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T.C.(A) Nos.154 of 2012 etc. batch

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16-12-2025

CORAM

THE HON'BLE DR.JUSTICE ANITA SUMANTH

AND

THE HON'BLE Mrs.JUSTICE K.GOVINDARAJAN THILAKAVADI

T.C.(A).Nos. 154, 156, 157, 158, 159, 160 and 161 of 2012

and

T.C.(A).Nos.881 of 2013, 938 & 939 of 2015 & M.P.No. 1 of 2015

T.C.(A).No.154 of 2012 etc batch

Commissioner of Income Tax – II
Tiruchirapalli

.. Appellant

Vs

M/s. Tamil Nadu State Transport Corporation
(Kum Div.I) Limited, Successor Company to
TNSTC (Kum.Div.II) Trichy,
Railway Station New Road,
Kumbakonam – 612 001.

.. Respondent

T.C.(A).No. 881 of 2013

The Commissioner of Income Tax,
Cuddalore.

.. Appellant

Vs



T.C.(A) Nos.154 of 2012 etc. batch

M/s. Tamil Nadu State Transport Corporation
(Villupuram) Limited,
No.3/137, Sala Medu, Valudareddy,
Villupuram – 605 062.

.. Respondent

T.C.(A).Nos.938 & 939 of 2015

The Commissioner of Income Tax,
Pondicherry.

.. Appellant

Vs

M/s. Tamil Nadu State Transport Corporation
(Villupuram) Limited,
No.3/137, Sala Medu, Valudareddy,
Villupuram – 605 062.

.. Respondent

Common Prayer in T.C.(A).No.154 of 2012 etc batch: Appeals filed under Section 260A of Income Tax Act against order of the Income Tax Appellate Tribunal Madras 'B' Bench dated:13.06.2011 in M.P.Nos.33/Mds/2011, 35/Mds/2011, 36/Mds/2011, 37/Mds/2011, 38/Mds/2011, 39/Mds/2011 and 40/Mds/2011 and ITA.Nos.1720/Mds/2009, 1722/Mds/2009, 1723/Mds/2009, 1724/Mds/2009, 1725/Mds/2009, 1726/Mds/2009 and 1727/Mds/2009 for the assessment years 2001 – 2002, 2003-2004, 2004 – 2005, 2005-2006 and 2006-2007.

Prayer in T.C.(A).No. 881 of 2013: Appeal filed under Section 260-A of the Income Tax Act against the order of the Income Tax Appellate Tribunal, Madras 'C' Bench, Chennai dated 18.01.2012 passed in ITA 1713/Mds/2011.

Prayer in T.C.(A).Nos. 938 & 939 of 2015: Appeals filed under Section 260-A of the Income Tax Act against the order of the Income Tax Appellate Tribunal, Madras 'D' Bench, Chennai dated 30.04.2013 passed in ITA 280/Mds/2012.



T.C.(A) Nos.154 of 2012 etc. batch

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For Appellant : Mr.V.Mahalingam
Senior Standing Counsel
(in T.C.(A).No.154 of 2012 batch)

Dr.S.Sathiya Narayanan
Senior Standing Counsel
(in T.C.(A).No.881 of 2013, 938 & 939/15)

For Respondent : Mr.A.S.Sriraman
For Mr.S.Sridhar
(in T.C.(A).No.154 of 2012 batch)

Mr.J.Balachander
For Ms.K.Kavitha
(in T.C.(A).No.881 of 2013, 938 & 939/15)

COMMON JUDGMENT

(Delivered by Dr.Anita Sumanth,J.)

