



TCA Nos.187 & 188 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.08.2025

PRONOUNCED ON: 16.09.2025

CORAM

**THE HONOURABLE MR.MANINDRA MOHAN SHRIVASTAVA,
CHIEF JUSTICE**

AND

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

TCA Nos. 187 & 188 of 2016

The Commissioner Of Income Tax
Chennai.
appeals

... Appellant in both

Vs

M/s.India Cements Ltd.,
827, Anna Salai, Chennai-02.
appeals

... Respondent in both

Common Prayer: Appeals filed under Section 260A of the Income Tax Act, 1961 against the common order of Income Tax Appellate Tribunal, "C" Bench, Chennai, dated 18.02.2014 passed in ITA.Nos.777/Mds/2008 & 710/Mds/2009 for the assessment years 1999-2000 and 2000-2001, respectively.



TCA Nos.187 & 188 of 2016

For Appellant : Mr.T.Ravikumar
in both appeals Sr.Standing Counsel for IT/Revenue

For Respondent : Mr.R.Vijayaraghavan
in both appeals for M/s.Subbaraya Aiyar
Padmanabhan Ramamani

COMMON JUDGMENT
(Delivered by SUNDER MOHAN, J)

These Tax Case Appeals viz., TCA Nos.187 and 188 of 2016 have been filed by the revenue against the common order dated 18.02.2014 passed by the Income Tax Appellate Tribunal (ITAT) "C" Bench, Chennai, which pertains to the Assessment Orders for the Years 1999-2000 and 2000-2001, respectively, in respect of the same Assessee/Respondent. There are three common questions of law raised in both the appeals. In Tax Case Appeal No.188 of 2016, two other questions of law have been raised. Hence, both the appeals viz., Tax Case Appeal Nos.187 and 188 of 2016 are heard and decided together.

2. Tax Case Appeal No.187 of 2016 was admitted on 20.02.2017 on the following substantial questions of law:

"1.Whether on the facts and in the circumstances of



WEB COPY



TCA Nos.187 & 188 of 2016

the case, the Tribunal was right in holding that the addition made on account of VRS expenditure and the expenditure towards newly launched products was not proper?

2. Whether on the facts and in the circumstances of the case, the Tribunal was legally justified in holding that the assessee was permitted to have two set of accounts one for the purpose of shareholders and another for the purpose of computation of book profits under Section 115JA of the Income Tax Act? and

3. Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the assessee deferred sales-tax liability which was assigned to another entity was not assessable under Section 41(1) of the Income Tax Act?"

3. Tax Case Appeal No.188 of 2016 was also admitted on the same day, i.e., 20.02.2017 on the following substantial questions of law:

"1. Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the addition made on account of VRS expenditure and the expenditure towards newly launched products was not proper?

2. Whether on the facts and in the circumstances of the case, the Tribunal was legally justified in holding that the assessee was permitted to have two set of accounts one for the purpose of shareholders and another for the purpose



WEB COPY



TCA Nos.187 & 188 of 2016

of computation of book profits under Section 115JA of the Income Tax Act?

3. Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the assessee deferred sales-tax liability which was assigned to another entity was not assessable under Section 41(1) of the Income Tax Act?

4. Whether the Tribunal was right in quashing the reassessment proceedings by allowing the assessee to invoke to Rule 27 of the Appellate Tribunal Rules? and

5. Whether the finding of the Tribunal is proper after quashing the reassessment order and upheld the findings of the CIT(A) by dealing the matter on merits which is against law?"

4. Shorn of unnecessary details, the brief facts leading to the above appeals are as follows:

(a) After the assessee had filed its return of income for both years, the Assessing Officer had issued independent notices under Section 148 of the Income Tax Act [hereinafter referred to as '**the Act**'], for reopening the assessment on the ground that the book profit offered by the assessee differed from the book profit prepared for the Annual General Meeting and hence certain income had escaped assessment. On receipt of the replies for both the



TCA Nos.187 & 188 of 2016

assessment years, the Assessing Officer made certain additions *inter alia* under the heads "Cessation of Sales Tax Liability"; "Book Profit under Section 115JA"; and "Expenses for product brand launching in the form of special discounts/expenses for promoting new brand of Cements" and increased the tax liability of the assessee.

