IN THE INCOME-TAX APPELLATE TRIBUNAL 'A' BENCH, CHENNAI
Before Shri V. Durga Rao, Judicial Member &
Shri Manoj Kumar Aggarwal, Accountant Member

I.T.A. No.694/Chny/2017
Assessment Year: 2012-13

The Assistant Commissioner of Income Tax, Corporate Circle 3(1), New Block, 4th Floor, 121, Mahatma Gandhi Road, Nungambakkam, Chennai 600 034.	Vs.	M/s. Tamil Nadu Water Investment Co. Ltd., 1st Floor, Poly Hose Towers, No. 86, Mount Road, Guindy, Chennai – 32. **[PAN: AABCT8153B]**
(Appellant)		(Respondent)

I.T.A. No.696/Chny/2017
Assessment Year: 2012-13

M/s. Tamil Nadu Water Investment Co. Ltd., 1st Floor, Poly Hose Towers, No. 86, Mount Road, Guindy, Chennai – 32.	Vs.	The Assistant Commissioner of Income Tax, Corporate Circle 3(1), Chennai 600 034.
(Appellant)		(Respondent)

Department by	:	Shri AR V Sreenivasan, Addl. CIT
Assessee by	:	Shri R. Viswanathan, C.A.
Date of hearing	:	18.04.2022
Date of Pronouncement	:	06.05.2022

O R D E R

PER V. DURGA RAO, JUDICIAL MEMBER:

Both the cross appeals filed by the Revenue and the assessee are directed against the order of the ld. Commissioner of Income Tax (Appeals)13, Chennai dated 27.12.2016 relevant to the assessment year 2012-13.

2. The appeal filed by the Revenue is delayed by one day, for which, the Revenue has filed a petition for condonation of the delay, to which; the ld. counsel has not raised any serious objection. Consequently, since the Revenue was prevented by sufficient cause, the delay of one day in filing of the appeal stands condoned and the appeal is admitted for adjudication.

3. In the appeal filed by the Revenue, the Ground No. 1 is general in nature and no adjudication is required.

3. 1 Ground No. 2.1 to 2.3 relates to disallowance made under section 14A of the Income Tax Act, 1961 ["Act" in short]. When the appeal was taken up for hearing, both the sides have submitted that in the earlier assessment years 2013-14 and 2014-15, the very same issue has been remitted back to the file of the Assessing Officer and the same may be followed for the assessment year under appeal.

3.2 We have heard both the sides, perused the materials available on record and gone through the orders of authorities below. Similar issue on an identical fact was subject matter in appeal in assessee's own case for the assessment years 2013-14 and 2014-15 and vide

order dated 20.11.2018 in I.T.A. Nos. 3084 & 3085/Chny/2017, the Coordinate Benches of the Tribunal has observed and held as under:

