

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.08.2006

Coram :

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN

AND

THE HONOURABLE MR.JUSTICE P.P.S.JANARTHANA RAJA

Tax Case (Appeal) Nos.262 to 267 of 2006 and  
1231 to 1237 of 2006

The Commissioner of Income-tax,  
Chennai.

..Appellant in all  
the T.C.As.

Vs

South India Corporation (Agencies) Limited,  
36-40, Armenian Street,  
Chennai-600 001.

..Respondent in all  
the T.C.As.

Appeals under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras, 'B' Bench in I.T.A. Nos.2656/Mds/95, 2657/Mds/95, 1553/Mds/94, 1919/Mds/94, 2676/Mds/96, 43/Mds/96, 44/Mds/96, 45/Mds/96, 46/Mds/96, 47/Mds/96, 1612/Mds/94, 1922/Mds/94 and 2600/Mds/96 for the assessment years 1990-91, 1991-92, 1989-90, 1992-93, 1993-94 and 1986-87 to 1989-90. dated 17.01.2005 Assessment order for 1990-91 dated 23.02.1993 on the file of Assistant Commissionr of Income Tax, Central Circle - II (5) Madras - 34 against the Assessment order for 1993-93 dated 31.03.1993 Assistant Commissioner of Income-Tax, Central Circle II (5) Madras 34 against the Assessment order for 1991-92 dated 16.02.1994 on the file of the Deputy Commissioner of Income Tax, Special Range (on III) Madras - 34 against the order of the Commissioner of Income Tax (Appeals) in ITA NO. 1/93-94 dated 22.04.1994 on the file of the Commissioner of Income Tax (Appeals) - II, Madras - 34 against the order of the Commissioner of Income Tax (Appeals) in ITA NO. 115/94-95, dated 22.06.1994 on the file of the Commissioner of Income Tax (Appeals - I) Madras - 34 against the Assessment order for 1986-87 dated 28.03.1995 on the file of the Assistant Commissioner of Income Tax Cent Circle II (5) Madras 34 Assessment order for 1988-89 dated 31.03.1995 on the file of the Assistant Commissioner of Income Tax Cent. Circle II (5) Madras 34, Assessment order for 1989-90 dated 31.03.1995 Assistant Commissioner of Income Tax Cent. Circle II (5) Madras - 34 against the order of

the Commissioner of Income Tax (Appeals) in ITA NO. 22/95-96 dated 16.10.1995 on the file of the Commissioner of Income Tax (Appeals) II Madras - 34 against the order of the Commissioner of Income Tax (Appeals) ITA NO. 24/95-96 dated 16.10.1995 on the file of the Commissioner of Income-Tax (Appeals)- I, Madras - 34 against the order of the Commissioner of Income Tax (Appeals) in ITA NO. 25/95-96 dated 16.10.95 on the file of the Commissioner of Income -Tax (Appeals) I madras - 34 against the Assessment order for 1993-94 dated 29.03.1996 on the file of the Madras - 34 against the order of the Commissioner of Income Tax (Appeals) in ITA NO. 68/96-97 dated 08.10.1996 on the file of the Commissioner of Income Tax (A) - II, Madras - 34 against the order of the Income Tax Appellate Tribunal in ITA NOS. 2656, 2657,, Mds - 95, 1553, 1919/Mds/94, 2676, 43-47/Mds/96, 1612, 1922/Nds/94 and 2600/Mds/96, dated 17.01.2005 on the file of the Income Tax Appellate Tribunal, Chennai Bench "B" Chennai.

For Appellant : Mr.J.Narayanaswamy

#### JUDGMENT

(Judgment of the Court was delivered by  
P.P.S.Janarthana Raja, J.)

The present appeals are filed under Section 260A of the Income Tax Act, 1961 by the Revenue, in I.T.A. Nos.2656/Mds/95, 2657/Mds/95, 1553/Mds/94, 1919/Mds/94, 2676/Mds/96, 43/Mds/96, 44/Mds/96, 45/Mds/96, 46/Mds/96, 47/Mds/96, 1612/Mds/94, 1922/Mds/94 and 2600/Mds/96 for the assessment years 1990-91, 1991-92, 1989-90, 1992-93, 1993-94 and 1986-87 to 1989-90, passed by the Income Tax Appellate Tribunal, Madras, 'B' Bench raising the following common substantial questions of law.

