

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

"D" BENCH, CHENNAI

श्री ए. मोहन अलंकामणी, लेखा सदस्य एवं श्री वी. दुर्गा राव, न्यायिक सदस्य केसमक्ष

BEFORE SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER AND  
SHRI V. DURGA RAO, JUDICIAL MEMBER

आयकर अपील सं./ITA No.2623/Mds/2014

Assessment Year : 2010-11

M/s Spark Capital Advisors  
(India) Private Ltd.,  
No.2, Reflections,  
Leith Castle Center Street,  
Santhome High Road,  
Chennai - 600 028.

v. The Assistant Commissioner of  
Income Tax,  
Company Circle – VI(4),  
Chennai - 600 034.

PAN : AADCS 0211 P

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by :

Ms. Jharna, CA

प्रत्यर्थी की ओर से/Respondent by :

Shri A.B. Koli, JCIT

सुनवाई की तारीख/Date of Hearing :

06.08.2015

घोषणा की तारीख/Date of Pronouncement:

19.08.2015

### **आदेश / O R D E R**

**PER V. DURGA RAO, JUDICIAL MEMBER:**

This appeal filed by the assessee is directed against the order of the Commissioner of Income Tax (Appeals)-VI, Chennai, dated 25.06.2014 relevant to the assessment year 2010-11.

2. There is a delay of 54 in filing the appeal. The assessee has filed a petition wherein the assessee has submitted that an application for rectification under Section 154 of the Income-tax Act, 1961 (in short 'the Act') was made on 15<sup>th</sup> July, 2014 against the order of the CIT(Appeals) since there was a mistake apparent on record. Considering the rectification petition, the assessee had not preferred any appeal against the order of the CIT(Appeals). However, the CIT(Appeals) has disposed of the rectification petition. The assessee, as an abundant caution on the issue and due to huge demand, has preferred an appeal before this Tribunal. Therefore, there is a delay of 54 days in filing the appeal and the assessee has prayed for condonation of the same.

3. The Ld. Departmental Representative has not raised any serious objection for condoning the delay in filing the appeal.

4. We have heard both sides and perused the records and gone through the orders of the authorities below. There is a delay of 54 days in filing the appeal by the assessee. We find that the assessee has explained sufficient cause in filing the appeal with a delay of 54 days. Therefore, we find that there is a genuine cause

not filing the appeal in time. Therefore, we condone the delay and the appeal filed by the assessee is admitted.

5. Now let's deal with the merits of the case. The assessee is a company M/s Spark Capital Advisors (India) Private Limited, engaged in the business of investment, banking, portfolio management, corporate finance advisory, securities broking and trading in securities. The assessee filed the return of income declaring total income of ₹1,80,37,166/-. The case of the assessee was also selected for scrutiny and with due process, the assessment was completed under Section 143(3) of the Act. The A.O. has made two additions, viz. disallowance under Section 14A of the Act and deemed dividend under Section 2(22)(e) of the Act.

6. Against the order of the A.O., the assessee carried the matter in appeal before the CIT(Appeals). Before the CIT(Appeals), the assessee raised a ground relating to disallowance under Section 14A of the Act only. However, the assessee filed additional ground before the CIT(Appeals) on 7<sup>th</sup> June, 2013 in respect of deemed dividend under Section 2(22)(e) of the Act and submitted that the assessee has already filed rectification before the Assessing Officer in respect of deemed dividend and also disallowance of bad debts and prayed for acceptance of the

additional ground filed by the assessee. However, the Ld. CIT(Appeals), by order dated 25.05.2014, i.e. subsequent to the additional ground filed by the assessee, adjudicated only the issue of disallowance under Section 14A of the Act. Insofar as deemed dividend is concerned, the CIT(Appeals) observed that no additional grounds were filed during the course of appellate proceedings against the addition of ₹2,14,00,000/- made under Section 2(22)(e) of the Act and hence the same is not adjudicated.

7. Against the order passed by the CIT(Appeals), the assessee filed an appeal before this Tribunal by raising two grounds in respect of disallowance under Section 14A of the Act as well as in respect of deemed dividend under Section 2(22)(e) of the Act and submitted that additional ground had been raised before the CIT(Appeals) in respect of deemed dividend, on 7<sup>th</sup> June, 2013 and to that effect, the assessee has already filed the ground before the CIT(Appeals).

8. We find that on 7<sup>th</sup> June, 2013, the assessee filed an additional ground and there is a stamp also by the Department having received the additional ground raised by the assessee. In the facts and circumstances of the case, we find that the Ld. CIT(Appeals) is not justified in not considering the additional ground

filed by the assessee. He adjudicated only the issue of disallowance under Section 14A of the Act. We, therefore, set aside the order passed by the CIT(Appeals) and direct him to admit the additional ground raised by the assessee in respect of the issue of deemed dividend under Section 2(22)(e) of the Act and decide afresh in accordance with law. So far as the issue of disallowance under Section 14A of the Act is also concerned, we direct the Ld. CIT(Appeals) to consider it afresh to reach a finality of the appeal.

9. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced on 19<sup>th</sup> August, 2015 at Chennai.

sd/- (ए. मोहन अलंकामणी) (A. Mohan Alankamony) लेखा सदस्य/Accountant Member	sd/- (वी. दुर्गा राव) (V. Durga Rao) न्यायिक सदस्य/Judicial Member
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चेन्नई/Chennai,

दिनांक/Dated, the 19<sup>th</sup> August, 2015.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|---|--------------------------|
| 1. अपीलार्थी/Appellant                      | 2. प्रत्यर्थी/Respondent |
| 3. आयकर आयुक्त (अपील)/CIT(A)-VI, Chennai-34 |                          |
| 4. आयकर आयुक्त/CIT-VI, Chennai              | 5. विभागीय प्रतिनिधि/DR  |
| 6. गार्ड फाईल/GF.                           |                          |