



T.C.A.Nos.1406 of 2008, 1382 & 1383 of 2009, 87 & 483 of 2011,619 of 2014, and 928, 929 & 941 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.02.2022

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CORAM

THE HONOURABLE MR. JUSTICE R. MAHADEVAN

AND

THE HONOURABLE MR. JUSTICE J. SATHYA NARAYANA PRASAD

T.C.A.Nos. 1406 of 2008, 1382 & 1383 of 2009, 87 & 483 of 2011,
619 of 2014 and 928, 929 & 941 of 2015

T.C.A.No. 1406 of 2008

The Commissioner of Income Tax
Tamil Nadu-I, Madras

.. Appellant

Versus

M/s.Tamil Nadu Water Investment Co.Ltd
Anurag No.15, Murray's Gate Road
Alwarpet, Chennai – 600 018

.. Respondent

T.C.A.Nos. 1382 & 1383 of 2009

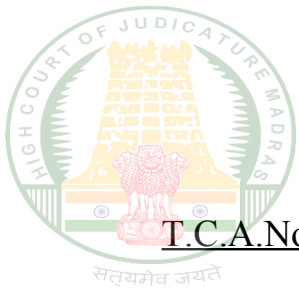
Commissioner of Income Tax
Chennai

.. Appellant

Versus

M/s.Tamilnadu Water Investment Co.Ltd
No.15, Murrays Gate Road
Alwarpet, Chennai – 600 018
PAN:AABCT8153B

.. Respondent



T.C.A.Nos.1406 of 2008, 1382 & 1383 of 2009, 87 & 483 of 2011,619 of 2014, and 928, 929 & 941 of 2015

T.C.A.Nos. 87 and 483 of 2011

Commissioner of Income Tax-I
Chennai

.. Appellant

Versus

M/s.Tamilnadu Water Investment Co.Ltd
Anurag,15, Murrays Gate Road
Alwarpet, Chennai – 600 018

.. Respondent

T.C.A.No. 619 of 2014

The Commissioner of Income Tax
Chennai

.. Appellant

Versus

M/s.Tamilnadu Water Investment Co.Ltd
Anurag No.15, Murray's Gate Road
Alwarpet, Chennai – 600 018
PAN: AABCT8153B

.. Respondent

T.C.A.Nos. 928 & 929 of 2015

Commissioner of Income Tax
Chennai

.. Appellant

Versus

M/s.Tamilnadu Water Investment Co.Ltd
Anurag, No.86, 1st Floor, Polyhose Towers
Mount Road, Guindy
Chennai – 600 032

.. Respondent

T.C.A.No. 941 of 2015

Commissioner of Income Tax
Corporate Circle 3(1)
Chennai 600 034

.. Appellant



T.C.A.Nos.1406 of 2008, 1382 & 1383 of 2009, 87 & 483 of 2011,619 of 2014, and 928, 929 & 941 of 2015

Versus

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M/s.Tamilnadu Water Investment Co.Ltd
1st Floor, Polyhose Towers
No.86, Mount Road, Guindy
Chennai – 600 032

.. Respondent

T.C.A.No. 1406 of 2008: Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order dated 20.11.2007 passed by the Income Tax Appellate Tribunal, Chennai “C” Bench, in I.T.A.No. 29/Mds/2007 (2003-04).

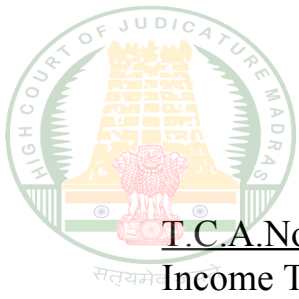
T.C.A.Nos. 1382 & 1383 of 2009: Tax Case Appeals filed under Section 260A of the Income Tax Act, 1961 against the order dated 13.03.2009 passed by the Income Tax Appellate Tribunal, Chennai “C” Bench, in I.T.A.Nos. 1030 & 1031/Mds/2008(2004-05 & 2005-06).

T.C.A.No. 87 of 2011: Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order dated 08.10.2010 passed by the Income Tax Appellate Tribunal, Chennai “D” Bench, in I.T.A.No. 642/Mds/2010 (2006-07).

T.C.A.No. 483 of 2011: Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order dated 12.05.2011 passed by the Income Tax Appellate Tribunal, Chennai “A” Bench, in I.T.A.No. 519/Mds/2011 (2007-08).

