2026:MHC:4540

Order QR

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02-11-2026

CORAM

THE HON'BLE DR.JUSTICE ANITA SUMANTH

AND

THE HON'BLE MR.JUSTICE KRISHNASWAMY GOVINDARAJAN

TCA No. 256 of 2015

CNR:{HCMA010505072015}

Case QR

The Commissioner of Income Tax,
Chennai.

..Appellant(s)

Vs

M/s Edac Engineering Limited,
88, Spic House,
Mount Road,
Guindy,
Chennai 600 032

..Respondent(s)

Appeal filed under Section 260-A of the Income-Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras ‘B’ Bench, Chennai dated 23.09.2013 in ITA No. 637/Mds/2013 for assessment year 2009 – 10.

For Appellant(s): Mr.T.Ravikumar
Senior Standing Counsel

For Respondent(s): Mr.J.Saravanan

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JUDGMENT

(Delivered by Dr.Anita Sumanth, J.)

This Tax Case (Appeal) relates to assessment year (AY) 2009 – 10 and the following six questions have been admitted on 16.06.2015:-

> *1. Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the deduction claimed under Section 54G by the assessee arising out of capital gains for the sale of the land is to be allowed especially when the Notification of the Tamilnadu Government dated 26.12.2009 defines Urban area as per which Chemmenchery Village was to be included within the city limit from the year 2011 and not on the date of sale viz., 23.04.2009?*
>
> *2. Is not the finding of the Tribunal bad especially when the notification of the Government of Tamilnadu dated 26.12.2009 clearly stated that urban area given in section 6A of the Tamilnadu Urban Land Tax, 1966 by which Chemmenchery village was included within the city limit only from the year 2011 and therefore the assessee did not satisfy the requirements of Section 54G?*
>
> *3. Whether the finding of the Tribunal is proper especially when the assessee has been paying Urban land taxes only to Chemmenchery village Panchayat and not to Chennai City Corporation by which it could be reasonably presumed that the exemption under Section 54G is not available?*
>
> *4. Whether the Tribunal was right in deleting the disallowance made under Section 40(a)(ia) to a tune of Rs.3,84,96,230/- holding that though the work was awarded to non resident provision of Section 195 would not apply since the payments were made to two Indian Companies only?*

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5. Whether the Tribunal was right in holding that disallowance under Section 40(a)(i) is not warranted especially when the assessee has made payment to non resident for the first contract for which no TDS was deducted under Section 195?

6. Whether the Tribunal was right in holding that the expenses relating to road construction, website development charges and project design cost should be allowed as revenue expenditure, even though the same was capitalised by the assessee in its books of accounts?

2. We have heard Mr.T.Ravikumar, learned Senior Standing Counsel for the appellant and Mr.J.Saravanan, learned counsel, for assessee / respondent.

3. At the outset, both learned counsel would submit that substantial question 6 contains an error in referring to website development charges and project design cost as these items of cost do not emanate from the subject proceedings.Hence reference to the aforesaid stand omitted from substantial question 6.

4. The respondent / assessee had filed a return of income for AY 2009 – 10 that was taken up for scrutiny by the assessing officer and various issues were identified for discussion.

5. Substantial questions 1 to 3 relate to a claim under Section 54G of the Income-Tax Act, 1961 (in short, 'Act'). The Respondent / assessee relied upon Notification No.S.O.276(E) [No.10056] dated 2.4.1996 issued by the Central Board of Direct Taxes (CBDT). Per contra, the assessing authority as well as

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the Commissioner of Tax (Appeals), [CIT(A)] took the view that the assessee is not entitled to the deduction relying on G.O. No. 256 dated 26.12.2009.

6. The facts arise in this manner. The respondent / assessee was admittedly running an industrial unit in Chemmenchery. In the financial year relevant to the subject assessment year, the work site was shifted from Chemmencherry to Puzhal (45, Ambattur Road, Puzhal).

7. The assessee sought deduction under Section 54G in respect of capital gains arising from account of such transfer. The claim was rejected by the assessing officer, who was of the view that, as the explanation to Section 54G enabled the claim only qua ‘urban land’ and since the State Government had notified Chemmencherry as part of city agglomeration limits only with effect from 2011, the assessee would not be entitled to the deduction in the present year. This view of the assessing officer, was upheld by the CIT(A) but reversed by the Tribunal as against which, the Revenue is in appeal.

8. The Tribunal has examined the issue in detail noting the purpose, spirit and object of Section 54G, the fact that Notification dated 2.4.1996 applied to, at Sl.No.8,‘Madras’, the fact that the city limits had been expanded from time to time and a legal opinion given by a learned Government Advocate, who had taken note of the fact that for the purposes of levy of urban land tax under the Urban Land Tax Act, 1966, Chemmencherry stood included within city limits.

