IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 19.09.2025

Pronounced on : 10.10.2025

CORAM

THE HONOURABLE MR. MANINDRA MOHAN SHRIVASTAVA,
CHIEF JUSTICE
AND
THE HONOURABLE MR.JUSTICE G.ARUL MURUGAN

TCA Nos.794 and 795 of 2016
and 798, 800, 801, 802 & 803 of 2018

TCA Nos.794 & 795 of 2016

M/s.Hinduja Foundries Ltd.,
(formerly Known as M/s.Ennore Foundries Ltd.,)
Kathivakkam High Road, Ennore,
Chennai - 600 057.
PAN: AAACE1078K .. Appellant

Vs

The Assistant Commissioner of Income Tax,
Corporate Circle - 2,
Chennai - 600 034. .. Respondent

Common Prayer : Appeals under Section 260A of the Income Tax Act, 1961 against the common order dated 19.02.2016 passed in ITA Nos.1592 & 1593/Mds/2015 on the file of Income Tax Appellate Tribunal 'A' Bench, Chennai.

TCA Nos.798, 800 to 803 of 2018

M/s.Hinduja Foundries Ltd.,
(merged with M/s.Ashok Leyland Limited) Kathivakkam High Road,
Ennore,
Chennai - 600 057.
PAN: AAACA4651L .. Appellant

Vs

The Deputy Commissioner of Income Tax,
Large Tax Payer Unit - 2,
Chennai - 600 034.
(Presently Deputy Commissioner of Income Tax
Company Circle 2(2)
Chennai - 600 034.) .. Respondent

Common Prayer : Appeals under Section 260A of the Income Tax Act, 1961 against the common order dated 08.03.2018 passed in ITA Nos.1974, 1975, 1976, 1977 & 1978/CHNY/2017 on the file of Income Tax Appellate Tribunal 'A' Bench, Chennai.

For Appellant [in all TCAs]	:	Mr.R.Vijayaraghavan for M/s.Subbaraya Aiyar Padmanabhan Ramamani
For Respondent [in all TCAs]	:	Mrs.V.Pushpa Senior Standing Counsel

COMMON JUDGMENT

(Judgment of the Court was delivered by G.Arul Murugan, J.)

These Tax Appeals are preferred by the Assessee under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as "the Act") challenging the two common orders of the Income Tax Appellate Tribunal, 'A' Bench, Chennai (hereinafter referred to as "Tribunal") dated 19.02.2016 and 08.03.2018, confirming the two common orders of CIT(A) dated 13.02.2015 and 31.05.2017 pertaining to the assessment years (AY) 2006-2007 to 2014-2015.

2. Tax Appeals in TCA Nos.794 and 795 of 2016 have been admitted, by order dated 22.11.2016, framing the following substantial questions of law:

> "(i) Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the assessee was not eligible to claim depreciation on sums paid to SIPCOT for development of common infrastructural facilities?

(ii) Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the common infrastructural facilities were not amenities used for carrying out the business of the Assessee ?

(iii) Whether, on the facts and in the circumstances of the case, the Tribunal was right in not holding that the assessee has acquired a commercial right to use the common infrastructure facilities for the purpose of its business and hence assessee is entitled to depreciation on such intangible asset ?

(iv) Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in not holding that, if the assessee was not eligible to claim depreciation on sums paid to SIPCOT, the amount was allowable as revenue expenditure."

3. Tax Appeals in TCA Nos.798 and 800 to 803 of 2018 have been admitted, by order dated 14.11.2018, framing the following substantial questions of law:-

"Common questions in all the appeals :

(i) Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the assessee was not eligible to claim depreciation on sums paid to SIPCOT for development of common infrastructural facilities?

(ii) Whether, on the facts and in the circumstance of the case, the Tribunal was right in law in holding that the common infrastructural facilities were not amenities used for carrying out the business of the assessee?

(iii) Whether, on the facts and in the circumstances of the case, the Tribunal was right in not holding that the assessee has acquired a commercial right to use the common infrastructure facilities for the purpose of its business and hence, the assessee is entitled to depreciation on such intangible asset?

(iv) Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in not holding that if the assessee was not eligible to claim depreciation on sums paid to SIPCOT, the amount was allowable as revenue expenditure deductible in the year, in which, it was incurred? And

(v) Without prejudice to the above, whether the Tribunal ought to have allowed the alternate contention that 5% of the amount paid for the year in as much as under Clause 14(ii) the Sipcot would be deducting 5% of the amount for every year of occupation?

