IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29-01-2026

CORAM

THE HON'BLE DR.JUSTICE ANITA SUMANTH

AND

THE HON'BLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

TCA No. 259 of 2012

M/s Tamil Nadu Small
Industries, Development Corporation Ltd, Guindy
Industrial Estate, SIDCO Electronic Complex,
Chennai – 600 032.
..Appellant(s)

Vs

1. The Income Tax Officer (OSD)
   Circle III (1) Chennai.

2. The Secretary To Government
   Small Industries (SIC) Department, Secretariat,
   Chennai-9.
   [R2 is Suo Motu impleaded vide Order of this
   Court dated 03/12/2024 made in TCA.No.259 Of
   2012)]

..Respondent(s)

Prayer: Appeal filed under Section 260A of the Income Tax Act, 1961 against ITA.No.1660/Mds/2008 dated 30.04.2012 for the assessment year 2004-2005 on the file of Income Tax Appellate Tribunal, Chennai 'A' Bench.

For Appellant(s): Mr.A.S.Sriraman

For Respondent(s): Dr.S.Sathiyanarayanan
Senior Standing Counsel (for R1)
R2 – No appearance

JUDGMENT

(Judgment of the Court was delivered by Dr.Anita Sumanth J.)

The assessee challenges the order of the Income Tax Appellate Tribunal (‘ITAT’/‘Tribunal’), dated 30.04.2012, for assessment year (AY) 2004 – 2005.

2. We have heard the submissions of Mr.A.S.Sriraman, learned counsel for the appellant and Dr.S.Sathiyanarayanan, learned Senior Standing Counsel for the first respondent.

3. The substantial questions of law admitted on 04.02.2013 are as follows:-

> *1. Whether the Appellate Tribunal is correct in law in sustaining the disallowance of expenses incurred amounting to Rs.1,64,47,348/- in the assessment year 2003-04 and debited to the profit and loss account in the assessment year 2004-05, claimed as a deduction in the computation of taxable total income based on the rejection of the plea for reimbursement of such expenses by the Government of Tamil Nadu which fact was taken note of by the Board of Directors as reflected in the minutes dated 07.09.2004 which was prior to the adoption of the final accounts of the Appellant for the assessment year 2004-05?*
>
> *2. Whether the Tribunal is correct in law in rejecting the alternate plea of issuing appropriate direction for considering and allowing such expenses in the assessment year 2003-04 based on the wrong perception of their powers in disposing off*

the appeal before them within the scope of Section 254 of the Act?

4. The appellant is the Tamil Nadu Small Industries Development Corporation (SIDCO/assessee/appellant), a Government Company. It was assigned the maintenance and upkeep of six government properties, at Ambattur, Guindy, Thuvakudi, Kappalur, Mettur and Trivellore that were earlier under the control of the State Industries Promotion Corporation of Tamil Nadu Limited (SIPCOT).

5. Vide G.O.Ms.No.877 dated 01.07.1982, SIDCO was permitted to debit the government, for staff cost and maintenance expenditure up to a certain threshold. Clause (iv) of the aforesaid G.O., reads as follows:-

> *(iv) The staff cost and the maintenance expenditure should not exceed the percentage worked out with reference to capital cost of the Industrial Estates and Developed Plot Estates as indicated below:*
>
> 1) *Staff expenditure : 2%*
> 2) *Property tax, Water tax and other miscellaneous expenditure : 1%*
> 3) *Lumpsum provision for maintenance including minor works : 1%*

6. The appellant, in line with the above mandate, had been debiting expenditure to the extent permitted, in computing taxable income. While so, the appellant was advised that it was preferable that the expenditure be debited on actual basis to obviate financial prejudice. Hence, memoranda were submitted

to the Board on 27.10.2003 and 10.04.2003 seeking that the Board take necessary action to consider revising the G.O., and permit debiting on actual basis instead of imposing a cap on the expenditure.

7. The Government did not originally reject the proposal. In fact, it had sought particulars from the appellant in regard to its request, thus giving it hope that the proposal would ultimately be accepted. Various letters dated 03.12.2003, 10.12.2003, 06.02.2004, 20.04.2004 and 17.07.2004 from the assessee to the Government furnishing the particulars sought, and reiterating the proposal, have been placed before us. Ultimately, the proposal came to be rejected on 06.02.2004.

