IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	20.08.2024
Pronounced On	29.10.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR
and
THE HONOURABLE MR.JUSTICE C.SARAVANAN

T.C.A.No.54 of 2015
and M.P.No. 1 of 2015

The Commissioner of Income Tax,
Chennai ... Appellant

vs.

M/s.Johnson Lifts Pvt.Ltd.,
No.1, East Main Road,
Anna Nagar West Extn.
Chennai 600 101. ... Respondent

Prayer: Appeal under Section 260A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Madras "B" Bench, Chennai dated 01.08.2014 in I.T.A.No.222/Mds/2013.

For Appellant : M/s.V.Pushpa
Senior Standing Counsel
For Respondent : Mr.R.Vijayaraghavan
for M/s.Subbaraya Aiyar
& Ramamani

JUDGMENT

(Judgment of the Court was delivered by **C.SARAVANAN, J.**)

This appeal has been filed by the appellant/Income Tax Department against Order dated 01.08.2014 passed by the Income Tax Appellate Tribunal, Madras "B" Bench, Chennai in I.T.A.No.222/Mds/2013.

2. By the Impugned Order, the Appellate Tribunal had dismissed I.T.A.No.480/Mds/2015 filed by the appellant/Income Tax Department. Appeal against the same viz., TCA 53 of 2015 by the Income Tax Department was dismissed on account of low tax effect vide order dated 22.10.2018, passed by the Appellate Tribunal, the dispute is confined to the impugned order dated 01.08.2014 passed by the Appellate Tribunal in ITA.No.222/Mds/2013.

3. By the impugned order dated 01.08.2014, the Appellate Tribunal has allowed the appeal filed by the respondent-assessee in I.T.A.No.222/Mds/2013 and dismissed the cross-appeal filed by the Income Tax Department.

4. In this appeal, the dispute is confined to the "Annual Maintenance Charges" (AMC) collected by the respondent-assessee in advance from its customers for maintenance of Lifts installed and commissioned by the respondent-assessee.

5. The respondent-assessee had treated the same in their Books of Accounts as a "current liability" viz., "Income Received in Advance". Therefore, the Respondent-Assessee did not offer the same to tax in the returns filed for A.Y. 2009-10. The Assessing Officer disallowed the same in the assessment order. The said decision was affirmed by the Appellate Commissioner.

6. The Appellate Tribunal has allowed the appeal of the respondent-assessee in the light of Section 41(1) of the Income Tax Act,1961 vide impugned order dated 01.08.2014 in I.T.A.No.222/Mds/2013 with the following observations:-

> "*5. The apprehension of the Revenue that the assessee is not bound to refund the money to the customers, is answered by the provisions of law stated in Section 41(1) of the Act. On scrutiny of the liability of the assessee regarding annual maintenance charges, if the Assessing Officer finds that certain amounts*

are not necessary to be carried forward in the liability account for the reason that the period of corresponding obligation has already been expired, it is within the competence of the Assessing Officer to bring such amount to tax as income under Section 41(1) of the Act. Whenever the obligation assumed by the assessee expires and correspondingly any provision for liability is remaining in the accounts, that much of the unconsumed provision could be treated as income of the assessee.

6. Therefore, in the facts and circumstances of the case, we find that the addition sustained by the lower authorities of Rs.8,20,45,067/- is not justified and accordingly, the said addition is deleted."

7. The reasons for the above conclusion are in Paragraph 4 of the impugned order dated 01.08.2014, passed by the Appellate Tribunal. It reads as under:-

"4. The detailed grounds stated by the assessee, itself makes the matter obvious and clear. The assessee is a manufacturer and supplier of lifts and it undertakes the responsibility of maintenance along with sales. The assessee collects such annual maintenance fees from the customers in advance and attributes such advance collection to the period covered by the annual maintenance contract. The lower

authorities have treated the entire such collection, as the income of the impugned assessment year, mainly on the ground that the assessee is not supposed to refund such annual maintenance collection to its customers. But the lower authorities have overlooked the crucial fact that the assessee is maintaining its accounts on accrual basis and, therefore, the assessee is bound to follow the matching principle of revenue and expenditure and as such, the assessee is bound to provide for future liability of maintenance from the advance collection made from the customers. In fact, the Accounting Standard on Disclosure of Accounting Policies notified by the Government of India under Section 145(2) supports the above position by stating that "Accrual refers to the assumption that revenues and costs are accrued, that is, recognized as they are earned or incurred (and not as money is received or paid) and recorded in the financial statements of the periods to which they relate". Therefore, when the assessee has assumed the obligation for maintaining the lifts sold by the assessee for a particular period of time and the assessee collects fee for such services in advance, it is incumbent upon the assessee to provide the liability for unexpired period from the total advance collections made from the customers."

8. Although this appeal was filed in the year 2015, it was not

admitted and it was adjourned from time to time. As such, no question of law was framed since 2015.

9. The appellant-Income Tax Department has raised the following questions of law as substantial questions of law:

i. Whether on the facts and in the circumstances of the case, the Tribunal was right in deleting the addition made by the Assessing Officer (AO) on account of Annual Maintenance Charges (AMC) received in advance and shown by the assessee as liability in the balance sheet especially when the period of Annual Maintenance Charges (AMC) was only one year?

ii. Is not the finding of the Tribunal bad especially when the assessee is following mercantile system of accounting and has received the entire Annual Maintenance Charges (AMC) amount in advance without any clauses in the agreement for refunding the same?

iii. Whether the Tribunal was right in holding that the assessee was bound to provide for future liability of maintenance from the advance collection made from its customer irrespective of the fact that no such liability had accrued or had been incurred during the year in respect of the Annual Maintenance Charges (AMC) received in advance?

10. The brief facts of the case are that the respondent-assessee is well-known manufacturer of lifts is also engaged in providing annual maintenance services to its customers. On various dates, during the Financial Year 2008-2009, the respondent-assessee had received a total sum of Rs.8,20,45,067/- for providing annual maintenance services to its customers under Annual Maintenance Contract signed with the respective customer for maintenance of lifts and escalators installed by it.

11. An Assessment Order dated 12.12.2011 was passed by the Assistant Commissioner of Income Tax, Chennai, **Section 143 (3)** of the **Income Tax Act, 1961**. It records that the respondent-assessee had two different kinds of Annual Maintenance Agreements as detailed below:-

(a)Comprehensive Maintenance Agreement

(b)Routine Maintenance Agreement

12. Under "Comprehensive Maintenance Agreement", the Respondent-assessee is required to replace all proprietary parts and components during the course of its maintenance works to its customers free of costs if such replacement was necessary. On the other hand, under "Routine Maintenance Agreement", the customer was under an obligation

to pay for any part or components that were replaced.