(b). The assessee aggrieved by the said assessment orders challenged them on the ground that reopening was done after the end of four years and since it was only a change of opinion, the assessment orders were invalid in law. The assessee also challenged the orders on merits.

(c). The Commissioner of Income Tax (Appeals) – III, Chennai [hereinafter referred to as '**the CIT(A)**'] rejected the ground relating to the legality of reopening of the assessment. However, for both the assessment years, the CIT(A) accepted in part the claim of the assessee. Accordingly, the appeals filed by the assessee were partly allowed.



TCA Nos.187 & 188 of 2016

WEB COPY (d). The revenue challenged the orders passed in both the appeals in ITA No.777/Mds/2008 and ITA No.710/Mds/2009. In ITA No.710/Mds/2009, the assessee filed an application under Rule 27 of the Income Tax (Appellate Tribunal) Rules, 1963, [hereinafter referred to as '**the ITAT Rules**'] supporting the order passed by CIT(A) on the ground that the reassessment was erroneous, which was raised by him before the CIT(A). The ITAT dismissed the appeals filed by the Revenue and in ITA No.710 (supra) held that the reassessment was invalid as it was only a change of opinion. The revenue aggrieved by the common order of the ITAT in the two appeals, has filed the instant appeals.

5. The learned counsel for the appellant/revenue submitted as follows:

(i) (a) As regards the first question of law, the learned counsel for the appellant/revenue submitted that the CIT(A) and the ITAT, ought not to have accepted the assessee's case for deleting the addition made by the Assessing Officer for computing the book



TCA Nos.187 & 188 of 2016

profit towards Voluntary Retirement Scheme [VRS] expenditure and expenditure incurred on the newly launched products; and that the assessee had maintained two sets of accounts and therefore, the Assessing Officer was right in proceeding on the basis of the profit and loss account as admitted in the printed Annual Report presented in the Annual General Meeting of the assessee company. The learned counsel therefore submitted that there cannot be two sets of accounts and both the CIT(A) and the ITAT erroneously ignored this aspect.

(i) (b) As regards the expenditure for the product launch and the brand advertisement, the learned counsel for the appellant/revenue submitted that there was no evidence produced by the assessee to prove the expenses incurred and therefore, the CIT(A) without any basis accepted the entire expenditure of Rs.20,64,77,946/- claimed by the assessee, though the ITAT had restricted it to 10% of the said amount, viz., Rs.2,06,47,794/-. He further submitted that having held that there was no evidence to prove the expenses, the ITAT erred in law, in accepting the



TCA Nos.187 & 188 of 2016

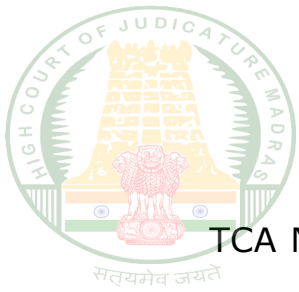
assessee's claim to the extent of 10% under this head.

WEB COPY

(ii) As regards the second question of law, the learned counsel for the appellant/revenue submitted that since maintenance of two sets of accounts, one for the purpose of shareholders and another for computation of book profit under Section 115JA of the Act, cannot be permitted, the impugned order, which held that there was no bar in maintaining two sets of accounts, is patently illegal and therefore, is liable to be set aside.

(iii) As regards the third question of law, the learned counsel for the appellant/revenue submitted that the ITAT erred in holding that the deferred sales-tax liability that was assigned to another entity was not assessable under Section 41(1) of the Act; and that the ITAT ought to have held that there was a cessation of liability and consequently the said amount was taxable in the hands of the assessee.

(iv) As regards the fourth question of law, which arises only in



TCA Nos.187 & 188 of 2016

TCA No.188 of 2016, the learned counsel for the appellant/revenue submitted that CIT(A) had upheld the reassessment and held against the revenue on merits; that the assessee had not challenged that finding of the CIT(A); and that therefore, the ITAT ought not to have held that reassessment was erroneous and set aside the assessment order. He relied upon the judgment of the Bombay High Court in **Commissioner of Income Tax-4 v. Jamnadas Virji Shares & Stock Brokers (P) Ltd.**, reported in [(2012) 21 taxmann.com 27 (Bom.)], the judgment of Punjab and Haryana High Court in **Self Knitting Works v. Commissioner of Income Tax, Central Circle, Ludhiana**, reported in [(2014) 51 taxmann.com 137 (Punjab & Haryana)] and the judgment of Delhi High Court in **Commissioner of Income Tax, Central-II v. Divine Infracon (P.) Ltd.**, reported in [(2015) 64 taxmann.com 472 (Delhi)], in support of his submissions.

