

(1968) 10 MAD CK 0027

Madras High Court

Case No: Writ Petition No"s. 4511 to 4513 of 1965

South Madras Electric Supply
Corporation Ltd.

APPELLANT

Vs

First Income Tax Officer

RESPONDENT

Date of Decision: Oct. 17, 1968

Acts Referred:

- Income Tax Act, 1922 - Section 35

Citation: (1969) 74 ITR 383

Hon'ble Judges: Veeraswami, J; Ramaprasada Rao, J

Bench: Division Bench

Advocate: T.V. Balakrishnan and S. Mathrubutheswaran, for the Appellant; V. Balasubrahmanyam and J. Jayaraman, for the Respondent

Judgement

Veeraswami, J.

The petitions relate to orders made in common for the assessment years 1957-58 to 1959-60. They were made u/s 35 of

the Indian Income Tax Act, 1922, to rectify the earlier orders. For instance, in respect of the assessment for the year 1958-59, as a result of

rectification a sum of Rs. 30,347 was added to the taxable total income. In respect of the other two years too, additions were made. It appears

that the assessee had earlier succeeded in the Supreme Court on the basis of Hoshiarpur Electric Supply Co. Vs. Commissioner of Income Tax,

Simla, which held that collections made by the assessee by way of reimbursements of capital expenditure incurred by it on behalf of different

consumers in laying mains and providing service connections, etc., were essentially of a capital character and that even the excess of the collections

over the actual capital expenditure would partake of that character. In view of the decision, therefore, the First Income Tax Officer, Tiruchi-I, had

to revise the order. But, in doing so, he thought that the establishment expenditure which had been allowed as a deduction originally should be

disallowed as capital expenditure, referable to laying of mains, providing service connections, etc. It is not clear from the orders of the Income Tax

Officer whether he considered only a portion of or the whole of the establishment expenses as relating to capital expenditure not entitled to

deduction. The Income Tax Officer called upon the petitioner by a notice to show cause why the earlier assessment orders should not be rectified

u/s 35. In answer, the petitioner was technical in its objection and stated that Section 35 would be inapplicable. So far as this is concerned, S.

Sankappa and Others Vs. The Income Tax Officer, Central Circle II, Bangalore, is against the petitioner. The point is, therefore, not reiterated in

this court, though taken at the time of filing the petitions under Article 226 of the Constitution.

2. The other point urged before us in support of the petitions is as to the scope of Section 35. This court in T.S. Rajam Vs. Controller of Estate

Duty, Madras, defined the scope as far as it was possible. In the particular circumstances of this case, we are satisfied that the Income Tax Officer

rightly invoked Section 35. He had to do so because of the decision of the Supreme Court in order to give effect to it. In giving effect to it,

necessarily he had to see whether the establishment expenses, which had been given deduction of, included wholly or partly capital expenditure

referable to the capital recoveries. On that view, we consider that the Income Tax Officer acted within his power u/s 35.

3. The last contention for the petitioner is that the order of the Income Tax Officer does not ex facie show whether and, if so, how the entire

establishment charges related to capital expenditure. That is a matter of detail which we think ought to have been gone into. The petitioner could

have given the figures to the Income Tax Officer in answer to the notice to it, with reference to which the question could have been decided. As we

said, the petitioner took at that stage only the technical objections as to jurisdiction to act u/s 35. When the Income Tax Officer at a later stage

decided to rectify and add to the chargeable income he should have at least called for further particulars in order to enable him to decide whether

the establishment expenditure wholly related to capital expenditure or only to a part of it. On this question the orders sought to be quashed do not

enlighten. As a matter of fact, the orders are very cryptic on the point. Unfortunately, there are no materials also before us with reference to which

we can check up the appropriateness of the additions made by the Income-tax Officer.

4. In the above circumstances, the petitions are allowed and the orders of the Income Tax Officer are quashed. He will be at liberty to dispose of

the question of rectification by fresh orders, after giving opportunity to the petitioner to produce materials, which would enable the officer to decide

the question on its merits. No costs.

5. Mr. Balakrishnan says on behalf of his client that since the officer will be acting in furtherance of our orders, no question of limitation will arise

and that, in any case, his client will not raise it.