8. The above sequence of events is admitted, and evidenced by the documents that have been placed for our consideration. In the meantime, and pending consideration of the assessee's proposal, the appellant claimed expenditure on actuals relating to AY 2003-2004 of a sum of Rs.1,64,47,348/- relating to the expenses incurred, in AY 2004-2005. The claim was picked up for scrutiny at the time of the assessment, and the assessing authority rejected the same, on the basis that it related to the prior period. Despite the justification given by the appellant, the order of assessment finds concurrent confirmations at the first and second appellate stages as well.

9. We extract below, the conclusion of the Tribunal in this regard:-

'3.2. I have considered the submissions of the representative. Admittedly, the claim of expenditure does not relate to this year. The appellant is following mercantile system of accounting and, therefore, the expenditure relating to another year cannot be claimed in this year. Further, as per the Board meeting dated 10.04.2003, which is relevant for this year, the appellant decided to request the Government to reimburse the entire expenditure disregarding the ceiling of 4%. Thus, even the request was made only during this year. The Board meeting, in which it was decided to charge the entire expenditure to profit and loss account, was held on 07.09.2004, which was in the subsequent assessment year. In the circumstances, even if the contention of the appellant is accepted that in the absence of favourable orders, it was decided to debit the profit and loss account, the same took place only in the next year. Thus, there is no justification for claiming the expenditure in this year. I cannot direct the AO to allow deduction in the earlier year or in the next year as only the proceedings for the relevant assessment year is pending before me. The assessment proceedings for each assessment year is separate and I find that the expenditure is not allowable in this year. I, therefore, confirm the addition made by the AO.'

10. However, the Tribunal finds categorically that the genuineness of the expenditure incurred is not in question. The basis of the request by the assessee, for reimbursement of expenditure on actual basis, is also not in doubt. The State Comptroller and Auditor General had raised an objection in regard to the claim of expenditure partially, to the extent permitted by the G.O. We had impleaded learned Special Government Pleader in order to secure a copy of the audit note and a copy of the same, under cover of letter dated 27.01.2004, has been furnished.

11. The audit objection, reply thereto, and the explanatory note in the financials establish the ongoing deliberations in regard to the annual

maintenance, and expenditure incurred by the assessee in that regard. The relevant extract from the note of the Comptroller and Auditor General in relation to the maintenance charges reads as follows:-

> ***'Comments of the Comptroller and Auditor General of India under Section 619(4) of the Companies Act, 1956 on the Accounts of the Tamil Nadu Small Industries Development Corporation Limited for the year ended on 31 March, 2003.***
>
> ***Balance Sheet***
>
> *1. **Assets-Current Assets, Loans & Advances (Schedule-H)***
>
> ***Loans and Advances Rs.18.15 crore***
>
> *……………....*
>
> *2. **Profit and Loss Account Income Rs.48.04 crore***
>
> *This includes Rs.1.64 crore being the maintenance charges incurred on Government owned industrial estates. As per GO.Ms.No.877 dated 01.07.1982 the Company is entitled to receive only 4% of the capital cost based on the original value of the assets. The Company has accounted the entire expenditure incurred on such maintenance as income contrary to the Government orders. This resulted in overstatement of income and profit by Rs.1.64 Crore.*

12. The assessee has replied to the audit objection and indicated the action taken by them. The reply reveals the hope that they had fostered, that their request would be considered favourably. The reply reads as follows:-

> ***Addendum to the Directors Report***
>
> ***Reply to the comments of the Comptroller and Auditor General of India***
>
> ***1. Balance Sheet***
>
> ***………...***
>
> *2. PROFIT AND LOSS ACCOUNT – INCOME Rs.48.04 crores.*

The position regarding Government owned industrial estates has been duly disclosed in the Notes to Accounts (Note No.7 (iii) under Schedule - I). The Company has also addressed the Government in this regard and the Government have informed that the matter is under their active consideration.

13. This is thus, an issue that has been plaguing the assessee for many years and in the annual report of the appellant for the financial year 2001-02, we find the following note:-

…….