This is a batch of Tax Case (Appeals) filed by the Revenue relating to Assessment Years (AY) 2001-02 (T.C.(A) No.154 of 2012), 2003-04 (T.C.(A) No.156 of 2012), 2004-05 (T.C.(A) Nos.157 and 158 of 2012), 2005-06 (T.C.(A) Nos.159 and 160 of 2012) and 2006-07 (T.C.(A) No.161 of 2012) where the assessee is the Tamil Nadu State Transport Corporation, Kumbakonam Limited (TNSTC Kumbakonam), and AY 2003-04 (T.C.(A) No.881 of 2013), 2007-08 (T.C.(A) No.938 of 2015) and 2008-09 (T.C.(A) No. 939 of 2015) where the assessee is the Tamil Nadu State Transport Corporation, Villupuram Limited (TNSTC Villupuram).



T.C.(A) Nos.154 of 2012 etc. batch

2. We have heard V.Mahalingam, learned Senior Standing Counsel for the appellant/Department and Mr.A.S.Sriraman, learned counsel for the respondent/assessee (TNSTC Kumbakonam Limited) in T.C.A.No.154 of 2012 and batch and Dr.S.Sathiya Narayanan, learned Senior Standing Counsel for the appellant/Department and Mr.J.Balachander, learned counsel for Ms.K.Kavitha for the respondent/assessee (TNSTC Villupuram Limited) in T.C.A.No.881 of 2013 and 938 & 939 of 2015.

3. The substantial questions of law are common across the assessment years and we set out below the questions, the assessment years in which that question arises, the discussions and our answer thereto, in seriatim below.

4. Substantial question of law No.I:

Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in deleting the addition under Section 41(1)(a) holding that there was no waiver of interest since shares had been allotted, overlooking the fact that the interest had been claimed as revenue expenditure earlier and hence the provisions of Section 41(1) were attracted?

5.This question of law pertains to AY 2001-02. The facts in relation to this issue are that, in the course of assessment, the Assessing Authority verified the notes forming part of the accounts and found under



T.C.(A) Nos.154 of 2012 etc. batch

G.O.Ms.18/Transport(T1) Department dated 07.03.2001, that shares have been issued for an amount of Rs.74.14 lakhs at the rate of Rs.10/- per share.

6. Admittedly, the allotment of shares was for conversion of liability on account of outstanding interest due to ways and means for the term loan received from the Government. The Assessing Authority was of the view that the conversion was not liable to be accepted and hence brought the amount of Rs.74.14 lakhs as addition by way of deemed profits and gains applying the provisions of Section 41(1)(a) of the Income Tax Act, 1961 (in short 'Act').

7. Having heard both learned counsel and also taking into account the decision of this Court in *Commissioner of Income Tax, Chennai V. Metropolitan Transport Corporation (Chennai) Ltd.*¹, we are of the considered view that conversion of liability received from the Government and interest payable on such loan, into equity share capital by allocation of shares, is an acceptable method of treating the principal and outstanding interest. The quantum of equity gain in such circumstances is not liable to be brought to tax as deemed profits.

8. In fact, the decision of this Court in *Metropolitan Transport Corporation (Chennai) Ltd.* (supra) is directly on point. Hence, this question of law is answered in favour of the assessee and adverse to the revenue.

¹ 421 ITR 307



T.C.(A) Nos.154 of 2012 etc. batch

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9. Substantial question of law No.II :

Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in allowing the contributions to an unrecognised Pension and Provident Fund?

10. This question of law pertains to AYs 2001-02, 2004-05 and 2005-06.

Having heard both learned counsel we are of the considered view that this question has to been answered in favour of the assessee. Four units of the TNSTC (i) Dheeran Chinnamalai Transport Corporation Ltd Employees' Provident Fund Trust, Trichy, (ii) Marudhu Pandiyar Transport Corporation Ltd Employees' Provident Fund Trust, Karaikudi (iii) Veeran Azhagumuthukone Transport Corporation Employees' Provident Fund Trust, Pudukottai and (iv) Tamil Nadu State Transport Corporation (Kumbakonam) Limited Employees had been amalgamated by order of the Company Court dated 30.12.2003 setting out the effective date for amalgamation as 31.03.2001.