Additional questions in T.C.A.No.802 of 2018 :

(vi) Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in refusing to entertain the legal ground raised before it regarding allowability of right issue expenditure? And

(vii) Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in not considering the ground of appeal that expenses of Rs.38,08,416/- incurred in connection with the issue of rights shares, which did not go through, hence eligible for deduction as revenue expenditure under Section 37 of the Act?"

4. Heard Mr.R.Vijayaraghavan, learned counsel for the assessee and Mrs.V.Pushpa, learned Senior Standing Counsel for the Income Tax Department.

5. The substantial questions of law 1 to 3 in all these appeals are almost similar, pertaining to the claim of depreciation on the sum paid to State Industries Promotion Corporation of Tamilnadu Limited (SIPCOT) for development of infrastructural facilities.

6. The substantial question of law 4 arises in TCA Nos.794 and 795 of 2016 and the substantial question of law 4 along with 5 arises in TCA Nos.798 and 800 to 803 of 2018, which pertains to the alternate claim made by the assessee claiming deduction on the sum paid to SIPCOT as revenue expenditure. The substantial questions of law 6 and 7 arise only in TCA No.802 of 2018 that pertains to the claim of deduction as revenue expenditure towards the issue of rights share.

7. During the course of arguments, the learned counsel for the assessee submitted that in view of the materials placed in the enquiry, he is not pressing the appeal in respect of the questions of law 6 and 7. **In view of the submissions made, *the appeal pertaining to question of law 6 and 7 stands dismissed as not pressed.***

Substantial questions of law 1 to 3:

8. The assessee had filed the return of income for AY 2008-2009 on 30.09.2008, declaring a total loss of Rs.15,16,36,876/-. The case was selected for scrutiny and notice under Section 143(2) was issued on 12.08.2009. The return had been processed under Section 143(1) on 28.01.2010. The assessee in its return had claimed 10% depreciation towards a sum of Rs.6.20 crores paid to SIPCOT for development of infrastructural facilities along with the building, which had also been carried forward in the subsequent returns.

9. The Assessing Officer (AO) rejected the claim, holding that the amount paid to SIPCOT is only for the purpose of land development and the rights obtained by the assessee is only towards land and therefore, the claim of depreciation is not allowable on building.

10. In the appeal before the CIT(A), the assessee had also made an alternate claim to allow the amount of Rs.6.20 crores paid towards

development of infrastructure as revenue expenditure. The CIT(A) dismissed the appeals, confirming the assessment order on the ground that to become eligible for depreciation in respect of roads and bridges laid in factory premises on par with factory buildings, the assessee ought to be the owner, but whereas the assessee had neither developed such infrastructure nor owned it.

11. Since the land development expenses collected by the government authority are for the purpose of developing the area as a whole and not with respect of any individual plot and the same is to be used by all the industrial undertakings in the area and the assessee is not the owner either individually or jointly, he is not entitled for depreciation. Further, the CIT(A) also rejected the alternate claim of the assessee to allow as revenue expenditure on the ground that the payment has been made towards development of the land for establishing the industrial unit and therefore the said expenses shall form part and parcel of the land costs, which are not allowable as revenue expenditure.

12. In the further appeals by the assessee, the Tribunal in a set of cases in TCA Nos.794 and 795 of 2016, while rejecting the claim of depreciation under Section 32 of the Act, had not considered the alternate claim of the assessee to treat it as revenue expenditure under Section 37 of the Act. However, in the other set of cases in TCA Nos.798, 800 to 803 of 2018, the Tribunal, by the common order while disposing of the appeals rejecting the claim of depreciation following the earlier order, had also considered the alternate claim to treat it as revenue expenditure and had rejected the same. Though this alternate claim has not been dealt with by the Tribunal in TCA Nos.794 and 795 of 2016, in view of the same having been decided by the Tribunal in the other set of cases, which is considered by this Court in deciding these substantial questions of law, we do not propose to remand TCA Nos.794 and 795 of 2016, as the finding and decision to be rendered on this issue would govern all the cases.

13. The Tribunal had dismissed the appeals holding that to claim depreciation under Section 32 of the Act, the assessee should be the owner of the property/asset and the same should be used for the

business of assessee. Unless and until the capital asset is used as a tool for carrying out the business of assessee and the assessee becomes the owner, he is not eligible for depreciation. Assailing the common orders, the assessee has preferred the above appeals.

