2026:MHC:4136

Case Citation: (2026) ibclaw.in 6419 HC

Order QR

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06-10-2026

CORAM

**THE HON'BLE DR.JUSTICE ANITA SUMANTH**
**AND**
**THE HON'BLE MR.JUSTICE K.RAJASEKAR**

TCA No. 643 of 2014
*CNR: {HCMA011136892014}*

Case QR

The Commissioner of Income Tax,
Chennai.

..Appellant

Vs

M/s.Shriram Chits Tamiladu Pvt Ltd.,
Greams Dugar, 4th Floor,
149, Greams Road,
Chennai – 600 006.

..Respondent

PRAYER: Tax Case Appeal filed under Section 260-A of the Income Tax Act, 1961 against the order of Income Tax Appellate Tribunal, Madras "A" Bench, Chennai passed in I.T.A.No.1512/Mds/2010 dated 24.06.2011

For Appellant: Mr.s.Rajesh
for Mr.J.Narayanasamy

For Respondent: Mr.R.Sivaraman



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**JUDGMENT**

(Delivered by Dr.Anita Sumanth, J.)

This is a Departmental appeal for assessment year (A.Y.) 2003 – 2004 and four substantial questions of law have been admitted on 17.12.2014.

2. We have heard Mr.S.Rajesh appearing for Mr.J.Narayanasamy for the appellant and Mr.R.Sivaraman for the respondent/assessee.

3. The substantial questions admitted, the discussions, and our conclusion are set out below in seriatim:

> *"1.Whether on the facts and circumstances of the case, the Income Tax Appellate Tribunal was right in deleting the addition of Rs.868 Crores as bad debts?"*

4. Both learned counsel accede to the position that this question has been answered by this Court on 04.11.2024 in T.C.A.No.185 of 2011 in favour of the assessee. The operative portion of the decision is extracted below:

> …..
> *"3.In regard to the issue relating to bad debts, that issue has been considered by a Division Bench in TCA.Nos.996 to 998 of 2005 dated 03.04.2012, and decided in favour of the assessee.*
> *4.After a detailed discussion in regard to the judgment of the Supreme Court in Shriram Chits and Investments Private Limited v. Union of India and others [AIR 1993 SC 2063] which dealt with the vires of the Chit Funds Act, 1982, the issue of bad debts has been discussed and concluded in the following terms:*
> *"11.Keeping this declaration of law, when we look into the provisions of the Chit Funds Act, one may note the obligation of the foreman, particularly as given under*



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*Section 21. While enumerating the rights of the foreman, the Act also takes care to impose an obligation on the foreman to do all acts which may be necessary for the due and proper conduct of the chit under sub clause (f) which empowers the foreman to substitute subscriber in the place of defaulting subscriber. As far as the duties of the foreman as enumerated under Section 22(2) of the Act is concerned, the Act stipulates that in the event of default by a prized subscriber, in respect of the prize amount due in respect of any draw remaining unpaid until the date of the next succeeding installment, the foreman shall deposit the prize amount in a separate account in an approved bank mention in the chit agreement. The Act also provides that where the prize subscriber does not collect the prize amount in respect of any instalment of a chit within a period of two months from the date of the draw, it shall be open to the foreman to hold another draw in respect of such instalment. The Section also provides that the foreman may appropriate to himself the interest accruing on the amount deposited under the second proviso to sub-section (1), for which he is entitled.*

*12. As far as the balance sheet of the company is concerned, Section 24 enumerates what is required to be stated in the balance sheet. The Rules therein provide for the format of the balance sheet. A reading of the schedule, as against the assets side, shows loans and advances to subscribers as well as the liabilities as relatable to non-prized subscribers. The assets side also contains receipt of interest and such other amount which can be transferred to fall under the caption of assets. In terms of the provisions thus prescribed in Section 24, the balance sheet and profit and loss account clearly showed the amount intimated by the company as against the default committed by the chit holders and the balance sheet was also audited by the Chartered Accountant qualified to act as Auditor under the Companies Act. In the context of the payment thus made, the question that arises herein is as to whether the activity of the assessee could be termed as falling under the status*



