

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, CHENNAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष

**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.: **2835/CHNY/2017**

निर्धारण वर्ष /Assessment Year: 2003 - 04

**Seshasayee Paper and
Boards Ltd.,**
Pallipalayam, Cauvery R.S.P.O.
Erode - 638 007.

The JCIT,
vs. Central Circle -II(1),
Chennai.
(presently, DCIT, Namakkal
Circle, Namakkal)

PAN: AACCS 1192G

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri G. Baskar, Advocate

प्रत्यर्थी की ओर से/Respondent by

: Shri P. Sajit Kumar, JCIT

सुनवाई की तारीख/Date of Hearing

: 18.07.2022

घोषणा की तारीख/Date of Pronouncement

: 22.07.2022

आदेश /O R D E R

PER MAHAVIR SINGH, VICE PRESIDENT:

This appeal by the assessee is arising out of the order of Commissioner of Income Tax (Appeals), Salem in Appeal No.77/2009-10 dated 31.08.2017. The assessment was framed by the JCIT, Central Circle II(1) i/c, Chennai for the assessment year 2003-04 u/s.143(3) of the Income Tax Act, 1961 (hereinafter the 'Act') vide order dated 29.03.2016.

2. The first issue in this appeal of assessee is as regards to the order of CIT(A) confirming the action of AO that the interest received u/s.244A of the Act is taxable when the right to receive is under dispute in view of the appeals filed by the Department. For this assessee has raised following Grounds Nos.2.1 to 2.3:-

2.1 The Learned CIT (A) erred in confirming that the interest received under Section 244A is taxable when the right to receive is under dispute in view of the appeals filed by the department. The Learned CIT (A) erred in holding that the interest under Section 244(A) is taxable, pending final determination of the assessments by the Income-Tax Authorities / Appellate Authorities.

2.2 The Learned CIT (A) failed to apply the ratio of the decision in the case of
"Godhra Electricity Co Ltd. Vs. CIT (1997) 225 ITR 746 (SC),
CIT Vs Shoori Vallabh Das Co 46 ITR 144,
CIT Vs Hindustan Housing and Land Development Trust Ltd."

2.3 The Learned CIT (A) failed to apply the decision of the Hon'ble Income Tax Appellate Tribunal in the case of the assessee for the Assessment Year 1984-85 in ITA No. 2897 and 2898 (MDS/87) dated 14.11.1991 wherein it has been held that the interest granted would be assessable as income only in the year during which the proceeding which gave rise to refund and consequential interest reaches finality.

3. Brief facts relating to this issue are that the AO during the course of assessment proceedings noticed from the computation of income that the assessee has reduced a sum of Rs.48,86,557/- being interest received under section 244A of the Act for the reason that it is not taxable pending final decision by the appellate authorities. The AO noted that in this case, the assessee has

received interest u/s.244A of the Act and it is taxable on receipt of interest as assessee has credited this amount in its accounts. The AO after discussing the case laws and noting the decision of Hon'ble Madras High Court in the case of CIT vs. MKKR Muthukaruppan Chettiar 145 ITR 175, wherein it is held that the interest u/s.243 of the Act accrues de die in diem in and not on the day on which it is paid. According to AO, the assessee has received interest in this very year and assessee is maintaining its accounts on mercantile basis and further, in view of the Jurisdictional High Court decision cited above, the interest u/s.244A of the Act amounting to Rs.48,86,557/- was added to the total income of the assessee. Aggrieved, assessee preferred appeal before CIT(A). The CIT(A) also confirmed the action of AO and also relied on the decision of ITAT, 'A' Bench in assessee's own case in ITA Nos.1619 and 1620/Mds/2007 for assessment years 2001-02 & 2002-03, order dated 18.03.2009 wherein the ITAT has considered this issue and confirmed the addition as under:-

"16. In the present case our jurisdiction is limited to deciding whether, as per law, interest granted to the assessee by the department was taxable in the year in which it was received by the assessee

16.1 The anxiety of the learned AR was that, in future, because of any of the reasons mentioned in sub-section (3) of Section 244A, the above interest may get reduced and the assessee may have to return part of the impugned interest on which he is being asked to pay tax and because of limitation it may not be possible to modify the assessment for AY. 2001-02 and/or 2002-03.

