

Commissioner of Income Tax-I, Chennai v. M/s. TVS Motor Company Ltd.

T.C.(A). No. 330 of 2011

T.C.(A). No. 330 of 2011 (Mad HC, decided 05.01.2026) | 2026-01-05

Seven questions decided for assessee: dies/moulds replacement under section 31(1); temporary office interiors; section 35(2AB) R&D WIP; Entry Tax set-off; Rs. 36.97 cr NPV sales-tax deferral prepayment outside section 41(1); ECB upfront fee outside UK/Singapore DTAA FTS ('make available'); and foreign agent export commission.

Income-tax Act, 1961: sections 9(1)(vii), 31(1), 32, 35(2AB), 37(1), 40(a)(i), 41(1), 43B, 90, 195 and 260A | India-UK DTAA: Article 13(4)(c); India-Singapore DTAA: Article 12(4)(b)

High Court of Judicature at Madras | 2-judge bench (Division Bench) | Dr. Anita Sumanth, J. | Mummineni Sudheer Kumar, J.

Assessment years: 2005-06

ITAT finding on nature of ECB arrangement services set aside in paragraph 36, though ultimate deletion upheld under treaty 'make available' clause

On Question 6 (paragraphs 34-40, PDF pp. 16-20), the Division Bench expressly set aside the Tribunal's observation that ECB loan-processing services rendered by the UK and Singapore entities were non-technical, holding that the CIT(A)'s unchallenged finding that the services were technical had attained finality. However, the Court affirmed the deletion of the Rs. 6,62,70,751 section 40(a)(i) disallowance because technical knowledge or know-how was not 'made available' under Article 13(4)(c) of the India-UK DTAA and Article 12(4)(b) of the India-Singapore DTAA.

01 FACTS OF THE CASE

For AY 2005-06, the Revenue appealed against the ITAT Chennai 'C' Bench order dated 21.12.2010 in the case of TVS Motor Company Ltd. on seven admitted substantial questions of law: (1) deduction for replacement of worn-out dies and moulds claimed in the tax adjustment statement; (2) 100% depreciation / deduction of Rs. 15,05,167 on temporary interior partition, wallpaper and electrical works at Delhi and Coimbatore area offices; (3) weighted deduction under section 35/35(2AB) on R&D capital work-in-progress; (4) deduction of Entry Tax paid where set off against Sales Tax liability under the TNGST Act; (5) exclusion of Rs. 36,97,26,960 capital discount arising on premature single instalment repayment (Rs. 32.23 crore) of a Karnataka Sales Tax Deferral Loan on Net Present Value (NPV) basis; (6) section 40(a)(i) disallowance of Rs. 6,62,70,751 paid as upfront ECB loan processing fees to Asia Pacific Investments PLC (UK, Rs. 3.29 crore) and Regional Capital Pvt. Ltd. (Singapore, Rs. 3.33 crore) without section 195 TDS; and (7) section 40(a)(i) disallowance of Rs. 9,53,00,671 export commission paid to foreign agents.

Source: [Paragraphs 1-42; PDF pp. 1-20](#)

02 DISCUSSION BY THE HON'BLE COURT

The Division Bench answered all seven questions in favour of the assessee: (1) Following the assessee's own case for AY 2003-04 (364 ITR 1) and Mahalakshmi Textile Mills (66 ITR 710), replacement of worn-out dies and moulds attached to plant and machinery creates no new capital asset and qualifies as 'current repairs' under section 31(1); (2) Rs. 15,05,167 spent on electrical MCB, wallpapers and interior partitions was temporary in nature and accepted by the Revenue in AY 2003-04; (3) weighted deduction under section 35(2AB) on R&D WIP stood covered by 364 ITR 1 and CIT v. Rane Brake Linings Ltd., 255 ITR 395; (4) Entry Tax actually paid is deductible and its statutory set-off against Sales Tax does not amount to double deduction or violate section 43B, as accepted in the earlier year; (5) Following CIT v. Balakrishna Industries Ltd., 300 CTR 209 (SC) affirming CIT v. Sulzer India Ltd., premature discharge of a deferred sales-tax loan at its Net Present Value (NPV) involves no remission or cessation of trading liability under section 41(1)(a), and the Rs. 36,97,26,960 differential is a capital receipt; (6) While the ECB processing services rendered by the UK and Singapore arrangers were technical in nature (reversing the ITAT on that point), they did not 'make available' technical knowledge, skill or processes enabling the assessee to raise ECBs independently in the future under Article 13(4)(c) of the India-UK DTAA and Article 12(4)(b) of the India-Singapore DTAA (De Beers India Minerals, 346 ITR 467 applied); and (7) foreign-agent export commission of Rs. 9,53,00,671 was covered by unchallenged orders for AYs 1991-92 to 1994-95 and TCA No. 739 of 2009 (dismissed 11.07.2025).