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*of a creditor that on the debt amount advanced, the same could be characterised as a debt for the purpose of treating it under Section 36(2) of the Chit Funds Act.*

*13. It is a settled position of law as held in [2010] 323 ITR 397 (SC) (TRF Limited vs. Commissioner of Income Tax) that after the amendment to Section 36(1)(vii) of the Income Tax Act, with effect from 01.04.1989, it is not necessary for an assessee to establish that the debt, in fact, has become irrecoverable and that it is enough if the bad debt is written off as irrecoverable in the accounts of the assessee. In the context of the different stand taken by the revenue in the year and the consideration in contradistinction to the earlier years, the terms of the claim of the assessee in earlier years assume significance.*

*14. It is not denied by the Revenue that in respect of the earlier years 1990~91 and 1991-92, the claim of the assessee for deduction as a bad debt was allowed and in the appeal preferred by the Revenue before the Tribunal, the Tribunal referred to the clarification issued by the Board in F.No.169/21/78/21/78-IT(80) dated 16th May 1997, which reads as follows:-*

*"(a) If any person organises Chit Funds and for this purposes brings the members together, administers the Chit Funds and thereby earns commission, etc., profits made by such a person is income from business and if for any special reason there is loss then it is business loss. Normally there should be no loss to the organiser unless he takes over the liability of some of the members. In such a case the unrecovered amount due from such members will have to be treated as bad debts and the test to be adopted in usual business assessment for the allowance of bad debts would be applicable in such cases also.*

*(b) In the hands of the subscribers, a few will be receiving more than what they have subscribed. This extra amount is in the nature of interest and as such, taxable. Members who take the money earlier from the chit will necessarily have to contribute more which means that they incur loss, which is nothing but interest paid for moneys taken in advance. The*



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*claim of such a loss will have to be considered for the purpose of allowance according to the provisions of the Act depending upon how the money was utilised by the subscriber."*

*15. The subsequent clarification issued on 25.03.1992, which had been extracted in the order of the Tribunal relating to the assessment years 1990-91 and 1991-92, merits to be extracted hereunder:-*

*Government of India*
*Ministry of Finance*
*Department of Revenue*
*Central Board of Direct Taxes*

*25th March 1992*

*The Chief Commissioner of Income tax II*
*New Delhi.*

*Sir,*

*Subject : CBDT Instruction No.1175 dated May 16, 1973*
*Liability to assessment Profits made by*
*subscriber of chit funds Question regarding*

*1. I am directed to refer to your Letter F.No.66(II)/HO/Proposal under section 263/91-92/4101, dated November 15, 1991 on the above mentioned subject.*

*2. The issues raised by you have been carefully examined by the Board. In this regard, I am directed to say, that Board are of the view that Instruction No.1175 issued in consultation with M.O.L. cannot be withdrawn on the basis of decision of Punjab & Haryana High Court in case of soda Silicate & Chemical Works (supra). The Board's Instruction stands.*

*3. Regarding proceedings under Section 263 pending before the Commissioner of Income-tax Delhi-II, New Delhi, Board cannot issue any directions.*

*Thanking you,*

*Yours faithfully*
*sd/-*
*Under Secretary of the*
*Government of India."*



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*16. Having regard to the specific observation of treating the unrecovered amount of the subscriber and the debts as bad debts, the Tribunal allowed the case of the assessee that the claim was to be construed as a bad debt, allowable as deduction under Section 36. In the background of the above facts, although we are inclined to dismiss the Revenue-s appeal, the decision taken by the Commissioner of Income Tax (Appeals) in respect of the above~said claim merits to be noted herein.*