(v) As regards the fifth question of law in TCA No.188 of 2016, the learned counsel for the appellant/revenue submitted that having held that the reassessment was bad in law, the ITAT ought not to



TCA Nos.187 & 188 of 2016

have confirmed the finding of CIT(A) on merits and relied upon the judgment of this Court in ***Rajam Chettiar Mahasivarathiri Kattalai v. Special CIT and Commr. of Agrl. IT, Chepauk, Chennai-5*** reported in ***[(2000) 241 ITR 794 (Mad)]*** and in ***Commissioner of Income Tax v. Matrix Intel P Ltd.***, reported in ***[(2007) 294 ITR 257 (Mad)]***.

6. *Per contra*, the learned counsel for the respondent/assessee made the following submissions:

(i) (a) As regards the first question of law, the learned counsel submitted that the question raised by the revenue is factual in nature and on facts, the CIT(A) and the ITAT had rightly held in favour of the assessee and hence no interference is called for. He further submitted that though the CIT(A) allowed the entire expenses of Rs.20,64,77,946/- claimed by the assessee, the ITAT had allowed only 10%, which is reasonable in the facts and circumstances of the case.



TCA Nos.187 & 188 of 2016

(i) (b) As regards expenditure towards VRS payments, the learned counsel for the respondent/assessee submitted that the same was allowable in the light of the decision of this Court in **CIT v. Simpson & Co. Ltd.**, reported in [(1998) 230 ITR 703].

(ii) The learned counsel for the respondent/assessee would further submit that the second question of law is covered by the judgment of the Karnataka High Court in **CIT v. Karnataka Soaps and Detergents**, reported in [(2015) 59 taxmann.com 43 (Karnataka)] and the challenge to the said order was negated by the Hon'ble Supreme Court in SLP (C) CC No.19860 of 2015 dated 16.11.2015 [reported in (2015) 64 taxmann.com 378 (SC)]. He also relied upon the judgment of the Hon'ble Gujarat High Court in **DCIT v. Arvind Mills Ltd.**, reported in [(2009) 314 ITR 251 (Guj.)].

(iii) As regards the third question of law, viz., sales-tax deferred liability, the learned counsel for the respondent/assessee relied upon the judgment of the Hon'ble Supreme Court in **CIT vs.**



TCA Nos.187 & 188 of 2016

Balkrishna Industries Ltd., reported in **[(2017) 88 taxmann.com 273 (SC)]**, the judgment of the Karnataka High Court in **CIT v. McDowell & Co. Ltd.**, reported in **[(2014) 52 taxmann.com 15 (Karnataka)]** and submitted that the third question of law is covered by these two judgments in favour of the assessee.

(iv) As regards the fourth and fifth questions of law raised in TCA No.188 of 2016, relating to the applicability of Rule 27 of the ITAT Rules, the learned counsel submitted that the assessee was entitled to raise this issue of the validity of the reassessment even though it was decided against the assessee by the CIT(A) and no appeal was filed by them. The learned counsel relied upon the judgment of this Court in **CIT v. Abdul Rahman Sait**, reported in **[(2008) 306 ITR 142 (Mad)]**, the judgment of the Delhi High Court in **Sanjay Sawhney v. PCIT** in **[(2020) 273 Taxman 332 (Del)]** and the order of this Court in the assessee's own case **[TCA No.452 of 2009 - Commissioner of Income Tax v. Indian Cements Ltd. Dated 04.03.2020]** for another assessment



TCA Nos.187 & 188 of 2016

year, which was held in favour of the assessee as regards the issue of the applicability of Rule 27 of the ITAT Rules.