ITA Nos.2656 and 2657/Mds/95 for the assessment years 1989-90 and 1992-93:

1. Whether in the facts and circumstances of the case, the Tribunal was right in holding that the 60% of the expenses incurred on partly convertible debenture had to be allowed as deduction?

ITA Nos.1553 and 1919/Mds/94, 2676 and 43 to 47/Mds/96 for the assessment years 1986-87 to 1988-89, 1992-93, 1993-94:

2. Whether in the facts and circumstances of the case, the Tribunal was right in holding that the mamool paid at harbour customs airport is to be allowed as a deduction?

ITA Nos.1553, 1919, 1612, 1922/Mds/94, 2657/Mds/95, 2656 and 2657/Mds/95, 43 to 47/Mds/96 for the assessment years 1990-91, 1991-92, 1992-93, 1989-90, 1992-93, 1986-87 to 1988-89, 1992-93:

3. Whether in the facts and circumstances of the case, the Tribunal was right in holding that the payment of incentives to Dock Labour Board workers had to be allowed as a deduction.

ITA Nos.43 and 45/Mds/96 for the assessment years 1986-87 and 1988-89:

4. Whether in the facts and circumstances of the case, the Tribunal was right in holding that the claim of the loss from the Films Division had to be allowed?

ITA Nos.1612 and 1922/Mds/94, 2657/Mds/95, 2600/Mds/96 for the assessment years 1990-91, 1991-92, 1992-93, and 1993-94:

5. Whether in the facts and circumstances of the case, the Tribunal was right in holding that the interest paid on the borrowings from the subsidiary company is an allowable deduction when the assessee had enough funds?

ITA Nos.1919/Mds/94, 2676 and 43 to 47/Mds/96 for the assessment years 1991-92, 1986-87 to 1988-89, 1992-93 and 1993-94:

6. Whether in the facts and circumstances of the case, the Tribunal was right in holding that inclusion of interest from Sundaram Industries for the amounts advanced by the assessee had to be deleted?

ITA No.2676/Mds/96 for the assessment year 1993-94:

7. Whether in the facts and circumstances of the case, the Tribunal was right in holding that interest paid towards the loan taken for acquiring spic zero bonds, had to be allowed as a deduction while computing the income from other sources.

2. The assessee company is carrying on business in agency, trading, engineering, stevedoring, clearing and forwarding, shipping etc. The assessment years involved are 1986-87, 1987-88, 1988-89, 1989-90, 1990-91, 1991-92, 1992-93 and 1993-94.

3.1. The common questions of law stated above for these assessment years are taken up as follows:

Question No.1:

"Whether in the facts and circumstances of the case, the Tribunal was right in holding that the 60% of the expenses incurred on partly convertible debenture had to be allowed as deduction?"

3.2. This question pertains to the assessment years 1989-90 and 1992-93. For the relevant assessment years, the assessee claimed certain expenditure as debenture issue expenses. The Assessing Officer treated 60% of the claim of expenditure as capital expenditure and the balance 40% as revenue expenditure. Aggrieved by the same, the assessee filed an appeal to the Commissioner of Income-tax (Appeals). The C.I.T.(A) confirmed the order of the Assessing Officer and dismissed the appeal filed by the assessee. Aggrieved by the order, the assessee filed an appeal to the Income-tax Appellate Tribunal (hereinafter referred to as the "Tribunal"). The Tribunal held as follows:

"The last of the issue is with regard to expenses incurred on Debenture Issue being treated as capital expenditure. The authorities have treated part of the expenditure as capital expenditure on the reasoning that at the time of redemption of the Debenture, the holders of the Debentures were entitled to certain shares. The issue of shares is a future event which may or may not happen. At present, the expenditure incurred was on the issue of Debentures only and hence the expenses incurred on obtaining a loan is a revenue expenditure. We accordingly uphold the claim of the assessee."

3.3. The Assessing Officer had bifurcated the expenditure and allowed only 40% as revenue expenditure, without any basis. The Tribunal correctly held that the disallowance of 60% is without any basis and the Assessing Officer was wrong in treating part of the expenditure as capital expenditure on the reasoning that at the time of redemption of debentures, the holders of the debentures would be entitled to certain shares. The issue of shares is a future event which may or may not happen.