17. The decisions relied upon by the learned AR are not applicable to the facts of this case.

18. To conclude the legal position that emerges from the order of the Tribunal (SB) is that the interest, granted by the department to the assessee u/s 244A of the Act, along with the refund, fully satisfies the requirements of Sections 4 and 5 of the Act and, therefore, it has to be taxed in the year of its receipt. The judgment of the Supreme Court in the case of E.D. Sassoon & Co. Ltd. Vs CIT [1954] 26 ITR 27 squarely supports this view. The fact that the quantum of such interest might vary at a later date, because of one of the reasons mentioned in sub-Section (3) of Section 244A, does not affect this conclusion.

19. Therefore, we respectfully follow the decision of the Tribunal (SB) (supra) and reverse the orders of the CIT(A) on this point and restore those of the AO for both the years”

Aggrieved, assessee is in appeal before the Tribunal.

4. We have heard rival contentions and gone through facts and circumstances of the case. Undisputed facts are that the assessee has received interest u/s.244A of the Act on refund and total interest is Rs.48,46,557/-. The Id.counsel for the assessee stated that this taxability of interest u/s.244A of the Act was allowed in favour of assessee by ITAT in assessment year 1984-85 in ITA No.2898(Mds)/87, order dated 14.11.1911 but he very fairly conceded that this issue is covered against assessee in assessee's own case in ITA No.1619 & 1620/Mds/2007 for assessment year assessment years 2001-02 & 2002-03 vide order dated 18.03.2009. Since, the issue is covered in favour of Revenue and against

assessee, respectfully following the Tribunal's decision for assessment years 2001-02 & 2002-03, we dismiss this issue of assessee's appeal.

5. The next issue in this appeal of assessee is as regards to the order of CIT(A) restricting the disallowance of business expenditure to the extent of 75% and allowing only 25%. For this, assessee has raised following two grounds:-

3.1 The CIT (A) was incorrect in disallowing the claim for extra-ordinary business expenditure of Rs 16,04,118 as it is incurred out of commercial expediency and for the purpose of the business of the appellant

3.2 The Learned CIT (A) was incorrect in allowing only 25% of the expenditure and disallowing the balance when the entire expenditure is incurred wholly and exclusively for the purpose of business. And is allowable under section 37 of the Income Tax Act.

6. We have heard rival contentions and gone through facts and circumstances of the case. We noted that the AO as well as CIT(A) noted the fact that the assessee has incurred expenditure of Rs.16,04,118/- under extraordinary circumstances and they have to interact with various Govt. Departments like Forest Department, TNEB, PCB, Local Panchayats, Excise Department, ST Department, etc., on day to day basis and for that purpose it is incurring expenses in the nature of customary and in the nature of entertainment expenses like providing tea, snacks, lunch etc.

According to assessee these expenses are in the nature of business expense and the AO disallowed by noting that the expenses do not fall under any regular head of expenditure under financial accounting and accordingly these are not incurred for the purpose of business. The CIT(A) restricted the disallowance at 75% and allowed 25% of expenses by observing in para 8.2 as under:-

I have considered the assessment order and the submissions of the appellant. This issue has been elaborately dealt with by the CIT(A) for the Asst. Year 2002-03 in ITA No.CIT(A)-IV/CHE/898/06-07 dated 22.03.2007. The assessee is in the business of manufacture of paper and is obliged to interact and co-ordinate with various departments of the government. The officials of various departments during the Course of their interaction with the company on their visits are provided tea, snacks, lunch etc. which is in the course of business. However, the officials who interact with the officials of the various Govt. Departments also partake of the tea, snacks and lunch. The appellant has not maintained separate accounts in respect of the expenditure under this head which can be precisely related to employees or the visiting officials. In this case an estimate out of this expenditure has to be made in respect of the amount spent on employees as well as the visiting officials. Since the appellant has not maintained any separate accounts under this head, 25% of the expenditure of Rs.16,04,118/- which comes to Rs.4,01,029/- is estimated on entertainment to be related to the employees and non Govt. officials and the same is directed to be allowed. The balance of Rs.12,03,089/- is disallowed. In view of the above, this ground of appeal is partly allowed.

