

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 19.01.2021

CORAM:

**THE HON'BLE MR. JUSTICE M.DURAISWAMY
AND
THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI**

T.C.A.Nos.1470 to 1472 of 2010

Commissioner of Income Tax,
Chennai. ... Appellant in all 3 TCA

Vs.

M/s.S.R.A.Systems Ltd.,
No.100, Valluar Kottam High Road,
Nungambakkam, Chennai. ... Respondent in all 3 TCA

Appeals preferred under Section 260A of the Income Tax Act,
1961, against the orders of the Income Tax Appellate Tribunal, Madras,
“A” Bench, dated 18.12.2009 in ITA.Nos.1497, 1498, 1499/Mds/2009,
Assessment Year 2000-01, 2001-02 and 2002-03

For Appellant : Mr.J.Narayanasamy, Standing Counsel
(in all 3 TCA)

For Respondent : Mr.R.Sivaraman
(in all 3 TCA)

COMMON JUDGMENT

(Judgment was delivered by M.DURAISWAMY, J.)

The above appeals have been filed by the Department challenging the order passed by the Income Tax Appellate Tribunal in I.T.A.Nos.1497 to 1499/Mds/2009 for the Assessment Years 2000-01 to 2002-03.

2.The brief facts necessary for the disposal of the appeals are as follows:

(i)The Assessing Officer, while completing the assessment under Section 143(3) r/w 147 of the Income Tax Act for the Assessment Years 2000-01 and 2001-02, disallowed the claim of deduction made by the assessee under Section 10A and 10B on the ground that an undertaking was formed by splitting up/reconstruction of the business already in existence. While completing the assessment under Section 143(3) r/w 263(3) for the Assessment Year 2002-03, the Assessing Officer disallowed the claim under Section 10A on the ground that an undertaking was formed by splitting up/reconstruction of the business already in existence among others. The Assessing Officer found that the assessee was claiming the deduction with respect of the same unit for

earlier year under Section 80HHE.

(ii)The Assessing Officer was of the view that the Clauses - ia, ii, iii of Sub Section 2 of Section 10B was not satisfied by the assessee for the Assessment Year 2001-02. The Assessing Officer was of the view that Section 10A(2)(ii) was not satisfied by the assessee for the Assessment Year 2001-02 and 2002-03 and levied interest under Section 234D.

(iii)Aggrieved by the assessment order, the assessee filed appeals before the Commissioner of Income Tax (Appeals). The Appellate Authority allowed the appeals for the Assessment Year 2000-01 and 2001-02 by following the order of the Tribunal in I.T.A.No.2255/Mds/06 dated 16.05.2008. For the Assessment Year 2002-03, the Appellate Authority held that the order of the CIT (A) under Section 263 was set aside by the Tribunal in I.T.A.No.2255/Mds/06 dated 16.05.2008 and therefore, held that the order of the Assessing Officer passed under Section 143(3) r/w 263 became *void ab initio*. The Appellate Authority,

while dealing with the levy of interest under Section 234D, held that the said Section comes into effect only after the commencement of Assessment Year and interest could be levied only for the Assessment Year 2004-05 and therefore, deleted the interest for the Assessment Years 2000-01, 2001-02 and 2002-03.

(iv) Aggrieved over the order of the Commissioner of Income Tax (Appeals), the Department filed appeals before the Income Tax Appellate Tribunal and the Tribunal confirmed the order of the Appellate Authority and dismissed the appeals. While dismissing the appeals, the Tribunal held that the interest under Section 234D cannot be levied for the Assessment Years 2000-01, 2001-02 and 2002-03. Further, the Tribunal while dismissing the appeals, followed the order in I.T.A.No.2255/Mds/06 dated 16.05.2008. Challenging the order passed by the Income Tax Appellate Tribunal, the Department has filed the above Tax Case Appeals.

3.The above appeals were admitted on the following substantial questions of law:

“(i)Whether on the facts and circumstances of the case, the Tribunal was right in holding that the assessee is entitled for deduction under Section 10B for the Assessment Year 2000-01?

(ii)Whether on the facts and circumstances of the case, the Tribunal was right in holding that the assessee is entitled for deduction under Section 10A for the Assessment Year 2001-02 and 2002-03?

(iii)Whether on the facts and circumstances of the case, the Tribunal was right in holding that the interest under Section 234B is leviable only after the Assessment Year 2004-05 prospectively and therefore, interest is not leviable for the Assessment Years 2000-01, 2001-02 and 2002-03?”