13. The Assistant Commissioner of Income Tax, Chennai, finalized the assessment on 12.12.2011 and observed as under:-

> *"5.3 Considering the above points discussed supra assessee's Annual Maintenance Contract (AMC) is for one year, it is simple and non-refundable and the entire money for AMC was received in advance and during the year. While distinguishing the CIT Vs. GSR Krishnamurthy case cited supra, the Authorised Representative of the assessee vide point 9 of his letter dated 26.08.2011 filed on 10.10.2011 stated that "the respondent in the above case" was not required to refund the amount collected in advance thereby he is allowed to enjoy the full consideration received. The assessee is under obligation to perform the activity of routine maintenance services of lifts to its customers at periodical intervals". The Authorised Representative is right when he states that the assessee is under obligation to perform maintenance services, in fact that is not in dispute, and that is for what AMC stands for and the assessee gets paid.* ***Hence, part of AMC shown under current liability amounting to Rs.8,20,45,067/- has to be assessed in this year only. In view of the discussion supra "income received in advance" of Rs.8,20,45,067/- is assessed to tax."***

14. The respondent - assessee preferred an appeal before the Appellate Commissioner/Commissioner of Income Tax (Appeals)-III, Chennai in I.T.A.No.148/2011-2012/A.III.

15. The Appellate Commissioner by an Order dated 07.12.2012, partly dismissed the appeal of the respondent-assessee and distinguished the decision of the Division Bench of this Court in **Commissioner of Income Tax** Vs. **Coral Electronics (P) Limited**, 274 ITR 336 (Mad) and the decision of the Income Tax Appellate Tribunal (ITAT) in **DCIT** Vs. **TVS Electronics Limited**, [(2012) 22 Taxmann.com 215 (Chennai)] from the case of the Respondent-assessee with the following observations:-

> *"A perusal of the ratio laid down by the Hon'ble Chennai ITAT in the case of TVS Electronics Ltd (supra) and Hon'ble Madras High Court in the Coral Electronics P Ltd (supra) reveal that in both these cases, customer had a right to terminate the contract if the services rendered by the vendor were not to the satisfaction of the customer. In the case of M/s.Coral Electronics (supra), the Court observed that the services may be rendered or may not be rendered depending upon withdrawal of the money as and when the*

customer required, so, it is highly uncertain as to whether it would at all remain as income of the assessee, only when the service is done the assessee has a right over the amount that was deposited. Similarly, in the case of TVS Electronics (Supra) it was noted very clearly that the clients of the assessee could at any point cancel the contract and get a refund for the unexpired period. This itself meant that the amount received by the assessee at the point of time it entered into an AMC was nothing but an advance, which on the progress of each day got converted into revenue. The income was accruing on a day-to-day basis based on the progress of time and it did not accrue on the day of entering into the contract. An obligation was there on the assessee in that case to refund the unexpired value of AMC, if the AMC was cancelled by its customers. However, in the instant case, a perusal of the specimen copy of the contract agreement entered into by the appellant with M/s.Udhi Eye Hospital, it is noticed that there is no clause for cancellation of contract by the client."

16. The Appellate Commissioner also relied on the decision of the Division Bench of this Court in **Commissioner of Income Tax** Vs. **G.S.R.Krishnamurthy**, (2003)262 ITR 393 and in the result, the appeal

was dismissed as far as the other issues with the following observations:-

> "*The facts of the appellant's case being identical, I find no force in the appellant's contention that the entire amount received on account of AMC should not be added to the total income of the current year. Considering the factual position and legal precedents as discussed in pre-pages, I agree with the AO's finding that part of AMC shown under the head current liabilities in the balance-sheet amounting to Rs.8,20,45,067/- has to be assessed in the current year only. The appellant fails on this ground of appeal. This ground is accordingly dismissed.*"

17. Arguing the case on behalf of the appellant-Income Tax Department, the learned counsel for the appellant-Income Tax Department would submit that since the amount has been received in advance, it is to be taxed in the year in which, it is received irrespective of the fact whether services were to be provided over a period of time which may spill over to the succeeding financial year.

18. That apart, the learned counsel for the appellant/Income Tax Department would submit that as and when the payments are received by the respondent-assessee from its customers, the payments were after

deduction of tax under Section 194C of the Income Tax Act, 1961 for that Assessment Year.

19. That apart, the learned counsel for the appellant-Income Tax Department would submit that amount received towards Annual Maintenance Charges was to be treated as total income of the respondent-assessee and was chargeable to tax under Section 4 read with Section 5 of Income Tax Act, 1961.

20. That apart, the learned counsel for the appellant-Income Tax Department would submit that not only the tax was paid under the provisions of the Tamil Nadu Value Added Tax (TNVAT) Act, 2006 but also service tax under the provisions of the Finance Act, 1994.

21. It is therefore submitted that merely because the amount received by the respondent-assessee was treated as current liability in the Books of Accounts viz Income Received in Advance *ipso facto* would not mean no tax was payable and that such tax is to be paid only during the succeeding financial year, as service is provided during the succeeding financial year.

22. It is submitted that the Appellate Tribunal failed to note that the respondent-assessee is following mercantile system of accounting and once the amount of Annual Maintenance Charges (AMC) is received, the income has occurred to it and therefore, is liable for taxation in the year of receipt only.

23. Furthermore, the expenditure incurred stands accrued in the year of providing service as per the Annual Maintenance Charges (AMC) terms and conditions. The Appellate Tribunal ought to have seen from the details stated in the various clauses of the Annual Maintenance Charges (AMC) contract entered by the respondent-assessee with that of its customer which the CIT(A) has elaborately dealt with and should have decided the issue in favour of the Department.

24. It is submitted that the Appellate Tribunal had wrongly held that the respondent-assessee maintains its accounts on accrual basis and is bound to provide for future liability or maintenance for the advance

collection made for the customer especially when the Annual Maintenance Charges (AMC) amount are actually received by the respondent-assessee in the present year and the expenditure incurred during the year for the Annual Maintenance Charges (AMC) have already been debited by the respondent-assessee to its profit and loss account and the expenditure in respect of Annual Maintenance Charges (AMC) amount received by the respondent-assessee in advance.

25. It is further submitted that the Appellate Tribunal missed to note that the respondent-assessee has not provided any quantification of the liability in respect of contracts relating to only services and in respect of the other contracts whereby parts of machinery have to be replaced along with services to be provided and therefore in the absence of any quantification the order of the Tribunal is wrong.