14. Mr.R.Vijayaraghavan, learned counsel for the assessee argued that a sum of Rs.6.20 crores paid by the assessee is for development of the infrastructure and the right acquired by the assessee is an intangible asset and as such, the assessee is entitled to claim depreciation on the sum paid, as it is a commercial right under Section 32 of the Act. The commercial right acquired by the assessee is required to be used to carry on the assessee's business by putting up a factory.

15. It is his further contention that as per Section 32(1)(ii) of the Act, a commercial right may be owned, wholly or partly, by the assessee and used. The right need not be in exclusivity. When the assessee has a long lease of 99 years holding the right, he is deemed to be a part owner and therefore, the assessee is eligible for depreciation on the commercial right. While so, the authorities and

Tribunal had erroneously rejected the claim only on the ground that the assessee does not own the infrastructure.

16. He further contended that the contribution made is ought to be treated as part of the building for the purpose of allowing depreciation. The terms of the lease deed are clear that a sum of Rs.6.20 crores paid towards development charges will not be treated as deposit and even in case of premature surrender, the entire amount will get forfeited at the end of 20th year, i.e. by deducting 5% for every year and therefore, the claim towards depreciation of the amount paid is to be allowed.

17. In support of his contentions, the learned counsel relied on the decision of the Hon'ble Supreme Court in the case of ***Techno Shares & Stocks Ltd. Vs. Commissioner of Income Tax*** reported in ***(2010) 327 ITR 323 (SC)*** and the decision of the Karnataka High Court in the case of ***Bangalore International Airport Ltd. Vs. Deputy Commissioner of Income Tax*** reported in ***(2023) 146 taxmann.com 206 (Karnataka)***.

18. Per contra, Mrs.V.Pushpa, learned Senior Standing Counsel for the revenue vehemently contended that the amount paid by the assessee towards development charges is nothing but the charges towards amenities. A separate annual maintenance charge is also paid for these amenities and further the ownership towards these developments are retained by the lessor of the assessee. Any amenities provided for common use of all the plot owners will not be eligible for depreciation, as the assessee does not own these facilities.

19. It is her further contention that the claim of depreciation by the assessee towards building was allowed by AO and only since this payment of Rs.6.20 crores was towards the development of infrastructure which pertains to the land, it has been rightly disallowed. The assessee had only claimed exemption towards the payment made to SIPCOT as development charges and had never claimed it as an intangible asset.

20. The learned Senior Standing Counsel further by relying on Section 32(1)(ii) of the Act submitted that the words 'commercial

rights of similar nature' in the provision would only relate to the commercial rights of similar nature like, patents, copyrights, trademarks, licences, franchises and cannot be extended to include the amenities in the layout. Further, when the assessee does not enjoy the infrastructure absolutely and there are many establishments entitled to use the infrastructure, the assessee neither fully nor partly owns the facilities to qualify for an exemption under Section 32(1)(ii) of the Act. The authorities and the Tribunal had in detail dealt with these issues in rejecting the claim of depreciation.

21. Heard the rival submissions and considered the materials available on record.

22. The assessee is engaged in the business of manufacturing grey iron and aluminium die castings for automobiles etc., and other marine applications. The assessee had entered into a lease deed dated 10.03.2006 with SIPCOT a State Government undertaking towards the lease of a plot in the industrial park promoted by the SIPCOT at Sriperumbudur.

23. As per the lease deed, a plot has been allotted to the assessee on a long term lease of 99 years. As per clause 2 of the lease deed, the assessee has paid Rs.1.80 crores towards plot deposit and also a sum of Rs.6.20 crores towards development charges. As per clause 14 of the lease deed, in the case of resumption of the plot by the lessor or in the event of surrender, the plot deposit alone shall be refunded by the lessor and the development charges will be refunded after forfeiting an amount of 5% per year.

24. Clause 14(ii) of the lease deed reads as follows:-

> "14(ii). The plot deposit alone shall be refunded by the Party of the First Part to the Party of the Second Part on the expiry of the period of lease and on compliance with all the terms of the lease. In the event of surrender by the party of the second part, the plot deposit will be refunded in full after forfeiting the initial deposit and processing fee by the party of the first part. The development charges will be refunded after forfeiting an amount of 5% per year or

part thereof for the number of years the plot was held by the party of the second part subject to a minimum deduction of 15% and no compensation for improvement of building or other structures erected in the plot shall be made by the party of the first part."

25. In view of the terms and conditions of lease deed, the assessee will be entitled to refund of the plot deposit amount alone either at the end of the lease period or in case of resumption or surrender. However, the assessee will not be entitled for refund of development charges of Rs.6.20 crores paid, but with a 5% deduction for every year, in case of resumption or surrender. In effect on expiry of 20th year, no sum would be eligible to be refunded from the development cost paid.