3.4. The Tribunal considered and followed the principles enunciated in the Apex Court judgment reported in in **India Cements Ltd. Vs. Commissioner of Income-tax** [60 ITR 52], which, in fact, followed by the Delhi High Court in **Commissioner of Income-tax Vs. Thirani Chemicals Limited** [(2006) 204 CTR 146] holding that expenditure incurred on the issue of debentures is a permissible



deduction under Section 37 of the Act.

3.5. The learned counsel appearing for the Revenue has not produced any material or evidence to take a different view. The reasoning of the Tribunal was based on relevant materials and evidence and there is no error or infirmity in the order of the Tribunal to warrant interference. In view of the same, no substantial question of law arises for consideration by this Court and hence, the appeal in respect of question No.1 is dismissed.

Question No.2:

Whether in the facts and circumstances of the case, the Tribunal was right in holding that the mamool paid at harbour customs airport is to be allowed as a deduction?

4.1. This question pertains to the assessment years 1986-87, 1987-88, 1988-89, 1992-93 and 1993-94. For the relevant assessment years, the assessee claimed certain expenses incurred at Harbour, Customs, Airport etc. as revenue expenditure. The Assessing Officer disallowed the expenditure. Aggrieved by the order, the assessee filed an appeal to the C.I.T. (A). The C.I.T.(A) held that the assessee is entitled to deduction and allowed the appeal filed by the assessee. Aggrieved by the order, the Revenue filed an appeal to the Tribunal. The Tribunal confirmed the order of the C.I.T.(A) and dismissed the appeal.

4.2. Both the C.I.T.(A) as well as Tribunal had given a concurrent finding that these expenses were incurred by the assessee in connection with release of various goods and found that these were eligible expenses and also given a finding that the expenditure was inevitable.

4.3. In view of the factual finding given by the Tribunal and the conclusion based on the material and evidence available on record, there is no error or infirmity in the order of the Tribunal to warrant interference.

4.4. In our considered opinion, the question No.2 has not been happily worded. Even though learned counsel for the appellant submits that the question only deals with the expenses paid at harbour customs, but the same has colloquially been described in the question as "mamool", we are unable to appreciate the said explanation as all the authorities have only meant and used the word, expenses incurred by the assessee and not the word, "mamool" which is unusual in business transaction. Hence, while reframing the question No.2 as,

"Whether in the facts and circumstances of the case, the Tribunal was right in holding that the expenses incurred

paid at harbour customs airport is to be allowed as a deduction?"

we still hold that no substantial question of law arises as the expenses incurred by the assessee in this regard is nothing but an inevitable expenditure as factually found by the Tribunal. Hence, finding no substantial question of law that arises for consideration, the appeal as regards question No.2 is also dismissed.

Question No.3:

"Whether in the facts and circumstances of the case, the Tribunal was right in holding that the payment of incentives to Dock Labour Board workers had to be allowed as a deduction?"

5.1. This question pertains to the assessment years 1986-87 to 1988-89, 1989-90, 1990-91, 1991-92 and 1992-93. The assessee paid incentives to Dock Labour Board workers, share handling workers, tally clerks and lorry drivers. The said amount was paid to the workers as incentives to speed up the stevedoring work carried on by the assessee. The Stevedoring is one of the business activities of the assessee company which is a registered employer of the Madras Dock Labour Board. The said amount was paid in cash to the workers of the Madras Dock Labour Board as incentives to speed up the stevedoring work. The Assessing Officer allowed only 50% of the amount by following the earlier order. Aggrieved by the order, the assessee filed an appeal to the C.I.T.(A). The C.I.T.(A) allowed the appeal. Aggrieved by the order of the C.I.T.(A), the Revenue filed an appeal to the Tribunal. The Tribunal dismissed the appeal filed by the Revenue and confirmed the order of the C.I.T.(A).

5.2. There is a factual finding by both the authorities that the payments were made in accordance with the list that was provided in the Dock Labour Board. The incentives paid do not exceed 3% of the gross receipts and also is a customary payment incurred over a number of years and accepted as genuine in earlier years by the Department. The payment was necessitated to utilise the full capacity of manpower from the workers, to avoid demurrage charges and to keep the contract commitments made to the stevedors to discharge the tonnage as stipulated in the agreements between the stevedors and the principals. Both the authorities found that there is no breach of law in making payments which were essentially incidental to the carrying of the appellant's business with a view to earning profits. The finding given by both the authorities is based on valid materials and evidence and there is no error or legal infirmity in the order of the Tribunal and hence, does not require interference. In view of the above, no substantial question of law arises for consideration of this Court and hence, the appeal with respect to question No.3 is dismissed.