7. We have considered the rival submissions and perused the records.

8. In respect of appeal viz., ITA No.710/Mds/2009 (impugned in TCA No.188 of 2016), wherein the assessee invoked Rule 27 of ITAT Rules and submitted that reassessment was invalid, the ITAT held that the reopening was made four years from the end of the Assessment Year; that there was nothing on record to show that the assessee had failed to disclose fully and truly all the particulars of the income; that the Assessing Officer ought not to have reopened the assessment as it was only a change of opinion and accordingly, set aside the reassessment. The ITAT also held that the findings of the CIT(A) are confirmed in accordance with Rule 27 of the ITAT Rules.

9. The fourth question of law in T.C.A.No.188 of 2016 pertains



TCA Nos.187 & 188 of 2016

to this aspect. We would deal with the same first.

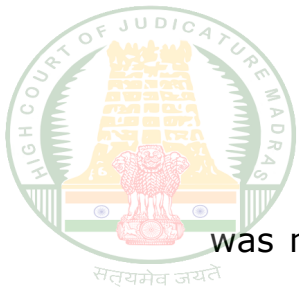
WEB COPY

10. Rule 27 of the ITAT Rules reads as follows:

“Respondent may support order on grounds decided against him - The respondent, though he may not have appealed, may support the order appealed against on any of the grounds decided against him.”

11. In the instant case, it is not in dispute that the assessee had filed the application under Rule 27 of the ITAT Rules in the appeal in ITA No.710/Mds/2009, the order that is impugned in TCA No.188 of 2016. The assessee in its appeal before the CIT(A) as stated earlier, had challenged the reassessment before the CIT(A) and the said challenge was rejected. In such circumstances, we see no reason why the ITAT could not have accepted this ground raised by the assessee in its Rule 27 application before the ITAT.

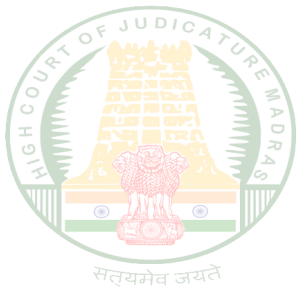
12. In the decision of the Bombay High Court relied on by the appellant/revenue in ***Jamnadas Virji Shares & Stock Brokers (P) Ltd.'s case*** (supra), the benefit of Rule 27 of the ITAT Rules



TCA Nos.187 & 188 of 2016

was not permitted since the assessee therein had filed an appeal / cross objection and withdrew the same. Therefore, we are of the view that the said decision would have no application to the interpretation of Rule 27 of the ITAT Rules.

13. Similarly, the Punjab and Haryana High Court in ***Self Knitting Works case*** (supra) (which was relied upon by the revenue) had not held in clear terms that Rule 27 of the ITAT Rules would be inapplicable in such circumstances. Therefore, the said decision also would not be of any avail to the appellant/revenue.



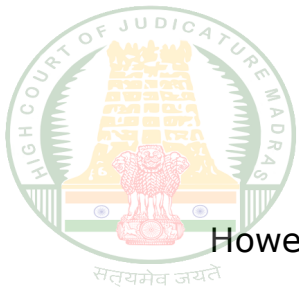
TCA Nos.187 & 188 of 2016

14. (i) The other decision relied upon by the revenue, viz.,

Divine Infracon (P.) Ltd.'s case (supra), would also be of no avail to the revenue.

(ii) That was a case where the CIT(A) had held that certain additions were beyond the scope of assessment under Section 153A of the Act. In respect of certain unexplained credits, the CIT(A) sustained the addition of a certain sum of money under Section 68 of the Act. The revenue had not challenged the finding of the CIT(A) as regards the additions made under Section 153A. The assessee had challenged the finding with regard to additions made under Section 68 of the Act. In that appeal, the revenue made an application under Rule 27 of the ITAT Rules, raising a ground challenging the order relating to Section 153A of the Act.

(iii) In that context, the Delhi High Court held that it would not be permissible for the revenue to raise that issue by invoking Rule 27 of the ITAT Act in the absence of any appeal challenging that finding. In that case, there were two issues and the decision in one issue was not dependent on the decision on the other issue.



TCA Nos.187 & 188 of 2016

However, it is not so in this case.