> *"5. We have heard both the sides, perused the materials available on record and gone through the orders of authorities below including paper book. By considering various case law including the decision of Hon'ble High Court of Punjab & Haryana in the case of CIT v. Lakhani Marketing Inc., 49 taxmann.com 257, the ld. CIT(A) has held that unless and until there is receipt of exempted income for concerned assessment years, section 14A of the Act cannot be invoked. Further on perusal of the statement of account, the ld. CIT(A) noticed that it does not show any exempt income, but, there is a credit of other income of ₹.70,66,971/- for the assessment year 2013-14 and ₹.15,15,297/- for the assessment year 2014-15. Further, for the assessment year 2013-14, the schedule of other income reveals interest income of ₹.4,32,932/- and other income of ₹.66,34,039/- without any details. Similarly, for the assessment year 2014-15, other income includes interest income of ₹.13,81,750/- and other income of ₹.1,33,547/-. In the absence of any details, the ld. CIT(A) directed the Assessing Officer to verify whether the receipts classified as other income i.e., ₹.66,34,039/- and ₹.1,33,547/- for the assessment years 2013-14 and 2014-15 respectively are exempt income and held that either entire expenses disallowed will stand deleted or the disallowance will be restricted to the earning of exempt income, as the case may be. Further, by considering various decisions including the decision of the Tribunal in the case of EIH Associated Hotels v. DCIT in I.T.A. No. 1503/Mds/2012 & 1624/Mds/2012, the ld. CIT(A) has directed the Assessing Officer to verify as to whether the investment made in SPV is a subsidiary company of the assessee and if so, no disallowance is warranted under section 14A of the Act.*
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> *6. In a recent judgement in the case of Maxopp Investment Ltd. v. CIT in Civil Appeal Nos. 104-109 of 2015 dated12.02.2018, after analysing various judgements of High Courts, the Hon'ble Supreme Court has given concurrent findings on various issues relating to the disallowance under section 14A r.w. Rule 8D. The Hon'ble Supreme Court has ruled out the dominant theory of investment in subsidiary and not relevant for applicability of section 14A and moreover, the Hon'ble Apex Court confirmed the view of restricting the disallowance to the quantum of exempt income, though not subscribed to dominant purpose theory. Various decisions relied on by the ld. CIT(A) are no longer res-integra having regard to the decision of the Hon'ble Apex Court and thus, we set aside the order of the ld. CIT(A) on various issues relating to disallowance under section 14A r.w. Rule 8D and remit the same to the file of the Assessing Officer to re-examine the issues in the light of the above judgement of the Hon'ble Supreme Court and decide the issues afresh after giving an opportunity of being heard to the assessee. Accordingly, both the appeals filed by the Revenue are allowed for statistical purposes.*

3.3 Respectfully following the above decision of the Tribunal in assessee's own case for the assessment years 2013-14 and 2014-15, we remit the matter back to the file of the Assessing Officer to re-examine and decide the issue afresh in accordance with law by affording an opportunity of being heard to the assessee. Thus, the ground raised by the Revenue is allowed for statistical purposes.

4. The next ground raised in the appeal of the Revenue in ground Nos. 3.1 to 3.5 relates to deleting the disallowance of interest payable claimed to the tune of ₹.7,53,16,872/-. With regard to the interest payable on loans taken from Government of Tamil Nadu and M/s. Infrastructure Leasing and Financial Services Company [IFLS], during the course of assessment proceedings, the AR of the assessee has confirmed before the Assessing Officer that the assessee had not paid nor was any interest payable during this financial year 2011-12 until 31.10.2011 in view of the moratorium. So, the sum of ₹.1,36,66,067/- being interest payable was held to be not crystallised vis-a-vis the year of payment and the same has not been paid during the year, in view of the non-payment due to the moratorium. Since the issue in appeal before the Hon'ble Supreme Court has not attained finality and in view

of the precedence, the interest payable amounting to ₹.7,53,16,872/- was disallowed and added back to the taxable income. On appeal, by following the decisions of the Tribunal in earlier assessment years 2003-04 to 2008-09, the ld. CIT(A) directed the Assessing Officer to delete the addition on account of interest payable to ₹.7,53,16,872/-.

4.1 Aggrieved, the Revenue is in appeal before the Tribunal. The ld. DR has submitted that the Department has preferred further appeal before the Hon'ble High Court of Madras against the orders of the ITAT for the assessment years 2004-05 to 2008-09, 2009-10 & 2010-11 and therefore pleaded for reversing the order passed by the ld. CIT(A) and that of the Assessing Officer restored.

4.2 On the other hand, the ld. Counsel for the assessee has submitted that the decision of the Hon'ble Madras High Court in the appeals preferred by the Department may be followed for the assessment year under consideration.

4.3 We have heard the rival contentions and perused the order of the Hon'ble High Court of Judicature at Madras vide order dated 15.02.2022 in T.C.A. Nos. 1406 of 2008, 1382 & 1383 of 2009, 87 &

483 of 2011, 619 of 2014 and 928, 929 & 941 of 2015, wherein, the Hon'ble High Court has observed and held as under:

"6. Heard both sides and perused the materials placed before this court.

