

**(2005) 01 MAD CK 0050**  
**In the Madras High Court**  
**Case No : T.C. No. 97 of 2000**

Sakthi Sugars Ltd.

APPELLANT

Vs

The Commissioner of Income Tax

RESPONDENT

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**Date of Decision :** 07-01-2005

**Acts Referred:**

Income Tax Act, 1961 — Section 35C, 40A, 40A(2)

**Citation :** (2006) 200 CTR 682 : (2005) 273 ITR 320

**Hon'ble Judges :** R. Banumathi, J;N.V. Balasubramanian, J

**Bench :** Division Bench

**Advocate :** P.P.S. Janarthana Raja, for the Appellant; J. Nareshkumar, Jr. S.C., for the Respondent

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**Judgement**

N.V. Balasubramanian, J.—Pursuant to the directions of this Court in T.C.P. No. 766 of 1997 dated 25.6.1998, the Income Tax Appellate

Tribunal has stated a case and referred the following question of law for our consideration:-

Whether on the facts and circumstances of the case, the Appellate Tribunal was right in law in holding that the assessee was not entitled to

weighted deduction u/s 35C of the I.T. Act in respect of the entirety of the expenditure incurred by way of Motor Vehicle Maintenance of cane

department, transport of fertilisers and travel expenses of cane department?

2. The assessment year involved is 1983-84. The assessee is a public limited company and its main business is the manufacture of sugar. The

assessee claimed, in its assessment proceedings, weighted deduction on certain expenses u/s 35C of the Income Tax Act, 1961 (hereinafter

referred to as "the Act"), but the assessing officer disallowed the following expenses:-

1. 50% of motor vehicle maintenance of

cane department ... Rs. 2,55,112/-

2. Transport of fertiliser ... Rs. 42,155/-

3. 60% of cane travelling expenses ... Rs. 1,56,900/-

The Commissioner of Income Tax (Appeals), on appeal preferred by the assessee, upheld the disallowance made by the assessing officer for the

reasons stated by him for the earlier assessment year 1982-83 and dismissed the appeal preferred by the assessee. The assessee carried the

matter in further appeal before the Income Tax Appellate Tribunal (hereinafter referred to as "the Appellate Tribunal") and the Appellate Tribunal

concurred with the reasonings of the Commissioner of Income Tax (Appeals) and held that the expenditure incurred by the assessee did not qualify

for weighted deduction in terms of clause (b) of Section 35C of the Act. The assessee has challenged the order of the Appellate Tribunal and on

the basis of the directions of this Court, the case has been stated on the question of law mentioned earlier.

3. The submission of Mr. P.P.S. Janarthana Raja, learned counsel for the assessee is that the entire expenditure incurred by the assessee on the

maintenance of motor vehicles in cane department would qualify for deduction. He also submitted that the entire travelling expenses incurred by the

assessee in cane department would also qualify for deduction, and the assessing officer was not correct in disallowing 60% of travelling expenses.

Learned counsel submitted that the expenditure incurred by the assessee for the transport of fertiliser would also qualify for weighted deduction u/s

35C of the Act.

4. Mr. J. Nareshkumar, learned Junior Standing Counsel for the Revenue, on the other hand, submitted that the Tribunal was justified in upholding

the disallowance as no material was placed before the assessing officer or the Commissioner (Appeals) or the Appellate Tribunal by the assessee

to establish that the expenditure disallowed would fall within the qualifying clause u/s 35C of the Act.

5. We have carefully considered the submissions of Mr. P.P.S. Janarthana Raja, learned counsel for the assessee and Mr. J. Nareshkumar,

learned Junior Standing Counsel for the Revenue. We are of the view, to appreciate the point that arises in the reference, it is necessary to refer to

Section 35C of the Act which reads as under:-

35C. Agricultural development allowance- (1)(a) Where any company or a co-operative society is engaged in the manufacture or processing of

any article or thing which is made from, or uses in such manufacture or processing as raw material, any product of agriculture, animal husbandry, or

dairy or poultry farming, and has incurred, after the 29th day of February, 1968, but before the 1st day of March, 1984, whether directed or

through an association or body which has been approved for the purposes of this section by the prescribed authority, any expenditure in the

provision of any goods, services or facilities specified in clause (b) to a person ( not being a person referred to in clause (b) of sub-section (2) of

Section 40A) who is a cultivator, grower or producer of such product in India, the company or co-operative society shall, subject to the provisions

of this section, be allowed a deduction of \*\*\* the amount of such expenditure incurred during the previous year.

(b) The goods, services or facilities referred to in clause (a) are the following -

(i) fertilisers, seeds, pesticides, concentrates for cattle and poultry feed, tools or implements, for use by such cultivator, grower or producer"

(ii) dissemination of information on, or demonstration of, modern techniques or methods of agriculture, animal husbandry, or dairy or poultry

farming, or advice on such techniques or methods;

(iii) such other goods, services or facilities as may be prescribed.