26. It is submitted that the Appellate Tribunal failed to note that the Annual Maintenance Charges (AMC) amount received in advance which are actually the amount received by the respondent-assessee and

the same is quantifiable since the period of the Annual Maintenance Charges (AMC) is only one year. The Appellate Tribunal had also failed to note that the nature of contract entered by the respondent-assessee cannot be considered as current liability of the respondent-assessee and the Annual Maintenance Charges (AMC) amount received as income of the respondent-assessee and there is no clause for refund or termination of the contract by the customer.

27. It is submitted that the Appellate Tribunal had wrongly relied upon the decision of the Special Bench of the Tribunal in **ACIT** Vs. **Mahindra Holidays Resorts India Limited**, (2010) 131 TTJ (Chennai) (SB), which is distinguishable on facts as the unexpired period of the contract therein was very long and the income was spread over 33/25 years depending on the scheme whereas in the present case, the Annual Maintenance Charges (AMC) period was only one year.

28. It is submitted that the Appellate Tribunal had wrongly applied the Judgment of the Income Tax Appellate Tribunal (ITAT) in **TVS Electronics Limited case** (referred to supra) wherein the customer

had right to terminate the contract with the services rendered by the vendor therein if it was not up to the satisfaction of the customer and therefore there was an obligation of the respondent-assessee to refund the unexpired value of Annual Maintenance Charges (AMC) if the same was cancelled by its customer which is not the case on hand.

29. On the other hand, the learned counsel for the respondent-assessee would submit that the substantial questions of law has already been answered by the Division Bench of this Court in **Coral Electronics (P) Limited case** (referred to supra), which wrongly distinguished by the Assessing Officer and the Commissioner of Income Tax (Appeals) and thus, it was correctly interfered by the Appellate Tribunal and therefore, the impugned order of the Appellate Tribunal does not warrant any interference.

30. Learned counsel for the respondent-assessee has placed reliance on the decision of Division Bench of the Allahabad High Court, Delhi High Court & Gauhati High Court in the following cases:-

i.**Commissioner of Income Tax Vs. Hindustan Computers Ltd.,** (1997) 65 CCH 0088 All

HC/(1998) 233 ITR 0366.

ii. **Commissioner of Income Tax and another** Vs. **Dinesh Kumar Goel**, 331 ITR 0010 (Del).

iii. **MKB (Asia) (P) Ltd.,** Vs. **Commissioner of Income Tax**, 294 ITR 0655 (Gauh.)

31. Learned counsel for the respondent-assessee has also drawn attention to the decision of the Hon'ble Supreme Court in the following two cases:-

i. **Commissioner of Income Tax** Vs. **Bilahari Investment (P) Ltd.**, 299 ITR 0001 (SC).

ii. **Rotork Controls India (P) Ltd.,** Vs. **Commissioner of Income Tax**, 314 ITR 0062 (SC).

32. That apart, it is submitted that the respondent-assessee has been followed the practice of treating the income on accrual basis and therefore, there is no justification in the stand of the Department to alter the account practice with a view to augment tax in the same year and its receipt during the Assessment Year 2009-2010.

33. That apart, the learned counsel for the respondent-assessee has also drawn attention to Accounting Standard (AS) 9, which has also been referred to in the above mentioned cases.

34. We have perused the Appellate Order dated 07.12.2012 passed by the Commissioner of Income Tax (Appeals)-III, Chennai and the impugned order dated 01.08.2014 passed by the Income Tax Appellate Tribunal (ITAT).

35. We have also considered the provisions of the Income Tax Act, 1961 and Companies Act, 1956 as in force during the period in dispute and the rules made thereunder. We have also considered the Accounting Standard (AS) 9 issued by the Institute of Chartered Accountant of India.

36. The respondent-assessee being a company was required to maintain its accounts, the Balance Sheet and the Profit and Loss Account strictly in accordance with the provisions of the Companies Act, 1956, as it stood during the period in dispute.

37. As per Section 211 of the Companies Act, 1956 (since repealed and substituted with Companies Act, 2013), every Balance Sheet of a company should give a "**true and fair"** view of the state of affairs of the company at the end of the financial year.

38. Similarly, Profit and Loss Account is also expected to be prepared to give a **true and fair** view of the profit or loss of the company for the financial year. The Profit & Loss Account is prepared to summarize the revenue and expenditure incurred by the Company. Information therein would have been based on accounts maintained by the respondent-assessee either under the mercantile system of accounting or under the cash system of accounting which is statutorily now recognized under Section 145 of the Income Tax Act, 1961.

39. As per Section 211(1) of the Companies Act, 1956 , a Balance Sheet also had to be in the Form set out in Part I of Schedule VI of the Companies Act, 1956, or as near thereto, as circumstances admit or in such other form as may be approved by the Central Government, either generally or in any particular case.

40. It further mandates that while preparing the Balance Sheet due regard shall be had, as far as may be, to the general instructions for preparation of Balance Sheet under the heading "**Notes**" at the end of that Part.

41. As per Sub-section (2) to Section 211 of Companies Act, 1956, every Profit and Loss Account of a company shall also give a **true and fair** view of the profit or loss of the company for the financial year and comply with the requirements of Part II of Schedule VI of the Companies Act, 1956, so far as they are applicable. Sub-section (1) and Sub-section (2) to Section 211 of the Companies Act, 1956 are reproduced below for clarity:-

211. Form and contents of balance sheet and profit and loss account .-	
(1) Every balance sheet of a company shall give a **true and fair** view of the state of affairs of the company as at the end of the financial year and shall, subject to the provisions of this section, be in the form set out in Part I of Schedule VI, or as near thereto as circumstances admit or in such other form as	(2) Every profit and loss account of a company shall give a **true and fair** view of the profit or loss of the company for the financial year and shall, subject as aforesaid, comply with the requirements of Part II of Schedule VI, so far as they are applicable thereto:

may be approved by the Central Government either generally or in any particular case; and in preparing the balance sheet due regard shall be had, as far as may be, to the general instructions for preparation of balance sheet under the heading "Notes" at the end of that Part: Provided that nothing contained in this sub-section shall apply to any insurance or banking company or any company engaged in the generation or supply of electricity or to any other class of company for which a form of balance sheet has been specified in or under the Act governing such class of company.]	Provided that nothing contained in this sub-section shall apply to any insurance or banking company [or any company engaged in the generation or supply of electricity], or to any other class of company for which a form of profit and loss account has been specified in or under the Act governing such class of company.

42. The returns that were filed by the respondent-assessee under Section 139(1) of the Income Tax Act, 1961 for the period in dispute would have been based on the Profit and Loss Accounts of the respondent-assessee which should have satisfied the requirement of Section 211(2) of the Companies Act,1956.

43. For preparing Balance Sheet and Profit and Loss Accounts, an assessee has to maintain its/her/his or their accounts either under the "**cash system"** of accounting or "**mercantile system"** of accounting" as per Section 145(1) of the Income Tax Act,1961, which prescribes the "Method of Accounting", statutorily recognizes these two methods of accounting.