*17. A perusal of the order of the Commissioner of Income Tax (Appeals) shows as regards the responsibility of the Foreman as listed under the Chit Funds Act. It is admitted by the parties herein that having regard to the obligation under the Chit Funds Act, the assessee had to pump in its own money for the purpose of ensuring that the chit cycle goes on as promised. It is an admitted fact that in respect of shortfall due to non~payment, the company brought in its own money which was utilised for running the chit business and this did not stand in the way of the statutory obligation of the foreman on getting the chit cycles move on as before. Thus with statutory obligation imposed and well in compliance of the said obligation, that the company had to pay its own money to have the successful chit circulated as before, as pointed out by the Apex Court, if there is an obligation under a special contract between the defaulted chit holder and the company, even if the amount due is not treated as a debt within the meaning of the Money Lenders Act, yet, the contract gives rise to a relationship of a creditor and debtor. Thus, the Commissioner of Income Tax (Appeals) having gone into the requirement of the provisions under the Chit Funds Act, held that the advancement of the money is part and parcel of the business, thus giving rise to a situation that when the defaulter did not make the payment to the company, the company had to claim it as a bad debt for the purpose of deduction under Section 36.*

*18. It may be of relevance herein to note that while considering the said claim, the Commissioner of Income*



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*Tax (Appeals) pointed out that having regard to the nature of payment made, the claim has to be considered as intimately connected with the business, resulting as a case of a bad debt. Hence, apart from Section 36, the same merited to be considered as falling under Sections 28 and 37 in the business expenditure resulting in a loss. As already pointed out, when the Revenue went on appeal as against the view of the Commissioner of Income Tax (Appeals) challenging that it would amount to a bad debt, apparently, no claim was made on the side of the Revenue to dispute the view of the Commissioner of Income Tax (Appeals) that the claim might also fall under the head of business loss under Section 28. Thus, when the Tribunal rejected the Revenue-s appeal, it clearly pointed out that it confirmed the view of the Commissioner of Income Tax (Appeals) as stated above that the claim is allowable not only as a bad debt, but could also be considered as a case of business loss under Section 28. The question raised before this Court thus is relatable to one part of the Tribunal's order as to whether the defaulted amount paid by the assessee could be treated as a bad debt.*

*19. It is not denied by the Revenue that the payment made in the course of the business had resulted in a loss of the chit amount which is also allowable under Section 28. Given the above-said fact, we have no hesitation in rejecting the Revenue-s appeal on this question.*

*20. Learned counsel appearing for the Revenue brought to our attention the decision of the Bombay High Court dated 28.02.2012 in T.C.No.89 of 2011, wherein, the Bombay High Court had an occasion to consider the money paid by the stock broker on the default committed by its client. The Bombay High Court held that the liability to pay the brokerage may arise at a point of time anterior to the liability to pay the value of the shares transacted. Nevertheless, it would constitute part of the debt that arises on the same transaction involving the sale or purchase of shares. Since the transactions are part of the same transaction and since both form a component or part of the*

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*debt, the requirement of Section 36(2)(i) are fulfilled and the assessee is entitled to treat it as a bad debt. Extending the same logic to the present case herein, going by the obligation of the foreman arising under Sections 21 and 22 of the Chit Fund Act to make good the default to the successful bidder on the subsequent day transaction, the claim was rightly considered by the Tribunal as one allowable under Section 36 of the Act.*

*21. As far as the reliance placed on the decision reported in [2010] 328 ITR 342 (Commissioner of Income Tax vs. Sahib Chits (Delhi) (P) Ltd.) is concerned, we do not find that the Revenue could draw any assistance from the said decision, since the said decision relates to a totally different situation. A perusal of the above judgment of the Delhi High Court shows that it is more on the question of discount allotted to the members of the chit in the prized chit disbursed by the various members and the successful bidder being given the contribution made. Thus the distribution was not made out of any money borrowed by the assessee to result in a debt for considering the same as deduction at source.*

*22. As far as the decision reported in [1998] 229 ITR 727 (Suman Saving and Investments Pvt. Ltd. vs. CIT) is concerned, the same also is not of any relevance to the case herein, considering the amendment to Section 36 and the nature of business of the assessee herein on the admitted position that when the Department had not agitated the issue further in respect of assessment years 1990-91 and 1991-92 and the situation herein is no different from that of the earlier orders, we have no hesitation in confirming the order of the Tribunal, thereby dismissing the Revenue's appeals."*

Accordingly this question of law is answered in favour of the assessee.

