Commissioner Of Income Tax I vs M/S The India Cements Ltd — Tax Case (Appeal) Nos. 53 and 54/2010

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Tax Case (Appeal).Nos.53 & 54 of 2010 IN THE HIGH COURT OF JUDICATURE AT MADRAS Reserved On: 30.03.2026 Delivered On: 09.04.2026 CORAM THE HONOURABLE DR JUSTICE G. JAYACHANDRAN AND THE HONOURABLE MR.JUSTICE SHAMIM AHMED Tax Case (Appeal).Nos.53 & 54 of 2010 Commissioner of Income Tax I, Chennai. … Appellant in both appeals vs. M/s.The India Cements Ltd., 827, Anna Salai, Chennai … Respondent in both appeals Prayer in T.C.A.No.53 of 2010: Tax Case Appeal filed under of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Chennai 'D' Bench, dated 15.07.2009 ITA No.778/Mds/2008 Assessment Year 2003-2004. For Respondent : Mr.R.Vijayaraghavan, in both appeals for M/s.Subbaraya Aiyar Padmanabhan Ramamani Page Nos.1/41 https://www.mhc.tn.gov.in/judis Tax Case (Appeal).Nos.53 & 54 of 2010 COMMON JUDGMENT The respondent herein is a company primarily involved in the manufacturing of cements. The assessment of tax for the Assessment Years 2003-04 and 2004-05 were challenged by the respondent and the same was partly allowed by the Appellate authority. The appeal by the Revenue before the Tribunal was dismissed through a common order. > (a) M/s.Industrial Chemicals Rs.1,62,01,890/- Monomers Ltd (b) ICL International Ltd Rs.1,50,68,835/- (c) ICL Sugars Ltd Rs.5,56,91,955/- (d) ICL Shipping Ltd Rs.4,69,19,385/- Total Rs.13,38,82,065/-

3. Bad Debt Rs.8,18,65,744/-

4. Entertainment Rs.5,52,306/-

5. Guest House Rs.12,44,760/-

6. Provident Fund Rs.3,44,49,930/-

7. ESI Rs.46,332/- Rs.27,83,95,182/- > 3. Against the above Assessment, the assessee went on appeal before the Commissioner of Income Tax (Appeals), challenging: > (a) The addition of interest accrued on the advances to the subsidiary/associates and charging it to the Profit and Loss Account to an extent of Rs.25,854.20 Lakhs. > (b) The disallowance of the assessee's claim towards bad debts to an extent of Rs.8,18,65,744/- and; Page Nos.3/41 https://www.mhc.tn.gov.in/judis Tax Case (Appeal).Nos.53 & 54 of 2010 (c) The disallowance of deduction under of a sum of Rs.2,63,54,045/- as debt incurred in respect of debt restructuring exercise.

4. Upon considering the grounds of appeal and hearing the assessee, the Appellate Authority, vide order in ITA No:194/06-07/A-III dated 31.01.2008, partly allowed the assessee's appeal on the following terms:- > 1. Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the assessee company was justified in not offering for tax the interest receivable on advances to the subsidiary companies to the tune of Rs.13,38,82.065/- departing suddenly from the practice followed hitherto without any change in the circumstances? > 2. Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the assessee was justified in not showing the interest accrued on advances to subsidiary companies on the basis of wrong assumptions such as no fresh advances having been made during the year.? Page Nos.6/41 https://www.mhc.tn.gov.in/judis Case (Appeal).Nos.53 & 54 of 2010 > https://www.mhc.tn.gov.in/judis Case (Appeal).Nos.53 & 54 of 2010 (A) Business: Net business loss as per Rs.15,14,29,384/- computation statement ADD:- Additions/Disallowances:- > 1. Share issue expenses disallowed as Rs.2,04,81,875/- discussed @ Para No.1

2. Interest debited to share premium Rs.17,72,00,000/- account, disallowed, as discussed @ Para No.2

3. Depreciation on electrical items, Rs.53,52,147/- restricted to 15% as discussed @ Para No.3

4. Interest not recognised by the Rs.16,73,13,00/- Rs.37,03,47,022 assessee, now assessed on accrual as discussed @ Para No.4 Rs.21,89,17,638/- Rounded to Rs.21,89,17,640/- (B) Capital Gains: (-) Rs.6,80,92,998/- Long-Term Capital Loss, as returned Assessed Income Rs.21,89,17,640/- Income-Tax thereon Rs.7,66,21,174/- Add: Surcharge Rs.19,15,529/- Rs.7,85,36,703/- Less: TDS Rs.5,92,566/- Rs.7,79,44,137/- Add: Interest Rs.2,57,21,553/- Demand Payable Rs.10,36,65,690/-