44. As per Section 145(1) of the Income Tax Act, 1961, income chargeable to tax under the head "Profits and gains of business or profession" (under Section 28 of the Income Tax Act, 1961) or "Income from other sources" (under Section 56 of Income Tax Act, 1961), shall be computed either in accordance with :-

(i) "**cash system of accounting";** or
(ii) "**mercantile system of accounting**

regularly employed by an assessee.

45. However, Section 145(1) of the Income Tax Act, 1961 is subject to the provisions of Sub-Section (2). The Hon'be Supreme Court in **Keshav Mills Ltd. vs. Commissioner of Income Tax** AIR 1953 SC

187, brought out the difference between "**Cash basis"** of accounting and "**Mercantile/Accrual basis"** of accounting. Relevant portion of the judgment reads as under :-

> *"13. The **mercantile system of accounting** or what is otherwise known as the **double entry system** is opposed to the **cash system** of book keeping under which a record is kept of actual cash receipts and actual cash payments, entries being made only when money is actually collected or disbursed.*
>
> *That system brings into credit what is due, immediately it becomes legally due and before it is actually received and it brings into debit expenditure the amount for which a legal liability has been incurred before it is actually disbursed. The profits or gains of the business which are thus credited are not realised but having been earned are treated as received though in fact there is nothing more than an accrual or arising of the profits at that stage. They are book profits.*
>
> *Receipt being not the sole test of chargeability and profits and gains that have accrued or arisen or are deemed to have accrued or arisen being also liable to be charged for income-tax, the assess ability of these profits which are thus credited in the books of account arises not because they are received but because. they have accrued or arisen."*

46. As per Sub-Section (2) to Section 145 of the Income Tax Act, 1961, the Central Government may notify in the Official Gazette from time to time "**Accounting Standards"** to be followed by any class of assessees or in respect of any class of income.

47. The "**Accounting Standards**" are issued by the Central Government in consultation with the Institution of Chartered Accountants from time to time. During the period in dispute, Accounting **Standard (AS) 9** was also issued by the Institution of Chartered Accountants.

48. Whichever method of accounting is followed, ie. whether the "**cash system of accounting"** or "**mercantile system of accounting**", it is intended to facilitate an assessee to prepare its financial documents namely the Balance Sheet and the Profit and Loss Accounts/Cash Flow Statement etc including its returns under Section 139 of the Income Act, 1961. In this case, the Respondent-Assessee is stated to be following the "**mercantile system of accounting"**.

49. In **CIT vs. Bilahari Enterprises (P) LTD.** (2008) 299 ITR 1

(SC), the Hon'ble Supreme Court held that every assessee is entitled to arrange its affairs and follow the method of accounting, which the Department has earlier accepted. This is in line with Section 145 of the Income Tax Act, 1961.

50. It further held that only in those cases, where the Department records a finding that the method adopted by the assessee results in **distortion of profits**, the Department can insist on substitution of the existing method.

51. Relevant portion from the decision of the Hon'ble Supreme Court in **CIT vs. Bilahari Enterprises (P) LTD.** (2008) 299 ITR 1 (SC) is extracted below:-

> *20……. In the past, the Department had accepted the completed contract method and because of such acceptance, the assessees, in these cases, have followed the same method of accounting, particularly in the context of chit discount. Every assessee is entitled to arrange its affairs and follow the method of accounting, which the Department has earlier accepted. It is only in those cases where the Department records a finding that the method adopted by the assessee results in **distortion of profits**, the Department can*

insist on substitution of the existing method. Further, in the present cases, we find from the various statements produced before us, that the entire exercise, arising out of change of method from completed contract method to deferred revenue expenditure, is revenue neutral. Therefore, we do not wish to interfere with the impugned judgment of the High Court.

52. The above ratio is applicable to the facts of the present case. However, as held if the profit and loss account results in distortion of profit, the Assessing officer can insist on substitution of the existing method. Such a substitution of the existing method will apply to for the prospective period. However, for the relevant assessment year when such distortion is found, the Assessing Officer has to complete the assessment under the Best Judgment Method under Section 145(3) read with Section 144 of the Income Tax Act, 1961. In the present case also the Assessing Officer has impliedly resorted to best judgment assessment order though it fails to refer to Section 144 of the of the Income Tax Act, 1961.

53. Considerations received in advance by the respondent-assessee for provision of the service under the Annual Maintenance Contract signed with its customer(s)/client(s) were not fully shown as a part of the

total income received by the respondent-assessee in the year of its/ their receipt, since the service were to be provided by the respondent-assessee partly during the ensuing Financial Year. It is the contention of the department that the tax was payable in the year of its receipt during for the relevant assessment year.

54. At this stage it will be also useful to refer to the decision of the Hon'ble Supreme Court in **J.K. Industries Ltd. vs. Union of India** (2007) 13 SCC 673. There the Hon'ble Supreme Court observed that the Accounting Standard is a policy statement or document framed by Institute, consisting of rules relating to recognition, measurement and disclosures, thereby ensuring that all enterprises that follow them are comparable and that their financial statements are true, fair and transparent.

55. The Court further added that the adoption of "Accounting Standards" for the "accounting income" as "taxable income" would avoid distortion of accounting income. It also observed that "**Accounting Standards"** are based on a number of accounting principles, namely, matching principle and fair value principle.

56. The Court further stressed that the object of "**Accounting Standards"** is to see that "**accounting income"** is adopted as the "**taxable income"** and not merely as the basis from which "**taxable income"** is to be computed. Thus, it observed that if "**Accounting Standards"** are properly applied**,** "**accounting income"** is to be the adopted as the "**taxable income"** of an assessee.

57. The expression "**income"** is defined in Section 2(24) of the Income Tax Act, 1961. The definition of "**income"** in Section 2(24) of the Income Tax Act, 1961 is an inclusive definition. It includes "**profits and gains**". There is no definition for the expression "**profits and gains**" in the Income Tax Act, 1961. In fact, there is also no such definition in the Companies Act, 1956.

58. Thus, it is the total income after expenditure which is the income. Such income could be income actually received but also the deemed to be received and/or income which has accrued or arises or is deemed to accrue or arises during such year.

59. Section 5 of the Income Tax Act, 1961, deals with "Scope of Total Income". Section 5 of the Income Tax Act, 1961 reads as follows:-

5. Scope of Total Income:

(1). Subject to the provisions of this Act, the total income of any previous year of a person who is a resident includes all income from whatever source derived which—

(a) is received or is deemed to be received in India in such year by or on behalf of such person ; or

(b) accrues or arises or is deemed to accrue or arise to him in India during such year.