11. Consequently, the Commissioner of Income-Tax, Trichirappalli, vide proceedings dated 30.01.2006 approved the merger of the provident funds of the four units, approving and recognizing the same in terms of Rule 3 (4) of Part A/Schedule IV of the Income-Tax Act, 1961. His order reads as follows:-



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T.C.(A) Nos.154 of 2012 etc. batch

*“Government Of India
Office of the Commissioner of Income Tax-II,
No.4, Williams Road, Cantonment, Tiruchirappalli – 620
001.*

*C.No.7162p(1)/2005-06/CIT-II/TRY Dated :30.01.2006
PROCEEDINGS OF THE COMMISSIONER OF INCOME
TAX – II, TIRUCHIRAPALLI
Present : G.Muthuramakrishnan, IRS*

Commissioner of Income Tax – II, Tiruchirapalli.

*Sub : Merger of Dheeran Chinnamalai Transport Corpora-
tion Ltd Employees’ Provident Fund Trust, Trichy, Marudhu
Pandiyar Transport Corporation Ltd Employees’ Provident
Fund Trust, Karaikudi and Veeran Azhagumuthukone Trans-
port Corporation Employees’ Provident Fund Trust,
Pudukottai with Tamil Nadu State Transport Corporation
(Kumbakonam) Limited Employees’ Provident Fund Trust –
Approval – reg.*

ORDER:

*The Tamil Nadu State Transport Corporation (Kumbakonam
– II) Ltd, Trichy, Tamil Nadu State Transport Corporation
(Kumbakonam – III) Ltd, Karaikudi, and Tamil Nadu State
Transport Corporation (Kumbakonam- IV) Ltd, Pudukottai
were merged with Tamil Nadu State Transport Corporation
(Kumbakonam) Ltd, Kumbakonam, vide Government of India
(Department of Company Affairs), order in No. S.O.1477(E)
dated 30.12.2003 published in the Gazette of India No.1159
dated 30.12.2003. Clause No.11 of the above merger stipu-
lated the merger of Provident Fund Trusts of the above Cor-
porations i.e., Dheeran Chinnamalai Transport Corporation
Ltd Employees’ Provident Fund Trust, Trichy, Marudhu Pan-
diyar Transport Corporation Ltd Employees’ Provident Fund
Trust, Karaikudi and Veeran Azhagumuthukone Transport*



T.C.(A) Nos.154 of 2012 etc. batch

Corporation Employees' Provident Fund Trust, Pudukottai with Tamil Nadu State Transport Corporation (Kumbakonam) Limited Employees' Provident Fund Trust.

2. Consequently the merger of the above Provident funds with the Tamil Nadu State Transport Corporation (Kumbakonam) Ltd Employees' Provident Fund is hereby recognised in terms of sub-rule 4 of rule 3 Part A of Schedule IV to the Income-Tax Act, 1961.

3. The recognition will take effect from 01.07.2005.

*Sd/-
Commissioner of Income-tax II,
Tiruchirappalli "*

12. The above approval appears to have been completely lost sight of by the assessing authority in passing order of assessment dated 24.12.2008, after the approval of the provident fund in the hands of the amalgamated entity, as the contributions to pension and provident fund were disallowed on the ground that the fund was unrecognized.

13. The Tribunal does not appear to have considered this ground of appeal and rather, at paragraph 10 of its order, has proceeded on the basis of the settlement arrived at with the employees by the management under Section 12(1) of the Industrial Disputes Act, 1947. Clearly, the Tribunal has misdirected itself, as the findings at paragraph 10 relate to settlement of account of retirement benefits and not contributions to provident fund at all.



14. Mr.Mahalingam would thus suggest that the matter be remanded to the file of the Tribunal for its consideration, but we are not inclined to consider this request in light of the fact that the assessment years under consideration are more than two decades old. There is no dispute in relation to the approval granted by the CIT for the Fund (post amalgamation), and in light of the same, the finding of the authorities that the Fund is unapproved cannot be sustained.