7. In order to appreciate the submissions made on both sides, it is but necessary to refer to the relevant provisions of law, viz., Section 43 and Explanation 3C, which was inserted by the Finance Act, 2006 with effect from 01.04.1989, read as follow:

> *"43B Notwithstanding anything contained in any other provision of this Act, a deduction otherwise allowable under this Act in respect of-*
>
> *(a) any sum payable by the assessee by way of tax, duty, cess or fee, by whatever name called, under any law for the time being in force, or*
>
> *(b) any sum payable by the assessee as an employer by way of contribution to any provident fund or superannuation fund or gratuity fund or any other fund for the welfare of employees, or*
>
> *(c) any sum referred to in clause (ii) of sub-section (1) of Section 36, or*
>
> *(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...*
>
> *shall be allowed (irrespective of the previous year in which the liability to pay such sum was incurred by the assessee according to the method of accounting regularly employed by him) only in computing the income referred to in section 28 of that previous year in which sum is actually paid by him."*
>
> *"Explanation 3C – 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 been actually paid."*

The aforesaid provisions make it clear that deduction of any sum being interest payable under clause (d) of section 43B of the Act, 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 been actually paid.

8. The issue involved herein is elaborately dealt with by the supreme court in the decision in Gujarat Cypromet Ltd case (supra) referred to on the side of the appellant. In that case, the judgment of the Delhi High court in CIT v. M.M.Aqua Technologies Ltd [(2015) 376 ITR 498/233 Taxman 397/60 taxmann.com 237], was referred to, wherein, after following the judgment of the Madhya Pradesh High Court in Eicher Motors Ltd v. CIT [(2009) 315 ITR 312 / 157 Taxman 501, it was categorically held by the Delhi High Court that "Explanation 3C having retrospective effect with effect from 01.04.1989 shall be applicable to the year in question". The relevant paragraphs of the supreme court decision in Gujarat Crypromet Ltd (supra) are usefully extracted below: "

> *14. In so concluding, this Court is supported by the decision of the Madhya Pradesh High Court in Eicher Motors Ltd. v. Commissioner of Income Tax, 315 ITR 312 and subsequently, the judgment of the High Court of Telangana and Andhra Pradesh in Commissioner of Income Tax v. Pennar Profiles Limited, (ITA No. 289 of 2003, decided on 11.02.2015). In Eicher Motors, the Court noted:*
>
> > *"7.As observed supra, the Expln. 3C has now in clear terms provided that such conversion of interest amount into loan shall not be deemed to be regarded as "actually paid" amount within the meaning of Section 43B. In view of clear legislative mandate removing this doubt and making the intention of legislature clear in relation to such transaction, it is not now necessary for this Court to interpret the unamended Section 43B in detail, nor it is necessary for this Court to take note of facts in detail as also the submissions urged in support of various contentions except to place reliance on Expln. 3C to Section 43B and answer the questions against the assessee and in favour of Revenue."*
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> *The Court in Pennar Profiles Limited (supra) considered the decisions in Mahindra Nissan (supra), Vinir Engineering (supra) and Eicher Motors (supra) and held as follows:*
>
> > *"8. In this backdrop, we have perused the provisions contained in Section 43B of the Act, in particular, Explanation 3C thereof, which was inserted by the Finance Act, 2006 with retrospective effect from 01.04.1989. This provision was inserted in 2006 and ITA 110/2005 Page 10 hence, this Court in Mahindra Nissans case, had no occasion to deal with the case in the light of this provision. Insofar as the Karnataka*

High Court is concerned, though this provision was existing on the date of judgment, it appears that it was not brought to the notice of learned Judges and hence, the Division Bench proceeded to consider and decide the appeal of the assessee without referring to Explanation 3C appended to Section 43B of the Act.