4.The above appeals have been filed by the Department challenging the order passed by the Income Tax Appellate Tribunal in respect of the Assessment Years 2000-01, 2001-02 and 2002-03. For the Assessment Years 2000-01 and 2001-02, the scrutiny assessment orders were re-opened in terms of provisions of Section 147 and re-assessment was carried out by withdrawing the claim of deduction under Section 10A. For the Assessment Year 2002-03, the CIT, Chennai-II, passed an order under Section 263, setting aside the issue of deduction under Section 10A and directed the Assessing Officer to decide the issue *de novo*.

5.As the issue of allowability of deduction under Section 10A is common to all the three Assessment Years, all the three Tax Appeals are taken up together and disposed of by this common judgment. For the Assessment Year 2000-01, the assessee had filed its return of income on 29.11.2000. The assessee claimed that it was eligible for deduction under Section 10B. The return was processed on 28.03.2002. Subsequently, the Assessing Officer had reason to believe that income chargeable to tax

had escaped assessment on account of the assessee Company being ineligible for deduction under Section 10A. Subsequently, a notice dated 22.03.2007 was issued under Section 148 and after giving an opportunity of hearing, the scrutiny assessment order was passed on 17.12.2007, disallowing the entire claim of deduction under Section 10B. Further, the expenditure incurred for the renovation and repairs of the rented premises of the assessee Company was disallowed by the Assessing Officer on the ground that such expenses were in the nature of capital expenditure. The Assessing Officer in his re-assessment order noted that in terms of Section 10B(ii) an undertaking in order to be eligible for deduction under Section 10B must not be formed by splitting up or reconstruction of a business already in existence. Further, the Assessing Officer held that deduction under Section 10B was not available to the assessee Company in view of the provisions of Section 10B(iii) which stipulate that eligible business is not formed by transfer to a new business of plant and machinery previously used for any purpose. The Assessing Officer found that the assessee had not complied with both these conditions, hence, it was not entitled to any deduction under Section

10B.

6.For the Assessment Year 2002-03, in the case of the assessee Company itself, the Income Tax Appellate Tribunal “C” Bench, Chennai had dealt with the applicability of Clauses (ii) and (iii) of Section 10A(2) in its order dated 16.05.2008 in I.T.A.No.2255/Mds/06. The Tribunal, after taking into consideration the decision of Apex Court reported in **107 ITR 195 [Textile Machinery Corporation Limited Vs. CIT]** held as follows:

“... this is not a case of setting up of a new business, but only transfer of business place of existing business to a new place located in STPI area and thereafter, getting the approval from the authorities, the assessee become entitled to deduction under Section 10A. Merely because by shifting the business from one place to another and keeping some of the plant and machinery as those are bearing charge of financial institution, does not violate Clause (ii) and (iii) of Sub Clause (2) to Section 10A of the Income Tax Act.”

7.The order passed by the Income Tax Appellate Tribunal was challenged by the Department in T.C.A.No.1916 of 2008 and the Hon'ble Division Bench of this Court by its judgment dated 26.10.2018 confirmed the order of the Income Tax Appellate Tribunal dated 16.05.2008 made in I.T.A.No.2255/Mds/06 for the Assessment Year 2002-03 and dismissed the appeal. In view of the judgment of the Hon'ble Division Bench of this Court, it is clear that the applicability of Clauses (ii) and (iii) of Sub Clause (2) to Section 10B of the Act, the impugned order passed by the Income Tax Appellate Tribunal is proper. In view of the order passed by the Income Tax Appellate Tribunal dated 16.05.2008 in I.T.A.No.2255/Mds/06 and the judgment passed by the Hon'ble Division Bench of this Court on 26.10.2018 in Tax Case Appeal No.1916 of 2008, the assessee Company would be entitled to deduction under Section 10A and disallowance made by the Assessing Officer was not correct. Since the order passed under Section 263 itself has been set aside, the cause of action for re-assessment does not survive.

8.So far as the levy of interest under Section 234D is concerned,

Mr.J.Narayanasamy, the learned Standing Counsel for the appellant submitted that the Department is entitled to claim interest retrospectively though the said Section was inserted only on 01.06.2003. In support of his contentions, the learned Standing Counsel relied upon a judgment reported in *[2014] 49 taxmann.com 221 (Gujarat) [Commissioner of Income Tax-II Vs. Gujarat State Financial Services Ltd.]* wherein following the judgment of the Bombay High Court reported in *[2012] 210 Taxman 466/25 taxmann.com 284 [CIT Vs. Indian Oil Corpn. Ltd.]* held that in all those matters where excess refund has been granted by the Revenue, the provision of Section 234D of the Act will apply even in the case of the earlier Assessment Years where the assessments were framed after 01.06.2003, the interest will be chargeable in accordance with law.