(iii) Based on the decision of the Board, the expenditure on Government Industrial Estates was debited to Government Account on actual basis during 2002-2003, instead of limiting to the ceiling fixed in G.O.Ms.No.877 Industries Department dated 01-07-1982. The Corporation anticipated favourable orders from the Government in this regard, in the absence of favourable orders from the Government, the Corporation has applied the ceiling fixed in the G.O and absorbed the expenditure in excess of 4% of the capital cost of Rs.9.99 Crores for the two years i.e. including that of the year 2002-2003 under various heads. Such excess expenditure amounts Rs.1,64,47,348/- for 2002-2003 and Rs. 1,48,72,000/- for 2003-2004.

The Break-up of such expenditure debited to respective Heads are as under:

Sl. No.	*Name of the Expenditure*	*Current Year 2003-2004*	*Previous year 2002-2003*	*Total*
1	Pay and Allowances	9136923.25	8798780.75	17935704.00
2	Employee Provident Fund	738451.01	847373.93	1585824.94
3	Medical Charges	258483.74	194999.05	453482.79
4	Staff Welfare Expenses	105320.00	134231.92	239551.92
5	Electricity Charges	1655537.12	2124172.56	3779699.68
6	Property Tax	9570.88	74281.59	83852.47
7	Water charges Paid	0.00	2176748.14	2176748.14
8	Legal Fees Paid	0.00	22059.90	22059.90
9	Insurance Charges	332.25	1414.65	1746.90
10	Office Contingencies	18654.97	9997.65	28652.62

11	*Conveyance Charges*	*4572.31*	*4393.13*	*8965.44*
12	*Travelling Allowances*	*40593.17*	*46379.48*	*86972.65*
13	*Dispensary Expenses*	*75.98*	*0.00*	*75.98*
14	*Stationery & Printing*	*16950.09*	*21971.51*	*38921.60*
15	*Postage, Trunk Call Charges*	*29417.06*	*45246.78*	*74663.84*
16	*Bank Charges*	*2623.88*	*3757.11*	*6380.99*
17	*Books & Periodicals*	*4471.22*	*6209.39*	*10680.61*
18	*Repairs & Renewals*	*0.00*	*0.00*	*0.00*
19	*Miscellaneous Expenses*	*0.00*	*2493.26*	*2493.26*
20	*Estate Maintenance*	*2826457.97*	*1932846.75*	*4759304.72*
21	*Refreshment charges*	*1853.13*	*0.00*	*1853.13*
22	*Unit Rent*	*21712.19*	*0.00*	*21712.19*
		1,48,72,000.22	***1,64,47,347.55***	***3,13,19,347.77***

14. In light of the aforesaid we are inclined to consider the alternate plea of the assessee for consideration of the expenses for AY 2003-04.

15. Dr.S.Sathiyanarayanan cites the judgements in *CIT V. Manick Sons*[1], *Madras Fertilizers Ltd. V. Commissioner of Income-tax*[2], *Morvi Industries Ltd. V. Commissioner of Income Tax*[3] and *Seshasayee Bros. (Travancore) (P.) Ltd V. Commissioner of Income Tax*[4]. We have carefully considered the aforesaid decisions solely in the context of whether the department may be directed to take note of the claim of expenditure for the previous year, that is, AY 2003-2004.

[1] [1969] 74 ITR 1 SC
[2] [1993] 71 Taxman 476 (Madras)
[3] [1971] 82 ITR 835 (SC)
[4] [1971] 82 ITR 442 (Kerala)

16. On a careful examination of all the material provided before us, we find that one thing is clear, that there is no doubt in regard to the genuineness of the expenditure incurred. Even before us, learned Standing Counsel does not dispute this aspect. The Government is a public company, and having regard to the totality of the circumstances, we are of the considered view that a direction may be given to the revenue to consider the claim of expenditure for AY 2003-2004, if the Assessee furnishes a revised computation of income for AY 2003-2004 within four (4) weeks from today.

17. The substantial questions of law are answered in favour of the revenue and this appeal is dismissed, though with liberty as above. No costs.

(A.S.M.,J.) (M.S.K.,J.)
29-01-2026

Index: Yes
Speaking order
Neutral Citation: Yes

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To
1. The Income Tax Officer (OSD)
   Circle III (1) Chennai.

2. The Secretary To Government
   Small Industries (sic) Department, Secretariat,
   Chennai-9.

3. The Income Tax Appellate Tribunal, Chennai 'A'
   Bench, Chennai.

DR.ANITA SUMANTH J.

AND

MUMMINENI SUDHEER KUMAR J.

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TCA No. 259 of 2012

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