6.1 We noted that the CIT(A) has not doubted the purpose of business i.e., purposes but he has estimated for the reason that the assessee has not maintained separate accounts in respect of these expenditures and the details of employees or visiting officials are not provided. Accordingly, he restricted the allowance of

expenditure at 25% and confirmed disallowance of 75% of expenditure. Even now before us, the assessee could not substantiate its claim beyond allowing of expenditure at 25% as allowed by CIT(A). Hence, we dismiss this issue of assessee's appeal and confirm the order of CIT(A).

7. The next issue in this appeal of assessee is as regards to the order of CIT(A) confirming the action of AO in making addition of write off of investments made in Ponni Sugars (Orissa) Ltd, claimed by assessee as commercial expediency and business compulsion but authorities below considered this as capital in nature. For this, assessee has raised following Ground Nos.4.1 to 4.3:-

4.1 The CIT (A) was wrong in confirming that the addition of write-off of investments made in Ponni Sugars (Orissa) Limited which was made out of commercial expediency and business compulsions.

4.2 The Learned CIT (A) was incorrect in disallowing the claim on the ground that the investment of the company in Ponni Sugars (Orissa) Limited is a capital in nature.

4.3 The Learned CIT (A) erred in ignoring the following decisions cited by the Appellant wherein it has been held that the loss on sale of investments is allowable as business loss.

8. Brief facts are that the AO during the course of assessment proceedings noticed from the profit & loss account that the assessee under the head 'extraordinary items' written off Rs.641.32 lakhs on account of loss of investment in Ponni Sugars (Orissa) Ltd. The

details of investments made by assessee in Ponni Sugars (Orissa) Ltd., written off amounting to Rs.641.32 lakhs are as under:-

i)	Investment in equity capital	Rs.3,23,34,200/-
ii)	16% non convertible debentures	Rs. 17,99,000/-
iii)	Zero coupon Redeemable Preference shares	Rs.2,99,99,000/-
	Total	Rs.6,41,32,200/-

8.1 The AO noted the remarks made in notes forming part of balance sheet and the relevant note-vi, he noted and reproduced in the order, which is being reproduced as it is, for the sake of clarity.

“(vi) amounts written off or written back in the period in respect of debts due from or to Related parties:

The Balangir unit of POL remains idle for many years. The revival of the unit seems to be impossible. Even efforts to sell off the unit but did not fructify. POL has become sick and registered as such with Board for Industrial and Financial Reconstruction. The net work of POL has been fully eroded as per the audited balance sheet for the year ended 31.3.2002. The realisable value of the assets will not even meet the liabilities of secured creditors in full. Consequently, our company has written off the value of investments in our books of accounts for the year ended March 31, 2003 after retaining a nominal value of Rs.1,000/- each, under equity capital, preference capital and non convertible debentures. The write off so made amounted to Rs.641.32 lakhs.”

8.2 The AO required the assessee to explain as to why the investments written off claimed by assessee in Ponni Sugars (Orissa) Ltd., be not treated as capital. The assessee replied stating various reasons that the investment in Ponni Sugars (Orissa) Ltd., falls for the purpose of business and the above three elements i.e.,

investment in equity capital, 16% non convertible debentures and zero coupon redeemable preference shares are for the purpose of assessee's business and for the commercial expediency for the reason that the Ponni Sugars and Chemicals Ltd., which was set up in 1984 for installation of coal fired boiler and also set up a new sugar mill in Balangir, Orissa from 1992 onwards. It was explained that Ponni Sugars and Chemicals Ltd., came up with a rights issue of equity shares as well as rights cum public issue of partly convertible debentures (PCD) to part finance its expansion projects. The assessee company made investment in 85,900 equity shares and 20,000 PCDs for an aggregate amount of Rs.55.77 lakhs. Again, assessee made investment in the rights issue by subscribing 33,33,000 equity shares of Rs.10 each at the premium of Rs.5 per share and thereby made total investment of Rs.499 lakhs. The assessee also subscribed 14% redeemable preference shares for an amount of Rs.500 lakhs. Subsequently in 1999, the Ponni Sugars and Chemicals Ltd., came out with demerger scheme which envisaged the transfer of Erode unit to Ponni Sugars (Erode) Ltd., along with transfer of 40% capital and major part of debt to Ponni Sugars (Erode) Ltd., which was renamed as Ponni Sugars (Orissa) Ltd. The scheme was approved by Hon'ble High Court of Madras in September, 2001. Finally, the Balangir unit could not function and

