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T.C.A.No.745 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.01.2026

CORAM :

THE HONOURABLE DR.JUSTICE ANITA SUMANTH
and
THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER
KUMAR

T.C.A.No.745 of 2014

Commissioner of Income-Tax,
Chennai.

.. Appellant

VS

M/s Southern Petrochemical Industries Corporation Ltd.,
SPIC House,
No.88 Mount Road,
Guindy, Chennai.

.. Respondent

Prayer : Appeal filed under Section 260A of the Income-Tax Act, 1961
against the order of the Income Tax Appellate Tribunal, Madras 'C'
Bench, dated 07.5.2010 in No.6/MDS/2005 against ITA
No.802/Mds/2005.

For Appellant : Dr.S.Sathiya Narayanan
Senior Standing Counsel

For Respondent : Mr.R.Vijayaraghavan
for M/s.Subbaraya Aiyar Padmanabhan



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JUDGMENT

(Delivered by Dr. ANITA SUMANTH, J.)

This is a Departmental tax case (appeal) challenging an order of the Income-Tax Appellate Tribunal (ITAT/Tribunal) in MP No.6/Mds/2010 in ITA No.802/Mds/2005 for Assessment Year (AY) 2001 – 02.

2. We have heard Dr.S.Sathiya Narayanan, appearing for the Department and Mr.R.Vijayaraghavan, appearing for the respondent / assessee.

3. The issue that arises for consideration in the present appeals relates to the allowability of interest on investment made in two Companies as expenditure, under the provisions of the Income-Tax Act, 1961(Act). Though the assessing officer, in order of assessment dated 23.03.2004, makes reference to orders from AY 1996 – 97 onwards, we have the benefit of the order of assessment for AY 2000-01 only. However, there is no dispute on the position that the subject disallowance had been effected in the earlier years as well.

4. In the financial year relevant to AY 1996 - 97, the assessee had obtained clearance from the Reserve Bank of India (RBI) to make investments in two Companies viz., M/s. Indo Jordam Chemicals Co., Ltd., Jordam and M/s. Spic Fertilizers and Chemicals FZE, Dubai, that were engaged in the manufacture of chemicals. Interest paid on



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borrowings used for the purpose of investment had been claimed as business expenditure and had been disallowed in the assessment for that year. The disallowance was on several grounds including that the interest, though claimed as revenue, had been capitalized in the accounts.

5. The first appeal filed challenging the disallowance was rejected, as against which an appeal was filed before the ITAT. In a decision dated 20.10.2004 reported in *Southern Petro Chemical Industries v Deputy Commissioner of Income Tax*¹, the Tribunal notes that the companies in which the investment had been made were engaged in the production of urea, phosphoric acid and ammonia, all raw materials in the fertilizer business of the assessee.

6. The Tribunal was thus of the view that the investment was for expansion of business of the Company, and applying the decision of this Court in *Sivakami Mills Ltd vs Commissioner of Income Tax, Madras*² affirmed by the Supreme Court in *CIT v Sivakami Mills*³, concluded that the interest on amount borrowed for purchase of machinery constitutes revenue expenditure.

7. The judgment of the Supreme Court in *State of Madras v G.J.Coelho*⁴ was also pressed into service. In that case, the interest paid

1 (2005) 93 TTJ (Chennai) 161

2 120 ITR 211

3 227 ITR 465

4 53 ITR 186 (SC)



was towards amounts borrowed for purchase of plantation. The Court viewed the transaction of purchase and working of the plantation as an integrated whole and concluded that the expenditure laid out/expended wholly and exclusively for the purpose of the plantation, was allowable as revenue expenditure.

8. The submission of the assessee that the investment had been for the purpose of business, in a company engaged in production of three raw materials that were fundamental to its fertilizer business, was accepted and the disallowance was reversed.

9. In the course of the hearing, one of the contentions put forth on behalf of the assessee had been that the object of the investment was not to earn dividends but to obtain a source for the supply of raw materials, and hence the question of disallowance did not arise. To support this argument, the assessee had filed certain additional documents relating to the investments, and approval of the same by the RBI. The documents had been admitted and the issue remitted to the file of the assessing authority for examination, to determine the utilization of funds invested in the investee companies.

10. The Tribunal concludes that in case the assessing officer came to the conclusion that no borrowed funds were used for the purposes of investment in the shares of the investee companies, then no disallowance



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was called for.