26. The further conditions of the lease deed would make it clear that when the plot alone has been conveyed to the assessee on a long lease, the common areas have been retained with the lessor for being developed for providing facilities, like roads, street lights, drainage, etc., for the use of all the other industrial undertakings in common.

The lessor has retained the entire ownership, whereas the lessee, like the assessee, was given a right of enjoyment.

27. The assessee had filed the return by including this Rs.6.20 crores paid to SIPCOT towards development charges as part of the building and had claimed depreciation as a commercial right under Section 32 of the Act. The AO disallowed the claim made by the assessee, as payment made towards common infrastructural facilities cannot be treated as part of the building and it is an asset forming part of the land.

28. The CIT(A) had confirmed the assessment holding that the assessee not being the owner of the development is not eligible to claim depreciation. Further the development charges have been collected for developing the area as a whole and it does not pertain to develop any individual plot. The Tribunal had also rejected the appeal holding that the amenities are not the tools for carrying out the business of the assessee. Unless and until the capital asset is used as a tool for carrying out the business and further only in case the

assessee is an owner, he would not be eligible for depreciation. When the facilities are owned by SIPCOT, the mere contribution for development of the infrastructure will not make the assessee an owner.

29. For better understanding, Section 32(1)(ii) of the Act is extracted here under:-

> *"32(1)(ii). know-how, patents, copyrights, trade marks, licences, franchises or any other business or commercial rights of similar nature, being intangible assets acquired on or after the 1st day of April, 1998 [not being goodwill of a business or profession,]*
>
> *owned, wholly or partly, by the assessee and used for the purposes of the business or profession, the following deductions shall be allowed"*

30. It is contended by the assessee that the rights acquired by the assessee on a long-term lease of 99 years by making payments towards the development charges are intangible assets and the same would fit in the words 'commercial rights of similar nature' under the

provision and it amounts to partly owning the rights or partly owning the assets, which are also used for the business and as such the amount paid qualifies for depreciation.

31. The revenue, on the other hand contends that the commercial rights of similar nature has to be read as a whole under Section 32(1)(ii) of the Act and therefore, the commercial rights of similar nature would only mean and include the other rights like patents, copyrights, trademarks, licences etc., and that would not include rights obtained on amenities to qualify for depreciation. Further only if the asset is owned in full or in part, the assessee would be entitled for deduction and any long-term right would not substitute the position as owner, to make the assessee eligible for claiming depreciation.

32. We are not in agreement with the submissions made by the learned counsel for the assessee in respect of the terms 'wholly or

partly owned'. Section 32(i) of the Act makes it clear that to claim depreciation, the assessee has to own the intangible asset either wholly or partly, which are used for the purpose of business or profession.

33. In view of the provision, the assessee has to be a full owner or part owner. Even though the assessee had obtained a long-term right over the infrastructures, the long-term leasehold right cannot substitute the term 'owner'. The term ‘owner’ implies that a person owns that particular asset, whereas the long-term right to use does not in any manner makes the person owner thereon but only allows that person to use that asset for the specified period. When the language used in the provision is clear and unambiguous that the assessee has to own the intangible asset wholly or partly for the purpose of claiming depreciation, it cannot be read or interpreted in any other way. In the instant case, the assessee having only the long-term leasehold right over the infrastructural facilities is not an owner either wholly or partly owning the intangible asset. Therefore, the claim of depreciation made by the assessee under Section 32 of the

Act has been rightly disallowed by the authorities and confirmed by the Tribunal.

34. In view of the above conclusion, we need not further go into the issue as to whether the commercial rights of similar nature would get restricted with the trademarks, licences, franchises etc., or would also include the rights in infrastructure developments.

35. In the decision relied on by the assessee, in the case of ***Techno Shares & Stocks*** stated supra, the Hon'ble Supreme Court held that the right of membership is akin to a licence, which would come within the term 'any other business or commercial right of similar nature' in terms of Section 32(1)(ii) of the Act and held that the same qualifies for deduction. Further, in the case of ***Bangalore International Airport Ltd.*** stated supra, it was held that the expenditure incurred to obtain a legally enforceable agreement can be capitalised and qualifies towards incurring the leasehold right and is eligible for depreciation. However the decisions relied on do not support the facts and circumstances of the present case. The assessee

does not have any absolute right in the infrastructural developments for which the payment has been made and the assessee not being a part or full owner does not qualify for claim of depreciation under Section 32(1)(ii) of the Act.