9. As a matter of fact, from reading of Explanation 3C, in our opinion, the question as raised in the present appeals stands answered without further discussion. This provision was inserted for removal of doubts and it was declared that deduction of any sum, being interest payable under clause (d) of Section 43B of the Act, 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 been actually paid. Thus, the doubt stands removed in view of Explanation 3C. This provision was considered by the Madhya Pradesh High Court in Eicher Motors Limited v. Commissioner of Income Tax to hold that in view of the Explanation 3C appended to Section 43B with retrospective effect from 01.04.1989, conversion of interest amount into loan would not be deemed to be regarded as actually paid amount within the meaning of Section 43B of the Act."

12. In light of the introduction of Explanation 3C, this Court does not consider it necessary to discuss the precedents relied upon by the assessee delivered prior to the enactment of Finance Act, 2006. As regards the decision in Shakti Spring Industries (supra), the interest due in that case was offset against a subsidy which the assessee was entitled to, and it did not involve an instance where it was "converted into a loan or borrowing" within the meaning of Explanation 3C. It is perhaps for this reason that Explanation 3C was not discussed."

15. In the impugned judgment, the Gujarat High Court has relied upon Bhagwati Autocast Ltd. (supra) which was not a case covered by Section 43B (d) rather was a case of Section 43B (a). The provision of Section 43B covers a host of different situations. The statutory Explanation 3C inserted by the Finance Act, 2006 is squarely applicable in the facts of the present case. It appears that the attention of the High Court was not invited to Explanation 3C, we are, thus, of the view that the Assessing Officer has rightly disallowed the deduction as claimed by the assessee. The Appellate Authority, ITAT and the High Court erred in reversing the said disallowance."

9. It is not in dispute that the interest payable to the Government of Tamil Nadu is not hit by the provisions of section 43B of the Act. However, in the present case, the assessee was provided with loan not only by the Government of Tamil Nadu, but also by M/s. Infrastructure Leasing and Financial Services Limited, and the interest liability, which accrued during the relevant assessment years, was not actually paid by the assessee, was sought to be deducted. In such circumstances, it has to be examined as to whether IL&FS is a public interest institution. Without verifying the same, the Tribunal simply held that the promoters were not covered under the definition of Public Financial Institution as per Explanation 4 to section 43B r/w section 4A of the Companies Act and hence, the provisions of section 43B(d) r/w Explanation 3C would not be applicable to the case of the assessee.

10. At this juncture, the learned counsel for the appellant invited the attention of this court to a decision of the co-ordinate bench in TCA. No.63 of 2015, dated 14.12.2020 [CIT v. Tamil Nadu Small Industries Corporation Ltd]. In that case, the Tribunal remanded the matter to the assessing officer to examine as to whether the assessee paid the interest to the Government of Tamil Nadu or to any other financial institution, after having held that interest paid to Government of Tamil Nadu is not hit by the provisions of section 43B of the Act.

11. In view of the reasoning stated in the preceding paragraphs, the orders of the Tribunal are set aside and the matters are remanded to the Assessing Officer to examine, whether M/s.Infrastructure Leasing and Financial Services Limited (IL&FS) is a public financial institution; and if it is in affirmative, then, section 43B(d) r/w explanation 3C will be applicable; and pass orders afresh, after providing due opportunity of hearing to all the parties, within a period of eight weeks from the date of receipt of a copy of this judgment."

4.4 Respectfully following the decision of the Hon'ble Jurisdictional High Court in assessee's own case, as reproduced hereinabove, we set aside the order of the ld. CIT(A) on this issue and remit the matter back to the file of Assessing Officer to decide the issue in line with the directions of the Hon'ble High Court for the assessment year under consideration also. Thus, the ground raised by the Revenue is allowed

for statistical purposes.