5. The second question relates to disallowance of interest of security deposits, commissions and gifts paid to closely associated entities.



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*"2.Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in deleting the disallowance of Rs.10.20 Crores being the interest on security deposits, commission, gift paid to closely associated companies?"*

6. Though learned Standing Counsel would seek to advance submissions on the merits, he cannot escape the position that on identical facts and legal position, this very issue has been held in faovur of the assessee for A.Y. 2002-2003 by the Commissioner of Income Tax (Appeals). An appeal filed by the Revenue in I.T.A.973/Mds/2006 was dismissed by order dated 19.10.2007 and this order has become final.

7. That apart, for the subsequent years i.e., 2004-2005 and 2005-2006, identical additions were made in assessment that were deleted by orders dated 05.03.2008 and 19.12.2008 respectively by the CIT (Appeals) and the Department has chosen not to agitate the issues further. It is also a fact that this issue has not been raised by the Department from A.Y. 2006 – 2007 onwards, though the assessee follows the same modus operandi in its operations even thereafter. Hence, and in view of the settled position that there must be consistency and uniformity in assessment of issues, there being no change in facts or legal position, we see no reason to intervene in the order of the Tribunal holding this issue in favour of the assessee. This substantial question of law is answered in favour of the assessee.



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8. The third question relates to royalty and read thus:

> *"3.Whether on the facts and in the circumstances of the case the Income Tax Appellate Tribunal was right in holding that the royalty amount should not be disallowed amounting to Rs.64.53 lakhs?"*

We have, in T.C.A.No.185 of 2011, by order dated 04.01.2024, considered the same question and held as follows:

> *"2.As regards questions 1 and 2 relating to the allowability of expenditure spent towards royalty, parties cite a decision of the Division Bench of this Court in the case of the very assessee before us in TCA.Nos.755 of 2009 and batch dated 30.06.2022. The discussion and conclusions are as follows:*
>
> ***'Royalty***
>
> *7.1. The assessee companies claimed royalty paid to the holding company M/s.Shriram Chits and Investments Pvt Ltd as revenue expenses. The assessing officer disallowed the royalty amount and allowed depreciation at 25% by holding that the expenditure incurred is for acquiring intangible asset and would thus amount to capital expenditure. However, the CIT(A) directed the assessing officer to allow the royalty payment in full as revenue expenditure, which was also affirmed by the Tribunal. Feeling aggrieved, the Revenue preferred the appeals viz., TCA Nos.622/2013, 360 & 361/2014 and 913/2014. Whereas, in the case of Shriram Transport Finance Co. Ltd relating to AY 2014-15, the assessee claimed royalty amount of Rs.20,93,93,838/~ paid to shriram Ownership Trust, which was disallowed, after allowing depreciation @ 25% on Rs.20,93,93,838/- by the assessing officer. The said order of the assessing officer was put to challenge before the CIT(A), by filing appeal, in which, both the grounds relating to disallowance of royalty for AY 2014-15 and depreciation on royalty amount disallowed in the earlier assessment years 2008~09 to 2013~14, were raised by the*



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*assessee. Though the CIT(A) decided royalty issue in favour of the assessee, he directed the AO to withdraw the depreciation granted at 25% on the royalty payment. The said finding of the CIT(A) was also confirmed by the Tribunal. Therefore, the assessee is before this court by filing TCA.No.407/2019, raising a substantial question of law, whether the Tribunal was right in not directing the assessing officer to allow depreciation on the royalty amounts disallowed in the earlier years, without prejudice to the ground raised in the earlier years that royalty amount is allowable as revenue expenditure.*