WEB COPY

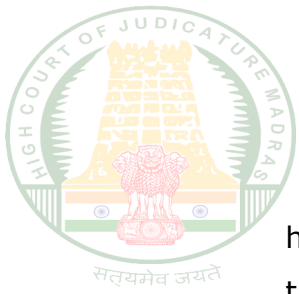
15. This issue came up for consideration earlier before the Division Bench of this Court in **Abdul Rahman Sait's case** (supra) The relevant portion of the said judgment reads as follows:

"Incidentally, an attempt was also made on behalf of the Revenue that the Tribunal ought not to have held that the reopening of assessment was not in order, as the finding of the Commissioner that reopening of assessment was held to be in order remain unchallenged by the assessee. But, in our considered opinion, Rule 27 of the Income Tax Rules, which provides that the respondent, though he may not have appealed, may support the order appealed against on any of the grounds decided against him, takes care of the right of the assessee to sustain the order of the Commissioner."

The above observations squarely apply to the facts of this case.

16. In fact, the Delhi High Court in **Sanjay Sawhney's case** (supra) had gone to the extent of observing that Rule 27 of the ITAT Rules does not even contemplate any application in writing. The relevant observations read as follows:

"26. The upshot of the above discussion is that Rule 27 embodies a fundamental principal that a Respondent who may not



WEB COPY



TCA Nos.187 & 188 of 2016

have been aggrieved by the final order of the Lower Authority or the Court, and therefore, has not filed an appeal against the same, is entitled to defend such an order before the Appellate forum on all grounds, including the ground which has been held against him by the Lower Authority, though the final order is in its favour. In the instant case, the Assessee was not an aggrieved party, as he had succeeded before the CIT (A) in the ultimate analysis. Not having filed a cross objection, even when the appeal was preferred by the Revenue, it does not mean that an inference can be drawn that the Respondent- assessee had accepted the findings in part of the final order, that was decided against him. Therefore, when the Revenue filed an appeal before the ITAT, the Appellant herein (Respondent before the Tribunal) was entitled under law to defend the same and support the order in appeal on any of the grounds decided against it. The Respondent - assessee had taken the ground of maintainability before Commissioner (Appeals) and, therefore, in the appeal filed by the Revenue, it could rely upon Rule 27 and advance his arguments, even though it had not filed cross objections against the findings which were against him. The ITAT, therefore, committed a mistake by not permitting the assessee to support the final order of CIT (A), by assailing the findings of the CIT(A) on the issues that had been decided against him. The Appellant - assessee, as a Respondent before the ITAT was entitled to agitate the jurisdictional issue relating to the validity of the reassessment proceedings. We are, therefore, of the considered opinion that the impugned order passed by the ITAT suffers from perversity in so far as it refused to allow the Appellant - assessee (Respondent before the Tribunal) to urge the grounds by way of an oral application under Rule 27. The question of law as



WEB COPY

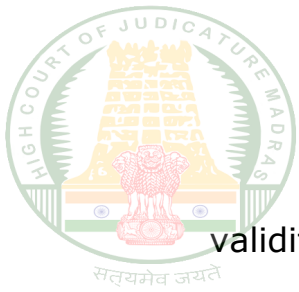


TCA Nos.187 & 188 of 2016

framed is answered in favour of the Appellant - assessee and resultantly the impugned order is set aside. The matter is remanded back before the ITAT with a direction to hear the matter afresh by allowing the Appellant- assessee to raise the additional grounds, under Rule 27 of the ITAT Rules, pertaining to issues relating to the assumption of jurisdiction and the validity of the reassessment proceedings under Section 153C of the Act.”

17. From the above, it would be clear that an assessee in an appeal filed by the revenue before the ITAT is entitled to defend the order of the CIT(A) on any of the grounds rejected by CITA(A) by invoking Rule 27 of the ITAT Rules. In fact, the Rule does not specify any particular format in which the said grounds can be raised before the Tribunal and hence, an oral application is also permissible. However, it is desirable that a written application be made which would give an opportunity to the revenue to respond. The assessee cannot, however, raise a totally new ground before the Tribunal that was not raised by him before the CIT(A) by virtue of this provision.

