IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.03.2025

CORAM :

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

AND

THE HONOURABLE MR.JUSTICE C.SARAVANAN

T.C.A.No.578 of 2013

Commissioner of Income Tax,
Chennai. ... Appellant

Vs.

M/s.Tamil Nadu State Transport
Corporation (Kumbakonam)
27, Railway Station New Road,
Kumbakonam – 612 001. ... Respondent

Prayer: Tax Case Appeal filed under Section 260A of Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal "D" Bench, Chennai, in I.T.A.No.37/Mds/2010, dated 21.02.2013 for AY 2005-06.

For Appellant	:	Mr.J.Narayanasamy Senior Standing Counsel
For Respondent	:	Mr.A.S.Sriraman

JUDGMENT

(Judgment was delivered by **C. SARAVANAN, J.**)

This Appeal is directed against the impugned final order dated 21.02.2013 passed by the Income Tax Appellate Tribunal (ITAT) in I.T.A.No.37/Mds/2010. By the impugned order, the Appellate Tribunal has dismissed the Appeal filed by the Appellant/Income Tax Department, against the order dated 20.10.2009 passed by the Appellate Commissioner in I.T.A.No.295/08-09 allowing the Appeal filed by the Respondent Corporation. The dispute relates to the Assessment Year 2005-06.

2. This Tax Case Appeal was admitted by this Court on 24.02.2015. The following substantial question of law was framed for being answered in this Appeal :

> ***"****Whether on the facts and circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the assessee is entitled for deduction of contribution made to the gratuity fund for the assessment year 2005-06, in contravention to Section 40A(9), by treating the approval granted on 30.1.06 with effect from 1.7.05 as retrospective in nature ?****"***

3. Earlier, the Respondent Corporation had suffered an adverse Assessment Order dated 28.03.2013 under Section 143(3) r/w. Section 147 of the Income Tax Act, 1961 (hereinafter referred to as 'IT Act'), wherein, a sum of Rs.5,69,51,044/- claimed as deduction towards the Gratuity under Section 36(1)(v) r/w. Section 40A(9) of the IT Act for the Assessment Year 2005-06 was disallowed.

4. The case of the Appellant/Income Tax Department is that the ITAT erred in dismissing the Appeal of the Appellant/Income Tax Department against the Order dated 20.10.2009 of the Appellate Commissioner since the approval under Section 4 of Part C of the IT Act was granted by the Commissioner of Income Tax-II, Tiruchirappalli on 30.01.2006 with retrospective effect from 01.07.2005, whereas, the dispute herein pertains to the Assessment Year 2005-06 for the previous Financial Year 2004-05.

5. We have heard the learned counsel for the Appellant/Income Tax Department and learned counsel for the Respondent Corporation.

6. It is to be noted that four different Transport Corporations had independent recognition under Section 4 of Part C of the IT Act which claimed deduction under Section 36(1)(v) of the IT Act. Details of the said four different Transport Corporations are mentioned hereinbelow:

Sl. Nos.	***Name of the Transport Corporations***	***Recognition received on***
1.	*M/s.Veeran Alagumuthkone Transport Corporation Limited Employees' Gratuity Fund Trust*	*30.03.1999*
2.	*M/s.Marudhu Pandiyar Transport Corporation Limited Employees' Gratuity Fund Trust*	*14.12.1983*
3.	*M/s.Dheeran Chinnamalai Transport Corporation Limited Employees' Gratuity Fund*	*15.03.1988*
4.	*M/s.Cholan Roadways Corporation Employees' Gratuity Fund*	*22.12.1976*

7. For the sake of clarity, Section 36(1)(v) and Section 40A(9) of the IT Act are reproduced below:

Section 36(1)(v)	***Section 40A(9)***
36(1)(v) - any sum paid by the assessee as an employer by way of contribution towards an approved gratuity fund created by him for the exclusive benefit of his employees under an irrevocable trust;	*40A(9) - No deduction shall be allowed in respect of any sum paid by the assessee as an employer towards the setting up or formation of, or as contribution to, any fund, trust, company, association of persons, body of individuals, society registered under the Societies Registration Act, 1860*

Section 36(1)(v)	***Section 40A(9)***
	(21 of 1860), or other institution for any purpose, except where such sum is so paid, for the purposes and to the extent provided by or under clause (iv) or clause (iva) or clause (v) of sub-section (1) of section 36, or as required by or under any other law for the time being in force.

8. The aforesaid four Transport Corporations have been amalgamated, pursuant to which, the Respondent Corporation was created. It is noticed that the approval of merger was also recognized by the Department of Company Affairs on 30.12.2003. *Post facto,* recognition was also granted under Section 4 of Part C of the IT Act since aforesaid four Transport Corporations were merged on 30.01.2006 and approval for the newly formed Corporation was granted from 01.07.2005.

9. No doubt, the order dated 30.01.2006 of the Commissioner of Income Tax-II, Tiruchirappalli states that merger of the Gratuity Funds had approval from 01.07.2005. Merely because an order has been passed on 30.01.2006 with an approval from 01.07.2005, *ipso facto* would not mean

that approvals granted to the individual transferees have ceased to exist.

10. We do not find any merit in this Tax Case Appeal. The substantial question of law raised in this Appeal has to be answered against the Appellant/Income Tax Department and in favour of the Respondent Corporation.

11. In the result, this Tax Case Appeal is dismissed. No costs.

(S.S.S.R., J.) (C.S.N., J.)
18.03.2025

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Index : Yes / No

Neutral Citation : Yes / No

Speaking Order (or) Non-Speaking Order

To

1.The Income Tax Appellate Tribunal,
"D" Bench, Chennai.

2.The Commissioner of Income Tax,
Chennai.

3.Tamil Nadu State Transport
Corporation (Kumbakonam),
27, Railway Station New Road,
Kumbakonam – 612 001.

S.S.SUNDAR, J.
and
C.SARAVANAN, J.

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