*7.2. The learned Senior Standing Counsel appearing for the Revenue would contend that the parent company of Shriram Group of Companies is in the trade of finance and investments and they had built a good will and reputation over several years of operation. The parent company also had large data base of its existing and past clients, who had investments and had financial transactions with them. While so, the assessee companies, with the help of the parent company, started business by making investment in land, building etc., and claimed depreciation. In addition, the assessee companies also invested for use of trademark on the parent company, which has to be treated as investment in capital asset. Further, the assessee companies were allowed to use the data base of the parent company to tap them for development of business. Continuing further, the learned senior standing counsel submitted that the customers are attracted not only through trust and good will, but also by the trade mark of the parent company. Therefore, by allowing the assessee companies to use the trademark of the parent company, they had the same effect of investing in the capital assets viz., land, building etc., and the said investment/expenditure is towards the profit making apparatus; and the use of the said trademark had enabled the assessee companies to get immediate market presence and commence their business. Thus, according to the learned Senior Standing Counsel,*



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*the expenditure incurred by the assessee companies in this regard, has to be treated as capital expenditure and they are entitled to claim depreciation alone. In other words, the royalty payment being acquiring an intangible asset, the assessee companies are entitled only for depreciation under Section 32 of the Act and the depreciation table expressly provides for 25% depreciation and therefore, the assessee companies cannot claim it to be revenue expenditure and get 100% deduction. It is also submitted that the license to use the trademark is given only to two companies and hence, the claim of the assessee companies that it is not an exclusive use, is liable to be rejected; and the further contention of the assessee companies that the agreement is only for one year, is also liable to be rejected, as the said agreement is being renewed for several years. Placing reliance on the decision of the Apex Court in Honda Siel Cars (India) Limited v. CIT [(2017) 8 SCC 170], the learned senior standing counsel ultimately submitted that without applying the test as to whether the investment on licence to use trade name and trade mark is capital or revenue in nature, in the light of the documentary evidence, especially license agreement, which concedes that the royalty is paid for capitalizing the good will of the parent company, the authorities below erroneously deleted the disallowance made by the assessing officer by treating the expenses as revenue in nature and hence, the appeals will have to be allowed by setting aside the orders of the authorities below.*

*7.3. Per contra, the learned Senior counsel appearing for the assessee companies would submit that M/s.Shriram Chits & Investments Private Limited is the owner of the logo and its absolute ownership can be recognised from the registered trademark. The assessee companies had obtained permission only to use the logo and the permission so granted is non-transferable and non-exclusive. Elaborating further, the learned senior counsel submitted that as per the agreement between the parties, no*



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*proprietary or exclusive interest has been acquired by the assessee companies and in the absence of any ownership in respect of the logo covered by the trademark, the provisions of section 32(1)(ii) of the Act are not at all attracted. Further, the document under which the permission was granted to the assessee companies can be terminated for breach of contract by either party by giving 60 days notice. Even the payment made by the companies is not in the capital field and no asset or advantage of an enduring nature has been acquired by them and therefore, the expenditure in the form of payment to the principal is a proper debit in the profit and loss account even after the introduction of section 32(1)(ii). It is also pointed out that in this case, royalty is being paid annually from 01.04.2003, which shows that there is no acquisition of any asset and the payment is only for the use of the asset without acquiring any interest therein. To substantiate his contention, the learned senior counsel referred to the decision of the Hon'ble supreme court in CIT v. Wavin India Limited [236 ITR 314]. The learned senior counsel further submitted that only the owners are entitled for depreciation. Whereas in the present case, the license agreement confers only the right to use and also imposes restrictions on such use; and it is non~transferable and must be renewed after the expiry of 5 years. In this regard, reference was made to the decision of the Hon'ble supreme court in CIT v. Ciba of India Ltd. [(1968) 2 SCR 696]. With these averments, the learned senior counsel submitted that the royalty expenditure is revenue in nature and the same cannot be included in taxable income.*