Source: [Paragraphs 3-43; PDF pp. 2-21](#)

03 JUDICIAL DECISION

Answering all seven substantial questions of law in favour of the assessee and against the Revenue, the High Court dismissed T.C.(A). No. 330 of 2011 with no order as to costs.

Source: [Paragraphs 4, 10, 13, 18, 28, 40, 43-44; PDF pp. 4-21](#)

04 OUTCOME / IN WHOSE FAVOUR

In favour of the assessee (M/s. TVS Motor Company Ltd.) on all seven substantial questions of law; Revenue appeal dismissed.

Source: [Paragraphs 43-44; PDF pp. 20-21](#)

05 AKHB REVIEW POINT

AKHB analysis: (1) On cross-border debt-syndication or ECB arrangement fees paid to UK, Singapore or US arrangers, even if the tax authority establishes that financial structuring/advisory is 'technical or consultancy', invoke the treaty 'make available' clause under section 90(2) by demonstrating that the borrower was not equipped with proprietary syndication know-how for future independent borrowing; (2) On premature NPV settlement of state sales-tax deferral loans, anchor capital-receipt treatment directly in Balakrishna Industries / Sulzer India to defeat section 41(1) additions.

Source: [AKHB analysis based on paragraphs 20-40 / PDF pp. 10-20](#)

SOURCE & VERIFICATION

[Madras High Court official judgment PDF - AKHB Cloud Repository](#)

Twenty-two-page official Madras High Court judgment PDF in T.C.(A). No. 330 of 2011; paragraphs 1-44 span PDF pages 1-22.

Supplied source-reviewed note retained; original bytes and identity validation checked in this release. Substantive re-review is not claimed for this record.

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Full 22-page official Madras High Court PDF read and verified. Original bytes match SHA-256
a413b3a0882e5a36bd433e346254a7ce907e4eb550072c620c939f2cf5a474eb.

STATUTORY SCOPE

Applies sections 9(1)(vii), 31(1), 32, 35(2AB), 37(1), 40(a)(i), 41(1), 43B, 90 and 195 of the Income-tax Act, 1961 read with Article 13(4)(c) of the India-UK DTAA and Article 12(4)(b) of the India-Singapore DTAA for AY 2005-06. Income-tax Act, 2025 equivalence is not verified.

LATER TREATMENT

Source checked 2026-10-17. Full judgment checked. Applies CIT v. TVS Motors Ltd., 364 ITR 1 (Mad), CIT v. Mahalakshmi Textile Mills Ltd., 66 ITR 710 (SC), CIT v. Saravana Spinning Mills P. Ltd., 293 ITR 201 (SC), CIT v. Balakrishna Industries Ltd., 300 CTR 209 (SC), CIT v. Sulzer India Ltd., (2010) 6 ITR 604 (Bom), CIT v. De Beers India Minerals (P) Ltd., 346 ITR 467 (Kar), and Union of India v. Azadi Bachao Andolan, 263 ITR 706 (SC). Comprehensive subsequent judicial treatment has not been verified.

AI DISCLOSURE

AI-assisted research checked against the identified source. Extraction, interpretation or omission errors remain possible. Source review does not mean independent approval by a practising professional. Verify every material statement against the complete original judgment.

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