



WEB COPY

T.C.(A).No.632 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16-04-2026

CORAM

**THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN
AND
THE HONOURABLE MR. JUSTICE R.SAKTHIVEL**

Tax Case (Appeal).No. 632 of 2010

Commissioner Of Income Tax,
Chennai.

... Appellant

Vs.

M/s.Pentamedia Graphics Ltd,
25, I Main Road,
United India Colony,
Kodambakkam,
Chennai - 600 024.

... Respondent

Prayer: Appeal under Section 260A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Madras 'B' Bench, dated 24.03.2008 in ITA No.554/Mds/2007.

For Appellant: Dr.S.Sathiyarayanan
Senior Standing Counsel
For Respondent: Mr.G.Baskar,
for Mr.N.Muthukumar

J U D G M E N T

(Order of the Court was made by G.Jayachandran J.)

The respondent, M/s.Pentamedia Graphics Limited, filed its return of income for the assessment year 2003-04 on 01.12.2002. The case was selected for scrutiny and it was found that the aggregate value of international transactions made by the assessee exceeded Rs.5 crores. Hence, the case was referred to



Transfer Pricing Officer (TPO). A notice under Section 143(2), along with questionnaires, issued to the assessee company. After discussions with the representative of the assessee company, the Assessing Officer computed the taxable income after making the following disallowance/adjustments:

(a) Consultancy charges amounting to Rs.50,50,571/- included in the 'other income' was claimed by the assessee as business receipts, but for the purpose of computation of deduction under Section 10B the Assessing Officer excluded the said consultancy charges from the profits of the eligible business.

(b) While computing the eligible deduction under Section 10B the assessee company had deducted expenditure in foreign exchange both from the export and total turnover, but the Assessing Officer did not allow the foreign exchange expenditure to be deducted from the total turnover. As a result, the claim under Section 10B got restricted to Rs.1.94 crores as against the assessee's original claim of Rs.3.99 crores.

(c) As per the Tax Audit Report export turnover stood at Rs.239.21 crores. The Assessing Officer noticed that out of this a sum of Rs.115.55 crores only was received by the assessee company in convertible foreign exchange within the extended time limit. Accordingly, the export turnover of the assessee company was restricted by the Assessing Officer to the said sum of Rs.115.55 crores. This restriction also affected the quantum of eligible deduction under Section 10B.



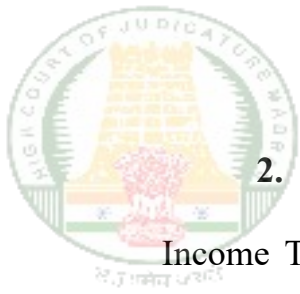
(d) A sum of Rs.38,61,680/- representing ROC fees paid in connection with increase in the authorised share capital was disallowed by the Assessing Officer on the ground of being capital expenditure.

(e) Delayed employees' contribution to PF and ESI amounting to Rs.20,08,411/- was disallowed by the Assessing Officer, under Section 2(24)(x)/36(1) (va). Belated employer's contribution to PF and ESI amounting to Rs.20,20,549/- was disallowed by the Assessing Officer under Section 43B.

(f) Depreciation amounting to Rs.59,84,18,000/- as per the Companies Act debited to Profit & Doss Account was added back by the Assessing Officer. But she omitted to allow eligible depreciation computed in accordance with the I.T Rules.

(g) A sum of Rs.8,73,00,000/- out of interest on borrowed capital was disallowed by the Assessing Officer on account of interest-free advances made to the subsidiary companies.

(h) The assessee company during the year had earned corporate dividend amounting to Rs.3,65,51,000/- in respect of which deduction of equivalent amount under Section 80M was claimed by its. This deduction has been restricted by the Assessing Officer to Rs.3,47,23,450/- by netting off the estimated expenditure amounting to 5% of gross dividend against the dividend income."



2. The assessee company went on appeal before the Commissioner of Income Tax (Appeals) in ITA No:133/2006-07. The Appellate Authority partly allowed the assessee's appeal. Particularly, accepted the plea of the assessee challenging the Assessing Officer's decision to modify the total turnover for the purpose of calculating the deduction under Section 10B of the Income Tax Act, by disallowing the deduction of expenditure in foreign exchange both from the export turnover and the total turnover for computing the deduction under Section 10A was upheld in favour of the assessee. Likewise, the assessee challenges in respect of Assessing Officer's decision to disallow the interest amount to an extend of Rs.8.73 crores, by holding it as increase of advance to the subsidiaries, also held in favour of the assessee observing that the Assessing Officer had failed to note that this was only a book entry between loans and advance and sundry debtors and no real transfer of funds involved. Thus, accepted the plea of the assessee and the disallowance was deleted.