11. We are of the considered view that the second limb of the argument that has been considered by the Tribunal may not have much relevance in light of the categorical conclusion of the Tribunal on the main argument relating to the investments being solely for the purpose of expansion of business. Para 18 of the Tribunal order, in the context of commercial expediency, is extracted below:-

“18. Now coming to the second contention of the assessee, we find considerable force in the argument of the Learned Counsel for the assessee and the decision of the Hon’ble Madras High Court in the case of Indian Commerce & Industries Co., (P) Ltd v CIT (supra) squarely covers this issue. In that case, as noted by the learned CIT (A), it was held “that the shares were purchased because of coercion by the company and also with a view to increase the assessee’s business with the company. Hence, there was a nexus between the business of the assessee and the purchase of shares.” In the present case also, we find that since the assessee had made the investment in a company which was to produce the basic raw material required by the assessee, it has to be held to be a case of the assessee’s expansion of business and, therefore, the funds were utilized for business purpose. The assessee in its written submissions has pointed out that both the companies were subsidiaries of the assessee. It is pointed out that M/s Indo Jordan Chemical Co., Jordan, with which the assessee had entered into a joint venture, owned phosphate mines which was a basic raw material for manufacture of phosphoric acid. Similarly, SPIC Fertilizers and Chemicals, FZE (SFCL), at Dubai was engaged in the manufacture of ammonia and urea which was raw materials for the fertilizer business of the assessee. It is pointed out that both ammonia and phosphoric acid accounted for 44.27 per cent in value of the total raw material consumption. Thus,



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even if borrowed funds were utilized, still the assessee would be entitled for deduction under S.36(1)(iii) of the Act, in view of the decisions of the Hon'ble Madras High Court in the case of Sivakami Mills Ltd (Supra), affirmed by the Hon'ble Supreme Court in 144 CTR (SC) 172 : (1997) 227 ITR 465 (SC) (supra), wherein it was held that interest on deferred payment for purchase of machinery was revenue expenditure. The decision in State of Madras v G.J.Coelho (supra) also supports this view. In this case it was held that the payment of interest on the amount borrowed for the purchase of the plantation when the whole transaction of purchase and the working of the plantation was viewed as an integrated whole, was so closely related to the plantation that the expenditure could be said to be laid out or expended wholly and exclusively for the purposes of the plantations. Therefore, the assessee, in any view of the matter, succeeds on the strength of its second contention. However, in order to have the completion on the merits of the case, we restore this issue to the file of the Assessing Officer for considering the first contention of the assessee that no borrowed funds were at all utilized for investment in shares. In the result, this ground is allowed for statistical purposes."

12. An order giving consequence to the order of the Tribunal has thereafter been passed by the assessing authority on 13.06.2006. In light of the Tribunal's observation that the funds have been used for the purpose of expansion of business, the claim of interest was allowed.

13. The purpose of remand was, in fact, not served in so far as the assessing officer notes that no materials were supplied by the assessee that would throw any light qua the examination of funds, whether borrowed. The remand was thus, only academic, and has no relevance to the issue of disallowance of interest that can be decided based on the



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factual findings of the Tribunal.

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14. For the present year, the Tribunal, following its order for earlier years, had allowed the appeal on 16.12.2008. However, in light of the remand on the additional issue, the matter ultimately stood remanded to the file of the assessing authority. Mr.Vijayaraghavan informs us, that no consequential order has been passed for this year by the assessing officer.

15. While so, the Department filed appeal in TCA No. 921 of 2009 challenging the order of Tribunal dated 16.12.2008 for AY 2001 - 02, raising the following question:-

Whether on the facts and circumstances of the case, the Tribunal was right in holding that the interest on investment amounting to Rs.18,29,04,091/- claimed by the assessee as revenue/business expenditure?

16. While dismissing the appeal on 20.10.2009, the Bench states that the Tribunal ought to have taken note of certain variations in the facts as pointed out by the CIT(A), leaving it left open to the Revenue to approach the Tribunal by filing a Miscellaneous Petition (MP). The operative portion of the order as aforesaid reads thus:

3. When the Commissioner of Income-Tax (Appeals) has given so much of reasoning for differentiating and not following the earlier order of the Tribunal with which reference has been made and followed by the Tribunal in the order impugned, we are of the view that the Tribunal failed to take note of the variance of the facts pointed out before the Tribunal. It is



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well open to the revenue to approach the Tribunal by filing a miscellaneous application and get a suitable order in accordance with law.

17. As a sequitur, the Department approaches the ITAT by way of a Miscellaneous Petition, that came to be dismissed on 07.05.2010, the Tribunal holding that there is no rectifiable mistake in its order dated 16.12.2008. It is as against the aforesaid order in MP that the present tax case (appeal) has been filed raising the question as to whether the dismissal of miscellaneous petition is correct in light of the order of the High Court dated 20.10.2009.

18. The argument of the Department is that when the Bench, in order dated 20.10.2009, has observed that the Department may approach the Tribunal by way of Miscellaneous Petition, the Tribunal ought not to have dismissed it on maintainability, but ought to have entertained it on merits.