accumulated losses of Ponni Sugars (Orissa) Ltd., exceed net wealth as on 31.03.2002. Therefore, the assessee made application to Board of Industrial and Financial Reconstruction (BIFR) for reconstruction of the assessee as sick industrial unit. The assessee company was declared sick by BIFR and therefore lead financial institution ICICI Bank has opted for sale of the unit but due to insufficient buyers, there was no possibility of getting any amount out of sale proceeds to meet the dues to unsecured creditors, preference shareholders and equity share holders. Accordingly, the investment was written off in the profit & loss account for the year ended i.e., 31.03.2003. The assessee claimed that the periodical investment in Ponni Sugars (Orissa) Ltd., was made to ensure uninterrupted supply of bagasse to meet 50% of its raw material requirement. It was claimed that the above investments were made due to business compulsion and commercial expediency. Since, the value of this investment has become nil as on 31.03.2003, the assessee made write off and claimed that write off as unrealizable amount u/s.37 of the Act, as business expenditure. The AO treated these investments as capital in nature but no finding is given as to why he has treated the same as capital investment. Aggrieved, assessee preferred appeal before CIT(A).

8.3 The CIT(A) after reproducing the submissions of the assessee and the submissions made before AO, finally confirmed the action of AO vide para 8.6 as under:-

8.6 I have gone through the assessment order and submissions of the appellant. The Assessing Officer has very elaborately discussed this issue in the assessment order and has come to a conclusion why the investments which are written off cannot be classified as expenditure u/s 37 of the IT Act. Having gone through the discussion of the Assessing Officer and the arguments of the appellant in their submissions at the time of appellate proceedings, I find no infirmity in the findings of the Assessing Officer in treating the investments as capital in nature. This ground of appeal stands dismissed.

Aggrieved, now assessee is in appeal before the Tribunal.

9. Before us, the Id.counsel for the assessee Shri G. Baskar, made submissions that the Balangir unit of Ponni Sugars (Orissa) Ltd., remains idle for many years and the revival of the unit seems to be impossible. Even the assessee took efforts to sell off the unit but could not succeed. The Ponni Sugars (Orissa) Ltd., has become sick and registered as sick unit with Board for Industrial and Financial Reconstruction. The net worth of Ponni Sugars (Orissa) Ltd., has been fully eroded as per the balance sheet for the year ended 31.03.2002. The realisable value of the assets not even met the liabilities of secured creditors in full. Consequently, the assessee has written off the value of investments in their books of accounts for the year ended 31.03.2003 after retaining a nominal

value of Rs.1,000/- each under equity capital, preference capital and non convertible debentures and the write off amounts to Rs.641.32 lakhs. He also reiterated the investments made in Ponni Sugars (Orissa) Ltd., which are reproduced in para 8 above. He reiterated the submissions made before AO and CIT(A). He also relied on the Jurisdictional High Court decision in the case of Indian Commerce & Industries Co. (P) Ltd., vs. CIT 213 ITR 533, CIT vs. Tamilnadu Industrial Investment Corp. Ltd., 394 ITR 255 and Electronic Corporation of Tamilnadu Ltd., vs. DCIT, 417 ITR 283.

10. On the other hand, the Id. Senior DR Shri P. Sajit Kumar argued that the investments made in equity capital, non convertible debentures, zero coupon redeemable preference shares cannot be held as revenue for the reason that these are invested in equity capital and assessee has acquired interest in Ponni Sugars (Orissa) Ltd. He also stated that the equity investment is made for acquiring interest in a company that makes the expenditure as capital in nature and the lower authorities have rightly held so. He relied on the assessment order and the order of CIT(A).