15. The approval has been granted only with effect from 01.07.2007. However, since the effective date of amalgamation per order of the High Court is 31.03.2001, the recognition must take effect from 2001 – 02 onwards. We hence answer this question in favour of the assessee and adverse to the revenue.

16.Substantial question of law No.III :

Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in deleting the addition towards insurance fund and no-fault liability even though the amounts represented contributions to an unrecognised fund and in any case the provisions for no-fault liability was towards an unascertained liability and therefore such claims were allowable only on actual payment basis?

17. This question of law pertains to AYs 2001-02, 2004-05, 2005-06 and 2006-07. In the profit and loss account for the relevant financial years, the



assessee had debited various amounts against the head '*Contribution to Insurance Fund (Schedule "S")*'. The Assessing Authority called for the particulars in relation to such contribution and the explanation furnished by the assessee was as follows:

'Under the Motor Vehicles Act, every owner of the motor vehicle is liable to compensate their victim in case of accident. The Motor Vehicles Act prescribes no fault liability on the part of the owner of the vehicle even though the accident took place due to negligence of the victim. The Motor Vehicles Act prescribes the limit as statutory liability.'

Therefore, as rightly submitted the learned representative for the assessee, there is no requirement for quantification of no fault liability whenever there was an accident. The quantification of the Compensation by agreement between the assessee and the victim or by a degree of a Motor Accidents claims Tribunal may be required in respect of enhanced compensation due to loss of life, loss of earning capacity on other related matters. As per as no fault liability is concerned, the liability is statutory and as soon as Act come to place, the assessee is liable to pay the no fault liability. Therefore, the assessee has provided in the accounts for payment of no fault liability as per the provisions of the Motor Vehicles Act. Therefore, we find not substance in the submission of the learned D.R. and no fault liability was not quantified either by way of an agreement between the parties or by an order of the tribunal. The Cause of Action for payment of no fault liability arises at the movement the accident took place. Therefore, in our opinion the assessee is entitled to claim the provisions made for payment of no fault liability on the basis of the Mercantile system of accounting. However, the Assessing



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Officer has to examine how many accident took place in the assessment year under consideration. In other words, how many fatal accidents and how many other accidents which resulted the liability to pay no fault compensation, has to be examined. Since the Assessing Officer had no opportunities to verify this factual aspects, we set aside the order of the lower authorities and remand back the issue to the file of the Assessing Officer. The Assessing Officer shall verify the details of the accident and thereafter decide the issue as indicated above. While considering the facts filed by the company and circumstance of the case, we request you to your goodselves to allow the expenditure. The company has followed mercantile system of accounting and the same principle is followed in the subsequent years also. As allowed in the earlier assessment years and the same basis be allowed in the subsequent years also. Since it is a routine type of expenditure and the payment made as per the Provisions of Motor Vehicles Act. In the notes and accounts and also the details about the payment mentioned in the Asst. Year 2004-05, in Kumbakonam Division, the Assessing Officer duly considered the above facts and passed the order not making any additions on this account. The whole payment in respect of insurance fund (No fault Liability payable) mentioned in the Annual accounts is not only related to the respective financial years and it is a cumulative amount of various financial years. Hence the same shall be allowed"

18. The Assessing Authority completed the assessment noticing that, apart from contribution to insurance fund, the accounts also revealed payments made towards no-fault liability. Invoking the provisions of Section 40A(9), the



T.C.(A) Nos.154 of 2012 etc. batch

Assessing Authority disallowed the entire contribution, adding the same back to income returned.

19. In first appeal, the authority held that the assessee was entitled to allowance to the extent of actual payment made towards fatal accident as provided for under the Motor Vehicles Act, as well as orders of the Tribunals/Courts awarding compensation in individual cases. In fine, the Assessing Officer was directed to restrict the disallowance, and allow the same to the extent of actual payment, after verification.