36. In view of the above, **the substantial questions of law 1 to 3 are answered against the assessee and in favour of the revenue**. **The decisions of the Tribunal and the authorities in disallowing the claim of the assessee of depreciation under Section 32(1)(ii) of the Act, is confirmed**.

Substantial questions of law 4 & 5 :

37. The AO held that the payment made by the assessee was towards the development of infrastructure, which could only be treated as part of the land and it cannot form part of the building. The assessee not being the owner of the infrastructure, it will not form part of any tangible or intangible assets in his hands. In the appeals made before the CIT(A), the assessee had also made an alternative plea to allow the same as revenue expenditure under Section 37 of the Act.

38. The CIT(A) while confirming the assessment order in disallowing the claim of depreciation under Section 32 of the Act had rejected the alternative plea also on the ground that, in view of clause 14(ii) of the lease deed, the development charges was only a contingent liability which crystallises only on surrender of plot by the assessee.

39. In the appeal before the ITAT, the Tribunal had observed that the Co-ordinate Bench in the case of ***DCIT Vs. M/s.Addison & Company Ltd. (ITA No.1744/Mds/2013, dated 06.02.2015)***, had allowed the claim towards development charges as the assessee had booked that sum paid annually as an expenditure pertaining to that assessment year, which had been treated as a case of amortisation that was confirmed by the Tribunal. However, the Tribunal held that in that case, the assessee had booked 5% annually as an expenditure in his books while preferring the claim, but in the instant case, the assessee had never charged the development charges in the books nor made a claim in the return of income. As such, since the assessee had

not made any claim nor debited in the books of accounts, the alternate claim was rejected.

40. Mr.R.Vijayaraghavan, learned counsel for the assessee argued that the finding of the Tribunal that the alternate claim is rejected because the assessee never charged in its books nor claimed in the return of income is erroneous and perverse, since there cannot be a double debit. When the assessee had already claimed it as capital expenditure and when such a claim is rejected, then the alternate relief to the assessee is to be granted. In this regard, the learned counsel relied on the decision of the Division Bench of the Bombay High Court in the case of ***CIBA of India Ltd. Vs. Commissioner of Income Tax*** reported in ***(1993) 202 ITR 1 (Bom)*** for the proposition that the authorities and the Tribunal would be under duty to grant the alternate relief, when the relief claimed by the assessee is rejected for some reason. It is his further contention that the contributions made towards the development purposes, like roads and bridges, which are used for the business in which the assessee does not have a right of ownership, has to be treated as revenue

expenditure.

41. He further relied on the decision of the Hon'ble Supreme Court in the case of ***L.H.Sugar Factory & Oil Mills (P) Ltd. Vs. Commissioner of Income Tax*** reported in ***(1980) 125 ITR 295 (SC)*** and the decision of the Division Bench of this Court in the case of ***Commissioner of Income Tax Vs. Coats Viyella India Ltd.*** reported in ***(2002) 253 ITR 667 (Mad)*** and contended that the contributions made by the assessee towards the building of the bridges and development of roads, which are essential to provide access to the factory of the assessee, should be treated as revenue expenditure. He further contended that the revenue expenditure has to be allowed in the year in which the expenditure was made and in this regard, learned counsel relied on the decision of the Hon'ble Supreme Court in the case of ***Taparia Tools Ltd. Vs. Joint Commissioner of Income-tax, Nasik*** reported in ***(2015) 55 taxmann.com 361 (SC)***.

42. Per contra, Mrs.V.Pushpa, learned Senior Standing Counsel for the revenue argued that both the reliefs claimed by the assessee

completely stand on different footings. The depreciation claim made by the assessee is under Section 32 of the Act towards the capital expenditure, whereas the alternate relief claimed by the assessee is as a revenue expenditure under Section 37 of the Act, which operates on different footing all together and cannot be merged.

43. It is her further vehement contention that when the assessee had not claimed it as a revenue expenditure in its books of account or in the returns, as found by the Tribunal, the alternate relief claimed is not maintainable. It is further contended that when the assessee neither owns the infrastructure development nor has developed the infrastructure and when several other parties have a common interest and enjoyment over these facilities and these facilities remain owned by SIPCOT, for which the assessee pays the annual amenities charges, the claim made by the assessee is not sustainable.

44. The learned Counsel distinguished the decisions relied on by the assessee by contending that in those cases either the

constructions have been put up by the assessee or it is in the property of the assessee. The developments made has no element of business activity carried on by the assessee.