11. We have heard rival contentions and gone through the facts and circumstances of the case. We noted that the assessee has

made investment in Ponni Sugars (Orissa) Ltd. in the equity capital, non-convertible debentures and zero coupon redeemable preference shares. The assessee made every effort to revive the Balangir unit of Ponni Sugars (Orissa) Ltd., which remains idle for many years. The assessee tried for the same and also acquired a co-operative sugar mill at Bargargh, Orissa to be operated on management contract basis and also acquired a license to set up a new sugar mill in Balangir, Orissa. The assessee has made investments in Ponni Sugars & Chemicals Ltd., which was set up in 1984 and the investments were made in 1992. Once the assessee could not revive, he referred the matter to BIFR for reconstruction of the assessee as sick industrial unit. Finally, BIFR declared the assessee as a sick unit. Even the lead financial institution i.e., ICICI bank has opted for sale of the unit but the offers received for sale of Balangir unit was not even sufficient to meet the dues of secured loans and there was no possibility of getting amount out of sale proceeds to meet the dues of unsecured creditors, preference shareholders and equity shareholders. In such circumstances, whether the loss or losses of investment claimed by assessee as write off of investment u/s.37 of the Act be allowed. This has been answered by Hon'ble Madras High Court in the case of Electronic Corporation of Tamilnadu Ltd., *supra*, wherein another decision of co-ordinate

bench of Hon'ble Madras High Court in Tamilnadu Industrial Investment Corp. Ltd., *supra*, is also considered and the Hon'ble High Court exactly on the same facts allowed the claim of assessee to write off of investment vide para 10 to 14 as under:-

10. We have perused the order passed by the CIT(A) and in our considered view, the reasoning given by the CIT(A) is just and proper. The CIT(A) has analysed the objects of the assessee as to why it was incorporated and the nature of activities done by them. On examining the factual matrix, the CIT(A) held that the finance provided by the assessee was provided by way of equity participation and it is akin to loan transaction or advances made and in such cases, if the loans are irrecoverable, then they are written off and precisely, that is what has been done by the assessee on their investments in those four companies. Further, on facts, the CIT(A) held that the amounts advanced by the assessee to those industries were towards working capital and the real character of the transaction are those akin to loans and not equity investments. Furthermore, the assessee had explained that the amounts which have been advanced by them are shown as equity and without the permission of the assessee, the share holding pattern of the companies cannot be changed and the promoters will have to keep minimum interest in the companies' assets and transfer of shares without the consent of the assessee cannot be made.

11. On this issue, it would be beneficial to refer to a decision of the Hon'ble Supreme Court in the case of Investments Ltd. vs. Commissioner of Income Tax (1970) 77 ITR 0533, wherein, the Court considered as to whether the shares and securities held by the assessee therein has to be treated as stock-in-trade and while considering the said question, it was held as follows:-

8. In the balance sheet, it is true, the securities and shares are valued at cost, but no firm conclusion can be drawn from the method of keeping accounts. A taxpayer is free to employ, for the purpose of his trade, his own method of keeping accounts, and for that purpose to value his stock-in-trade either at cost or market price. A method of accounting adopted by the trader consistently and regularly cannot be discarded by the Departmental authorities on the view that he should have adopted a different method of keeping account or of valuation. The method of

accounting regularly employed may be discarded only if, in the opinion of the taxing authorities, income of the trade cannot be properly deduced therefrom. Valuation of stock at cost is one of the recognised methods. No inference may, therefore, arise from the employment by the company of the method of valuing stock at cost, that the stock valued was not stock-in-trade. Nor is the description of stock in the balance sheet as "investments" decisive.