Question No.4:

"Whether in the facts and circumstances of the case, the Tribunal was right in holding that the claim of the loss from the Films Division had to be allowed?"

6.1. This question pertains to the assessment years 1986-87 and 1988-89. During the relevant assessment years, the assessee purchased distribution rights for the Tamil Film and for Exploitation Rights in the District of North Arcot, South Arcot and Chengalpattu for a consideration of Rs.80,00,000/- and thereby incurred a loss. The assessee claimed the set off loss from film distribution and the Assessing Officer disallowed the claim on the ground that the assessee venture into the film distribution business is only to avoid payment of taxes due to Government, legitimately. Aggrieved by the order, the assessee filed an appeal to the C.I.T. (A). The C.I.T.(A) allowed the appeal. Aggrieved by the order, Revenue filed an appeal to the Tribunal. The Tribunal dismissed the appeal by following its earlier order of the assessee's own case relating to the earlier assessment years.

6.2. The Tribunal has consistently allowed the claim for loss from Films Division. The Revenue has accepted the earlier order and the counsel for the Revenue has not produced any material or evidence before us to take a different view. When a consistent view has been taken by the Tribunal, there is no error or infirmity in the order of the Tribunal and it does not require interference and hence, no substantial question of law arises for consideration of this Court and hence, the appeal in respect of question No.4 is dismissed.

Question No.5:

"Whether in the facts and circumstances of the case, the Tribunal was right in holding that the interest paid on the borrowings from the subsidiary company is an allowable deduction when the assessee had enough funds?"

7.1. This question pertains to the assessment years 1990-91, 1991-92, 1992-93 and 1993-94. The assessee had advanced an amount to M/s.Sundaram Industries. In the said advance, the assessee had not charged any interest. The said advances were made to provide working capital to the subsidiaries. The Assessing Officer calculated the interest at 12% on the minimum balance outstanding during each year and disallowed out of interest claim of the assessee. Against the disallowance, the assessee filed an appeal to the C.I.T.(A). The C.I.T.(A) confirmed the order of the Assessing Officer. Aggrieved by the order, the assessee filed an appeal to the Tribunal. The



Tribunal allowed the assessee's claim. The Tribunal had given a finding that the assessee has a lot of business action with the subsidiaries and carrying on various activities through the subsidiaries.

7.2. There is a factual finding that the assessee had its own free reserves and funds used mainly for running expenses. Also, there was no material produced by the Revenue to establish that the money borrowed was actually given to its subsidiaries. Hence the conclusion of the Tribunal is based on material and evidence and it does not suffer from legal infirmity to warrant interference. In view of the above, no substantial question of law arises for consideration of this Court and hence, the appeal qua question No.5 is dismissed.

Question No.6:

"Whether in the facts and circumstances of the case, the Tribunal was right in holding that inclusion of interest from Sundaram Industries for the amounts advanced by the assessee had to be deleted?"

8.1. This question pertains to the assessment years 1986-87 to 1988-89, 1991-92, 1992-93 and 1993-94. There was a debit balance in the books of the assessee company in the name of M/s.Sundaram Industries. No interest was charged by the assessee even though the assessee was paying interest on its borrowings. The Assessing Officer estimated the interest at 18% and added as income. Aggrieved by the order, the assessee filed an appeal to the C.I.T. (A). The C.I.T.(A) allowed the appeal filed by the assessee. Aggrieved, the Tribunal filed an appeal to the Tribunal and the Tribunal dismissed the appeal.

8.2. In respect of the earlier assessment order, for the assessment years 1981-82 and 1982-83, the Tribunal had allowed the claim of the assessee. In the present case, the Tribunal followed the said earlier order and allowed the claim of the assessee. The Revenue was also not able to produce evidence or material to take a different view and the said earlier order was accepted by the Revenue. In view of the same, no substantial question of law arises for consideration of this Court and hence, the appeal apropos question No.6 is dismissed.

Question No.7:

"Whether in the facts and circumstances of the case, the Tribunal was right in holding that interest paid towards the loan taken for acquiring spic zero bonds, had to be allowed as a deduction while computing the income from other sources?"



9.1. This question pertains to the assessment year 1993-94. During the relevant years, the assessee had acquired Spic Zero Bonds from M/s.SPIC Limited. The assessee has claimed interest payment as a deductible expenditure. The reasons for the said claim are:

- a) Interest claimed as a deduction from other sources being expenditure incurred for earning the same.
- b) As the assessee is not a dealer in shares, the interest paid on loan borrowed is allowable as deduction and is not required to be capitalised.

