in the actual cost of such asset.

Explanation 9.—For the removal of doubts, it is hereby declared that where an asset is or has been acquired on or after the 1st day of March, 1994 by an assessee, the actual cost of asset shall be reduced by the amount of duty of excise or the additional duty leviable under section 3 of the Customs Tariff Act, 1975 (51 of 1975) in respect of which a claim of credit has been made and allowed under the Central Excise Rules, 1944.

Explanation 10.—Where a portion of the cost of an asset acquired by the assessee has been met directly or indirectly by the Central Government or a State Government or any authority established under any law or by any other person, in the form of a subsidy or grant or reimbursement (by whatever name called), then, so much of the cost as is relatable to such subsidy or grant or reimbursement shall not be included in the actual cost of the asset to the assessee: Provided that where such subsidy or grant or reimbursement is of such nature that it cannot be directly relatable to the asset acquired, so much of the amount which



bears to the total subsidy or reimbursement or grant the same proportion as such asset bears to all the assets in respect of or with reference to which the subsidy or grant or reimbursement is so received, shall not be included in the actual cost of the asset to the assessee.

Explanation 11.—Where an asset which was acquired outside India by an assessee, being a nonresident, is brought by him to India and used for the purposes of his business or profession, the actual cost of the asset to the assessee shall be the actual cost to the assessee, as reduced by an amount equal to the amount of depreciation calculated at the rate in force that would have been allowable had the asset been used in India for the said purposes since the date of its acquisition by the assessee.

Explanation 12.—Where any capital asset is acquired by the assessee under a scheme for corporatisation of a recognised stock exchange in India, approved by the Securities and Exchange Board of India established under section 3 of the Securities and Exchange Board of India Act, 1992 (15 of 1992), the actual cost of the asset shall be deemed to be the amount which would have been regarded as actual cost had there been no such corporatization.

Explanation 13.—The actual cost of any capital asset on which deduction has been allowed or is allowable to the assessee under section 35AD, shall be treated as 'nil',—

- (a) in the case of such assessee; and
- (b) in any other case if the capital asset is acquired or received,—
 - (i) by way of gift or will or an irrevocable trust;
 - (ii) on any distribution on liquidation of the company; and
 - (iii) by such mode of transfer as is referred to in clauses (i), (iv), (v), (vi), (vib), 2[(xiii), (xiiib) and (xiv)] of Section 47:

Provided that where any capital asset in respect of which deduction or part of deduction allowed under section 35AD is deemed to be the income of the assessee in accordance with the provisions of subsection (7B) of the said section, the actual cost of the asset to the assessee shall be the actual cost to the assessee, as reduced by an amount equal to the amount of depreciation calculated at the rate in force that would have been allowable



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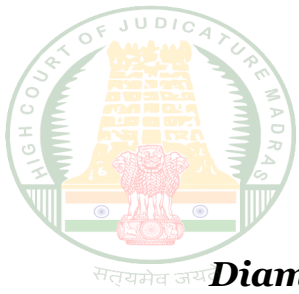


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had the asset been used for the purpose of business since the date of its acquisition.

8. Rule 5 of the Income Tax Rules, 1962, which deals with depreciation also states “... *provided that the aggregate depreciation allowed in respect of any asset for different assessment years shall not exceed the actual cost of the said asset ...*”.

9. In this case, for the assessment year 1985-86, it is only the assessee that claimed depreciation. The erstwhile firm came to an end on 31.03.1984. Assessee, as per Section 32 of the Act read with Rule 5 quoted above, will be entitled to claim depreciation in respect of any asset on the actual cost of the said asset. The actual cost of the said asset will be actual cost which the assessee paid to the erstwhile partners. The amount paid was as per the valuation of April, 1982. Certainly, in our view, assessee will be entitled to claim depreciation for the subsequent years on the basis of the actual cost paid. It is immaterial whether the erstwhile partners or shareholders or directors are all of the same family. The Act does not provide for any exclusion in such cases. We find support for our view in the judgment of the Bombay High Court in ***PCIT-5 v. Dharmanandan***



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Diamonds Pvt Ltd¹.
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10. Therefore, the questions of law framed are answered in favour of the assessee. Appeals are disposed. There shall be no order as to costs.

(K.R.SHRIRAM, CJ)

(SUNDER MOHAN,J.)

08.07.2025

Index : Yes
Neutral Citation : Yes

kpl

To

1. The Assistant Registrar
Income Tax Appellate Tribunal
Chennai Benches, Chennai.
2. The Commissioner of Income Tax (Appeals)
Coimbatore
3. The Deputy Commissioner of Income Tax
Special Range III
Coimbatore.

¹ 2024 (467) ITR 26 (Bom.)



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T.C.A.Nos.586 & 587 of 2011

THE HON'BLE CHIEF JUSTICE
AND
SUNDER MOHAN,J.

(kpl)

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08.07.2025



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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.07.2025

CORAM :

THE HON'BLE MR.K.R.SHRIRAM, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SUNDER MOHAN

T.C.A.Nos.586 and 587 of 2011

Sundaram Spinning Mills (P) Ltd.
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Appellant in
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..

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ORDER

(Order of the Court was made by the Hon'ble Chief Justice)

Suo motu called for speaking to the minutes.



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2. In the order dated 8.7.2025, in the first page, the appearance of counsel for appellant recorded as “Mr.A.S.Sriraman” be deleted and replaced with “Mr.T.Vasudevan”.

3. Rest of the order remains unaltered. Original order to be corrected and fresh order copy issued.

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

(SUNDER MOHAN, J.)

17.07.2025

sasi