T.C.A.No. 619 of 2004: Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order dated 02.08.2012 passed by the Income Tax Appellate Tribunal, Chennai “A” Bench, in I.T.A.No.1242/Mds/2012 (2008-09).

T.C.A.Nos. 928 & 929 of 2015: Tax Case Appeals filed under Section 260A of the Income Tax Act, 1961 against the order dated 06.06.2014 passed by the Income Tax Appellate Tribunal, Chennai “A” Bench, in I.T.A.Nos. 236 & 237/Mds/2014 (2009-10 & 2010-11).



T.C.A.Nos.1406 of 2008, 1382 & 1383 of 2009, 87 & 483 of 2011, 619 of 2014, and 928, 929 & 941 of 2015

T.C.A.No. 941 of 2015: Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order dated 08.04.2015 passed by the Income Tax Appellate Tribunal, Chennai “C” Bench, in I.T.A.No.463/Mds/2015 (2011-12).

For Appellant : Mr.M.Swaminathan (in all cases)
assisted by Mrs.V.Pushpa

For Respondent : Mr.G.Baskar (in all cases)

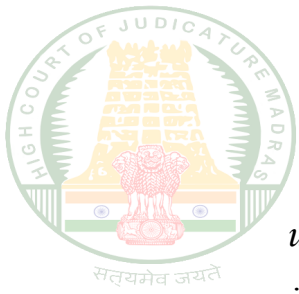
COMMON JUDGMENT

(Judgment of the Court was delivered by **R. MAHADEVAN, J.**)

These tax case appeals at the instance of the Revenue are directed against the orders passed by the respective Benches of the Income Tax Appellate Tribunal, Chennai, relating to the assessment years 2003-04, 2004-05, 2005-06, 2006-07, 2007-08, 2008-09, 2009-10, 2010-11 and 2011-12.

2.1. By order dated 14.10.2008, this court admitted the appeal in T.C.A.No.1406 of 2008 on the following substantial question of law:

“Whether on the facts and in the circumstance of the case, the Income-tax Appellate Tribunal was right in law in holding that the interest on loan borrowed from the Tamil Nadu Government and Infrastructure and Leasing Financial Services Ltd has accrued during the previous, even though the liability to pay interest cannot be stated to have accrued



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until after 5 years and that too, is payable half yearly instalments along with principal amount beginning from 1st May 2013 and ending with 1st November 2022?”

2.2. By order dated 21.12.2009, T.C.A.Nos.1382 & 1383 of 2009 were admitted on the following substantial questions of law:

“Whether on the facts and circumstances of the case, the Appellate Tribunal was right in holding that the interest on loan borrowed from Tamil Nadu Government Infrastructure and Leasing Financial Services Ltd had accrued during the previous year when the interest is actually payable only after the expiry of moratorium period of five years?”

2.3. This court admitted the appeals in T.C.A.Nos.87 & 483 of 2011 on the following substantial questions of law, vide respective orders dated 02.03.2011 and 08.11.2011:

“(i) Whether on the facts and in the circumstances of the case, the Income-tax Appellate Tribunal was right in holding that interest on loan borrowed from the Tamil Nadu Government and M/s.Infrastructure and Leasing Financial Ltd had accrued during the previous year even though there was a moratorium for five years as per the agreement and the interest was payable only after the expiry of the said five year period?”



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(ii) *Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the provisions of Section 43B(d) and Explanation 3C to Section 43B were not applicable to the facts of this case?”*

2.4. On 02.09.2014, the appeal in T.C.A.No.619 of 2014 was admitted on the following substantial question of law:

“Whether on the facts and circumstances of the case, the Appellate Tribunal was right in holding that the interest on loan borrowed from Tamil Nadu Government and Infrastructure and Leasing Financial Services Ltd. had accrued during the previous year when the interest is actually payable only after the expiry of moratorium period of five years?”

2.5. By order dated 24.11.2015, this court admitted the appeals in T.C.A.Nos.928 & 929 of 2015 on the following substantial questions of law:

“(i) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the interest on loan borrowed from the Government of Tamil Nadu and Infrastructure and Leasing Financial Services Limited had accrued during the previous year even though there was moratorium for five years as per the agreement as per which interest is actually



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payable only on 1.5.2013 and not before the said date?

(ii) Is not the finding of the Tribunal bad, by holding that the provisions of Section 43B(d) and Explanation 3(C) to Section 43B are not applicable to the facts of the case?"