18. In this case, as submitted earlier, the respondent/assessee had raised the ground with regard to the

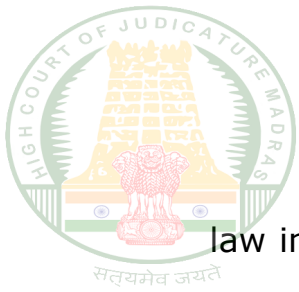


TCA Nos.187 & 188 of 2016

validity of the reassessment before the CIT(A). The assessee had filed a written application before the ITAT under Rule 27 of the ITAT Rules, seeking to sustain the order passed by the CIT(A) also on the validity of reassessment. The ITAT was justified in the facts and circumstances in accepting the ground raised by the assessee that the reassessment was only a change of opinion and hence unsustainable in law. **Therefore, we answer the fourth substantial question of law in favour of the respondent/assessee.**

19. As regards the fifth substantial question of law in TCA No.188 of 2016, we are of the view that since the ITAT had found that reopening of assessment was not sustainable, the ITAT was not justified in upholding the finding of the CIT(A) on merits. **Therefore, the fifth substantial question of law has to be answered in favour of the revenue and accordingly, it is answered in favour of the revenue.**

20. Since we have answered the fourth substantial question of

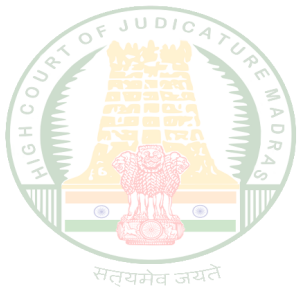


TCA Nos.187 & 188 of 2016

law in favour of the assessee, it is not necessary to answer the first three questions of law raised in this appeal (T.C.A.No.188 of 2016).

21. We shall now deal with the questions of law raised in T.C.A.No.187 of 2016. The first substantial question of law has two parts to it. The first part deals with the additions made on account of VRS expenditure and the second part deals with expenditure towards newly launched products.

(i) (a) As regards the expenses relating to payment to the employees under the Voluntary Retirement Scheme (VRS), the ITAT Act observed that this Court in ***Simpson & Co. Ltd.'s case*** (supra), had recognized VRS expenditure as revenue expenditure. We find no infirmity in the said finding. That apart, in this appeal which pertains to assessment year 1999 – 2000, it must be noted that the VRS expenditure was not disallowed by the Assessing Officer. Hence, this question does not arise in this appeal, as rightly contended by the learned counsel for the assessee.

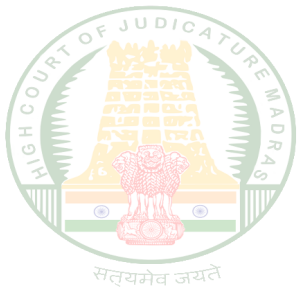


TCA Nos.187 & 188 of 2016

WEB COPY

(i) (b). As regards the advertisement expenditure towards newly launched products, the CIT(A) accepted the entire expenditure claimed by the assessee. Though it is the case of the revenue that no vouchers were produced by the assessee, the CIT(A) rightly found that it would not be easy for the assessee to locate the vouchers after seven years.

(i) (c). The CIT(A) also found that the assessee had produced certain bank statements and entries to show that the assessee had incurred expenses towards advertisement for the launch of new products. The ITAT found that though relevant evidence was not produced by the assessee to prove the expenses, the fact that the assessee had incurred expenses towards advertisement charges and incentives to dealers cannot be ruled out. It is not the revenue's case that the assessee had not spent any money towards advertisement and payment of incentive to dealers. However, the ITAT held that the entire expenditure claimed cannot be allowed and restricted it to 10% of the claim.



TCA Nos.187 & 188 of 2016

(i) (d). The findings of the CIT(A) and the ITAT would indicate that the assessee had actually incurred expenses, which has not been disputed by the revenue. It is only in the quantum that there is a dispute. The ITAT's order in restricting the expenditure to 10% of what was claimed by the assessee, though, is without basis, cannot be said to be unjustified or perverse in the facts and circumstances of this case. In the absence of definite evidence on either side with regard to quantum, we are not inclined to interfere with the factual finding of the ITAT. **Hence, the first substantial question of law is answered in favour of the assessee.**

(ii) (a). As regards the second question of law, it is the assessee's case that the company in its books of account has treated VRS expenditure as well as advertisement expenditure incurred on the introduction of new products as deferred revenue expenses and written them off over a period of five years. However, in the computation of taxable income under Section 115JA of the Act, the entire expenditure of VRS and advertisement expenses was claimed as deductions. It is not disputed by the



TCA Nos.187 & 188 of 2016

assessee that the book profit for the purpose of Section 115JA and that which was reported to the shareholders were different.