12. As held in the above referred decision, no inference can be drawn with regard to description of the stock in the balance sheet as investments and this cannot be a decisive fact. In respect of more or less an identical case, the Division Bench in the case of Commissioner of Income Tax v. Tamilnadu Industrial Investment Corporation Ltd., [(2017) 394 ITR 0255 (Mad)] held the same in favour of the assessee. The question which fell for consideration was whether the Tribunal was right in holding that the shares are stock-in-trade of the assessee company. The Division Bench took note of the Memorandum and Articles of Association which spelt out the main activities of the assessee (TIIC Limited) and held that the assessee was incorporated solely for the purpose of ensuring and facilitating growth and development of industries in the State of Tamilnadu and investments by way of subscription of shares is solely on account of the under writing operations. Further, it held that the investments are in the nature of stock-in-trade and cannot be held otherwise. In our considered opinion the decision in the case of TIIC Limited (cited supra) would squarely cover the case on hand and the question framed for consideration is required to be answered in favour of the assessee.

13. The Revenue placed reliance on the decision of the Hon'ble Supreme Court in the case of Berger Paints India Ltd., vs. Commissioner of Income-Tax, Delhi-V [2017] 393 ITR 113. We have perused the said decision and we find that the said decision can have no application to the facts of the case as it was a case where the interpretation with regard to the premium amount collected by the assessee company on the share capital and how it has to be construed for the purpose of Section 35D(3)(b) of the Act. Therefore, the said decision in the case of Berger Paints (cited supra) can render no assistance to the case of the Revenue.

14. Furthermore, we find that the CIT(A) relied upon the decision in the case of Tamil Nadu Industrial Development Corporation (TIDCO) and in the said decision also, the investments made by the TIDCO was in the form

of equity shares including share application deposit and the profit made on the sale of shares was held to be in the nature of business profit and not as long term capital gains. Further, the loss on investments was treated as bad debts and claims were written off as business expenditure which goes to show that the investments on such shares are in the course of primary business activities of the company. In the case of TIDCO, the CIT(A) relied upon a decision of the ITAT, Chennai B Bench in the case of M/s.V.D.Swami and Company Ltd., Vs. DCIT in ITA No.2592/MDS/95. As pointed out by us earlier, the objects for which the assessee company had been established by the Government of Tamil Nadu is no different from the purpose for which TIIC and TIDCO were established. Therefore, the CIT(A) was fully justified in relying upon the decision in the case of TIDCO. The Tribunal relied on a decision in the case of R.Chidambaranatha Mudaliar (cited supra). We find that the reliance placed on the decision is thoroughly misconceived as in the said case, the loss was under different connotation namely with regard to Section 45 of the Act. Furthermore, in the said case, the head of income was never in dispute. Therefore, the Tribunal erred in relying upon the decision in the case of R.Chidambaranatha Mudaliar. Thus, for all the above reasons, the order passed by the Tribunal reversing the order passed by the CIT(A) is not sustainable.

11.1 From the above facts and the decision of Hon'ble Madras High Court in the case of Tamilnau Industrial Investment Corp. Ltd., and Electronic Corporation of Tamilnadu Ltd., *supra*, we are also of the view that the claim of loss accruing or arising as investment in equity shares, non-convertible debentures and zero coupon redeemable preference shares is not capital loss but eligible for deduction in computation of business income as business loss, as held by Hon'ble Madras High Court in the case of Electronic Corporation of Tamilnadu Ltd., for the sale of shares and amount advanced by assessee to various industries towards working capital,

the real character of the transaction was those akin to loans and not equity investment. Respectfully following Hon'ble Madras High Court decision in the above two cases, we reverse the orders of lower authorities and allow this issue of assessee's appeal.

12. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced in the open court on 22nd July, 2022 at Chennai.

Sd/-

(मनोज कुमार अग्रवाल)

(MANOJ KUMAR AGGARWAL)

लेखा सदस्य /ACCOUNTANT MEMBER

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)

उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,

दिनांक/Dated, the 22nd July, 2022

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|------------------------|--------------------------|------------------------------|
| 1. अपीलार्थी/Appellant | 2. प्रत्यर्थी/Respondent | 3. आयकर आयुक्त (अपील)/CIT(A) |
| 4. आयकर आयुक्त /CIT | 5. विभागीय प्रतिनिधि/DR | 6. गार्ड फाईल/GF. |