20. As against the restriction, the assessee approached the Tribunal that allowed the appeal, following the orders of the Tribunal in the case of Cholan Roadways Corporation Ltd.

21. We agree with the Commissioner of Income Tax (Appeals) that the assessee would be entitled to the allowance only to the extent of actual payment of no-fault liability, based on statutory liability and/or Court orders and nothing more. The order of the Commissioner of Income Tax (Appeals) extracted below, is confirmed.

2.4. Contribution to Insurance Fund: The Assessing Officer has made an addition of Rs. 6,68,94,843/-. The amount shown by the appellant is 'contribution to insurance fund.' If the appellant



company has paid actual amount to the victims as per motor vehicles act and as per Court Order extent to that can be allowed by the Assessing Officer and balance amount is required to be added. From the Assessing Officer's order it is not clear whether the amount is actually paid or kept in the insurance fund account as provision. If it is a provision only the additions made by the Assessing Officer is in order. The appellant is entitled for allowance to the extent of actual payment towards fatal accident and other no fault liability in case of other accidents as per Motor Vehicle Act and Court Order if any in this regard.

3. Accordingly the Assessing Officer is directed to restrict the disallowance on insurance fund and allow the amount to the extent of actual payment as discussed after verification.

22. This substantial question of law is answered in favour of the revenue.

23.Substantial question of law No.IV:

TNSTC Kumbakonam Limited

‘Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in allowing the benefit of set off of unabsorbed business loss and depreciation of earlier years amalgamated companies under a broad interpretation of the term ‘business’ even though transport units are not covered under the specific definition given in Section 72A(7)(aa)?

24.TNSTC Villupuram Limited



T.C.(A) Nos.154 of 2012 etc. batch

In T.C.(A).No. 881 of 2013 relating to AY 2003-04, the following questions had been admitted on 01.09.2014:-

- “1. Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the claim of the assessee for set off of brought forward losses for the assessment years 1983-84 to 1993 – 94 for the amalgamating company which was not originally claimed in the return of income filed against profits for the assessment year 2003 -04 but on the basis of the revised computation were claimed which was not accompanied by valid revised return as per Sec.139(5) is to be allowed?*
- 2. Whether on the facts and in the circumstances of the case, the Tribunal was right in not following the judgment of the Supreme Court in the case of Goetze India Limited, 284 ITR 323 which clearly holds that the Assessing Officer cannot entertain any claim made by the assessee otherwise through a valid return?*
- 3. Whether on the facts and in the circumstances of the case, the Tribunal was right in allowing set off of the brought forward losses without considering the issue raised by the department that brought forward losses pertaining to amalgamating company cannot be set off against the income of the amalgamated company under the provisions of Section 72A of the Income Tax Act? ”*

25. We do not find any reference to Section 72A in the order of the Tribunal for AY 2003-04, and hence the above substantial questions are returned unanswered for this year.



T.C.(A) Nos.154 of 2012 etc. batch

26. T.C.(A).Nos. 938 & 939 relating to AY 2007-08 and AY 2008-09

have been admitted on the following questions of law on 24.11.2015:-

“1) Whether, on the facts and in the circumstances of the case, the Tribunal was right in allowing the set off of depreciation of another company income in the amalgamated company which is not an industrial undertaking as defined in Section 72A?

2) Whether the finding of the Tribunal is proper especially when the assessee company is doing the business of public passenger transport service and is ineligible to claim the carry forward business loss as well as depreciation losses of the amalgamation company in view of sub-section (1) read with the provision of sub-section (1)(aa) of Section 72A of the Income Tax Act”

27. This question of law pertains to AYs. 2003-04, 2004-05, 2005-06 and 2006-07 in the case of TNSTC Kumbakonam Limited, and AY 2003-04, 2007-08 and 2008- 09 in the case of TNSTC Villupuram Limited. The issue relates to the entitlement of the assessee to carry forward and set off unabsorbed business loss and depreciation of earlier years post the amalgamation of various Divisions of the TNSTC, that is, Division II (Trichy), Division III (Karaikudi) and Division IV (Pudukottai), with TNSTC Division I (Kumbakonam).