(ii) (b). It is not the case of the revenue that the accounts so prepared by the assessee were not in accordance with Parts II and III of Schedule VI to the Companies Act. The assessee cannot be denied the benefit of actual expenditure incurred merely because the said expenditure is not deducted and it is shown as a deferred expenditure in their profit and loss account presented to the shareholders in the Annual General Meeting. Once it is found that the assessee had incurred the said expenditure and the accounts are in accordance with Parts II and III of Schedule VI of the Companies Act, 1956, the revenue cannot have any grievance. In similar circumstances, the Karnataka High Court in **Karnataka Soaps and Detergents case** (Supra) held as follows:

"14. It is not in dispute that the assessee has incurred the expenses as stated above for the years 1999-2000, 2000-01 and 2006-07. The net profit could be determined only after deducting the aforesaid amount. The assessee is seeking for deduction of the said amount which has actually incurred. However, in the P & L account which is printed for the purpose



WEB COPY



TCA Nos.187 & 188 of 2016

of showing it to the shareholders in order to show that they have earned some profits, they do not want to deduct the entire amount. They want to defer these expenses for the subsequent years in which they intend to earn profits because of the expenditure in those years. Therefore, the figure of profits shown in the printed balance sheet is more than the profit earned by the assessee/company in terms of the books of accounts maintained according to Part-II and Part-III of Schedule VI of the Companies Act.

15. The argument is even though they have incurred the entire expenditure as in the printed P & L account, the same is not shown and a portion of it is shown as deferred expenditure. That portion as deferred expenditure cannot be deducted. There cannot be two balance sheets – one for the purpose of income tax and another for the purpose of showing it to the shareholders under the Income Tax Act and therefore, it was contended that the order passed by the Tribunal is incorrect.

16. As is clear from Section 115JA of the Act, it deals with the 'deemed income'. In other words it is not the actual income earned by the assessee. The object behind it is to prevent the assessee from adjusting the accounts or manipulating the accounts so as to avoid payment of tax on the ground that they have not earned any profit at all. Therefore, the said provision was introduced insisting of preparation of profit and loss account for the relevant previous year in accordance with the provisions of Part-II and III of Schedule-VI to the Companies Act, 1956. Once such an account is prepared and certified by the auditors, the same becomes the basis for levying tax on book profit. When once the assessee has incurred an expenditure and it is



WEB COPY



TCA Nos.187 & 188 of 2016

deducted in terms of Part-II of Schedule-VI of the Companies Act and the profit is arrived at, merely because in the printed P & L account for the purpose of showing to the shareholders that a profit is made by the Company, the entire expenditure is not deducted and a portion of it is shown as a deferred expenditure, the assessee cannot be denied the benefit of actual expenditure incurred. The assessee is not showing the actual expenditure incurred to avoid payment of tax. On the contrary when the actual expenditure is given deduction to, the profit margin gets reduced. It is by showing it to the P & L account, a portion of it as a deferred payment, artificially the profit has gone up. The object of Section 115JA being to avoid adjustment of account, manipulation of figures to avoid payment of tax. When the assessee has actually incurred expenditure and the tax liability is less when compared with the net profit arrived at after giving deduction to the actual expenditure, the tax payable is on that net profit and not on the fancy figure shown in the P & L account for the purpose of showing profit to the shareholders. In other words, to find out what is net profit one has to look into the books of accounts maintained by the company and the profit and loss account prepared on the basis of such book of accounts. What is shown in the printed balance sheet is for the benefit of the shareholders as it will not reflect the true state of affairs and that cannot be made the basis for levying tax under the Act. This is precisely what the Tribunal has held. Neither under the Companies Act nor under the Income Tax Act, this concept of deferred expenditure is recognized. That is a pathology used by the chartered accountants to show to the shareholders that the company has made profit though it has



WEB COPY



TCA Nos.187 & 188 of 2016

not earned profits. In other words it is nothing but a window dressing and the authority should not be misled or guided by this balance sheet which is prepared to satisfy the shareholders. It is the P & L account prepared on the basis of the books of accounts as contemplated in Part-II of Schedule VI which should form and assist to find out what is the profit earned and on that profit, tax is levied."