45. The learned Counsel also relied on the decision of the Hon'ble Supreme Court in the case of ***Arvind Mills Ltd. Vs. Commissioner of Income Tax, Gujarat*** reported in ***(1992) 3 Supreme Court Cases 535***; the Hon'ble Supreme Court in ***Brooke Bond India Ltd. Vs. Commissioner of Income Tax*** reported in ***[1997] 225 ITR 798 (SC)***; the Hon'ble Supreme Court in ***Rotork Controls India (P) Ltd. Vs. Commissioner of Income Tax, Chennai*** reported in **[2009] 314 ITR 62 (SC)**, decision of the Division Bench of this Court in the case of ***Commissioner of Income Tax, Madurai Vs. Viswams*** reported in ***[2019] 414 ITR 148 (Madras)***, the decision of the Division Bench of this Court in the case of ***Commissioner of Income Tax Vs. K.V.Nellaiappan*** reported in ***[2022] 135 taxmann.com 223 (Madras)***.

46. The aforesaid decisions are mainly relied for the proposition that the betterment charges paid by the assessee and the expenditure made towards the renovation leading to enduring benefit cannot be treated as revenue expenditure.

47. Heard the rival submissions and gave our anxious consideration and perused the materials available on record.

48. The assessee had paid a sum of Rs.6.20 crores towards development charges as per the lease deed dated 10.03.2006 which has been executed with SIPCOT in respect of 99 years long-term lease for allotment of industrial plot. The assessee had filed the return of income by claiming depreciation for the sum paid as a commercial right for the intangible asset under Section 32(1)(ii) of the Act. The assessee had made the alternate claim before the CIT(A) to treat it as revenue expenditure.

49. Section 37 of the Act deals with revenue expenditure, which reads as follows:-

"37. (1) Any expenditure (not being expenditure of the nature described in sections 30 to 36 and not being in the nature of capital expenditure or personal expenses of the assessee), laid out or expended wholly and exclusively for the purposes of the business or profession shall be allowed in computing the income chargeable under the head "Profits and gains of business or profession".

[Explanation 1].—For the removal of doubts, it is hereby declared that any expenditure incurred by an assessee for any purpose which is an offence or which is prohibited by law shall not be deemed to have been incurred for the purpose of business or profession and no deduction or allowance shall be made in respect of such expenditure.]

[Explanation 2.—For the removal of doubts, it is hereby declared that for the purposes of sub-section (1), any expenditure incurred by an assessee on the activities relating to corporate social responsibility referred to in section 135 of the Companies Act, 2013 (18 of 2013) shall not be deemed to be an expenditure incurred by the assessee for the purposes of the business or profession.]

[(2B) Notwithstanding anything contained in sub-section (1), no allowance shall be made in respect of expenditure incurred by an assessee on advertisement in any souvenir, brochure, tract, pamphlet or the like

published by a political party.]."

50. As per the terms and conditions of the lease deed, the assessee had paid a sum of Rs.6.20 crores towards development charges. The developments include the formation of roads, streets, lightings, sanitation, drainage, sewerage, etc. The assessee had been given the right over these infrastructural developments for the use of industrial plot allotted to the assessee. It is the contention of the revenue that since these developments had not been undertaken by the assessee and are also not owned by the assessee and further the developments made are for business profits, the expenditure made is to be treated as a capital and cannot be taken as a revenue expenditure. It is her contention that the amenities are provided for the beneficial enjoyment and additional facilities of all the industrial undertakings in common and the same does not form part of the business operations of the assessee.

51. We are not in agreement with the contention of the revenue. The development charges found in the agreement could not be

narrowly considered that it is only towards amenities for beneficial enjoyment. The infrastructural facilities for which the development charges have been contributed by the assessee include roads, streets, water facilities, drainage, etc. The amenities that include parks, recreation places, canteen etc. are recreational facilities that may or may not be strictly required for the business purposes of the assessee. Whereas the infrastructural developments towards roads, streets and other facilities are basic requirements, without which the assessee will not be in a position to put up the factory or run the business.

52. The assessee, who had contributed this amount towards the infrastructural development, though does not own the same and is also developed by SIPCOT, still the assessee has a right of usage and without using this right, the assessee will not be in a position to put up the factory or run the business. The expenditure made by the assessee is not towards betterment of the business or for any enduring benefit, but it is a basic requirement without which the business cannot be established or run. The contributions made by the assessee towards development charges not being owned by him and there being no

capital asset, qualifies for deduction as a revenue expenditure.

