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T.C.A.Nos.1483 to 1485 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 17.04.2026

Judgment Delivered on : 02.06.2026

Coram:

THE HONOURABLE Dr.JUSTICE G.JAYACHANDRAN
and
THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

T.C.A.Nos.1483 to 1485 of 2010

T.C.A.No.1483 of 2010

Director of Income Tax (International Taxation),
Chennai.

... Appellant

vs.

M/s.Vedanta Limited,
(Successor in Interest to Cairn India Limited)
ASF Center, Tower B, 362-363,
Jwala Mill Road, Phase IV, Udyog Vihar,
Gurugram, Haryana-122 016.

... Respondent

Cause title amended vide court order dated 13.03.2026 made in CMP.No.1002/2025 in TCA.No.1483/2010 (GJJ and SSAJ)

Prayer: Tax Case (Appeal) filed under Section 260-A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Chennai 'C' Bench dated 04.06.2010 in ITA.No.1181/Mds/04 Assessment Year 2000–2001.

T.C.A.No.1484 of 2010

Director of Income Tax (International Taxation),
Chennai.

... Appellant

vs.

M/s.Vedanta Limited,
(Successor in Interest to Cairn India Limited)
ASF Center, Tower B, 362-363,
Jwala Mill Road, Phase IV, Udyog Vihar,
Gurugram, Haryana-122 016.

... Respondent



T.C.A.Nos.1483 to 1485 of 2010

*Cause title amended vide court order dated 13.03.2026 made in CMP.No.1003/2025 in TCA.No.1484/2010
(GJJ and SSAJ)*

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Prayer: Tax Case (Appeal) filed under Section 260-A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Chennai 'C' Bench dated 04.06.2010 in ITA.No.863/Mds/06 Assessment Year 2000–2001.

T.C.A.No.1485 of 2010

Director of Income Tax (International Taxation),
Chennai.

... Appellant

vs.

M/s.Vedanta Limited,
(Successor in Interest to Cairn India Limited)
ASF Center, Tower B, 362-363,
Jwala Mill Road, Phase IV, Udyog Vihar,
Gurugram, Haryana-122 016.

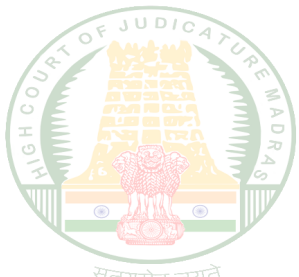
... Respondent

*Cause title amended vide court order dated 13.03.2026 made in CMP.No.1005/2025 in TCA.No.1485/2010
(GJJ and SSAJ)*

Prayer: Tax Case (Appeal) filed under Section 260-A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Chennai 'C' Bench dated 04.06.2010 in ITA.No.864/Mds/06 Assessment Year 2001–2002.

Counsel for Appellant: Mr.B.Ramana Kumar, Senior Standing Counsel for Income Tax and Mr.Avinash Krishnan Ravi, Junior Standing Counsel.

Counsel for Respondent: Mr.Srinath Sridevan, Senior Counsel for M/s.M.V.Swaroop. Gayathri, B.Devadharshini, Hredai, Thivakkaran Rajagopalan, Sankar



T.C.A.Nos.1483 to 1485 of 2010

COMMON JUDGMENT

Dr.G.JAYACHANDRAN, J

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The Appeals are filed by the Revenue, being aggrieved by the orders of the Income Tax Appellate Tribunal, (ITAT), Chennai, which partly allowed the appeals filed by the Revenue through common order.

(i) T.C.A.No.1483 of 2010 filed under Section 260-A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal “A” Bench, Chennai, dated 04.06.2010 in I.T.A.No.1181/Mds/2004.

(ii) T.C.A.No.1484 of 2010 filed under Section 260-A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal “A” Bench, Chennai, dated 04.06.2010 in I.T.A.No.863/Mds/06.

(iii) T.C.A.No.1485 of 2010 filed under Section 260-A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal “A” Bench, Chennai, dated 04.06.2010 in I.T.A.No.864/Mds/2004.

2. Brief facts leading to the appeals by the revenue:

The company, “Cairn Energy India Pty. Limited (CEIL)” is a non-resident Company incorporated in New South Wales, Australia and engaged in prospecting



and production of mineral oil and in some cases, natural gas also in India through its Project Office located at Chennai. The said Company is wholly owned subsidiary of Cairn Energy Asia Limited (CEAL), which is a company incorporated and registered in Australia.

3. The Assessing Officer held that, under the profit-sharing contract, there is no express provision to allow the provisions for site restoration costs as admissible deduction under Section 42 of the Income Tax Act, 1961 (for short, 'the Act'), and the expenses incurred before or after the commercial production, in respect of drilling or exploration activities alone, are eligible for deduction. After the insertion of Section 33-ABA of the Act, with effect from 01.04.1999, the special benefit is not in addition to the normal business deduction available under Section 37(1) of the Act.