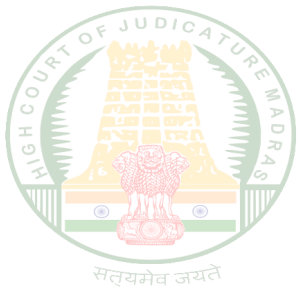
(ii) (c) The challenge to the above judgment was rejected by the Hon'ble Supreme Court in SLP(C) CC.No.19860 of 2015 vide order dated 16.11.2015. The same view was taken by the Gujarat High Court in **Arvind Mills Ltd.'s case** (supra). Therefore, in the absence of any allegation that the profit and loss account did not adhere to Parts II and III of Schedule VI of the Companies Act, the appellant's claim with regard to expenditure cannot be rejected as rightly held by CIT(A) and the ITAT. **Therefore, the second substantial question of law is also answered in favour of the assessee.**

22. The third substantial question of law relates to the Taxability of the discounted value of the deferred Sales-Tax



TCA Nos.187 & 188 of 2016

Liability. The assessee had set up a new undertaking in the State of Tamil Nadu. The State under a Scheme to attract investments permitted the Sales Tax collected by the new undertakings to be converted as a loan and payable after twelve years. In the instant case, the assessee had a liability of Sales Tax of Rs.31.75 Crores treated as a loan payable after twelve years. The assessee had assigned this outstanding future liability of Rs.31.75 Crores to another company for a consideration of Rs.5,94,20,288/- (Rs.5.94 Crores) being the Net Present Value of Rs.31.75 Crores payable after twelve years. The assessee in this case had offered the difference of Rs.25,81,17,000/- as income for computing tax liability. The revenue sought to include the difference amount i.e., Rs.5.94 Crores also as income, considering it to be a cessation of liability. It is the assessee's case that since Rs.5.94 Crores represented the Net Present Value of the future tax of Rs.31.75 Crores payable at the end of twelve years, there was no cessation of liability and the assessee need not even have offered the said sum of Rs.25,81,17,000/- as income for computation of tax.



TCA Nos.187 & 188 of 2016

23. Be that as it may. It is not the revenue's case that the Net Present Value of the tax of Rs.31.75 Crores payable after twelve years was not Rs.5.94 Crores. Therefore, assignment of the said liability for the value of Rs.5.94 Crores would not be cessation of liability, as on such assignment at that value, the entire liability to pay the tax stood discharged. Therefore, the claim of the revenue that Section 41(1) of the Act is attracted is misconceived. The CIT (A) and the ITAT have rightly held against the revenue on this aspect.

24. Further this issue is squarely covered by the Judgment of the Hon'ble Supreme Court in **CIT vs. Balkrishna Industries Ltd.**, reported in **[(2017) 88 taxmann.com 273 (SC)]**, and the judgment of the Karnataka High Court in **CIT v. McDowell & Co. Ltd.**, reported in **[(2014) 52 taxmann.com 15 (Karnataka)]**. Therefore, the third substantial question of law is answered in favour of the assessee.

25. Though we have answered one substantial question of



TCA Nos.187 & 188 of 2016

law, viz., the fifth substantial question of law, in TCA No.188 of 2016, in favour of the appellant/revenue, in view of our answers to the other questions of law in favour of the respondent/assessee, both the appeals are liable to be dismissed and hence, dismissed. There shall be no order as to costs.

(MANINDRA MOHAN SHRIVASTAVA, CJ)
16.09.2025

(SUNDER MOHAN,J)

Index : Yes/No
Neutral Citation : Yes/No
ars/dk



TCA Nos.187 & 188 of 2016

WEB COPY

- To
1. The Income Tax Appellate Tribunal,
Chennai Bench 'C',
Chennai.
 2. The Commissioner of Income Tax (Appeals)- III,
Chennai



WEB COPY



TCA Nos.187 & 188 of 2016

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

ars

Pre-delivery common Judgment in
TCA Nos.187 & 188 of 2016

16.09.2025