53. In this regard, is useful to refer to the case of ***L.H.Sugar Factory & Oil Mills (P) Ltd.*** cited supra, wherein the Hon'ble Supreme Court has allowed the amount contributed by the assessee for the purpose of formation of the road, which facilitates the conduct of business of the assessee as a revenue expenditure. The relevant portion is extracted hereunder:-

> *"Now it is clear on the facts of the present case that by spending the amount of Rs.50,000, the assessee did not acquire any asset of an enduring nature. The roads which were constructed around the factory with the help of the amount of Rs.50,000 contributed by the assessee belonged to the Government of U.P. and not to the assessee. Moreover, it was only a part of the cost of construction of these roads that was contributed by the assessee, since under the sugarcane development scheme, one-third of the cost of construction was to be borne by the Central Government, one–third by the State Government and only the remaining one-third was to be divided between the sugarcane factories and sugarcane growers. These roads were undoubtedly advantageous to the business of the assessee as they facilitated the*

transport of sugarcane to the factory and the outflow of manufactured sugar from the factory to the market centres. There can be no doubt that the construction of these roads facilitated the business operations of the assessee and enabled the management and conduct of the assessee's business to be carried on more efficiently and profitably. It is no doubt true that the advantage secured for the business of the assessee was of a long duration inasmuch as it would last so long as the roads continued to be in motorable condition, but it was not an advantage in the capital field, because no tangible or intangible asset was acquired by the assessee nor was there any addition to or expansion of the profit–making apparatus of the assessee. The amount of Rs.50,000 was contributed by the assessee for the purpose of facilitating the conduct of the business of the assessee and making it more efficient and profitable and it was clearly an expenditure on revenue account."

54. Further the Division Bench of this Court in ***Commissioner of Income Tax Vs. Coats Viyella India Ltd.*** reported in ***(2002) 253 ITR 667 (Mad)*** by relying on the decision in the case of ***L.H.Sugar Factory & Oil Mills (P) Ltd.*** cited supra, allowed the contributions made by the assessee towards construction of the

bridge, though not owned by him and built by the government is allowable as a revenue expenditure. The relevant paragraphs are extracted hereunder for easy reference:-

> *"3. Here, the bridge is one which is built across the river. The bridge is not owned by assessee. It is built by the Government, and the assessee does not acquire any rights of ownership over the bridge in the short-term or in the long run by reason of the contribution that it agreed to pay towards the construction of the bridge. So far as the assessee is concerned, the payment made is an outgo in return for which it receives no addition to the value of any of the assets owned by it. The bridge merely facilitates the movement of the workmen to gain access to assessee's factory and to return home, and also for the movement of the goods over the bridge. The facts of this case are such as to bring it within the ratio of decision in the case of L.H.Sugar Factory & Oil Mills (P) Ltd. vs. CIT (supra).*
>
> *4. We, therefore, do not see any justification for calling for a reference. The Tribunal has rightly held that the amount is to be treated as revenue expenditure. The assessment year is 1991-92. The Petitions are dismissed."*

55. In the instant case also, the infrastructure developments

including the roads, streets, etc., are not owned by the assessee and is developed by the SIPCOT. The assessee does not acquire any right of ownership and the payment receives no addition to the value of assets owned by the assessee. The development merely facilitates the running of the business of the assessee, which is an essential requirement without which the business could not be operated. As such the contributions made by the assessee are eligible to be treated as a revenue expenditure.

56. The Tribunal had rejected the alternate claim mainly on the ground that the assessee had neither made the claim as revenue expenditure in the return of income nor made provision in the books of accounts. In this regard, as rightly contended by the learned counsel for the assessee, they cannot make a double debit when the assessee has already made a claim for this contribution as depreciation under Section 32 of the Act. When the claim of depreciation under Section 32 of the Act has been rejected, then the alternate claim of the assessee to treat it as a revenue expenditure, ought to have been considered on its own merits.