19. We are unable to agree as we note that the rejection of the MP is after the Tribunal had considered the facts and material available on record including the order of the CIT(A) dated 19.01.2005 that was part of the record.

20. In the interests of completion, we too have carefully perused the order of the CIT (A). The submission of the assessee/respondent was encapsulated as follows:



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9.7. It was found from the Annual Report for the previous year ended 31.3.2001 relevant for A.Y. 2001-02, that M/s SFCL, Mauritius is the subsidiary of the appellant company and its accounts are included in the appellant's accounts. From the Balance Sheet and P&L Account, it is seen that SFCL, Mauritius has not made any investment in fixed assets and plant and machinery and the main object of SFCL is only to carry on the business of investment in shares, bonds and securities (p.74 of the annual report). Considering these facts, the appellant was asked to clarify as to how the investment in SFCL is for the purpose of appellant's business. The appellant was asked to furnish breakup of Interest payment towards investments made in both the companies separately. In response thereto, the appellant has furnished a reply dt. 21.12.2004 - stating that entire interest claim both for A.Y. 2000-01 (Rs. 13.99 crores) and for A.Y. 01-02 (Rs. 18.29 crores) is only in respect of investment in the SFCL, Mauritius. Thus the issue is only with reference to the investments in SFCL, Mauritius, i.e., whether it is for the purpose of appellant's business or not. The appellant has furnished further details as under:-

“PIC Fertilisers and Chemicals FZE, Dubai(SFC) was originally set up as a wholly owned subsidiary of SPIC and subsequently in view of operational necessity, a local party, Emirate Trading Agency (ETA) was inducted as co-promoter. The main objective of the company is to manufacture Ammonia and Urea. Since the regulations of Jebel Ali Free Zone Authority (JAFZA) did not permit more than the one shareholder in the Free Zone Establishment (FZE) separate holding company SPIC Fertilizers & Chemicals Limited (SFCL) was formed in Mauritius with SPIC & ETA as shareholders and SFCL- Mauritius holding the entire equity of SFC, Dubai. The fact is explained in Director's Report Vide Page No.68 of the Annual Report for the financial year 2000 – 2001.

SPIC made its investment in SFCL, Mauritius which in turn invested in SFC, Dubai. Hence the purpose of investment in SFCL, Mauritius is to fund ammonia and



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urea manufacturing plants, SFC, Dubai which could not be done directly by SPIC, in view of the restrictions imposed by the local law.

Status Report of SPIC Fertilizers and Chemicals FZE, Dubai

Back Ground

SPIC Fertilizers and Chemicals FZE(SFC) Dubai is wholly owned subsidiary of M/s SPIC Fertilisers and Chemicals Limited (SFCL) Mauritms. The project has been set in Jebel Ali Free Zone for manufacturing of Ammonia (as an intermediate product) and Urea (Final Product).

The proposed capacity of the project is as follows;

S.No Product Description Million Tons per Annum

1. Ammonia-Intermediate Product 2,26,050
2. Urea - Final Product 3,96,000

Status of the Projects:

For established the above project, die company has taken on lease a plot of land of 240,000/- sq.r.mtrs. From the Free Zone Authorities for fifteen years with renewable option for a similar period. The basic engineering work and detailed engineering work have been completed and the overall progress of the project is 57%. In brief the position of the project is as follows:

S.No. Particulars % of Completion

1. Civil works 70%
2. Refurbishment of Old Plant and Machinery 80%
3. Procurement of Plant and Machinery 50%
4. Overall Position 57%

The company has already got a confirmation letter from the Government of Dubai for supply of Natural Gas (40,000 MMBtu/Day) for an initial period of 15 years. Regarding the execution of a detailed Gas Supply and Purchase Agreement (GSPA) with the Government of Dubai, the discussion between the Government of Dubai and Dolphin Energy Limited (DEL) Abu Dhabi, for the additional supply of gas



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to Dubai (including our project) is expected to be reached soon. Once the above agreement is reached, the discussion on the detailed terms and conditions for the GSPA between the Dubai Government and SFC would start. As per the present plans, the project is expected to commence by last quarter of 2006.