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We have carefully perused the operative portion of the Tribunal's order and fully concur with the same.

9. Section 54G was inserted with the avowed object of decongesting city limits. It provided for a beneficial methodology in computation of capital gains where a unit, earlier located in an urban area was shifted to an alternate location, the object being to encourage decluttering of urban agglomerations.

10. In order to appreciate whether Chemmencherry would fall within the ambit of urban land, the assessing authority has relied wholly on G.O. No.256 dated 26.12.2009. That Government Order was issued to provide for the inclusion of local bodies in the Chennai Metropolitan area, bringing them within the limits of the city Corporation.

11. The 2009 GO has named, in part C thereof certain panchayats, Chemmencherry figuring at Sl no.24 thereof, observing that those panchayats may be upgraded to corporations after the term of office of the currently elected local government representatives ends, in 2011. The purpose of deferring the upgradation to 2011, is thus clearly only to enable completion of term of the government representatives as the caveat mentioned in the Government Order is itself to state that the deferral should not affect the working of the existing local bodies.

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12. That apart, the Tribunal has noted the following position, to conclude that Chemmencherry is been part of the urban agglomeration of Chennai :-

> *"11. Section 6-A of Tamil Nadu Urban Land Tax Act, 1966, defines 'Urban Area' to include Madras City Belt Area. Section 1-A of Tamil Nadu Urban Land Tax Act, 1966, extends the applicability of the Tamil nadu Urban Land Tax Act to Madras City Belt Area with effect from 01.07.1975 in the area comprised within 16 Kilometers of the outer limits of the City of Madras, as per Tamil Nadu Urban Land Tax (Amendment) Act,1975, (Act 45 of 1975).*
>
> *12. Section 3(o) of Tamil Nadu Urban Land (Ceiling & Regulation) Act, 1978, defines 'Urban Land' to include any land situated within the limits of an urban agglomeration and referred to as such in the master plan. Section 3(n), of Tamil Nadu Urban Land (Ceiling & Regulation) Act, 1978, defines 'Urban Agglomeration' to mean the area comprised in the urban agglomearation specified in Schedule I. Schedule I of Tamil Nadu Urban Land (Ceiling & Regulation) Act, 1978, includes St. Thomas Mount-cum-Pallavaram Cantonment to be within the Madras Urban Agglomeration. Section 3(i) of Tamil Nadu Urban Land (Ceiling & Regulation) Act, 1978 defines 'Master Plan' to in relation to an area within an urban agglomeration or any part thereof, means the Plan (by whatever name called) prepared under any law for the time being in force or in pursuance of an order by the State Government for the development of such area or part thereof.*

13. That apart, the Tribunal also notes that the Second Master Plan for the Chennai Metropolitan Area envisions that Chennai Metropolitan Area comprises the area encompassed by the Chennai City Corporation, (Chennai District) comprising 16 municipalities, 20 town Panchayats and 214 villages that form part of 10 panchayat units of the Tiruvallur and Kancheepuram Districts. Per that list, item No. XXXXVI, namely St.Thomas Panchayat Union,

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includes the village of Chemmencherry in Tambaram taluk, Kancheepuram District, at Sl.No. 297.

14. We are thus left in no doubt that Chemmencherry would be included within the ambit of 'urban land' as envisaged under the Explanation to Section 54G, even prior to 2010. In the interest of completion, we extract Notification dated 2.4.1996, which, at serial No.8, refers to 'Madras' and thus must take into account all those panchayats and villages that would fall within the sweep of the city of Madras from time to time.

Sl.No.	Name of the State	Name of the Municipal Corporation or Municipality situated in the State mentioned in column (2)
1	Tamil Nadu	1.Athur 2. Bhavani 3.Coimbatore 4.Coonoor 5.Dharmapuri 6. Erode 7.Gobichettipalayam 8.Madras 9.Madurai 10.Mettupalayam 11.Namakkal 12.Pollachi 13.Salem 14.Tiruchirapalli 15.Udumalpet

15. Our attention has been drawn to the decision of this Court in *Chemmancherry Estates Co v ITO, Ward – VIII*(2)[1]. Though cited by the

[1]417 ITR 314

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Revenue, we are of the view that this decision would better support the assessee. The issue in that case related to whether certain lands that were located in Chemmencherry may be treated to be agricultural land entitled to exemption under the Act.

16. The Court concluded adverse to the assessee upholding the finding of fact by the Tribunal that Chemmencherry stood within urban agglomeration and hence would fall outside of the ambit of agricultural land. In paragraphs 8 and 12 of that order, the Court has reiterated the factual findings that the village of Chemmencherry stood notified under the provisions of Tamil Nadu Land Urban Land (Ceiling and Regulation) Act as well as Urban Land Tax Act and that land tax was being collected in respect of various properties there.