28. Both the Assessing Authority and Commissioner of Income Tax (Appeals) rejected the claim, being of the view that the assessee is not an



‘industrial undertaking’ and hence not entitled to the benefit of Section 72A.

The Tribunal finds as a fact that the assessee is in the business of running vehicles on hire, but opines that the concept of ‘business’ has to be understood in a broad sense, having regard to the object of Section 72A. In fine, the conclusion was the assessee qualified to be an ‘industrial undertaking’, eligible to the benefit of Section 72A of the Act.

29. We have heard rival contentions on this issue. Section 72A, to the extent to which it is relevant, reads as follows:

‘Provisions relating to carry forward and set off of accumulated loss and unabsorbed depreciation allowance in amalgamation or demerger, etc.

72A. (1) Where there has been an amalgamation of-

(a) a company owning an industrial undertaking or a ship or a hotel with another company; or

.

then, notwithstanding anything contained in any other provision of this Act, the accumulated loss and the unabsorbed depreciation of the amalgamating company shall be deemed to the loss or, as the case may be, allowance for unabsorbed depreciation of the amalgamated company for the previous year in which the amalgamation was effected, and other provisions of this Act relating to set off and carry forward of loss and allowance for depreciation shall apply accordingly;

.....



(2) Notwithstanding anything contained in sub-section (1), the accumulated loss shall not be set off or carried forward and the unabsorbed depreciation shall not be allowed in the assessment of the amalgamated company unless-

(a) the amalgamating company-

(i) has been engaged in the business, in which the accumulated loss occurred or depreciation remains unabsorbed, for three or more years;

(ii) has held continuously as on the date of the amalgamation at least three-fourths of the book value of fixed assets held by it two years prior to the date of amalgamation;

....

(3) In a case where any of the conditions laid down in sub-section (2) are not complied with, the set off of loss or allowance of depreciation made in any previous year in the hands of the amalgamated company shall be deemed to be the income of the amalgamated company chargeable to tax for the year in which such conditions are not complied with.

.....

(7) For the purposes of this section,

.....

(aa) “industrial undertaking” means any undertaking which is engaged in

(i) the manufacture or processing of goods; or

.....

30. The benefit under Section 72A is available only in specific circumstances, including to a company that owns an ‘industrial undertaking’.

The definition of ‘industrial undertaking’ under adumbrates those undertakings



engaged in the business activities circumscribed by clauses (i) to (v) of clause (aa) of Section 72A(7), that includes, in clause (i) of Section 72A(7)(aa), any undertaking engaged in '*the manufacture or processing of goods*'.

31. The Memorandum of Association of TNSTC Kumbakonam is placed before us and to a specific query, we are told that the document is part of records. Mr.Mahalingam does not dispute this. The objects are as follows:-

- 1.To operate Road Transport Service.*
- 2.To buy, sell, operate and lease out all types of passengers and goods vehicles.*
- 3.To co-ordinate with any form of Road Transport Service.*
- 4.To extend and improve the facilities for Road Transport in any area by providing an efficient system of Road Transport Service.*
- 5.To manufacture, purchase, sell, maintain and repair rolling stock, vehicles, appliances, plant equipment or any other thing required for activities of the Company."*

32. Hence one of the main objects of the assessee is to '*manufacture ... vehicles ... or .. or any other thing for the activities of the company*'. The assessee admittedly, has units relating to manufacture of bus bodies that are assembled with the chassis purchased from the third parties, and must thus, be taken to be an industrial undertaking. This is true in the case of TNSTC



Villupuram as well, though the memorandum of association of that assessee is not before us. In any event the Revenue does not dispute that this assessee is also engaged in similar lines of businesses.