(c) accrues or arises to him outside India during such year :

Provided that, in the case of a person not ordinarily resident in India within the meaning of Sub-Section (6) of Section 6, the income which accrues or arises to him outside India shall not be so included unless it is derived from a business controlled in or a profession set up in India.

(2) Subject to the provisions of this Act, the total income of any previous year of a person who is a non-resident includes all income from whatever source derived which-

(a) is received or is deemed to be received in India in such year by or on behalf of such person; or

(b) accrues or arises or is deemed to accrue or arise to him in India during such year.

***Explanation 1**.- Income accruing or arising outside India shall not be*

deemed to be received in India within the meaning of this section by reason only of the fact that it is taken into account in a balance sheet prepared in India.

***Explanation 2**.- For the removal of doubts, it is hereby declared that income which has been included in the total income of a person on the basis that it has accrued or arisen or is deemed to have accrued or arisen to him shall not again be so included on the basis that it is received or deemed to be received by him in India."*

60. As per Section 5(1) of the Income Tax Act, 1961, the total income of any previous year of a person in India in a year by or on behalf of such assessee includes all income derived from any source which is either:-

(i) **received** ;or

(ii) is **deemed to be received** .

61. We are not concerned with the situation covered by Section 5(1)(b) of the Income Tax Act, 19961 as in the transaction in question, the

consideration for the Annual maintenance Charges(AMC) were received in advance by the respondent-assessee. We are also not concerned with the situation contemplated in Section 5(1)(c) of the Income Tax Act, 1961.

62. The Hon'ble Supreme Court in J.K**. Industries Ltd. vs. Union of India** (2007) 13 SCC 673 further observed that, if the rules by which inventories are to be valued are laid down in the Accounting Standards and are followed in the determination of "accounting income", then tax laws do not need to lay down the rules and the tax authorities do not need to examine the computation of the value of inventories and its effect on computation of income.

63. There, the Hon'ble Supreme Court also underscored the point that the adoption of Accounting Standards and of accounting income as taxable income would avoid distortion of accounting income which is the real income. Relevant portion from the above decision is extracted below:-

> *"4. In its origin, Accounting Standard is a policy statement or document framed by Institute. Accounting Standards establishes rules relating to recognition, measurement and*

disclosures thereby ensuring that all enterprises that follow them are comparable and that their financial statements are true, fair and transparent. ***Accounting Standards (A.S. for short) are based on a number of accounting principles. They seek to arrive at true accounting income. One such principle is the matching principle. The other is fair value principle. The aim of the Institute is to go for paradigm shift from matching to fair value principle.***

10. *The main object sought to be achieved by Accounting Standards which is now made mandatory is to see that accounting income is adopted as taxable income and not merely as the basis from which taxable income is to be computed. Thus, if the rules by which inventories are to be valued are laid down in the Accounting Standards and are followed in the determination of accounting income, then tax laws do not need to lay down the rules and the tax authorities do not need to examine the computation of the value of inventories and its effect on computation of income.*

Similarly, if there is an accounting standard on depreciation which requires estimation of the useful life and prescribes the appropriate method for apportionment of cost of fixed assets over their useful life, it is unnecessary for tax laws to apply an artificial rule to decide the extent of allowance for depreciation.

Finally, the adoption of Accounting Standards and of accounting income as taxable income would avoid distortion of accounting income which is the real

income."

64. Thus, if "Accounting Standards" are properly applied by an assessee, the "accounting income" for the payment of income tax will be available. However, if an assessee fails to adopt "Accounting Standards" properly for computation of income, the discretion is vested with the Assessing Officer under Section 145(3) of the Income Tax Act, 1961.

65. Under Section 145(3) of the Income Tax Act, 1961, an Assessing Officer may complete the assessment to the best of his/ her or their judgment as provided in Section 144 of the Income Tax Act, 1961 under any of the following circumstances:-

i) where an Assessing Officer is not satisfied about the correctness or completeness of the accounts of the assessee; or

ii) where an Assessing Officer is not satisfied with the method of accounting regularly employed by the assessee as provided in Sub-Section (1); or

iii)where an Assessing Officer finds that the accounting standards as notified under Sub-Section (2), have not been regularly followed by an assessee.

66. Section 145 of the Income Tax Act, 1961 as it stood during the period in dispute read as follows:-

"***145. <u>Method of Accounting</u>:***

(1) Income chargeable under the head "Profits and gains of business or profession" or "Income from other sources" shall, subject to the provisions of Sub-Section (2), be computed in accordance with either cash or mercantile system of accounting regularly employed by the assessee.

(2) The Central Government may notify in the Official Gazette from time to time ***accounting standards*** *to be followed by any class of assessees or in respect of any class of income.*

(3) Where the Assessing Officer is not satisfied about the correctness or completeness of the accounts of the assessee, or where the method of accounting provided in Sub-Section (1) or accounting standards as notified under Sub-Section (2), have not been regularly followed by the assessee, the Assessing Officer may make an assessment in the manner provided in Section 144.

67. It is thus clear that "Accounting Standards" adopted by an assessee should not result in "**Distortion of Profits"**, so as to render the mandate prescribed under Section 211 of the Companies Act, 1956 qua "**true and fair view"** and the provisions of the Income Tax Act, 1961, otiose.

68. It is also clear that every assessee is entitled to arrange its affairs and follow one of the two methods of accounting, which the Department had earlier accepted.

69. However, if the Assessing Officer records a finding that the method adopted by an assessee results in distortion of profits, i.e., "taxable income" for the purpose of computation and payment of income tax, the Assessing Officer can insist on substitution of the existing method of accounting as held in **CIT Vs Bilahari Enterprises (P) Ltd** (s*upra)* for future and make best judgement assessment under Section 144 of the Income Tax Act, 1961 for the current assessment year.

70. In fact, the Hon'ble Supreme Court in **CIT v. British Paints India Ltd, (**1991) 188 ITR 44, held that:-

> *"12. It is not only the right but the duty of the Assessing Officer to consider whether or not the books disclose the true state of accounts and the correct income can be deduced therefrom.* ***It is incorrect to say, as contended on behalf of the assessee, that the officer is bound to accept the system of accounting regularly employed by the assessee the correctness of which had not been questioned in the past****. There is no estoppel in these matters and the officer is not bound by the method followed in the earlier years."*

71.In the present case, the Assessing Officer did not expressly resort to Best Judgement Assessment as mentioned elsewhere in the course of discussions here. Instead, the Assessing Officer has added the AMC received in advance to the taxable income of the Respondent-Assessee. Thus, by implication, the Assessing Officer completed the assessment by best judgment method without referring to Section 144 of the Act.

