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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :06.04.2026

Pronounced on :20.04.2026

CORAM

**THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN
AND
THE HONOURABLE MR.JUSTICE SHAMIM AHMED**

T.C.A.Nos.641 and 642 of 2009

T.C.A.No.641 of 2009:

Commissioner of Income Tax,
Chennai.

..Appellant/Appellant

/versus/

M/s Vijay Shanthi Builders Ltd.,
No.3, Blackers Road, Anna Salai,
Chennai 600 002.

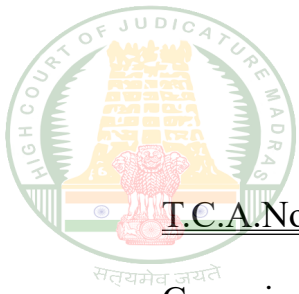
..Respondent/Respondent

Prayer:

Tax Case Appeal is filed under Section 260-A of the Income Tax Act, 1961, against the Order of the Income Tax Appellate Tribunal, Madras 'C' Bench, dated 28.11.2008 in ITA No.584/Mds/2003.

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

For Respondent :Mr.Vishnu Mohan for
Mr.R.Parthasarathy



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Prayer:

Tax Case Appeal is filed under Section 260-A of the Income Tax Act, 1961, against the Order of the Income Tax Appellate Tribunal, Madras 'C' Bench, dated 28.11.2008 in ITA No.724/Mds/2003.

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

For Respondent :Mr.Vishnu Mohan for
Mr.R.Parthasarathy

COMMON JUDGMENT

(Judgment was made by Dr.G.JAYACHANDRAN,J.)

The Tax Case Appeals are filed by the Revenue, being aggrieved by the order of the Tribunal, confirming the order of the Appellate Authority held in favour of the Assessee.

2. These two Appeals are in connection with the same issue, but for the Assessment Year 1995-1996 to 1997-1998. The Assessee, who is in the



business of construction activity, had filed its return of income on 26.12.1997 disclosing income for a sum of Rs.61,070/- for the Assessment Year 1996-1997.

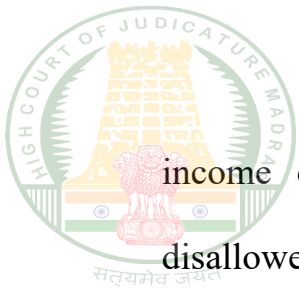
The return was processed under Section 143(1)(a) of the Income Tax Act, 1961(in short "IT Act") making an addition of Rs.7,43,936/- on account of excess depreciation. After notice under Section 143(2) of the IT Act, the Assessment Order was passed holding:-

(i)In respect of the land development account, the assessee claims expenses of Rs.44,63,562/-. The perusal of its accounts would show that these expenses have not been debited by assessee to the Profit and Loss Account. Instead, they are shown under 'Current Assets' (Schedule G) in the Balance Sheet under the head "Property Development Project in Progress as on 31.03.1996 (Total: Rs.10,87,33,207/-). There is no specific amount of this magnitude debited under "Construction Expenses"(Schedule O).

(ii)Claiming depreciation at 50% of invoice value of cinematograph films purchased on 29.03.1996 from M/s Sri Varu Creations and immediately leased back to the same party is not a genuine transaction, therefore, the depreciation claim is fully rejected.

(iii)The accounting method adopted in respect of construction expenses debited and other depreciation claimed are faulty. Hence, Rs.9,72,86,043/- levied as total tax.

(iv)Similarly, for the year 1997-1998, when the Assessee declared total



income of Rs.8,44,740/-. Hearing notices were issued to the Assessee disallowed the assessee's claim of depreciation a sum of Rs.91,23,873/- and 100% depreciation on the cinematographic films amounting to Rs.53,93,590/-, as a result, levied tax of Rs.70,82,301/-.

3. Both the assessment orders were challenged by the Assessee before the CIT (Appeals). After considering the grounds of appeals, the CIT(A) accepted the plea of the assessee method of accounting as a method approved by the Hon'ble Supreme Court of India in *Calcutta Company Limited vs. CIT reported in [(1959)37 ITR 1(SC)]*. In respect of construction expenditure and claim of depreciation on cinematographic films, the appeals were partly allowed.

4. Insofar as the next assessment year 1997-1998, the appeal filed by the Assessee was allowed in respect of depreciation claimed on cinematographic films purchased. The Revenue had preferred appeal against this order before the ITAT raising various grounds including deletion of the disallowance of construction expenses and deleting the disallowance of depreciation on cinematographic films.