4. Though the assessee is under obligation to restore the site to its original position as per the terms of the production sharing contract, the accounting procedure as agreed by the parties, shall not be prejudicial to the computation of income tax under the applicable provisions of the Act. Therefore, the Assessing Officer held that, since the assessee had not incurred any expenditure towards site restoration during the period under assessment, the same is un-ascertainable, which can be ascertained only when commercial production from the Well is over. Therefore, the Assessing Officer disallowed the claim of provisional expenditure for site restoration under



Section 37(1) of the Act. However, the expenses declared were adjusted while computing the book profit under Explanation to Section 115-A of the Act.

5. The assessee-Company, being aggrieved, preferred appeal before the Commissioner of Income Tax (Appeals). The Appellate Authority, following the order passed by his predecessor for the previous assessment years – 1996-97 to 1998-99, held that the assessee-Company is eligible to claim deduction in respect of the expenditure incurred for site restoration under Section 37 of the Act and also while computing the book profits under Section 115 of the Act, the Appellate Authority allowed the appeal of the assessee.

6. Assailing the order of the Appellate Authority, the Revenue preferred appeals before the Tribunal, in which, the Tribunal partly allowed the Revenue's appeals with certain observations and the relevant portion of which is extracted hereunder:

“11. It is thus held that, since in the appeals filed by the revenue for A.Y. 96-97 to 98-99, there was no issue regarding provision for site restoration cost, while making adjustment u/s 115JA of the Act, the said order cannot be made a precedent for deciding the issue under consideration.



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12. *Even other-wise, to what we have held above, we find that, section 115JA of the Act starts with a non-obstante clause and, reads as “notwithstanding anything in any other provisions of this Act”. In other words, it overrides all other provisions of the Act and, therefore any adjudication in terms of section 37(1) of the Act cannot be applied to decide the claim regarding section 115-JA of the Act. It is thus held that, section 115JA of the Act is a separate Code by itself and overrides all other provisions contained in the Act. Thus, expenditure though may not be strictly allowable under section 37(1) of the Act yet be a liability which is ascertained liability and, does not warrant any adjustment under section 115-JA of the Act.*

13.....

14.*The undisputed facts as emerging from the material on record are, the assessee company in each of the assessment years was engaged in carrying out petroleum operations in Ravva oil filed under the PSC with joint venture partners namely M/s.Videocon Petroleum Ltd., Ravva oil (Singapore) Pvt. Ltd., ONGC and Govt. of India. Article 1.65 of PSC defines the expression “petroleum operations” as under:*

“Petroleum operations” means, as the context may require, exploration operations, development operations or production operations or any combination of two or more of such operations, including



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construction, operation and, maintenance of all necessary facilities, plugging and, abandonment of wells, environmental protection, transportation, storage, sale or disposition of petroleum to the delivery point, site restoration and all other incidental operations or activities, as may be necessary.”

15. From the aforesaid definition, it is seen that, petroleum operations include construction, operation and maintenance of all necessary facilities, plugging and abandonment of wells, environmental protection, transportation, storage, sale or disposition of petroleum to the delivery point, site restoration and all other incidental operations or activities as may be necessary. In other words, under Article 1.65 of PSC, site restoration is part and parcel of petroleum operations namely exploration, development or production operations. It is not in dispute that provision for site restoration cost has been debited in the Profit & Loss Account prepared by the assessee company in accordance with part II and III of Schedule of the Companies Act, 1956 and, certified by statutory auditors. It is also not in dispute that such Profit & Loss Account has not been found to be rejected by Registrar of companies. In such circumstances, in terms of the judgment of the Apex Court in the case of Appollo Tyre v CIT reported in 255 ITR 273, there is no justification to warrant any adjustment under section 115-JA of the Act unless it is covered by adjustments provided in Explanation to section 115-JA. In coming to the above conclusion, we derive



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support from the judgment of Hon'ble jurisdictional High Court in the case of *CIT v Kovai Maruthi paper and Board (P) Ltd* reported in 294 ITR 57, wherein following the judgment of *Apollo Tyres (supra)*, it has been held as under:

*“We have heard Mr.N.Muralikumaran, learned senior standing counsel appearing for the Revenue. The issue raised in this appeal is not res integra as it has been clearly covered by the decision of the apex court in the case of *Apollo Tyres Ltd. v. CIR (2002) 255 ITR 273*. In that case, the apex court in fact considered the question as to whether the Assessing Officer while assessing a company for income tax under section 115-J of the Act could question the correctness of the profit and loss account prepared by the assessee-company and certified by the statutory auditors of the company, as having been prepared in accordance with the requirements of Parts II and III of Schedule VI to the Companies Act. The apex court considered that once the profit and loss account prepared by the assessee-company is certified by the statutory auditors of the company as having been prepared in accordance with the requirement of the principles of the Companies Act, **then there is no scope for the Assessing Officer while computing the income under section 115-J to find out as to whether the said profit and loss account was in fact prepared and properly maintained in accordance with the***