10. The assessee went on appeal before the Commissioner of Income Tax (Appeals) in T.A.No.838/06-07/A-III challenging the above assessment order. Page Nos.8/41 https://www.mhc.tn.gov.in/judis Case (Appeal).Nos.53 & 54 of 2010 The Appellate Authority, dismissed the assessee appeal in respect of deduction of Rs.2,04,81,875/- However, allowed the assessee appeal in respect of its challenge regarding: https://www.mhc.tn.gov.in/judis Case (Appeal).Nos.53 & 54 of 2010

2. Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the assessee was justified in not showing the interest accrued on advances to subsidiary companies on the basis of wrong assumptions such as no fresh advances having been made during the year?

3. Whether on the facts and in the circumstances of the case the Income Tax Appellate Tribunal was right in holding that the decision of the Supreme Court in 288 ITR 1 was applicable to the assessee's case without appreciating that in each case the assessee had to establish commercial expediency especially when the assessee was paying huge amounts of interest on its borrowings?

17. The Learned Counsel for the appellant/revenue submitted that the facts in S.A Builder's case and the facts of the case in hand are different. Therefore, the observations in case have no relevance to the case in hand. Even otherwise, the Hon'ble Supreme Court consisting three Judges Bench in Addl. Commissioner of Income Tax -vs- Tulip Star Hotels Ltd., had opined the view expressed in S.A.Builders by two judges bench needs reconsideration. Therefore, the S.A.Builder's case cannot be binding, though later Tulip Star Hotel's case was dismissed as withdraw in view of Low Tax Liability.

18. The assessee had not furnished party-wise details of the bad debts on the ground that the list is voluminous. As per the Schedule-VII, the amount written off is shown as Rs.775.47 lakhs. Whereas as per the Profit and Loss Accounts, the assessee had written off Rs.41.19 lakhs only. The remaining Rs.7.7 crores actually not written off but only a provision is made. The assessee had only adjusted it against the

debtors balance and had claimed the same in the income tax adjustment statement which is not valid. The assessee without debiting the bad debts in the profit and loss account or in the provision for doubtful debts claimed reduction which is not allowable being not in accordance with the proviso of . Page Nos.14/41 https://www.mhc.tn.gov.in/judis Case (Appeal).Nos.53 & 54 of 2010

25. To begin, it may be necessary to understand how for taxing purpose total income is computed and what are all the income excluded from total income. of Income Tax Act, 1961. Scope of total income. (1) Subject to the provisions of this Act, the total income of any previous year of a person who is a resident includes all income from whatever source derived which- (a) is received or is deemed to be received in India in such year by or on behalf of such person; or (b) accrues or arises or is deemed to accrue or arise to him in India during such year; or (c) accrues or arises to him outside India during such year: > Provided that, in the case of a person not ordinarily resident in India within the meaning of sub-section (6) of , the income which accrues or arises to him outside India shall not be so included unless it is derived from a business controlled in or a profession set up in India. > (2) Subject to the provisions of this Act, the total income of any previous year of a person who is a non-resident includes all income from whatever source derived which- Page Nos.18/41 https://www.mhc.tn.gov.in/judis Case (Appeal).Nos.53 & 54 of 2010 (a) is received or is deemed to be received in India in such year by or on behalf of such person; or (b) accrues or arises or is deemed to accrue or arise to him in India during such year.