5. The first effective ground raised in the appeal of the assessee relates to confirmation of addition of bad debt written off in the books of accounts. On perusal of the financial statements of the assessee company, the Assessing Officer has noticed that the assessee has debited an amount of ₹.12,07,84,026/- as bad debt being written off in the Profit & Loss A/c. The Assessing Officer sought for explanation from the assessee and it was replied by the assessee that the said debit entry pertains to accrued interest on loan of ₹. 18.33 Cr. forwarded to the subsidiary of the assessee company in the earlier years. Pursuant to the corporate debt restructuring of the subsidiary company, NTADCL, done by the banker, M/s IDBI, as part of such exercise, all the lenders had to write off the loans given to NTADCL. The accrued income of the assessee in terms of interest on the loans advanced by it had to be written off. The assessee has also contended before the Assessing Officer that the interest was recognised as income in earlier years and on account of CDR of the subsidiary company, the same was written off in the books of account and accordingly the AR further contended before the Assessing Officer that

the assessee company has to write off the debt for reasons beyond its control. While rejecting the above clarifications of the assessee, the Assessing Officer has concluded that such a conscious decision of the assessee cannot be termed and claimed as debt which has gone wrong. The subsidiary is a going concern and is not untraceable. Moreover, the assessee has a deep interest in the business of the assessee. Therefore, the Assessing Officer disallowed the debit entry of ₹.12,07,84,026/- made by the assessee as bad debt written off and added back to the income of the assessee.

5.1 On appeal, after considering the submissions of the assessee, the ld. CIT(A) has observed and held as under:

> *I have carefully considered the appellant's above contentions and find that the case laws relied by the appellant CIT vs. Ramakrishna and sons Ltd. 326 ITR 315 is squarely distinguishable on facts. Assessee has complete control on NTADCL is a associated enterprise and a related party. Assessee's contention that bad debt has occurred due to circumstances beyond the control of the assessee is not found acceptable. Assessee has been showing interest income as receivable and has paid tax or the same. It is revealed from the submission that the assessee had agreed to the CDR mechanism wherein one of the condition was acceptance of the laws of the accrued income. Thus, it is assessee's conscious decision to end up the liability of its associated enterprise and therefore such a conscious decision of the assessee cannot be termed and claimed as debt which has become bad. M/s NTADCL is a going concern and not untraceable. The assessee has deep interest in the business of M/s NTADCL. Therefore, the debit entry made by the assessee in the Profit & Loss A/c for ₹.12,07,84,026/- and is rightly disallowed by the AO and added to the total income of the assessee. The appellant ground on this issue is accordingly dismissed.*

5.2 On being aggrieved the assessee is in appeal before the

Tribunal. By reiterating the submissions as made before the ld.CIT(A) as well as filing copy of the judgement of the Hon'ble Supreme Court in the case of T.R.F. Ltd. v. CIT 323 ITR 397, the ld. Counsel for the assessee has prayed for following the above judgement.

5.3 On the other hand, the ld. DR strongly supported the orders of authorities below.

5.4 We have heard the rival contentions. Against the disallowance of bad debt written off, the assessee has submitted before the ld. CIT(A) that the Assessing Officer has not considered the sundry debtors receivable shown as receivable in the audited financial accounts. It was further submitted before the ld. CIT(A) that the debtor M/s. M/s New Tiruppur Area Development Corpn. Ltd. is a company promoted by the assessee and it is a subsidiary of the assessee is factually erroneous and untenable and also, the Assessing Officer erred in stating that the debtor is traceable and ongoing concern. The assessee contended that the debt has become bad only due to corporate restructuring scheme, which shows that the receivable has become bad. The AR also contended that the Assessing Officer erred in observing that the appellant had taken a conscious decision to end the

liability of its subsidiary. Before the ld. CIT(A), the assessee has relied on the ratio decided in the Hon'ble jurisdictional Madras High Court in the case of CIT vs. Ramakrishna and sons Ltd. 326 ITR 315, wherein it has been held that loss on account of write off debt advanced to subsidiary is a bad debt reported. Moreover, the assessee contended that consequent to the CDR scheme, the assessee had written off the receivables from M/s NTADCL same as bad debt. The assessee further submitted that in the books of account of M/s NTADCL had accounted the remission of liability as income in the assessment years 2010-11 and 2011-12. Therefore, the interest income which was offered has become bad only due to corporate restructuring scheme, which shows that the receivable has become bad. The AR further clarified that M/s NTADCL is an associated enterprise and a related party but not a subsidiary as stated in the assessment proceedings. Accordingly on facts the bad debt written off by the assessee has been shown as income on remission of liability by the debtor, i.e. M/s NTADCL and therefore the bad debt is revenue neutral, hence bad debt to be deleted. By reiterating the above submissions as well as relying upon the judgement of the Hon’ble Supreme Court in the case of T.R.F. Ltd. v. CIT (supra), the ld. Counsel prayed for deleting the