2.6. On 26.10.2015, the appeal in T.C.A.No.941 of 2015 was admitted on the following substantial questions of law:

“(i) Whether on the facts and circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the provisions of Section 43B(d) and Explanation 3C to Section 43B were not applicable to the facts of this case?

(ii) Whether on the facts and circumstances of the case, the Income Tax Appellate Tribunal was right in deleting the addition made by the Assessing Officer when the liability to pay interest has not been crystalised?”

3.The assessee, which is an investment company, was promoted jointly by the Government of Tamil Nadu and M/s.Infrastructure Leasing and Financial Services Limited (IL&FS), with a view to implement a project under Tirupur Area Development Program. A shareholders agreement was entered into between the Government of Tamil Nadu and IL& FS on 24.05.2000, as per which, apart from equity, the promoters agreed to provide the assessee company (TWICL) unsecured loan of Rs.40 crores in the following

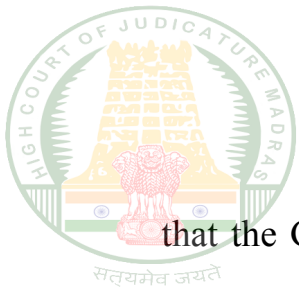


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proposition: (i)Rs.25 crores by the Government of Tamil Nadu and (ii) Rs.15

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crores by IL&FS for implementing the said project. While so, the respondent / assessee filed its returns for the assessment years in question. After scrutiny of the same, the Assessing officer was of the view that as per clause 1.2 of Article 1 of the loan agreement, the liability to pay interest on the unsecured loan arises only after five years from the operation date; the assessee was not required to pay the interest until the moratorium period; and they can claim interest after the moratorium period when the liability crystalizes. Therefore, the Assessing officer disallowed the claim for interest payable to the Tamil Nadu Government and IL&FS and completed the assessment for the years in question. Aggrieved by the orders of assessment passed by the assessing officer, the assessee preferred appeals before the Commissioner of Income Tax (Appeals), who dismissed the appeal in respect of the assessment year 2003-04 and allowed the appeals in respect of other assessment years viz., from 2004-05 to 2011-2012, following the ITAT's order in respect of the assessee's own case for the Assessment Year 2003-2004. Challenging the dismissal of the appeal, the assessee went on further appeal before the Tribunal, whereas the Revenue filed appeals against the orders passed by the CIT(A) in respect of allowing the assessee's appeals. The Income Tax Appellate Tribunal allowed the assessee's appeal and dismissed the appeals filed by the Revenue, after having observed

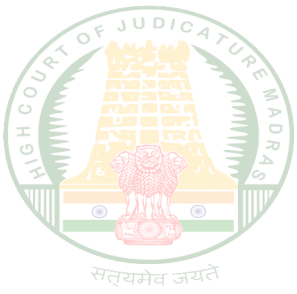


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that the Govt. of Tamil Nadu and ILFS were not covered by the definition of

Public Financial Institution as per Explanation 4 to sec. 43B read with sec.4A of the Companies Act, 1956 and hence, the provisions of sec.43B(d) read with Explanation 3C would not be attracted to the case of the assessee. Therefore, the Revenue is before this court with these appeals.

4.The main contention of the learned counsel for the appellant / Revenue is that the Tamil Nadu Government may not be a Public Financial Institution but M/s.Infrastructure Leasing and Financial Services limited is a Public Financial Institution and therefore, the interest payment not paid by the assessee company to the promoters is hit by explanation 3C to Section 43B (d) of Income Tax Act. Whereas, the authorities below did not consider this aspect and they erroneously concluded that the promoters were not covered by the definition of Public Financial Institution as per Explanation 4 to Section 43B read with section 4A of the companies Act, 1956. In support of his contention, the learned counsel placed reliance on the decision of the Hon'ble Supreme Court in *CIT v. Gujarat Cypromet Ltd [(2019) 103 taxmann. Com 346 (SC)]*.



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5. On the other hand, the learned counsel for the respondent / assessee submitted that the Tribunal after analysing the entire materials placed before it, concluded that the promoters were not public financial institutions and hence, rightly dismissed the department's appeals, by the orders impugned herein, which do not require any interference by this court.