72. The Accounting Standards (AS) 9 relied on by the counsels for both the sides, primarily deals with "Revenue Recognition". The Accounting Standard (AS) 9 explains the expression "**revenue"** as under:-

> ***4.1.*** *Revenue is the gross inflow of cash, receivables or other consideration arising in the course of the ordinary activities of an enterprise from the sale of goods, from the rendering of services, and from the use by others of enterprise resources yielding interest, royalties and dividends.* ***Revenue is measured by the charges made to customers or clients for goods supplied and services rendered to them and by the charges and rewards arising from the use***

of resources by them. *In an agency relationship, the revenue is the amount of commission and not the gross inflow of cash, receivables or other consideration.*

73. Accounting Standard (AS) 9 provides a literature for "Revenue Recognition" for the following, namely:-

(i) The sale of goods;
*(ii)**The rendering of services**;*
(iii)The use by others of enterprise resources yielding interest, royalties and dividends.

74. In para 2 of the Accounting Standard (AS) 9, it has been specifically stated that the Accounting Standard does not deal with the following aspects:-

(i) Revenue arising from construction contracts;
(ii) Revenue arising from hire-purchase, lease agreements;
(iii) Revenue arising from Government grants and other similar subsidies;
(iv) Revenue of insurance companies arising from insurance contracts."

75. Para 3 of Accounting Standard (AS) 9 lists out examples of items not included within the definition of "**revenue**" for the purpose of Accounting Standard (AS) 9. They are as follows:-

i. Realised gains resulting from the disposal

of, and unrealised gains resulting from the holding of, non-current assets e.g., appreciation in the value of fixed assets;

ii. *Unrealised holding gains resulting from the change in value of current assets, and the natural increase in herds and agricultural and forest products;*

iii. *Realised or unrealised gains resulting from changes in foreign exchange rates and adjustments arising on the translation of foreign currency financial statements;*

iv. *Realised gains resulting from the discharge of an obligation at less than its carrying amount;*

v. *Unrealised gains resulting from the restatement of the carrying amount of an obligation"*

76. In Paragraph 5 of Accounting Standard (AS) 9, an explanation has been given for "**Revenue Recognition**". It has been stated that "**Revenue Recognition**" is mainly concerned with the timing of the "**recognition of reven**ue" in the **Statement of Profit and Loss** of an enterprise.

77. It states that the amount of revenue arising from a transaction is usually determined under an agreement between the parties involved in the transaction. It however underscores that only where uncertainties exist

regarding the determination of the amount, or its associated costs, these **uncertainties** may influence the timing of revenue. Thus, it is clear, where no uncertainties exist regarding the determination of the amount, as amounts are received in advance; there is no scope for confusion. Use of the word "**uncertainties**" is relevant.

78. In Paragraph 7.1 of the Accounting Standards (AS) 9, it has been also stated as follows:-

> "***7. Rendering of Services:***
>
> *7.1 Revenue from service transactions is usually recognised as the service is performed, either by the **proportionate completion method** or by the **completed service contract method**.*

79. In Paragraph 12 of the Accounting Standards (AS) 9, it is stated that "**Performance of Service**" is to be measured either under "**Completed Service Contract Method"** or "**Proportionate Completion Method"**.

80. The two methods for "**recognition of reve**nue" are described in Paragraphs 4.2 and 4.3. They have to be read along with Paragraphs 7.1(i) and 7.1(ii) of the Accounting Standards (AS) 9. Paragraphs 4.3 and

Paragraphs 7.1(i) of the Accounting Standards (AS) 9 dealing with **Proportionate Completion Method** of the Accounting Standards (AS) 9 are reproduced in the ensuing paragraphs:-

Definition	***Services***
Proportionate Completion Method	***Proportionate Completion Method***
*4.3**Proportionate Completion Method** is a method of accounting which recognizes revenue in the statement of profit and loss proportionately with the degree of completion of services under a contract.*	*7.1 (i)Performance consists of the execution of more than one act. Revenue is recognised proportionately by reference to the performance of each act. **The revenue recognized under this method would be determined on the basis of contract value, associated costs, number of acts or other suitable basis**. For practical purposes, when services are provided by an indeterminate number of acts over a specific period of time, revenue is recognised on a **straight line basis** over the specific period unless there is evidence that some other method better represents the pattern of performance.*

81. Under the "**Proportionate Completion Method**" of accounting, the revenue is recognized proportionately by referring to the

performance of each act and it would be determined on the basis of "contract value", "associated costs", "number of acts" or other suitable basis. The Revenue is recognised on a "straight line basis" over the specific period when services are provided by an indeterminate number of acts over that specific period, unless there is evidence that some other method better represents the pattern of performance. The Learned Counsel for the Respondent-Assessee referred to the above during the course of hearing.

82. On the other hand, under the "**Completed Service Contract Method"** of accounting, the revenue is recognized in the statement of profit and loss only when the rendering of services under a contract is completed or substantially completed. It may consist of the execution of a single act of service or services are performed in more than a single act, and the services yet to be performed are so significant in relation to the transaction taken as a whole that performance cannot be deemed to have been completed until the execution of those acts.

83. Paragraphs 4.2 and Paragraphs 7.1(ii) of the Accounting Standards (AS) 9 dealing with **Completed Service Contract Method** of

the Accounting Standards (AS) 9 are reproduced in the ensuing paragraphs:-

Completed Service Contract Method	***Completed Service Contract Method***
4.2 ***Completed Service Contract Method*** *is a method of accounting which recognizes revenue in the statement of profit and loss only when the rendering of services under a contract is completed or substantially completed*	*7.1(ii)Performance consists of the execution of a single act. Alternatively, services are performed in more than a single act, and the services yet to be performed are so significant in relation to the transaction taken as a whole that performance cannot be deemed to have been completed until the execution of those acts. The completed service contract method is relevant to those patterns or performance and accordingly revenue is recognised when the sole or final act takes place and the service becomes chargeable*

84. However, these would relate to recognition of the income only where the amounts are yet to be credited to an assessee. In other words, where an assessee follows “mercantile method of accounting”, such an assessee will be required to recognize the income as having accrued even

if no amount is received for service provided. If the amount is received, the assessee cannot stagger the recognition of income to a future date merely because service is to be provided in future during the ensuing Financial Year.

85. In Annual Maintenance Contracts (AMC), whether:-

(i)**Comprehensive Maintenance**

(ii)**Routine Maintenance**.

an assessee, will be bound to recognize the amounts received in its books of income as income. It cannot treat the same as a "current liability" in the books of accounts by resorting to accounting jugglery to distort the accounting income to postpone the imminent tax liability under the Income Tax Act, 1961.

