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T.C.A.No.121 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.07.2025

CORAM

THE HONOURABLE MR. MANINDRA MOHAN SHRIVASTAVA,
CHIEF JUSTICE

AND

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

T.C.A.No.121 of 2025

Indian Overseas Bank
763, Anna Salai,
Chennai - 600 002.

Appellant(s)

Vs

The Assistant Commissioner of Income Tax,
Large Tax Payer Unit, Chennai.

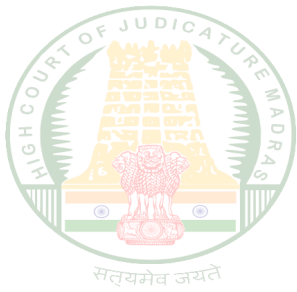
Respondent(s)

For Appellant(s):

Mr.R.Vijayaraghavan
for M/s.Subbaraya Aiyar Padmanabhan
and Ramamani

For Respondent(s):

Ms.V.Pushpa
Senior Standing Counsel



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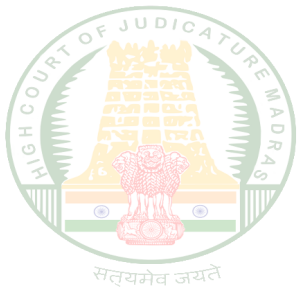
ORDER

WEB COPY (Order of the Court was made by the Hon'ble Chief Justice)

Ms.Pushpa, learned Senior Standing Counsel, takes notice for respondent/Revenue.

2. The appeal is admitted on the following substantial questions of law:

- (1)Whether the Tribunal was right in law in disallowing the contribution made by assessee to Staff Welfare Fund on the ground that the Fund is not recognized?
- (2)Whether the Tribunal ought to have appreciated that the recognition or non-recognition of the fund in no way affects the admissibility of the expenditure in the hands of the assessee since there is no such stipulation in the IT Act for getting recognition under the Act?
- (3)Whether the contribution to staff welfare fund in terms of the agreement entered into with the employees is an allowable expenditure u/s. 37 of the Act since it is



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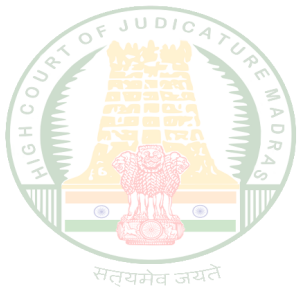
neither a capital expenditure nor personal expenditure and has been incurred wholly and exclusively for the business of the assessee?

(4) Without prejudice to the above contention, whether the order of the Tribunal is perverse in not allowing the actual amount of Rs.6,69,59,031/- paid during the year out of the Staff Welfare Fund?

(5) Whether on the facts and in the circumstances of the case the Tribunal was right in law in holding that the appellant is not entitled to Double Income Tax Relief in respect of income from foreign branch based on the DTAA entered into with respective countries?

(6) Whether the Tribunal was right in law in rejecting the claim of the assessee that income accruing to the PE of the assessee in other countries is taxable only in the other country and not in India?

(7) Whether the Tribunal was right in law in not applying the provisions of Double Taxation Avoidance Agreement regarding the country of taxation of profits of a



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Permanent Establishment?

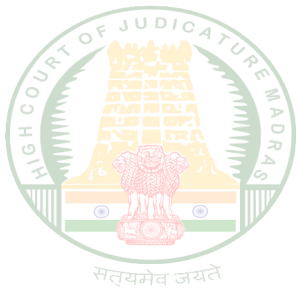
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(8) Whether on the facts and in the circumstances of the case the Tribunal was right in law in holding that DTAA between two countries does not exempt any income from taxation in India but only permits credit for taxes paid in foreign country?

(9) Whether the Tribunal was right in law in assigning a restricted meaning to the term "may be taxed in the other Contracting State" in Article 7.1 of the DTAA ignoring that it provides the right of taxation of the other Contracting State in respect the business profits attributable to the Permanent Establishment of an enterprise of a Contracting State situated therein?

(10) Whether the Tribunal was justified in not applying the ratio laid down by the Supreme Court in the case of CIT v. P.V.A.L. Kulandagan Chettiar, 267 ITR 654?

(11) Whether the Tribunal was right in law in rejecting the claim of the assessee for grant of depreciation on goodwill arising out of take over of Shree Suvara



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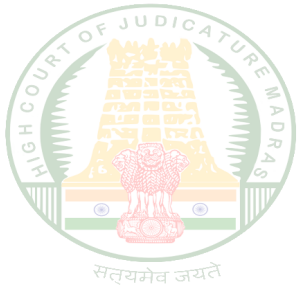
Sahakari Bank Limited on the ground that the transferor bank did not enjoy any goodwill?

(12)Whether the Tribunal was right in law in rejecting the claim of depreciation on goodwill arising on take over, ignoring the decision of the Apex Court in the case of Smifs Securities, wherein it has been held that the excess of liabilities over assets constitutes goodwill and is entitled to depreciation?

(13)Whether the Tribunal was right in law in disallowing the provision for leave salary by invoking Section 43B(f) of the Act by overlooking the fact that the said amount was not payable to the employees during the previous year and that the provisions of Section 43B applies only in respect of sums payable?

(14)Whether the Tribunal was right in law in holding that the assessee is not entitled for deduction in respect of provision made for leave salary based on actuarial valuation?

(15)Whether the Tribunal was right in law in holding that



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provision for leave encashment cannot be allowed under Section 43B(f), even though it has accrued but is not due for payment before the year end?

(16)Whether the Tribunal ought to have applied the ratio of the Andhra Pradesh High Court in the case of Srikakallu Subba Rao and Co v. Union of India, reported in 173 ITR 708?

List this appeal along with T.C.A.Nos.401, 341 and 342 of 2020.

(MANINDRA MOHAN SHRIVASTAVA, CJ) (SUNDER MOHAN,J)
25.07.2025

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