5. With regard to the issue relating to construction expenses and adoption of hybrid system of accounting (i.e.) receipt based on sale and on accrual basis



for expenses, the Tribunal confirmed the view of the Appellate Authority by holding that such hybrid method of accounting is permissible in view of the judgment of the Hon'ble Supreme Court in *Calcutta Company Limited case* (cited supra).

6. The Tribunal approving matching concept of accounting as below:

“15. After considering the rival contentions and material on record, we note that the Assessee credited the full sale consideration in the profit and loss account at the time of booking of the flat though the amount received as advance was very less. At the same time, the Assessee has also debited the estimated expenditure to be incurred in construction of the flat. The estimates so made by the Assessee regarding cost of construction is a conservative estimate and the Assessee has claimed the difference between the actual expenditure and the estimated expenditure at the time of filing of return. The Assessing Officer has disallowed this expenditure on the ground that the Assessee has adopted hybrid system of accounting whereas we note that this is not so as apparent from records because when the Assessee has credited the entire sale consideration at the time of booking of flat without receiving the same then the Assessee is adopting the mercantile system of account in respect of sale whereas the Assessing Officer has observed that this is on receipt basis for the sale and accrual basis for the expenditure. We further note that the Assessing Officer is not correct in saying that the claim is made only in computation of income and not in the books of accounts whereas the learned counsel for the Assessee pointed out and referred to pages 7 & 12 of the paper book which shows that the construction expenses were booked in the profit and loss accounts for so many years and this was accepted by the Department in the previous years. The Assessing Officer though rejected the estimation made but did not specifically point out the defect in the estimation of the Assessee.”

7. As far as the depreciation on purchase of cinematographic films, the ITAT has approved as below:



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“34.After considering the rival submissions and the material on record, we note that the Assessing Officer has disallowed the depreciation claim of the Assessee on the ground that the transaction itself is not genuine transaction but in the nature of sale and lease back transaction the Assessee was claiming 100% depreciation while the seller was claiming as lease rent on the same asset without movement of the asset itself. We note that the disallowance of depreciation is only for questioning the transaction and not otherwise. It is not the case of the department that if the transaction is found to be genuine, the depreciation is not allowed. We note that the lease transaction is entered into the parties by executing lease deed which contains all the terms and condition of the transaction and also referring to sale as well as the lease back transaction. As per lease agreement dated 28.03.96, the lessee requested the lessor to purchase the equipment described in schedule I to the lease agreement at a price finalised by the parties and had offered to take on lease the said equipment thereafter purchase. Therefore, when the lease agreement itself contains all the terms and conditions and subsequent lease back transaction, then subsequent issuing of invoice/bills by M/s Sri Veeru Creations on 29.3.96 is in pursuance to the lease agreement which is also containing the terms and conditions of the purchase as well as lease back does not suffer from any illegality. Thus, we find no defect in the subsequent issue of bills against the consideration through two cheques on 28.3.96. We further note that even otherwise if a particular transaction is done with a motive to save the tax then the same cannot be treated as colourable devise if the transaction is otherwise permissible in law. Therefore, on the facts and in the circumstances of the case when the transaction itself is

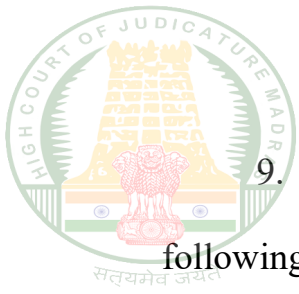


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permissible under law, then merely because the same is suspected by the Department, as a device to evade tax, the said transaction cannot be held as lawful or colourable. In view of the above discussion, we find no error or illegality in the order of the CIT(appeals) on this issue. The issue is decided against the Revenue and in favour of the Assessee.”

8. Revenue has filed these appeals on the ground that the Tribunal failed to take note of the fact that the Assessee has prepared its accounts in such a manner that a rosy picture has been given to the public and the share holders by showing a net profit of Rs.2.04 crores in the Profit and Loss account, however, while computing the taxable income for the purpose of paying tax had shown only Rs.61,070/-. By improper accounting procedure for income, the assessee has shown the actual receipt as income. Whereas the expenditure has been claimed on accrual basis. Therefore, the principal of matching concept will not arise. The claim of depreciation on purchase of cinematographic films ought to have been rejected since the date of lease of the film to the same person proceeds the date of purchase by the Assessee. When there is no right over the cinematographic films on the date of lease, the Assessee has leased it out. Therefore, it being a sham and nominal transaction and colourable device with a motive to evade the tax, the Tribunal ought not to have accepted the plea of the Assessee.