33. The Bombay High Court in the case of *Commissioner of Income Tax v Jayanand Khira & Co.*², considered the grant of Developmental Rebate under Section 33 of the Act. The rival contentions of the assessee and department in that case were that the assessee, engaged in the manufacture of bus body manufacture as in the present case, should be entitled to Developmental Rebate.

34. The Department argued that mere assembling of bus body and chassis would not amount to manufacture, and, in any event, only the chassis manufacturer is entitled to Development Rebate. The Bench concludes that manufacturers of both bus bodies and chassis carry on the business of manufacturing motor buses, and the issue was hence answered in favour of the assessee.

35. The assessing authority has rejected the claim in the following terms:-

“The expression “Industrial Undertaking is not defined in the Income tax Act. Kind reference is invited to the decision of Bombay HC 216 ITR 259. In Sec.33 B the meaning of the “Industrial Undertaking” has been given in explanation to that sec. i.e., sec.33B of IT Act. The explanation mention that

² 170 ITR 31



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“industrial undertaking” means any undertaking which is “Mainly” engaged in the business of generation or distribution of electricity or any other form of power or in the construction of ships or in the manufacturing or processing of goods or in mining.

The stress in the explanation with reference to meaning of industrial undertaking is the implication of expression “Mainly”. The thrust of fulfilment of the condition of “Mainly” is laid down in the explanation to the sec.2(7)(c) of Finance Act, 1981, which is that the income attributed to any-one or more of the above said activities included in the total income before giving deduction u/s Ch.VI A is not less than 51% of such income. Thus, where the income of assessee from the manufacturing activities was less than 51% of total income, the company was held not to be an industrial undertaking or industrial company. Our assessee, TNSTC is doing business of plying of buses and transporting of passengers which itself mean the assessee is not an industrial undertaking. Secondly, the reason mentioned that the main object of the company is manufacturing, purchase, sell, maintain & repair, rolling stock, vehicles, plant equipment or any other equipment required for the business activities of the company, does not in any manner help assessee because it does not fulfill definition of Sec.2(7)(c) of Fin. Act, 1981. There is no income arising to company from all activities mentioned in letter dt. 19-11-2008 wherein assessee claim as an industrial undertaking. Besides this, the main condition for set off of accumulated losses and unabsorbed depreciation u/s 72A(2)(ii), which says that the amalgamated company furnishes along with the return for the said asst. year, a certificate from Specific authority to the effect that suitable steps have been taken by the company for rehabilitation or revival of the business of the amalgamating company. To get the confirmation from the “Specific authority” (Secretary of Department of Industrial Development or Department of Company Affairs or Ministry of Labour or Additional Secretary of Department of Banking Affairs or Department of Economic Af-



fairs or Member, CBDT), the amalgamated company should address to the Secretary, Department of Industrial Development, a letter giving relevant information regarding the steps taken.

On verification of the details filed and records it is seems that there is no certificate from specific authority (Secretary of Department of Industrial Development, Department of Company Affairs, Ministry of labour; Additional Secretary of Department of Banking Affairs or Department of Economic Affairs or Member, CBDT) nor a letter addressed to Secretary, Dept. of Industrial development by the amalgamated company.

On account of discussion made above, provisions of Sec.72A cannot be applied in assessee's case and hence set off of business loss and unabsorbed depreciation made in the original order u/s 143(3) is disallowed."

36. The assessing authority has proceeded to apply the provision (Section 72A), as it stood at the time of its insertion in 1981. The term 'mainly' in the context of manufacture being the main activity of the assessee, is found in the definition of 'industrial undertaking' in the Finance Act of 1981. No such limitation is found in the Act for the assessment years in question.

37. Section 72A(1) only requires the amalgamation of Companies 'owning an industrial undertaking'. The Transport Corporations are admittedly engaged in the business of manufacture, and hence, for the purpose of Section 72A, this would suffice. This argument of Dr.S.Sathiya Narayanan is hence rejected.