*7.4. The learned senior counsel for the assessee companies also pointed out certain instances, wherein the department accepted the plea of the assessees and treated the royalty payment as revenue expenditure, viz., (i)in the case of Shriram Chits Tamil Nadu Private Limited for the assessment year 2001-02, the CIT dropped the proceedings under section 263 accepting the objections raised to treat*



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*the royalty payment as capital expenditure; and for the assessment years 2004-05 and 2005-06, the CIT(A) accepted the claim of the company by holding the expenditure as revenue in nature, which was also accepted by the department and no further appeal was filed before the ITAT; (ii)in the case of Shriram City Union Finance Limited, for the assessment years 2004-05 & 2005-06, the assessing officer accepted the claim of deduction in respect of royalty expenditure and did not add the same in the respective assessment orders; and (iii)in the case of Shriram Transport Finance Company for the assessment years 2004-05, 2005-06, 2006-07 and 2007-08, the assessing officer did not add the royalty expenditure claimed in the respective assessment orders. Therefore, according to the learned senior counsel, the orders of the Tribunal do not require any interference by this Court.*

*7.5. In respect of depreciation on royalty disallowed in the earlier assessment years from 2008-09 to 2013-14, the learned senior counsel appearing for the assessee in TCA No.407/2019, without prejudice to the contention that royalty claimed is allowable as revenue expenditure, submitted that the assessing officer disallowed royalty claimed from AY 2008-09 onwards, treating it as capital expenditure and allowed depreciation in the assessment year in which the royalty payment was disallowed, against which, appeals were filed and are pending at different stages. As such, it is contended that in case royalty paid is not allowed as revenue expenditure, the cumulative payments made in the past years and the amounts payable will constitute the cost of acquisition of the asset and therefore, depreciation is allowable on that sum. However, the assessing officer did not allow depreciation on the written down value (WDV) in the subsequent years, as a result of which, a ground was raised in this regard by the assessee, in the appeal filed relating to the assessment year 2014-15 before the CIT(A). The CIT(A) in his order dated 28.08.2017 dismissed the said ground as infructuous as the*



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*issue of royalty was decided in the assessee's favour. The ITAT also did not decide this issue. Therefore, the learned senior counsel sought to consider the same and pass appropriate orders in favour of the assessee.*

*7.6. This court considered the rival submissions and perused the materials placed before the same. It is borne out from the records that the assessee companies had paid royalty to the parent company for using its logo, based on the turnover and claimed deduction treating the said expenses as revenue in nature. Whereas, the assessing officer rendered a finding that in view of the amendment made to section 32 with effect from 1.4.1999, the deduction for royalty payment construing it as revenue expenditure, has to be disallowed and depreciation at 25% has to be allowed by treating it as capital expenditure. It was further observed that though the royalty is paid for the use of logo for one year, the same is made for acquisition of intangible asset; and the mode, methodology and duration of payment is irrelevant. Accordingly, the claim of the assessee companies under the head 'royalty' was disallowed and depreciation at 25% was allowed. However, following the earlier orders of the Tribunal as well as the decision of the Hon'ble supreme court in CIT v. Wavin (India) Ltd (supra), the CIT(A) allowed the claim of the assessee companies, which was affirmed by the Tribunal as well. Therefore, the appeals viz., TCA Nos.622/2013, 360 & 361/2014 and 913/2014 at the instance of the Revenue.*

*7.7. It is an admitted fact that the assessee companies had entered into licence agreement with the parent company viz., M/s.Shriram Chits & Investments Pvt. Ltd., for use of its logo, on payment of royalty based on turnover and the same is renewable. As already stated, it is the claim of the assessee companies that the license agreement confers the right to use the logo with restrictions viz., non-transferable and non-exclusive; there is no acquisition and there is only the right to use and not ownership; and*



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*therefore, the royalty payment which is revenue in nature, falls within the general provisions of section 37(1) and not under section 32(1)(ii).*