Explanation: - In computing the expenditure which is to be allowed as deduction under this section, the amount, if any, received by the company or

co-operative society in consideration of, or as compensation for, such goods, services or facilities shall be deducted.

(2) Where a deduction under this section is claimed and allowed for any assessment year in respect of any expenditure of the nature specified in

sub-section (1), deduction shall not be allowed in respect of such expenditure under any other provision of this Act for the same or any other

assessment year.

Section 35C was introduced by the Finance Act, 1968 with effect from 1st April, 1968 and was deleted by the Direct Tax Laws (Amendment)

Act, 1987 with effect from 1st April, 1989. There is no dispute, on the facts of the case, that the assessee company is engaged in the manufacture

of sugar and used sugarcane as raw-material. The only question is whether the above three items of expenditure which are the subject matter of the tax case reference would qualify for weighted deduction u/s 35C of the Act.

6. In so far as the expenditure on maintenance of motor vehicles in cane department is concerned, we find from the order of the assessing officer

that 50% of the expenditure was taken as being qualified for weighted deduction and the balance was disallowed. The Commissioner (Appeals)

also upheld the disallowance which was confirmed by the Appellate Tribunal. We find that the assessee has not placed any material to show that

the entire expenditure incurred on the maintenance of motor vehicles in cane department would qualify for weighted deduction u/s 35C of the Act.

In other words, there was no material placed before the assessing officer or the Commissioner (Appeals) or the Appellate Tribunal to establish that

the entire expenditure incurred on the maintenance of motor vehicles in cane department would qualify for weighted deduction. We are of the view

that in the absence of any material placed by the assessee, the Appellate Tribunal was justified in upholding the disallowance of 50% of the

expenditure on maintenance of motor vehicles in cane department and it cannot be assumed that the entire expenditure on the maintenance of

motor vehicles in cane department was for the purposes mentioned in clause (b) of Section 35C of the Act. We hold that in the absence of such

material produced by the assessee to establish that the entire expenditure on the maintenance of motor vehicles in cane department was incurred

for any of the purposes mentioned in clause (b) of Section 35C of the Act, the Appellate Tribunal was justified in holding that only 50% of the

expenditure incurred qualified for weighted deduction.

7. In so far as travelling expenditure incurred in cane department is concerned, the assessing officer disallowed 60% of the amount claimed on the

ground that the amount so disallowed did not qualify for weighted deduction. The view of the assessing officer was confirmed by both the

Commissioner (Appeals) and the Appellate Tribunal. We also find that the assessing officer disallowed 50% of expenditure on maintenance of

motor vehicles and 60% of travelling expenditure in cane department following the order of the Commissioner (Appeals) for the earlier assessment

year 1982-83 and that order had been accepted by the assessee. The Tribunal

had the opportunity to look into the records and concurred with the reasons of the Commissioner (Appeals). We therefore hold that in the absence of any material placed to substantiate the plea of the assessee that the entire expenditure incurred for the maintenance of motor vehicles in cane department as well as the travelling expenditure incurred in the cane department would come within the qualifying expenditure as mentioned in clause (b) of Section 35C of the Act, the assessing officer was justified in apportioning the expenditure and disallowing a portion thereof and the disallowance was, in our view, rightly upheld by the Appellate Tribunal. Further, the assessee has not challenged the finding of the Appellate Tribunal by raising a separate question.

8. In so far as the expenditure on transport of fertiliser is concerned, the assessee claimed a sum of Rs. 42,155/- to qualify for weighted deduction

u/s 35C of the Act. The assessing officer disallowed the entire amount which was confirmed by the Commissioner (Appeals) as well as by the

Appellate Tribunal. However, after hearing learned counsel for the assessee and the Revenue, we are of the view that the transport of fertiliser

would be a service rendered by the assessee to a cultivator as it is stated that the fertiliser has to be carried from the godown to the agricultural

land to be used by the cultivator. Hence, we are of the view, the expenditure incurred on transport of fertiliser would qualify for deduction as it is a

service within the meaning of Section 35C(b)(i) of the Act and unless the fertiliser is transported, it is not possible to use fertiliser for cultivation of

sugarcane. We find that the Appellate Tribunal has not gone into the details of the expenditure. Normally, we would have remitted the matter to the

Appellate Tribunal to consider the question again, but however, considering the meagre amount involved and also taking note of the assessment

year in question, namely, 1983-84, we are not inclined to remit the matter to the Appellate Tribunal after a period of nearly 20 years from the end

of the assessment year. Accordingly, we hold that the expenditure incurred on the transport of fertiliser would qualify for weighted deduction u/s

35C of the Act.

9. Consequently, we hold that the Appellate Tribunal was right in holding that the assessee was not entitled to weighted deduction u/s 35C of the

Act in respect of the entire expenditure on the maintenance of motor vehicles in

cane department and the travelling expenses in cane department,  
but the Appellate Tribunal was not right in holding that the assessee was not entitled to weighted deduction u/s 35C of the Act in respect of entire expenditure incurred on the transport of fertilisers. The question of law referred to us is answered accordingly. However, in the circumstances of the case, there will be no order as to costs.