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38. Incidentally, the assessee is also engaged in the business of retreading tyres. However, and as rightly pointed out by the Revenue, retreading of tyres has been held not to amount of manufacture by the Kerala High Court in *Commissioner of Income-tax v Vijaya Retreaders*³. However, this is of no relevance as we have held that the manufacture of bus body amounts to manufacture entitling the assessee to the benefit of Section 72A of the Act.

39. Section 72A(2) contains a condition that the amalgamated entity is to confirm, after a period of four years, that the industrial undertakings continues in business. In the present case, the assessee has produced the necessary confirmations in Form 62C under Rule 9(C) of the Income tax Rules, that are part of the record.

40. Finally, Mr.Balachander cites the case of *Commissioner of Income-Tax, Bangalore v J.H.Gotla*⁴, wherein three Hon'ble Judges of the Supreme Court, considering a question relating to carry forward and set off of loss, held that the interpretation of a statutory provision should be done with the intention of discovering the true intention of that provision. The Court says:-

³ 253 ITR 53 (Kerala)

⁴ 156 ITR 323 (SC)



“Where the plain literal interpretation of a statutory provision produces a manifestly unjust result which could never have been intended by the Legislature, the court might modify the language used by the Legislature so as to achieve the intention of the Legislature and produce a rational construction. The task of interpretation of a statutory provision is an attempt to discover the intention of the Legislature from the language used. It is necessary to remember that language is at best an imperfect instrument for the expression of human intention. It is well to remember the warning administered by judge Learned Hand that one should not make a fortress out of the dictionary but remember that statutes always have some purpose or object to accomplish and sympathetic and imaginative discovery is the surest guide to their meaning.”

41. There is thus no necessity to stretch and strain the language of Section 72A, as the assessing authority has, and on the clear language of the provision, we find that the assessee is entitled to the benefit of Section 72A of the Act. This question of law is answered in favour of the assessee.

42. **Substantial question of law No.IV :**

“Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the expenditure on increase in share capital should be allowed as revenue expenditure contrary to the decision of the Supreme Court in the case of Brooke Bond India Limited – 225 ITR 798.”

43. All learned counsel agree that this question of law pertaining to AY 2004-05 is covered against the assessee by the judgment of the Supreme Court



T.C.(A) Nos.154 of 2012 etc. batch

WEB COPY

in the case of *Brooke Bond India Limited vs Commissioner Of Income Tax*¹. The Assessing Officer and Commissioner of Income Tax (Appeals) have applied the aforesaid judgment to capitalize expenditures incurred on share capital. Hence, this issue is answered against the assessee and in favour of the revenue.

44. All Tax Case (Appeals) are disposed in terms of this order. No costs. Connected miscellaneous petition is closed.

(A.S.M, J.) (KG.T,J.)

16-12-2025

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

sl/ssm



T.C.(A) Nos.154 of 2012 etc. batch

To

1.The Commissioner of Income Tax – II
Tiruchirapalli.

2. M/s. Tamil Nadu State Transport Corporation
(Kum Div.I) Limited, Successor Company to
TNSTC (Kum.Div.II) Trichy,Railway Station New Road,
Kumbakonam – 612 001.

3.The Commissioner of Income Tax, Cuddalore.

4. M/s. Tamil Nadu State Transport Corporation
(Villupuram) Limited,No.3/137, Sala Medu, Valudareddy,
Villupuram – 605 062.

5. The Commissioner of Income Tax,
Pondicherry.

6.The Income Tax Appellate Tribunal, Madras 'B', 'C' & 'D'Bench,
Chennai.



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T.C.(A) Nos.154 of 2012 etc. batch

DR.ANITA SUMANTH J.

AND

K.GOVINDARAJAN THILAKAVADI,J.

sl/ssm

**T.C.(A).Nos. 154, 156, 157, 158, 159, 160 and 161 of 2012
and T.C.(A).Nos. 881 of 2013, 938 & 939 of 2015**

16-12-2025

26/26