86. Para 12 of the Accounting Standards (AS) 9 also underscores the point that "performance of services" should be regarded as being achieved when **no significant uncertainty exists** regarding the amount of the consideration that will be derived from rendering the service. If amounts are received in advance, there is no uncertainty and therefore there was "performance of service" immediately after payments were

received in advance, even if "mercantile system of accounting" was followed.

87. Paragraph 12 of the Accounting Standards (AS) 9 reads as under:-

> ***12***. *In a transaction involving the rendering of services, performance should be measured either under the* ***completed service contract method*** *or under the* ***proportionate completion method,*** *whichever relates the revenue to the work accomplished.* ***Such*** *performance should be regarded as being achieved when* ***no significant uncertainty exists*** *regarding the amount of the consideration that will be derived from rendering the service."*

88. Thus, it is clear that if there is no doubt regarding the consideration that will be derived from rendering the service, performance of service shall be regarded as having been achieved as per Paragraph 12 of the Accounting Standards (AS) 9. Since, the receipt of the amounts is in advance, it leaves no uncertainty regarding rendering of the service in future. Therefore, it an income of the respondent assessee at the time of its receipt.

89. Thus, it is evident, if the amount is received in advance, it is a

revenue that is to be recognized as income immediately in the books of accounts. Further, the amount paid to the respondent-assessee is not refundable. It may be quite different, if the there is scope for refund of the amounts to the customer based on the terms of Agreement between the parties involved.

90. That apart, from the nature of service provided and the monopoly exercised by reputed lift companies like respondent-assessee company, the customers have no choice. They have no choice to opt for services of other lift service providers for the lifts installed by companies like the respondent-assessee. The software which is used for operating the lifts is not freely available and never shared by the lift companies with the customers. If the contract for Annual Maintenance Service is not renewed, the cost of maintenance and running of the lifts will high and usurious as the respondent-assessee has the monopoly over not only the software but also the spares as they are not available in the open market.

91. Even if the customer opts to terminate the contract, the respondent-assessee is not bound to refund the amount. If the customer opts to terminate the contract, the customer will still be at the mercy of

the respondent-assessee should the lift malfunction. The business model which the respondent-assessee follows in so far as service under the Annual Maintenance Contract is concerned, it leaves no scope for uncertainties as far as income for provision service under its AMC model is concerned.

92. The decision of the Court in **Commissioner of Income Tax** Vs. **Coral Electronics (P) Limited** 274 ITR 336 (Mad) cannot be followed. The Division Bench of this Court did not advert to the Accounting Standards issued by the Institute of Chartered Accountants of India. In fact, the Court also did not refer to Section 145 of the Income Tax Act, 1961. It merely held as under after referring to the decisions of this Court though it had given contra views :-

> "*8. In the instant case, the amount that was received was only as charges for the services to be rendered in future. The services may be rendered or may not be rendered depending upon withdrawal of the money as and when the customer required. So, it is highly uncertain as to whether it would at all remain as income of the assessee. Only when the service is done, the assessee has a right over the amount that was deposited. Till then, he has no right over the same. It is in that sense till then, it cannot be considered as an income of the assessee and*

is not exigible to tax. Therefore, the issue is answered in favour of the assessee and against the Revenue."

93. The Court in **Commissioner of Income Tax** Vs. **Coral Electronics (P) Limited** 274 ITR 336 (Mad) though referred to its earlier decision in **CIT Vs. Shaik Mohamed Rowther** [2000]246ITR161(MAD) where the assessee used to receive amounts in advance from the principals and then submits bills for payments and after bills were passed on, the amounts so received were passed and credited to the profit and loss account. Till then the amounts received were shown only as advance.

94. In **Shaik Mohamed Rowther** case (*supra*), the assessee was following this practice for a number of years and the Department used to accept it. However, in the year under reference, the Income-tax Officer stated that what the assessee received as advance was really its income. The Court referred to the decision of the Hon'ble Supreme Court in **CIT v. British Paints India Ltd.** AIR 1991 SC 1338 and accepted the contention of the Income Tax Department .

95. The Division Bench in **Commissioner of Income Tax** Vs. **Coral Electronics (P) Limited** 274 ITR 336 (Mad) still gave a contra ruling ignoring the decision of the co-ordinate Bench in **Shaik Mohamed Rowther** case *(supra)*.

96. In the decision rendered in **Coral Electronics (P) Limited**. *(supra)*, by the Hon'ble Division Bench, the Court has merely concluded that the amount received was only the charges to be rendered in future. However, there is no discussion on the provisions under the Companies Act, 1956 as also ther provisions of the Income Tax Act, 1961. Further, in **Coral Electronics Pvt Ltd**. *(supra)*, the person who paid the amount could have a right to refund over the amount that was paid to the assessee. Thus, in this count also, the above mentioned case is factually different. We therefore do not wish to follow the above ruling of the Court in **Commissioner of Income Tax** Vs. **Coral Electronics (P) Limited** 274 ITR 336 (Mad) as a binding precedent.

97. In **Commissioner of Income Tax** Vs. **G.S.R.Krishnamurthy**, 262 ITR 393, the Division Bench of this Court again had held that the Assessing Officer was right in including the whole of the amount

received under this agreement in the assessment and treating the same as income of the assessee in the year when the amount received was received. The whole of the amount payable under the agreement although the agreement also contained a clause that part of the amount so handed over was to be adjusted annually towards rental over a period of five years. Relevant portion of the decision is extracted as under:-

> *"12. So far as the second question for the assessment year 1986-87 is concerned, as already noticed, the amounts received by the assessee were under an agreement. The amount received was the whole of the amount payable under the agreement although the agreement also contains a clause that part of the amount so handed over was to be adjusted annually towards rental over a period of five years.* ***The provision for such time of the agreement and the assessee being under no obligation to return all or any part of it under any circumstances whatsoever at any point of time*** *in* ***the future. The Assessing Officer was right in including the whole of the amount received under this agreement in the assessment and treating the same as income of the assessee in this year.*** *This question is answered against the assessee and in favour of the Revenue."*

98. Though in Paragraph 5.3 to the Assessment Order dated 12.12.2011 has not expressly held that the Respondent-Assessee's

accounts distorted the income, the conclusion in Paragraph 5.3 of the Assessment Order dated 12.12.2011 is confined to AMC shown under current liability amounts to Rs.**8,20,45,067**/- which is to be assessed in the year of it's receipt in the light of the decision of the Division Bench of this Court in **G.S.R.Krishnamurthy** *(supra)*.

99. The Hon'ble Supreme Court in **M/s.JK Industries Limited** *(supra),* in Paragraph 4, has made it clear that there is a paradigm shift from the "Matching Principle" concept to "Fair value Principle" under the Accounting Standards.