9.Mr.R.Sivaraman, learned counsel appearing for the respondent submitted that the provisions of Section 234D which came into force on 01.06.2003 would only operate prospectively and not retrospectively. The learned counsel submitted that the said provision is applicable only

from the Assessment Year 2004-05. In support of his contention, the learned counsel relied upon a judgment reported in **[2012] 21 taxmann.com 514 (Karnataka) [Commissioner of Income Tax Vs. Fanuc India Ltd.]** wherein the Hon'ble Division Bench of the Karnataka High Court held as follows:

“ ...

9. It is in this context, it is useful to refer to the Constitution Bench of the apex Court in the case of *J.K. Synthetics Ltd. v. CTO* [1994] 119 CTR (SC) 222/[1994] 94 STC 422 (SC) where it has been held as under :

"It is well known that when a statute levies a tax it does so by inserting a charging section by which a liability is created or fixed and then proceeds to provide the machinery to make the liability effective. It, therefore, provides the machinery for the assessment of the liability already fixed by the charging section, and then provides the mode for the recovery and collection of tax, including penal provisions meant to deal with defaulters. Provision is also made for charging interest on delayed payments, etc. Ordinarily the charging section which fixes the liability is strictly construed but that rule of strict construction is not extended to the machinery provisions which are construed like any

other statute. The machinery provisions must, no doubt, be so construed as would effectuate the object and purpose of the statute and not defeat the same. [See *Whitney v. IRC* [1926] AC 37, *CIT v. Mahaliram Ramjidas* [1940] 8 ITR 442 (PC), *India United Mills Ltd. v. CEPT* [1955] 27 ITR 20 (SC)/[1955] 1 SCR 810 and *Gursahai Saigal v. CIT* [1963] 48 ITR 1 (SC)/[1963] 3 SCR 893.] But it must also be realised that provision by which the authority is empowered to levy and collect interest, even if construed as forming part of the machinery provisions, is substantive law for the simple reason that in the absence of contract or usage interest can be levied under law and it cannot be recovered by way of damages for wrongful detention of the amount [See *Bengal Nagpur Railway Co. Ltd. v. Ruttanji Ramji* AIR 1938 PC 67 and *Union of India vs. A.L. Rallia Ram* [1964] 3 SCR 164 and 185 to 190]. Our attention was, however, drawn by Mr. Sen to two cases. Even in those cases, *CIT v. M. Chandra Sekhar* [1985] 44 CTR (SC) 110 / [1985] 151 ITR 433 (SC); and *Central Provinces Manganese Ore Co. Ltd. v. CIT* [1986] 58 CTR (SC) 112/[1986] 160 ITR 961 (SC), all that the Court pointed out was that provision for charging interest was, it seems, introduced in order to

compensate for the loss occasioned to the Revenue due to delay. But then interest was charged on the strength of a statutory provision, may be its objective was to compensate the Revenue for delay in payment of tax. But regardless of the reason which impelled the legislature to provide for charging interest, the Court must give that meaning to it as is conveyed by the language used and the purpose to be achieved. Therefore, any provision made in a statute for charging or levying interest on delayed payment of tax must be construed as a substantive law and not adjectival law. So construed and applying the normal rule of interpretation of statutes, we find, as pointed out by us earlier and by Bhagwati, J. in the Associated Cement Co.'s case (supra) that if the Revenue's contention is accepted it leads to conflicts and creates certain anomalies which could never have been intended by the legislature."

10. Therefore, in the absence of any express words used in the provision making the levy of interest retrospective, it is only prospective i.e. from the day it came into force i.e., 1st June, 2003. In fact, this view also finds support from the judgment of the Delhi High Court, in the case of *Director of IT v. Jacobs Civil Incorporated and*

Mitsubishi Corporation (2010) 235 CTR (Delhi)
123/(2010) 45 DTR (Delhi) 163/(2011) 330 ITR 578
(Delhi).

11. Yet another judgment of the Constitution Bench of the apex Court in the case of *Karimtharuvi Tea Estate Ltd. v. State of Kerala* [1966] 60 ITR 262 (SC) where it has held as under :

"It is well-settled that the IT Act, as it stands amended on the first day of April of any financial year must apply to the assessments of that year. Any amendments in the Act which come into force after the first day of April of a financial year, would not apply to the assessment for that year, even if the assessment is actually made after the amendments come into force."