*7.8. This court is bound by the legal proposition laid down In the decision in CIT v. Ciba of India Ltd, (supra) referred to on the side of the assessee companies. In that case, the Hon'ble supreme court answered the question, whether the payment made by the assessee to the swiss company towards technical and research contribution for the use of its Indian patents and /or trade marks, in pursuance of an agreement, is an admissible deduction, in favour of the assessee. Such a conclusion was arrived at, after a detailed analysis of the terms of the agreement, nature of the expenditure incurred and the other relevant factors. The following passage extracted from the said judgment is important:*

> *In the case in hand, it cannot be said that the swiss company had wholly parted with its Indian business. There was also no, attempt to part with the technical knowledge absolutely in favour of the assessee.*
>
> *The following facts which emerge from the agreement clearly show that the secret processes were not sold by the swiss company to the assessee:(a) the licence was for a period of five years, liable to be terminated in certain eventualities even before the expiry of the period; (b)the object of the government was to obtain the benefit of the technical assistance for running the business; (c)the licence was granted to the assessee subject to rights actually granted or which may be granted after the date of the agreement to other persons; (d)the assessee was expressly prohibited from divulging confidential information to third parties without the consent of the swiss company; (e)there was no transfer of the fruits of research once for all: the swiss company which was continuously carrying on research and had agreed to*



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*make it available to the assessee; and (f) the stipulated payment was recurrent dependent upon the sales, and only for the period of the agreement. We agree with the High Court that the first question was rightly answered in favour of the assessee.*

*However, it is imperative for this court to apply the law laid down by the Apex Court to the facts of the present case, to determine the nature of the royalty payment made by the assessee companies i.e., whether it is revenue or capital expenditure.*

*7.9. At this juncture, it is apposite to refer to the decision of the Hon'ble supreme court in CIT v. Wavin (I) Ltd. (supra) which was referred to by the Tribunal, while passing the orders impugned herein and it was held by the Hon'ble Supreme court as follows:*

*"The expenditures were incurred to obtain benefit of research and development made by the foreign company. The technical information given to the Indian company was "non-exclusive" and "non-transferable". In other words, this is not an out and out sale of technical know-how. The assessee was merely given a non-exclusive and non-transferable right of user of the technical information. Expenditures in these facts cannot be said to be for acquisition of any asset at all.*

*7.10. Furthermore, in the judgment of the Supreme Court in Honda Siel Cars India Ltd v. CIT (supra), it was held that while deciding, whether royalty payment for technical know-how is capital or revenue expenditure, the enduring benefit test has to be applied; and the conditions to be satisfied for treating the expenditure under technical collaboration, as capital in nature, are (i)there is no existing business and (ii)agreement is crucial for setting up a new manufacturing plant. The relevant passage of the said judgment of the supreme court is usefully extracted below:*

*"19. If the aforesaid factors are taken in isolation,*



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*probably the claim of the assessee may be justified. Distinction between capital and revenue expenditure with reference to acquisition of technical information and know-how has been spelled out by this Court as well as High Courts in a series of cases. Primary test which is adopted to differentiate between capital and revenue expenditure remains the same, namely, the enduring nature test. It means where the expenditure is incurred which gives enduring benefit, it will be treated as capital expenditure. In contradistinction to the cases where expenditure of concurrent and reoccurring nature is incurred and the later would belong to revenue field. Technical information and know~how are intangible. They have a different and distinct character from tangible assets. When the expenditure is incurred to acquire a tangible asset, determination as to whether the said acquisition of tangible asset is of capital nature or the expenditure is of revenue nature, may not pose a problem. However, in case of technical information and know-how, having regard to their unique characteristic, the questions that need to be posed for determining the nature of such an expenditure are also of different nature. In case where there is a transfer of ownership in the intellectual property rights or in the licences, it would clearly be a capital expenditure. However, when no such rights are transferred but the arrangement facilitates grant of licence to use those rights for a limited purpose or limited period, the Courts have held that in such a situation, the royalty paid for use of such technical information or know~how would be in the nature of revenue expenditure as no enduring benefits is acquired thereby. This was so held in a classic case, entitled CIT v. Ciba India Limited (AIR 1968 SC 1131).*