3. The Revenue, being aggrieved by the above order dated 17.11.2006 of the Commissioner of Income Tax (Appeals) passed in I.T.A.No:133/06-07, by partly allowing the appeal of the assessee, preferred appeal before Income Tax Appellate Tribunal (ITAT) in ITA.No:554/Mds/2003-04.



4. The Tribunal, *vide* order dated 24.03.2008, following its decision in ITA No:2148/Mds/2007 (which form part of the same order and subject matter in appeal T.C.(A).No.631/2010 pending before this Court), dismissed the appeal filed by the Revenue both in respect of Revenue's contention relating to the deduction from total income claimed by assessee towards foreign exchange expenditure for computing deduction under Section 10A and in respect of the allowability of interest amounts due from the subsidiary, The Income Tax Appellate Tribunal, referring the reasoning assigned by it in the connected appeal ITA.No:2148/Mds/2007, adopted the same reasoning and relied upon precedents to buttress its decision.

5. The Revenue is before us, being dissatisfied with the reasoning assigned by the ITAT for dismissing the revenue appeal.

6. At the time of admission, the following two substantial questions of law were framed by this Court.

1. Whether in the facts and circumstances of the case, the Tribunal was right in holding that deduction of expenditure in foreign exchange is allowable from the total turnover while computing deduction under section 10-A?



2. *Whether in the facts and circumstances of the case, the Tribunal was right in law in deleting the addition of interest of Rs.8.73 crores made towards diversion of interest bearing funds to subsidiaries without interest?*

Substantial Question of Law: No.1

The identical substantial question of law came up before the Hon'ble Division Bench of this Court in respect of the same assessee, formerly *M/s.Pentamedia Graphics Ltd.* This Court, following the dictum laid down in ***Commissioner of Income-Tax, Central-III vs. HCL Technologies Limited***, reported in **[2018] 404 ITR 719 (SC)**, held as follows:

“20. Even in common parlance, when the object of the formula is to arrive at the profit from export business, expenses excluded from export turnover have to be excluded from total turnover also. Otherwise, any other interpretation makes the formula unworkable and absurd. Hence, we are satisfied that such deduction shall be allowed from the total turnover in same proportion as well.”

In view of the above, position of law settled by the Division Bench of this Court following the dictum laid by Hon'ble Supreme Court in ***HCL Technologies Limited*** case cited supra. The substantial question of law held in favour of the assessee.

**Substantial Question of Law: No.2**

WEB COPY

This substantial question of law requires a fresh appreciation of facts. Based on the book entries, the Assessing Officer has considered the sum of Rs.70.39 crores as 'Loans and Advances' to the subsidiary Company and disallowed the proportionate interest. However, the statement of accounts and other material placed before the Appellate Authority had brought to light that no cash transaction was effected to the subsidiaries. Pending RBI approval, for the value of the material supplied to the subsidiary company, the assessee Company been paid as shares of the subsidiary Company. This explanation of the assessee been accepted by the Appellate Authority as well as the Tribunal and disallowance been reversed.

However, we find that whether the said investment in the subsidiary company is connected to any business expenditure is not been discussed either by the Appellate Authority or the Tribunal. The version of the assessee regarding the said investment has to be tested by the Assessing Officer afresh after affording opportunity to the assessee to provide necessary materials. For that limited purpose, the matter is remitted back to the Assessing Officer for fresh processing of computing the tax in respect of this transaction and complete the assessment preferably within three months.



7. As a result, the Tax Case Appeal is disposed with the above direction.

There shall be no order as to costs.

(Dr. G.JAYACHANDRAN, J.) & (R.SAKTHIVEL, J.)
16-04-2026

Index :Yes/No.
Neutral Citation :Yes/No.
bsm

To,
The Income Tax Appellate Tribunal, Madras.



WEB COPY

T.C.(A).No.632 of 2



Dr. G.JAYACHANDRAN J.
AND
R.SAKTHIVEL J.
bsm

T.C.A.No.632 of 2010

16-04-2026