9.8 Besides the above submissions, the appellant has also claimed that as far as SFCL is concerned, the RBI had imposed a condition that the entire investment have to be made particularly through GDR proceeds and the balance from internal accruals. Hence, investments are made out of the own funds. Even assuming that borrowed funds are utilised for investments in the said joint venture at SFCL, Dubai, through SFCL, Mauritius, it is for the purpose of business, and hence interest on such borrowed funds for investment is allowable as deduction in view of the decision of the Madras High Court in the case of *M/s Sivakami Mills Ltd. Vs. CIT* (120 KR 211), affirmed by the Supreme Court in 227 FTR 465. Since the investment has been made in SFCL, Mauritius / Dubai with an intention to get raw material and finished goods, the investment is for the purpose of the business and hence should allowed as deduction for the purpose of sec.'36(l)(iii) of the Act/. The appellant has also filed copies of correspondence dt. 6.7.94 and 5.03.97 between the appellant company and the RBI for sanctioning permission for investment in US Dollars for setting up of Urea Plant at UAE/Joint Venture abroad. The appellant has also filed the scope and cost of the project, the conditions imposed by the RBI while granting approval. The appellant has also filed copies of correspondence of appellant with the RBI dt. 10.11.97 regarding conversion of wholly owned subsidiary to a Joint Venture company, the current status of the project, which may accrue to SPIC and permission for amending the earlier



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approval and other relevant papers.

21. The submissions were disbelieved and rejected on the following reasoning:-

“(1) The appellant was originally intended to form a wholly owned subsidiary SFCL, Mauritius for manufacture of urea and ammonia. Later it was converted to a joint venture with SFCL Mauritius and ETA as co-promoters of SFCL, Mauritius, which holds entire equity in SFCL, Dubai. SFCL, Dubai is yet to complete the installation of Plant and Machinery and supply of natural gas is yet to be tied up and the project may commence by the last quarter of 2006.

(2) It is only Ammonia which is the raw material for the appellant and urea is a finished product. Purchase of urea at future date by the appellant from SFCL, Dubai and sale of the same is independent activity which may take place at a future date and is no way can be said to be a integral part of the appellant's business activity carried on the during the previous year. There is no agreement or proposal to buy back Ammonia. It is a mere claim which is unsubstantiated.

(3) Even though the appellant has agreed for buyback of entire product, urea, from the proposed plant at Jeba Ali Free Zone from SFCL, Dubai after commencement of production, there is no material on record to substantiate the claim that it is at subsidised price or such purchase will be beneficial to the appellant company, as the price has to be mutually agreed with reference to the prevailing price for bulk purchase at that time as per appellant's letter dt. 13.4.98 addressed to SFCL, Dubai. Even this bulk purchase of urea is subject to the approval of Government of India , which depends on the policy of the government at that time

(4) As per letter dt. 08.10.98, from Ministry of Chemicals and Fertilizers, Government of India (in response to appellant's letter-dt 20.11.98, the government has informed that so long as urea is a controlled item and is imported on Government of India account, buy back of the production by SPIC of its joint venture urea project in Dubai for importing into India



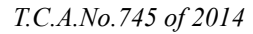
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will be given preference, if there is need to import urea after accommodating the supply from the joint venture Oman India Fertiliser Project and the joint venture Qeshm Fertilizer Project in Iran. The formula for determining the price for such imports will be communicated only after the policy regarding joint ventures abroad is finalised.”

5.. Thus it is clear that import of urea from joint venture with SFCL, Dubai is not guaranteed and it comes as the last preference after import from other two foreign companies. Hence there is no certainty of import of urea (finished product for trading purpose) from the joint venture company.

6. Thus the investment in SFCL, Dubai through SFCL, Mauritius with uncertain implementation of project and uncertain government policy regarding import of urea cannot said to be even remotely connected with the present business carried on by the appellant during the previous year 2000-01. Investment in SFCL, Dubai through SFCL, Mauritius is an independent investment and there is no evidence to substantiate the claim that either it is beneficial to the appellant or serves its present business purposes. No evidence whatsoever was furnished to show that the investment is for the purpose of appellant's business. It is in no way connected with the business carried on by the appellant during the previous year.

22. The conclusions as above militate with the findings of the Tribunal in its order dated 20.10.2004. We have in the paragraphs supra, specifically between paragraphs 5 and 12, elaborated on the findings of the Tribunal which have, in fact, attained finality for AY 1996-97. The factual findings of the Tribunal have been accepted by the revenue for AY 1996-97 itself and there is hence no justification in a different view being taken for the present assessment year.



The questions of law raised for our consideration are as follows:

(iii) Whether on the facts and circumstances of the case it was proper for the Tribunal to dismiss an M.P. when the Hon'ble High Court had passed an order in Tax case No 921 of 2009 wherein it observed that the department was to approach the Tribunal and file an M.P. and get suitable order in accordance with law?

25. This appeal is dismissed. No costs.

Index:Yes
Neutral Citation:Yes
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To

1.The Commissioner of Income-Tax,
Chennai.

2.The Income Tax Appellate Tribunal, Madras 'C' Bench,
Chennai.



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DR. ANITA SUMANTH,J.
and
MUMMINENI SUDHEER KUMAR,J.

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