12. In that view of the matter, the appellate authorities were justified in holding that the assessee is not liable to pay tax from the date of refund and the liability is only from 1st June, 2003 when s. 234D came into force. Accordingly, we answer this point in favour of the assessee and against the Revenue. Ordered accordingly. No costs."

10.In the judgment reported in *[2001] 117 TAXMAN 320 (Mad)*

[Ayyappan Textiles Ltd. and ors. Vs. Commissioner of Income Tax],

the Hon'ble Division Bench of this Court held that the law applicable for assessment is the law applicable as on the date of commencement of the Assessment Year and not the change in the law amended subsequent to that date.

11.As already stated, the subject matter of the above appeals are relating to the Assessment Years 2000-01, 2001-02 and 2002-03. Section 234D came to be inserted by the Finance Act, 2003 with effect from 01.06.2003. Prior to the introduction of Section 234D, no interest was payable on refund in the event of an order for refund is set aside and the assessee is made to pay the same from the date of rectification order or the orders passed by the Appellate Authorities. A reading of the provisions of Section 234D makes it clear that there is no indication in the language employed in the entire Section that the Parliament intended to make this levy of tax on excess refund retrospectively. On the contrary, after inserting this provision in the Act, it is specifically stated that it comes into effect from 01.06.2003. Though the amendment is by

insertion, the Parliament has expressly stated that the amendment comes into effect from 01.06.2003. The Parliament has made its intention clear and unambiguous. In other words, it is not retrospective. Merely because the order of assessment was passed subsequent to the insertion of the said provision in the Act, would not make the said provision retrospective. The provision providing imposition of interest is a substantive provision. It is settled law that in the absence of any express words used in the provision making levy of interest retrospective, it can only be prospective (i.e.) from the date on which it came into force (i.e.) 01.06.2003.

12.The Constitution Bench of the Apex Court in the case of ***[Karimtharuvi Tea Estate Ltd. Vs. State of Kerala]*** reported in 1966 60 ***ITR 262 SC*** held as follows:

“...It is well settled that the Income Tax Act as it stands amended on the First Day of April of any Financial Year must apply to the assessments of that year. Any amendments in the Act which comes into force after the First Day of April of a Financial Year, would not apply to the assessment for that year even if the assessment is

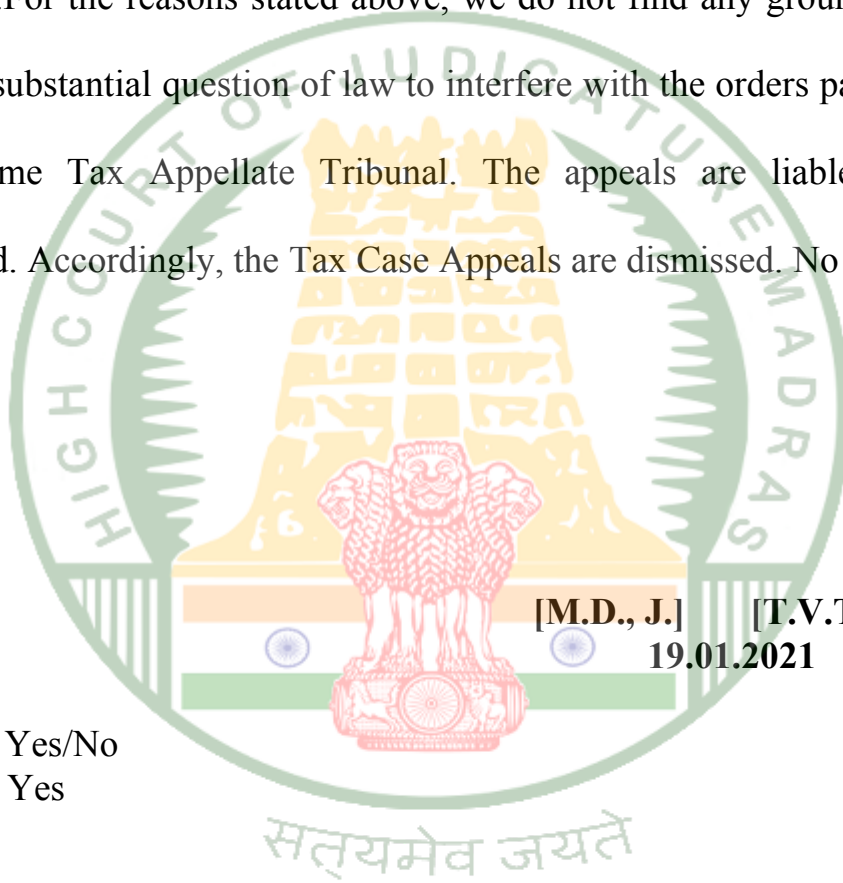
actually made after the amendments come into force.”