6. Heard both sides and perused the materials placed before this court.

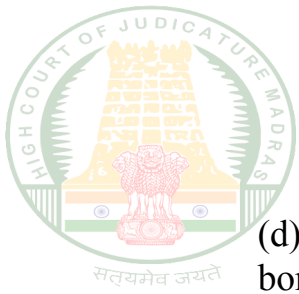
7. In order to appreciate the submissions made on both sides, it is but necessary to refer to the relevant provisions of law, viz., Section 43 and Explanation 3C, which was inserted by the Finance Act, 2006 with effect from 01.04.1989, read as follow:

“43B Notwithstanding anything contained in any other provision of this Act, a deduction otherwise allowable under this Act in respect of-

(a) any sum payable by the assessee by way of tax, duty, cess or fee, by whatever name called, under any law for the time being in force, or

(b) any sum payable by the assessee as an employer by way of contribution to any provident fund or superannuation fund or gratuity fund or any other fund for the welfare of employees, or

(c) any sum referred to in clause (ii) of sub-section (1) of Section 36, or



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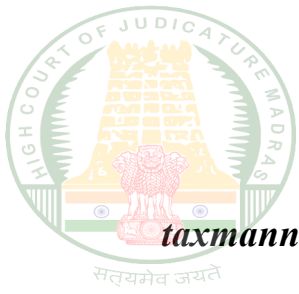
(d) any sum payable by the assessee as interest on any loan or borrowing from any public financial institution or a State financial corporation or a State industrial investment corporation in accordance with the terms and conditions of the agreement governing such loan or borrowing, or...

shall be allowed (irrespective of the previous year in which the liability to pay such sum was incurred by the assessee according to the method of accounting regularly employed by him) only in computing the income referred to in [section 28](#) of that previous year in which sum is actually paid by him.”

“Explanation 3C – For the removal of doubts, it is hereby declared that a deduction of any sum, being interest payable under clause (d) of this section, shall be allowed if such interest has been actually paid and any interest referred to in that clause which has been converted into a loan or borrowing shall not be deemed to have been actually paid.”

The aforesaid provisions make it clear that deduction of any sum being interest payable under clause (d) of section 43B of the Act, shall be allowed if such interest has been actually paid and any interest referred to in that clause, which has been converted into a loan or borrowing, shall not be deemed to have been actually paid.

8.The issue involved herein is elaborately dealt with by the supreme court in the decision in *Gujarat Cypromet Ltd case (supra)* referred to on the side of the appellant. In that case, the judgment of the Delhi High court in *CIT v. M.M.Aqua Technologies Ltd [(2015) 376 ITR 498/ 233 Taxman 397 / 60*



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taxmann.com 237], was referred to, wherein, after following the judgment of

the Madhya Praesh High Court in *Eicher Motors Ltd v. CIT [(2009) 315 ITR*

312 / 157 Taxman 501, it was categorically held by the Delhi High Court that

“Explanation 3C having retrospective effect with effect from 01.04.1989 shall

be applicable to the year in question”. The relevant paragraphs of the supreme

court decision in *Gujarat Crypromet Ltd (supra)* are usefully extracted below:

“14.In so concluding, this Court is supported by the decision of the Madhya Pradesh High Court in [Eicher Motors Ltd. v. Commissioner of Income Tax](#), 315 ITR 312 and subsequently, the judgment of the High Court of Telangana and Andhra Pradesh in *Commissioner of Income Tax v. Pennar Profiles Limited*, (ITA No. 289 of 2003, decided on 11.02.2015). In *Eicher Motors*, the Court noted:

"7.As observed supra, the Expln. 3C has now in clear terms provided that such conversion of interest amount into loan shall not be deemed to be regarded as "actually paid" amount within the meaning of Section 43B. In view of clear legislative mandate removing this doubt and making the intention of legislature clear in relation to such transaction, it is not now necessary for this Court to interpret the unamended Section 43B in detail, nor it is necessary for this Court to take note of facts in detail as also the submissions urged in support of various contentions except to place reliance on Expln. 3C to Section 43B and answer the questions against the assessee and in favour of Revenue."

The Court in *Pennar Profiles Limited (supra)* considered the decisions in *Mahindra Nissan (supra)*, *Vinir Engineering (supra)* and *Eicher Motors (supra)* and held as follows:

"8.In this backdrop, we have perused the provisions contained in [Section 43B](#) of the Act, in



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particular, Explanation 3C thereof, which was inserted by the [Finance Act, 2006](#) with retrospective effect from 01.04.1989. This provision was inserted in 2006 and ITA 110/2005 Page 10 hence, this Court in Mahindra Nissans case, had no occasion to deal with the case in the light of this provision. Insofar as the Karnataka High Court is concerned, though this provision was existing on the date of judgment, it appears that it was not brought to the notice of learned Judges and hence, the Division Bench proceeded to consider and decide the appeal of the assessee without referring to Explanation 3C appended to [Section 43B](#) of the Act.