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Companies Act or not. In fact, we may quote the following paragraph in the said apex court judgment:

“Therefore, we are of the opinion, the Assessing Officer while computing the income under section 115-J has only the power of examining whether the books of account are certified by the authorities under the Companies Act as having been properly maintained in accordance with the Companies Act. The Assessing Officer thereafter has the limited power of making increases and reductions as provided for in the Explanation to the said section. To put it differently, the Assessing Officer does not have the jurisdiction to go behind the net profit shown in the profit and loss account except to the extent provided in the Explanation to section 115-J”.

From a perusal of the above, it can be inferred that once the profit and loss account prepared by the assessee is certified by the authorities under the Companies Act, as having been properly maintained in accordance with the Companies Act the Assessing Officer has only the limited power of making increases and reductions as provided for in the Explanation to the said section, and he does not have the jurisdiction to go behind the net profit shown in the profit and loss account except to the extent provided in the Explanation to section 115-J.

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19. It is thus held that, provision for site restoration arose as a result of the PSC with the Government of India and, is an ascertained liability and, therefore clause (c) of Explanation to section 115-JA is inapplicable to the facts of the assessee company. The contention of the revenue that, site restoration is part of petroleum operations and, not exploration is evidently misplaced as petroleum operations include exploration activities. In fact, the Apex Court in the case of CIT v Enron Oil and Gas Co. Ltd reported in 305 ITR 75 has held that, any expenditure incurred by the assessee, whether capital or revenue, so long the same is in accordance with the PSC, the same is eligible for deduction. Further, Rajasthan High Court in the case of Udaipur Mineral Development Syndicate (P) Ltd. vs. DCIT & Anr. Reported in 261 ITR 706, wherein it has been held as under:

“as far as possible the lessee shall restore the surface land so used to its original condition, the moment the assessee digs pits, he is bound under the agreement to fill those pits and the liability does accrue on the date when the pits are dug. Therefore, in our view, the Tribunal has committed an error in disallowing the claim of the assessee in the year in hand, i.e. 1991-92. We agree with the view taken by the Commissioner of Income-tax (Appeals) that the moment the assessee digs the pits, the liability does arise and it is entitled for deduction of the expenses which it is supposed to incur for filling those pits, as the assessee is following the mercantile system



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of accounting. It can claim the expenses incur as soon as it digs the pits.”

20. In the light of the above, it is held that the provision for site restoration is not an eligible deduction under section 37(1) of the Act but the same will be considered while computing income under section 115-JA of the Act.”

7. Being aggrieved by the observation of the ITAT that, 'the provision for site restoration is not an eligible deduction under section 37(1) of the Act, but the same will be considered while computing income under section 115-JA of the Act,' the Revenue has filed the above appeals. The three Tax Case Appeals for the respective assessment years, were admitted to answer the following common substantial questions of law:

(i) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the reopening of the assessment under Section 147 was bad in law even though the Return had been processed only under Section 143(1) and no assessment had been made under Section 143(3), without taking note of the Supreme Court's decision in Assistant Commissioner of Income Tax Vs. Rajesh Jhaveri Stock Brokers P. Ltd. (2007) 291 ITR 0500)?

(ii) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in



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holding that the provision for Site Restoration Expenses could not be added back by way of adjustment treating it as an unascertained liability in the computation of book profits under Section 115-JB / 115-JAA, even though the dis-allowance of the claim was under Section 37(1) has been upheld ?

(iii) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that while levying interest under Section 234 - B and 234 - C, MAT credit should be set off first before advance tax contrary to the scheme of the Act and the Form of Return prescribed under the Income Tax Rules ?

8. The learned Senior Counsel appearing for the Appellant-Assessee-Company submitted that the site restoration expenditure is part and parcel of the exploration, development and production of operations and, thus, it is eligible expenditure under the production sharing contract and liable for assessment in accordance with the accounting guidelines and statutory provisions of law. If the said expenditure is disallowed, it will result in gross mismatch of the expenditure. The allowance under Section 115 of the Act, is an additional incentive, besides the normal deduction under Section 37(1) of the Act. The introduction of Section 33-ABA of the Act, has not been taken away by the existing right to claim deduction under the normal provision.