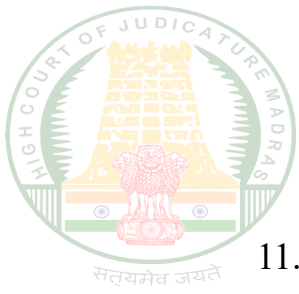
9. This Court, while admitting these two appeals, has formulated the following Substantial Questions of Law for consideration:-

1. Whether on the facts and circumstances of the case, the Tribunal was right in holding that the assessee is entitled to deduction of construction expenses and incremental expenses accounted for on accrual basis, while accounting for the equivalent income only on receipt basis?

2. Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the assessee is entitled to depreciation on cinematograph films in a sale and lease back transaction, when the date of purchase of the films is subsequent to the date of leasing them out, and no evidence was produced regarding the original sale of the same?

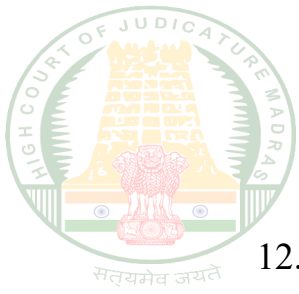
3. Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the sale and lease back transaction of cinematograph film is only with a motive to save tax and so cannot be treated as a colourable device?

10. Heard the learned Senior Standing Counsel appearing for the Revenue/appellant and the learned counsel appearing for the respondent/the assessee.



11. In so far as the question of adopting hybrid system of account in respect of receipt on sale of flats and expenditure of the construction, the said issue has been considered by the Hon'ble Supreme Court in *Calcutta Company Ltd.*, case (cited supra), in the following lines.

28. Turning now to the facts of the present case, we find that the sum of Rs 24,809 represented the estimated expenditure which had to be incurred by the appellant in discharging a liability which it had already undertaken under the terms of the deeds of sale of the lands in question and was an accrued liability which according to the mercantile system of accounting the appellant was entitled to debit in its books of account for the accounting year as against the receipts of Rs 43,692-11-9 which represented the sale proceeds of the said lands. Even under Section 10(2) of the Income Tax Act, it might possibly be urged that the word "expended" was capable of being interpreted as "expendable" or "to be expended" at least in a case where a liability to incur the said expenses had been actually incurred by the assessee who adopted the mercantile system of accounting and the debit of Rs 24,809 was thus a proper debit in the present case. We need not however base our decision on any such consideration. We are definitely of opinion that the sum of Rs 24,809 represented the estimated amount which would have to be expended by the appellant in the course of carrying on its business and was incidental to the same and having regard to the accepted commercial practice and trading principles was a deduction which, if there was no specific provision for it under Section 10(2) of the Act was certainly allowable deduction, in arriving at the profits and gains of the business of the appellant under Section 10(1) of the Act, there being no prohibition against it, express or implied in the Act.



12. Therefore, in view of the affirmative judgment of the Hon'ble Supreme Court, which has been duly followed by the Appellate Authority and the Tribunal, we find no reason to interfere with the concurrent finding of the Appellate Authority and the Tribunal, based on the above said Judgment of the Hon'ble Supreme Court.

13. In case of depreciation claimed on purchase of cinematograph film, no doubt, the Assessee, who has purchased the cinematograph film from one M/s Sri Veeru Creations production, had immediately leased it back to the very same party. However, the fact remains the status of the vendor as the holder of the cinematograph right has become the lessee. The title has been transferred in favour of the assessee. While so, the depreciation sought by the assessee cannot be disallowed, merely on suspicion without any material to substantiate the said suspicion.

14. As rightly contended by the learned Senior Standing Counsel for the appellant/Revenue, the Assessing Officer had disallowed the depreciation purely on the basis of surmises and conjunctions. Sale and leaseback is a recognised business transaction. The records show that the entire amount of sale consideration was paid by cheque and encashed by the vendor. What is paid by



the vendor to the assessee is the lease amount and not the sale consideration.

For the said reason, we find that the Appellate Authority as well as the Tribunal have rightly applied the law to the facts of the case and have arrived at a correct decision.

15. As a result, the Substantial Questions of Law framed above are held against the appellant/revenue.

16. In fine, ***both the Tax Case Appeals stand dismissed. No order as to costs.***

(G.JAYACHANDRAN, J.)

(SHAMIM AHMED, J.)

20.04.2026

Neutral Citation:yes

Index:yes/no

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Dr.G.JAYACHANDRAN, J.
and
SHAMIM AHMED,J.

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delivery Common Judgment made in
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