The Assessing Officer disallowed the appellant's claim for deduction of interest. Aggrieved by the order, the assessee filed an appeal to the C.I.T.(A). The C.I.T.(A) held that the assessee is entitled to deduction of interest and allowed the claim. Aggrieved, the Revenue filed an appeal to the Tribunal. The Tribunal dismissed the Revenue's appeal and confirmed the order of the C.I.T.(A).

9.2. Both the first appellate authority as well as the Tribunal given a factual finding finding that the assessee is a flag-ship company carrying on the worldwide business and the bonds were acquired for purposes of business. The conclusion arrived at by the authorities were based on material and evidence and hence no substantial question of law arises for consideration by this Court and hence, the appeal in regard to question No.7 is dismissed.

In the result, the tax case are dismissed. No costs.

Km

Sd/  
Asst.Registrar

/true copy/

Sub Asst.Registrar

To  
The Assistant Registrar  
Income Tax Appellate Tribunal  
IIIrd Floor, Rajaji Bhavan,  
Besant Nagar, Chennai 600 090

2. The Commissioner of Income Tax, Chennai

3. The Income Tax Appellate Tribunal, Madras B Bench Chennai

4. The Assistant Commissioner of Income Tax  
Central Cir II (5) Chennai - 34

5. The Deputy Commissioner of Income Tax  
Special Range (Central III) Madras - 34

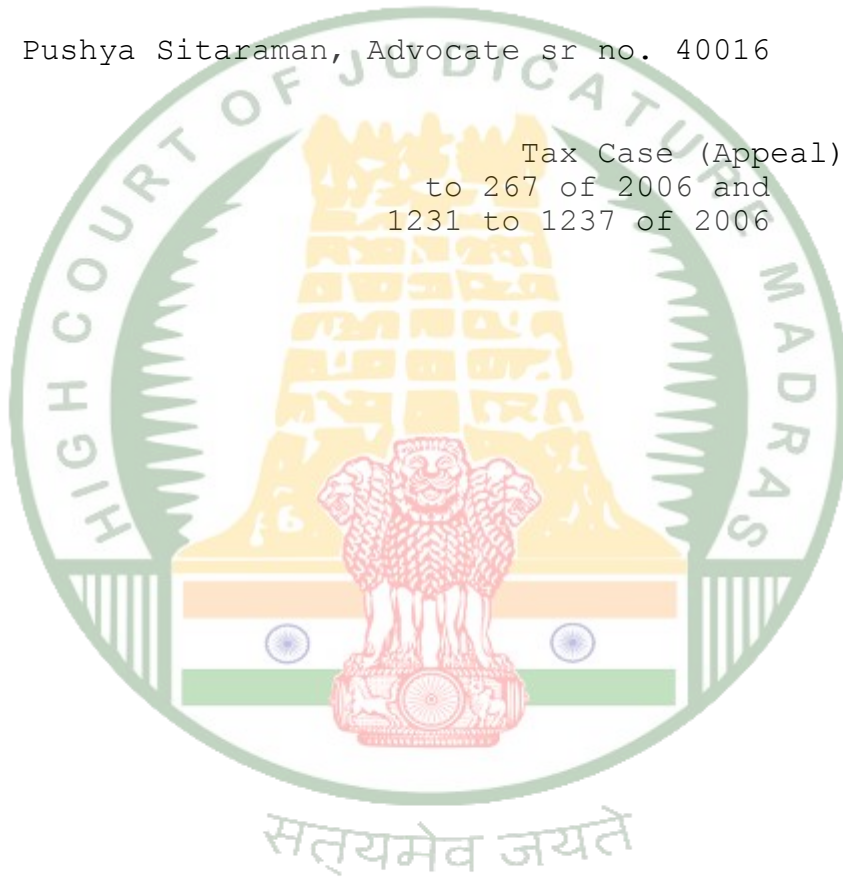
6. The Commissioner of Income Tax (Appeals) II  
Madras 34

7. The Commissioner of Income Tax (Appeals I)  
Madras - 600 034

+ one cc to Mrs. Pushya Sitaraman, Advocate sr no. 40016

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Tax Case (Appeal) Nos.262  
to 267 of 2006 and  
1231 to 1237 of 2006



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