*7.11. Thus, it is crystal clear from the aforesaid decisions of the Hon'ble supreme court that royalty payment made by the assessee, for use of logo or trademark for a particular period, for improvement / expansion of business, would qualify as revenue expenditure. The Judgment in Honda*



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*Siel Cars India Ltd (supra) is of no assistance to the revenue as in that case, the technical know-how was shared pursuant to technical collaboration agreement and not only technical information was transferred, but on field complete assistance was given pursuant to the joint venture agreement. Further, in that case, the very same business was set up by the transferee company. However, in the present case, it is not the case. The grant of licence to use the intellectual property of the parent company for limited purpose, cannot be treated as transfer of ownership or title. Though the licence is renewed periodically, it by itself does not guarantee the renewal. Similarly, the parent company is always at liberty to not only cancel the license, but also grants such rights to any other organization. Further, the findings of the Apex Court in the above judgment that when the intellectual property right is not transferred, but permitted to be utilized for a particular period, would have to be treated as revenue expenditure, on application to the facts of this case, tilts the balance in favour of the assessees. Every expenditure incurred to acquire some right over intangible asset, cannot be ipso facto termed as capital expenditure. The nature of the assets, right, information or technical know~how that is transferred, must be such that without which the transferee could never commence the business. As rightly contented by the learned senior counsel appearing for the assessees, the benefit granted by the licensor is not enduring in nature in the present cases. The assessing officer without appreciating the terms of the licence agreement and ascertaining the nature of the expenditure incurred by the assessee companies, disallowed the deduction of royalty payment and allowed the depreciation at 25% treating it as capital expenditure. However, the appellate authorities, while deleting the disallowances made by the assessing officer, have rightly treated the royalty payment as revenue expenditure. Once the payment of royalty is treated as revenue expenditure, automatically, it goes without saying that the assessees would be entitled to 100% deduction.*



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*Therefore, we need not interfere with the orders passed by appellate authorities. Accordingly, the substantial questions of law relating to royalty, are answered in favour of the assessees."*

This substantial question of law is answered in favour of the assessee.

9. The last substantial question relates to a disallowance of interest on the ground that interest bearing amounts were diverted for non-interest bearing advances.

> *"4.Whether on the facts and circumstances of the case, the Tribunal was right in allowing OD interest amounting to Rs.22.73 lakhs?"*

10. The assessing authority has noted the submission of the assessee/ respondent that it had sufficient surplus funds to make the interest free advances, though no evidence was produced before the assessing officer to substantiate this submission. However, there is a categoric finding by the CIT (Appeals), reiterated by the Tribunal that surplus funds were available to the tune of Rs.18.58 Crores.

11. The breakup of the interest free advances have been set out in the assessment order as follows:

| | |
|---|---|
| *1.M/s.Shriram Engineering Constructions Ltd.* | *Rs.5,00,000* |
| *3.M/s.Sripet Industries* | *Rs.10,00,000* |
| *4.M/s.Shriram Chits and Inv. P. Ltd.* | *Rs.7,48,94,335* |
| *5.M/s.Shriram Sales International* | *Rs.4,20,000* |
| *6.M/s.Pallavi Investments* | *Rs.10,00,000* |
| | --- |
| *Total* | *Rs.7,78,14,338* |
| | --- |



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12. In view of there being sufficient surplus funds with the assessee, we find nothing untoward in the conclusion of the Tribunal accepting this ground and this substantial question is also answered in favour of the assessee.

13. In fine and in light of the discussion supra, this Tax Case (Appeal) is dismissed. No costs.

**(A.S.M.,J.) (K.R.S.,J.)**
**06-10-2026**

Index: Yes
Speaking order
Neutral Citation: Yes

*hvk*



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**DR.ANITA SUMANTH, J.**
**AND**
**K.RAJASEKAR, J.**

*hvk*

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