100. Therefore, the observation of the Appellate Tribunal in the Impugned Order dated 01.08.2014, that the respondent-assessee was bound to follow the "Matching Principle" of revenue and expenditure and was bound to provide future liability of maintenance from the advance collection made from the customers is an irrelevant consideration to the issue under consideration. Further, the "Matching Principle" is not an absolute principle invariably applicable to each and every case.

101. The reference to Section 41(1)(a) of the Income Tax Act, 1961

in the Impugned Order of the Appellate Tribunal is wholly misplaced. Section 41(1)(a) of the Act would apply to a situation where an allowance or deduction has been made in respect of the following, namely:-

i) Loss;

ii) Expenditure; or

iii) Trading liability

102. Such Loss, Expenditure or Trading liability should have been incurred by such an assessee and claimed as an expenditure albeit as a deduction while computing the taxable income during any Assessment Year.

103. If such assessee later receives payments/benefits subsequently during any previous year, i.e.,

(i)An amount by way of cash; or in any other manner with respect to such Loss or Expenditure

ii)some benefit in respect of such Trading Liability by way of remission or cessation,

then the amount or benefits received by an assessee in the Previous Year will be deemed to be profits and gains chargeable to income tax of that previous year, whether the business or profession in respect of which the

allowance or deduction has been made is in existence in that year or not.

104. Section 41(1) is extracted as under :-

Section 41.*(1) Where an allowance or deduction has been made in the assessment for any year in respect of loss, expenditure or trading liability incurred by the assessee (hereinafter referred to as the first-mentioned person) and subsequently during any previous year,-*

(a) the first-mentioned person has obtained, whether in cash or in any other manner whatsoever, any amount in respect of such loss or expenditure or some benefit in respect of such trading liability by way of remission or cessation thereof, the amount obtained by such person or the value of benefit accruing to him shall be deemed to be profits and gains of business or profession and accordingly chargeable to income-tax as the income of that previous year, whether the business or profession in respect of which the allowance or deduction has been made is in existence in that year or not; or

(b) the successor in business has obtained, whether in cash or in any other manner whatsoever, any amount in respect of which loss or expenditure was incurred by the first-mentioned person or some benefit in respect of the trading liability referred to in

clause (a) by way of remission or cessation thereof, the amount obtained by the successor in business or the value of benefit accruing to the successor in business shall be deemed to be profits and gains of the business or profession, and accordingly chargeable to income-tax as the income of that previous year."

105. In the case of **Indian Molasses Co. (P) Ltd.** vs **CIT,** (1959) 37 ITR 66 the Hon'ble Supreme Court observed expenditure which is deductible for income tax purposes is one which is towards a liability actually existing at the time, but the putting aside of money which may become expenditure on the happening of an event is not expenditure. Relevant portion of the said decision reads as under : -

> ***36.*** *In our opinion, the payment was not merely contingent but the liability itself was also contingent.* ***Expenditure which is deductible for income tax purposes is one which is towards a liability actually existing at the time, but the putting aside of money which may become expenditure on the happening of an event is not expenditure****. In the present case, nothing more was done in the account years. The money was placed in the hands of trustees and/or the insurance company to purchase annuities of different kinds, if required, but to be returned if the annuities*

were not bought and the setting apart of the money was not a paying out or away of these sums irretrievably.

106. That apart, as a service provider, the respondent-assessee would be registered under the provisions of Finance Act, 1994 and would have been liable to pay service tax in relation to "**Management, Maintenance or Repair**" under **Section 65 (105) (ZZG)** of **Finance Act, 1994**. . The expression **Management, Maintenance or Repair** is defined under **Section 65 (64)** of the **Finance Act, 1994** during the period in dispute. The expression "**Management, Maintenance or Repair**" under Section 65 (64) was defined as follows:-

> ***(64)***"*Management, Maintenance or Repair" means any service provided by—*
>
> *(i) any person under a contract or an agreement; or*
>
> *(ii) a manufacturer or any person authorized by him, in relation to,—*
>
> *(a) management of properties, whether immovable or not;*
> *(b) maintenance or repair of properties, whether immovable or not; or*
> *(c) maintenance or repair including reconditioning or restoration, or servicing of any goods, excluding a motor vehicle.*

The service provided under AMC would have been liable to service

tax for "**Management, Maintenance or Repair**"

107. Thus, the respondent-assessee would have been liable to pay tax under **Section 65(64) r/w Section 65(105)(zzg)** of the **Finance Act, 1994** in the same quarter of it's receipt. Similarly, the same activity could also have been liable to tax under **Section 5** of the **TNVAT Act, 2006** and liable to tax under succeeding months. This is also confirmed in Schedule 11 to the Balance Sheet of the Respondent-Assessee.

108. In fact with effect from 1st of April 2011 for the purpose of determination of tax liability, "**The Point of Taxation Rules, 2011**" was also framed by the Central Government *vide* **Notification No.18/2011 ST** dated **01.03.2011**. As per **Rule 3** of the Point of taxation Rules, 2011, the point of taxation is at the time when invoice for service provided or agreed to be provided is issued.

109. As per **Rule 6 (b)** of the Point of Taxation Rules, 2011 (as it stood then and since omitted), in a case where the persons providing service receives payment before the time of issuance of invoice, the time when he receives such payment to the extent of such payment shall be

point of taxation.

110. Thus the authorities, who are responsible for collecting indirect tax for the service provided would have treated the amount received towards that liability, the moment payment are received.

111. There is also no dispute that the amount was collected by the appellant in advance towards Annual Maintenance Charges (AMC). The advance is a revenue in its hands at the time of its receipt. It is taxable in the year of its collection, as is contended by the Appellant/Income Tax Department. Further, there is no uncertainty in the amount of consideration derived for rendering of service and the amount is non-refundable.

112. In the light of the above discussion, we answer the substantial questions of law in favour of the Revenue and against the respondent-assessee. Therefore, the impugned order dated 01.08.2014 in I.T.A.No.222/Mds/2013 passed by the Appellate Tribunal is liable to be set aside. Hence, it is accordingly, set aside.

113. This Tax Case Appeal is accordingly allowed. No costs.

Consequently, connected Miscellaneous Petition is closed.

(R.S.K.J.,) (C.S.N.J.,)

29.10.2024

Index : Yes/No
Internet : Yes/No
Speaking : Non-Speaking Order
Neutral Citation : Yes/No
arb/nst

R.SURESH KUMAR, J.
AND

C.SARAVANAN, J.

arb/nst

To

The Income Tax Appellate Tribunal,
Madras “B” Bench, Chennai

Pre-delivery Judgment in
T.C.A.No54 of 2015

29.10.2024