57. In the case of ***CIBA of India Ltd.*** cited supra, the Division Bench of the Bombay High Court, by relying on the decision of the Hon'ble Supreme Court in the case of ***Commissioner of Income Tax Vs. Mahalakshmi Textile Mills Ltd.*** reported in ***(1967) 66 ITR 710 (SC)*** held that when the claim of the assessee is rejected for some reasons, then the alternate claim made by the assessee ought to be duly considered and granted. The relevant portion is extracted hereunder:-

> *"This view of ours gets full support from the decision of Supreme Court in Commissioner of Income Tax Vs. Mahalakshmi Textile Mills Ltd. (1967) 66 ITR 710 (SC), where, dealing with the scope of the powers of the Tribunal under s.33(4) of the Indian Income-tax Act, 1922(corresponding to s.254(1) of the present Act), it was held :*
>
> *". . . There is nothing in the Income-tax Act which restricts the Tribunal to the determination of questions raised before the departmental authorities. All questions, whether of law or of fact, which relate to the assessment of the assessee may be raised before the Tribunal: if for reasons recorded by the departmental authorities in rejecting a*

contention raised by the assessee, grant of relief to him on another ground is justified, it would be open to the departmental authorities and the Tribunal, and indeed they would be under a duty, to grant that relief. The right of the assessee to relief is not restricted to the plea raised by him." (emphasis supplied)

9. In that view of the matter, we are of the clear opinion that the Tribunal was not justified in refusing to consider the alternative submission of the assessee that, in the event the expenditure in question was held by it to be capital in nature, suitable directions should be given for allowing appropriate development rebate and depreciation as admissible under the law on such amount on the plea that it was an additional ground raised by the assessee. In our opinion, it was the duty of the Tribunal, even in the the absence of an alternative argument of the assessee, to make such a direction suo motu. We, therefore, answer the second question in the negative and in favour of the assessee."

58. The learned counsel for the assessee further submitted that the revenue expenditure is to be allowed in the same year in which it was incurred. As per clause 14(ii) of the lease deed, even though the assessee is not entitled for refund of Rs.6.20 crores paid towards the

development charges on the expiry of lease, however in case of resumption or surrender, this amount would be refunded subject to 5% of depreciation for each year. Therefore, only after the expiry of 20th year, the assessee will not be entitled to the refund.

59. As such, we are not inclined to accept the submission of the learned counsel for the assessee that the entire amount contributed by the assessee towards the development charges has to be allowed as revenue expenditure in the AY during which the same has been paid. In view of the terms and conditions of the lease, as the entire amount paid does not get crystallised and the same is refundable to the assessee after deduction of 5% for each year in case of resumption or surrender, we are of the considered opinion that the sum paid is to be amortised and the assessee would be entitled for deduction by allowing 5% of the contribution made towards the development charges at the end of each year when amount gets crystallised, which becomes non-refundable in view of the terms and conditions of the lease.

60. With regard to the decisions relied on by the revenue, the facts in those cases are, either the contributions were made towards betterment charges for increase in valuation or expenditures leading to an enduring benefit. But in the instant case, the contributions made are towards formation of roads and streets, which are basic and essential requirement for the assessee to put up the business operations by establishing the factory and continue its business, without which the business cannot be undertaken and further there is no addition to value of assets owned the assessee.

61. In such circumstances, these expenses cannot be construed as betterment charges towards increase in valuation or expenditure towards an enduring benefit, and therefore the sum paid by the assessee towards this head is eligible for deduction as revenue expenditure as indicated above. The deduction of 5% of the sum paid is to be allowed as revenue expenditure in the ensuing AY, as and when the 5% gets crystallised at the end of each year. As such the findings rendered and the decision arrived at by the Tribunal in this regard is perverse and is liable to be interfered with.

62. In view of the above deliberations, **the substantial questions of law 4 and 5 are answered in favour of the assessee and against the revenue**. T**he decisions of the Tribunal are set aside and the Tax Appeals are partly allowed to the extent indicated above.** The AO shall give effect to the decision, by allowing the corresponding deductions as revenue expenditure in each of the AY.

63. Accordingly, **TCA Nos.794 and 795 of 2016 and TCA.Nos.798, 800, 801, 802 and 803 of 2018 stand partly allowed**. There shall be no order as to costs. Consequently, the interim applications are also closed.

(MANINDRA MOHAN SHRIVASTAVA, CJ.) (G.ARUL MURUGAN, J.)
10.10.2025

Index : Yes
Neutral Citation : Yes
sri

To

1.The Assistant Registrar,
Income Tax Appellate Tribunal,
Chennai.

2.The Assistant Commissioner of Income Tax,
Corporate Circle - 2,
Chennai - 600 034.

3.The Deputy Commissioner of Income Tax,
Large Tax Payer Unit - 2,
Chennai - 600 034.

THE HON'BLE CHIEF JUSTICE
AND
G.ARUL MURUGAN,J.

sri

Pre-Delivery Common Judgment made in
TCA Nos.794 and 795 of 2016
and 798, 800, 801, 802 and 803 of 2018

10.10.2025