13.The amended provision shall come into force only after the commencement of the Assessment Year and cannot be applied retrospectively unless it is specifically mentioned. Therefore, the law to be applied is the law as on the date of commencement of the Assessment Year and not the change in law amended subsequent to that date. Section 234D having come into force only on 01.06.2003 (i.e.) after the commencement of the Assessment Year, interest could be levied only from 01.04.2004 (i.e.) from the Assessment Year 2004-05 and no interest under Section 234D could be chargeable prior to the Assessment Year 2004-05. Since all the three Assessment Years are prior to the Assessment Year 2004-05, the provisions of Section 234D cannot be applied.

14.Following the judgment of the Constitution Bench of the Hon'ble Supreme in ***Karimtharuvi Tea Estate Ltd. Vs. State of Kerala*** reported in ***1966 60 ITR 262 SC*** (cited supra), we are of the considered view that the provisions of Section 234D cannot be applied to the case of

the assessee in respect of the Assessment Years 2000-01, 2001-02 and 2002-03 which are prior to the insertion of Section 234D.

15.For the reasons stated above, we do not find any ground much less any substantial question of law to interfere with the orders passed by the Income Tax Appellate Tribunal. The appeals are liable to be dismissed. Accordingly, the Tax Case Appeals are dismissed. No costs.



[M.D., J.] [T.V.T.S., J.]
19.01.2021

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Internet : Yes
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To

The Income Tax Appellate Tribunal, Chennai, "A" Bench

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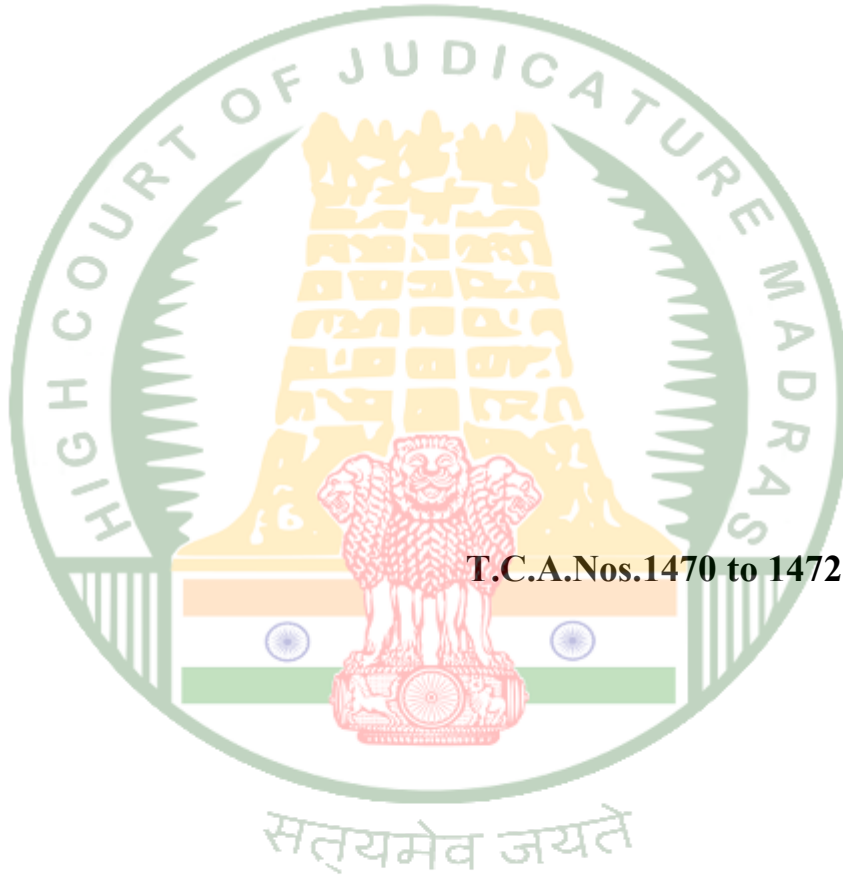
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