17. We are hence of the considered view that the Assessee is entitled to deduction as claimed under Section 54G. In our interpretation of Section 54G as supra, GO No.256 dated 26.12.09 has no place or relevance. Questions 1 to 3 are decided in favour of the assessee and adverse to the Revenue.

18. Substantial question 4 relates to disallowance under Section 40(a)(ia) in relation to certain payments made by the assessee/respondent in respect of which the assessing authority took the view that tax deduction under Section 40(a)(i) was called for.

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19. The Assessee had engaged an entity in Dubai for Mass Alkali Flusing work in Boiler units of JSWERL Toranagallu. However, both the assessing and first appellate authorities, have noted unambiguously that though the work order was with the Gulf Spic Engineering, Dubai, the work had been entrusted to two Indian entities viz., Fairline Shipping Services Limited (FISL) and AMS Enterprises, and payments had thus been made by the assessee only to domestic companies.

20. The authorities took the view that despite the payments admittedly having been made to Indian concerns, Section 40(a)(i) and Section 195 would stand attracted, as, according to them, the payment to the Indian entities has been made on behalf of the non-resident.

21. Section 195 deals with the deduction of tax at source in respect of amounts paid to non-residents and Section 40(a)(i) provide for a disallowance in the event that tax was not deducted in respect of payments made to non-residents. Both the provisions require payments to be made to the non-residents and would have to be read and interpreted strictly. There is no insinuation in this case that the Indian entities are only a pass through and that the ultimate beneficiary was the non-resident.

22. In fact, the assessing authority records unambiguously that the sub-contracting of the transaction to the Indian entities was at the instance of the non-resident and that payments were made directly to the Indian entities for

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which documentation had been produced even at the stage of assessment, such as work orders, correspondence, ledger extracts and invoices. No material has been produced by the Revenue to indicate why the version of the assessee is to be disbelieved. In such circumstances, we see no necessity to intervene in the factual findings of the Tribunal and confirm the order of the Tribunal in this regard. Substantial questions 4 and 5 are answered in favour of the assessee and adverse to the Revenue.

23. Substantial question 6 relates to a claim of expenditure in regard to the construction of roads. In the order of assessment, the assessing authority records the detailed enquiries made by him in order to establish the veracity of the aforesaid payments. The enquiries revealed that the two contractors to whom the assessee claimed to have made payments, one of whom was a cotton merchant, had disavowed the same. Neither had the resources or the wherewithal to engage labour for the magnitude of the work claimed to have been entrusted to them.

24. The assessee was given opportunity before the assessing authority to produce the two contractors but failed to do so. The categoric finding of the authorities is that there was no material produced in support of the claim of expenditure. The claim was thus disallowed as being bogus.

25. In the grounds before the CIT (A), the assessee states that supporting documentary evidences were produced. The order of CIT(A), however, records

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categorically that no documentary evidences were produced and the opportunities afforded at the time of assessment to produce the contractors or material to support the claim were also not availed.

26. In appeal before Tribunal, the assessee has partly succeeded, as the Tribunal accepts the contention of the assessee that temporary roads had been laid. The Tribunal records that involvement of the assessee in the project was not doubted and hence sustains 25% of the disallowance.

27. We find no justification to confirm either the approach of the Tribunal in deciding the issue or the conclusion.

28. While the involvement of the assessee in the project overall, may be one thing, a claim of expenditure is another matter altogether. It is for an assessee to produce evidences by way of documents and other supporting material to buttress a claim of expenditure. In the present instance, while a claim of expenditure amounting to Rs.22,10,07,155 crores has been made, the consistent finding through all stages of the proceedings, including the Tribunal, is that no supporting material has been placed before the authorities to support such a claim.

29. In these circumstances, the Tribunal has, in our view, erred in accepting 75% of the claim of expenditure in the absence of any supporting material and on an estimated basis. We find no basis for such an estimate in the

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light of the concurrent findings of all authorities, including the Tribunal, that the claim of expenditure was unsupported by any evidence or supporting material. In such circumstances, we reverse the finding of the Tribunal on this count, confirm the assessment on this count and answer the question of law in favour of the Revenue.

30. To sum up, questions 1 to 5 are answered in favour of the assessee and question 6 is answered in favour of the Revenue.

31. This Tax Case (Appeal) stands disposed in terms of this order. No costs.

(A.S.M,J.) (K.G.R,J.)
02-11-2026

Index: Yes
Speaking order
Neutral Citation: Yes

To

1. The Commissioner of Income Tax,
Chennai.

2. The Income Tax Appellate Tribunal, Madras ‘B’ Bench, Chennai.

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DR.ANITA SUMANTH, J.
AND
KRISHNASWAMY GOVINDARAJAN, J.

ssm

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