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9. The ITAT, having held that the site restoration expenditure towards site restoration is an ascertainable liability, contrary to the settled principles of law, the Tribunal disallowed the claim of the assessee in respect of the provisions made for site restoration. Section 33-ABA of the Income Tax Act, is not a bar to claim deduction under Section 37 of the Act. The marginal note to the provisions of Section 33-ABA of the Act, is 'Site Restoration Fund.' Circular No.772, dated 23.12.1998, explains that the provisions of Section 33-ABA was inserted as an incentive and the provision for site restoration fund is optimal. However, the expenditure for site restoration, being part of the contractual obligation, forms part of the cost of operation and therefore, the profits and gains of a business can be computed under Section 28(i) of the Act, only after giving due deduction towards the cost of production, which includes site restoration expenditure also.

10. The facts and contentions of the parties are interconnected with the cross- appeals by the assessee in T.C.(A).Nos: 1299 to 1301 of 2010. The respondent- assessee-company, which is a company engaged in extraction of petroleum products pursuant to the production sharing contract with the consortium of private companies and the Government of India along with ONGC, claimed deduction under Section 42 of the Act in respect of anticipated expenses for site restoration. The assessment orders for the year 1999-2000, 2000-2001 and 2001-2002, challenged by the assessee-Company, were partly allowed by the appellate authority. As against the



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orders of the Appellate Authority, the Revenue preferred appeals before the Income Tax Appellate Tribunal. Those appeals were partly allowed by the Tribunal, *vide* common order, dated 04.06.2010.

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11. Being aggrieved, the assessee filed appeals in T.C.A.Nos.1299, 1300 and 1301 of 2010. After a detailed discussion, this Court allowed the above appeals of the assessee-Company, answering the substantial questions of law in negative, as against the Revenue. The present appeals by the Revenue are in respect of the dismissal portion of the appeal filed by the Revenue.

12. The answer to the common substantial questions of law in these appeals subsumes within the questions of law framed and answered in the assessee's appeals T.C.A.Nos.1299 to 1301 of 2010, filed against the same common order of ITAT. In respect of the substantial questions of law are concerned, we have held that the finding of the Tribunal that the expenditure towards site restoration can be claimed only under Section 115-JA of the Act is in-correct. Therefore, we are of the considered view that there is no necessity for any detailed discussion, since the claim of the assessee-Company for deduction under Section 37(1) of the Act, has already been upheld by us in their appeals T.C.(A).Nos.1299 to 1301 of 2010.



13. Since this Court has held that the assessee-Company is entitled to seek deduction under Section 37(1) of the Act, the substantial questions of law raised in the Revenue's appeals, as a corollary, is to be negated.

14. Accordingly, T.C.A.Nos.1483 and 1485 of 2010 filed by the Revenue, (which are in respect of the Assessment Year 2000 – 2001 and 2001 – 2002), are dismissed. There shall be no order as to costs.

15. Insofar as T.C.(A).No.1484 of 2010, which is in respect of the Assessment Year 1999-2000, is concerned, the assessment was re-opened by the Commissioner of Income Tax by exercising the powers conferred under Section 147 of the Income Tax Act, after causing notice under Section 148 of the Income Tax Act on 05.02.2003, the assessee-Company has filed its Return of income. However, without serving a copy of the reasons recorded and notice under Section 143(2) of the said Act, the assessment been re-opened after four years. Therefore, following the decision of the Hon'ble Supreme Court in the case of *Madhya Pradesh Industries Limited Vs. Income Tax Officer*, reported in *1965 (57) ITR 637 (SC)*, which held that no roving or fishing enquiry may be done under the guise of re-assessment, the assessment order for the year 1999-2000, is set aside in favour of the assessee-Company by the Tribunal.



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16. We find neither before the Appellate Authority nor before the ITAT the Department has given valid reason for re-opening the assessment after the period of limitation. Accordingly, the appeal in T.C.A.No.1484 of 2010 in respect of the Assessment Year 1999-2000 filed by the Revenue, stands dismissed.

17. In fine, T.C.A.Nos.1483 to 1485 of 2010 stand dismissed. There shall be no order as to costs.

(Dr. G.J., J) (R.S.V., J)

02.06.2026

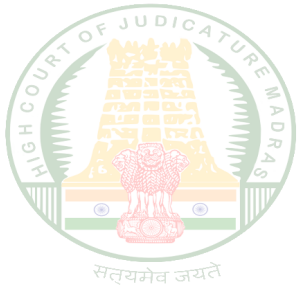
Index : Yes.
Speaking Order : Yes/no.
Neutral Case Citation : Yes/no.
cs

To,

1. The Assistant Director of Income Tax,
(International Taxation),
121, Nungambakkam High Road,
Chennai-600 034.

2. Director of Income Tax (International Taxation),
Chennai.

3. The Commissioner of Income Tax, Chennai.



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T.C.A.Nos.1483 to 1485 of 2010

Dr.G.JAYACHANDRAN, J

and

R.SAKTHIVEL, J

CS

Pre-delivery judgment
in
TC(A) No: 1483 to 1485 of 2010

Judgment delivered
on 02.06.2026