addition made towards bad debt written off. We have perused the above decision, wherein, the Hon'ble Supreme Court, for the sake of clarity reproduced the provisions of section 36(1)(vii) of the Act, both prior to 01.04.1089 and post 01.04.1989 and observed as under:

> *"Pre-1st April, 1989:*
>
> *36. Other deductions. (1) The deductions provided for in the following clauses shall be allowed in respect of the matters dealt with therein, in computing the income referred to in section 28—*
>
> *(i) to (vi) xxxx xxxx xxxx*
>
> *(vii) subject to the provisions of sub-section (2), the amount of any debt, or part thereof, which is established to have become a bad debt in the previous year.*
>
> *Post-1st April, 1989:*
>
> *36. Other deductions. (1) The deductions provided for in the following clauses shall be allowed in respect of the matters dealt with therein, in computing the income referred to in section 28—*
>
> *(i) to (vi) xxxx xxxx xxxx*
>
> ***(vii) subject to the provisions of sub-section (2), the amount of any bad debt or part thereof which is written off as irrecoverable in the accounts of the assessee for the previous year."***
>
> *4.* ***This position in law is well-settled. After 1st April, 1989, it is not necessary for the assessee to establish that the debt, in fact, has become irrecoverable. It is enough if the bad debt is written off as irrecoverable in the accounts of the assessee*****.....*** *"*

5.5 In the case law relied on by the assessee before the ld. CIT(A) in the case of CIT v. V. Ramakrishna and Sons Ltd. (supra), the Hon'ble Jurisdictional High Court dismissed the appeal of the Department and the head-notes are reproduced as under:

Section 36(1)(vii) of the Income-tax Act, 1961 – Bad debts – Assessment year 1989-90 – Where assessee had written off debt advanced to subsidiary as latter had huge losses and both appellate authorities found that transactions were genuine, their finding being finding of fact, assessee's claim for bad debt had to be allowed [in favour of assessee].

5.6 In the present case, it is an undisputed fact that consequent to the CDR scheme, the assessee had written off the receivables from M/s. NTADCL as bad debt and the debt has become bad only due to corporate restructuring scheme. Moreover, in the books of account of M/s. NTADCL had accounted the remission of liability as income in the assessment years 2010-11 and 2011-12. Therefore, the interest income which was offered has become bad only due to corporate restructuring scheme, which shows that the receivable has become bad and also it was clarified that M/s. NTADCL is an associated enterprise and a related party but not a subsidiary as stated in the assessment proceedings. Under the above facts and circumstances and respectfully following the decisions of the Hon'ble Supreme Court in the case of T.R.F. Ltd. v. CIT (supra) as well as in the case of CIT v. V. Ramakrishna and Sons Ltd. (supra), we set aside the order of the ld. CIT(A) on this issue and direct the Assessing Officer to delete the addition made towards bad debts written off. Thus, the ground raised by the assessee is allowed.

6. In the appeal filed by the assessee, by making endorsement in the grounds of appeal, the ld. Counsel for the assessee has pray for withdrawal of ground No. 3 and 4 and accordingly, ground Nos. 3 & 4 are dismissed as withdrawn.

7. In the result, the appeal filed by the Revenue is allowed for statistical purposes and the appeal filed by the assessee is partly allowed.

Order pronounced on 06th May, 2022 at Chennai.

Sd/-	Sd/-
(MANOJ KUMAR AGGARWAL)	(V. DURGA RAO)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Chennai, Dated, 06.05.2022