26. In the case in hand, the assessee, being a Company incorporated in India, it has to follow the mercantile system of accounting, which means the income accrued, even if not actually received, is deemed to be received and to be brought under the head ‘Total Income.’ However, while computing the total income, certain income such as income from agricultural do not form part of total income. > b)... Page Nos.19/41 https://www.mhc.tn.gov.in/judis Case (Appeal).Nos.53 & 54 of 2010 c)... d) any sum payable by the assessee as interest on any loan or borrowing from any public financial institution or a State financial corporation or a State Industrial Investment Corporation, in accordance with the terms and conditions of the agreement governing such loan or borrowing or .... .. Explanation 3 C: **(inserted by the w.e.f 1/04/1989) For the removal of doubts, it is hereby declared that a deduction of any sum, being interest payable under clause (d) of this section, shall be allowed if such interest has been actually paid and any interest referred to in that clause which has been converted into a loan or borrowing shall not be deemed to have actually paid. (reported in [2007] 288 ITR 1 (SC), held as below: > “30. In the present case, neither the High Court nor the Tribunal nor other authorities have examined whether the Page Nos.22/41 https://www.mhc.tn.gov.in/judis Case (Appeal).Nos.53 & 54 of 2010 amount advanced to the sister concern was by way of commercial expediency. > 32. The High Court and the other authorities should have examined the purpose for which the assessee advanced the money to its sister concern, and what the sister concern did with this money, in order to decide whether it was for commercial expediency, but that has not been done. (See CIT v.Jwala Prasad Tiwari [(1953) 24 ITR 537 Page Nos.25/41 https://www.mhc.tn.gov.in/judis Case (Appeal).Nos.53 & 54 of 2010 (Bom)] and Vithaldas H. Dhanjibhai Bardanwala v.CIT [(1981) 130 ITR 95 (Guj)]) Such state of law prevailed up to and including Assessment Year 1988-1989. However, by insertion (w.e.f. 1-4-1989) of a new Explanation to , it has been clarified that any bad debt written off as irrecoverable in the account of the assessee will not include any provision for bad and doubtful debt made in the accounts of the assessee. The said amendment indicates that before 1-4-1989, even a provision could be treated as a write-off. When bad debt occurs, the bad debt account is debited and the customer's account is credited, thus, closing the account of the customer. In the case of companies, the provision is deducted from sundry debtors. As stated above, the assessing officer has not examined whether, in fact, the bad debt or part thereof is written off in the accounts of the assessee. This exercise has not been undertaken by the assessing officer. Hence, the matter is remitted to the assessing officer for de novo consideration of the abovementioned aspect only and that too only to the extent of the write-off.”

35. The Commissioner of Income Tax, Ahmedabad vs. M/s.Gujarat Cyproment Ltd, (2019) 308 CTR 309 (SC) order dated 21.02.2019 is in respect of interest liability which accrued during the relevant assessment year but not actually paid back by the assessee rather was sought to be adjusted in the future loan of Rs

36. Conclusion: > The clear and specific case of the Department against the assessee Company is that in the earlier years the assessee company had been charging interest on advances to its subsidiaries/associates. It was following the mercantile system of accounting. While so, for the Assessment Years 2003-04 and 2004-05, to reduce the incidence of tax, the assessee against the accounting standard, had not charged interest on advances to its subsidiaries.

37. The Appellate Authority as well as the Tribunal has held that the interest on advances were not charged to auger the commercial expediency and not charging interest was a prudent business measure in view of the fact that the subsidiaries were not financially doing well. A vague and general observation that the paper book contains the required details and that those details had satisfied them to hold the addition of Rs.17.72 crores by Assessing Officer is erroneous and is not a justifiable finding on fact, since the Appellate Authority CIT(A) as well as the Tribunal had consciously omitted to take into consideration that the assessee, in its Audit Report Annexure-V, had not included Rs.17.72 crores in the disallowance under .

45. If at all there is any necessity to reappreciate the facts is view of new plea or document raised in the appeal, in all fairness, the matter should have been remitted back to Assessing Officer for fresh consideration of the deduction claimed. Instead, without indicating which document provided satisfaction for them to reverse the finding of the Assessing Officer and without any plausible explanation from the assessee for not disclosing this amount in Annexure-V of the Audit Report, the appeal of the assessee was allowed by CIT (A) and the same was confirmed by the Page Nos.36/41 https://www.mhc.tn.gov.in/judis Case (Appeal).Nos.53 & 54 of 2010 ITAT.

49. In fine, Case Appeals are disposed of on the above terms. There shall be no order as to costs. (Dr. G.JAYACHANDRAN, J.) & (SHAMIM AHMED, J.) 09-04-2026 Index :Yes/No. Neutral Citation :Yes/No. Page Nos.40/41 https://www.mhc.tn.gov.in/judis Case (Appeal).Nos.53 & 54 of 2010 Dr. G.JAYACHANDRAN, J. & SHAMIM AHMED, J. bsm Pre-Delivery common judgment made in Case (Appeal).Nos.53 & 54 of 2010 09-04-2026 Page Nos.41/41 https://www.mhc.tn.gov.in/judis