9.As a matter of fact, from reading of Explanation 3C, in our opinion, the question as raised in the present appeals stands answered without further discussion. This provision was inserted for removal of doubts and it was declared that deduction of any sum, being interest payable under clause (d) of [Section 43B](#) of the Act, shall be allowed if such interest has been actually paid and any interest referred to in that clause, which has been converted into a loan or borrowing, shall not be deemed to have been actually paid. Thus, the doubt stands removed in view of Explanation 3C. This provision was considered by the Madhya Pradesh High Court in [Eicher Motors Limited v. Commissioner of Income Tax](#) to hold that in view of the Explanation 3C appended to [Section 43B](#) with retrospective effect from 01.04.1989, conversion of interest amount into loan would not be deemed to be regarded as actually paid amount within the meaning of [Section 43B](#) of the Act."

12. In light of the introduction of Explanation 3C, this Court does not consider it necessary to discuss the precedents relied upon by the assessee delivered prior to the enactment of [Finance Act, 2006](#). As regards the decision in Shakti Spring Industries (supra), the



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interest due in that case was offset against a subsidy which the assessee was entitled to, and it did not involve an instance where it was "converted into a loan or borrowing" within the meaning of Explanation 3C. It is perhaps for this reason that Explanation 3C was not discussed.”

15.In the impugned judgment, the Gujarat High Court has relied upon Bhagwati Autocast Ltd. (supra) which was not a case covered by [Section 43B](#) (d) rather was a case of [Section 43B](#) (a). The provision of [Section 43B](#) covers a host of different situations. The statutory Explanation 3C inserted by the [Finance Act](#), 2006 is squarely applicable in the facts of the present case. It appears that the attention of the High Court was not invited to Explanation 3C, we are, thus, of the view that the Assessing Officer has rightly disallowed the deduction as claimed by the assessee. The Appellate Authority, ITAT and the High Court erred in reversing the said disallowance.”

9.It is not in dispute that the interest payable to the Government of Tamil Nadu is not hit by the provisions of section 43B of the Act. However, in the present case, the assessee was provided with loan not only by the Government of Tamil Nadu, but also by M/s.Infrastructure Leasing and Financial Services Limited, and the interest liability, which accrued during the relevant assessment years, was not actually paid by the assessee, was sought to be deducted. In such circumstances, it has to be examined as to whether IL&FS is a public interest institution. Without verifying the same, the Tribunal simply held that the promoters were not covered under the definition of Public Financial Institution as per Explanation 4 to section 43B r/w section 4A of the Companies Act and



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hence, the provisions of section 43B(d) r/w Explanation 3C would not be applicable to the case of the assessee.

10.At this juncture, the learned counsel for the appellant invited the attention of this court to a decision of the co-ordinate bench in ***TCA. No.63 of 2015, dated 14.12.2020 [CIT v. Tamil Nadu Small Industries Corporation Ltd]***. In that case, the Tribunal remanded the matter to the assessing officer to examine as to whether the assessee paid the interest to the Government of Tamil Nadu or to any other financial institution, after having held that interest paid to Government of Tamil Nadu is not hit by the provisions of section 43B of the Act.

11.In view of the reasoning stated in the preceding paragraphs, the orders of the Tribunal are set aside and the matters are remanded to the Assessing Officer to examine, whether M/s.Infrastructure Leasing and Financial Services Limited (IL&FS) is a public financial institution; and if it is in affirmative, then, section 43B(d) r/w explanation 3C will be applicable; and pass orders afresh, after providing due opportunity of hearing to all the parties, within a period of eight weeks from the date of receipt of a copy of this judgment.

12.All these tax case appeals are disposed of in the above terms. No



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(R.M.D., J.) (J.S.N.P., J.)
15.02.2022

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Internet : Yes / No

Index : Yes / No

To

1. The Income Tax Appellate Tribunal,
Chennai "C" Bench.
2. The Income Tax Appellate Tribunal,
Chennai "A" Bench.
3. The Income Tax Appellate Tribunal,
Chennai "D" Bench.
4. The Commissioner of Income Tax
Chennai

R. MAHADEVAN, J.



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T.C.A.Nos.1406 of 2008, 1382 & 1383 of 2009, 87 & 483 of 2011,619 of 2014, and 928, 929 & 941 of 2015

and
J.SATHYA NARAYANA PRASAD, J.

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