

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

"B" BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं  
श्री ए. मोहन अलंकामणी, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND  
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.1810/Mds/2015

निर्धारण वर्ष / Assessment Year : 2011-12

The Deputy Commissioner  
of Income Tax,  
Corporate Circle-1,  
63-A, Race Course Road,  
Coimbatore.

(अपीलार्थी/Appellant)

v. M/s Lakshmi Machine Works  
Ltd.,  
Perianaickenpalayam,  
Coimbatore – 641 020.

PAN : AAACL 5244 N

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Sh. P. Radhakrishnan, JCIT

प्रत्यर्थी की ओर से/Respondent by : Sh. R. Vijayaraghavan, Advocate

सुनवाई की तारीख/Date of Hearing : 09.11.2015

घोषणा की तारीख/Date of Pronouncement : 27.11.2015

### आदेश / O R D E R

PER N.R.S. GANESAN, JUDICIAL MEMBER:

This appeal of the Revenue is directed against the order of the Commissioner of Income Tax (Appeals)-1, Coimbatore, dated 13.05.2015 and pertains to assessment year 2011-12.

2. Sh. P. Radhakrishnan, the Ld. Departmental Representative, submitted that the only issue arises for consideration is with regard to setting off of loss of the company incorporated in China against the profit of the assessee-company in India. The Ld. D.R. submitted that the assessee is 100% beneficial owner of the business in Chennai in the name and style of LMW Textile Machinery (Suzhou Co. Ltd.). The assessee is manufacturing textile machinery and spares in China. According to the Ld. D.R., the assessee has to file return of income in China in respect of the income earned therein. In fact, the assessee-company suffered a loss in China. The assessee is claiming set off of the loss suffered in China against the profit earned in India. According to the Ld. D.R., when the company in China is an independent and separate entity, the loss suffered by China company cannot be set off against the profit earned by the assessee-company in India. However, the CIT(Appeals), after entertaining new material in the form of Minutes of the Board meeting held in Coimbatore and other material which was not filed before the Assessing Officer, allowed the claim of the assessee for set off. The CIT(Appeals) concluded that the control and management of the China company is in India. The Ld. D.R. further

pointed out that the Minutes of the Board meeting and other material filed before the CIT(Appeals) were not available before the Assessing Officer. Therefore, there was a clear violation of Rule 46A of the Income-tax Rules, 1962. Hence, the Ld. D.R. submitted that the matter may be remitted back to the file of the Assessing Officer for reconsideration.

3. We heard Sh. R. Vijayaraghavan, the Ld.counsel for the assessee, who submitted that the additional evidence was filed before the CIT(Appeals) in the form of Minutes of the Board meeting, which was held at Coimbatore. This document was not available before the Assessing Officer.

4. We have considered the submissions on either side and perused the relevant material available on record. Admittedly, the CIT(Appeals) placed his reliance on the Minutes of the Board meeting held in Coimbatore to come to a conclusion that the management and control of the company in China is in India. The Minutes of the Board meeting was not available before the Assessing Officer. The CIT(Appeals) has not given any opportunity to the Assessing Officer. This Tribunal is of the considered opinion that there was a violation of Rule 46A. This Tribunal is of the

considered opinion that when the CIT(Appeals) admitted the additional evidence, an opportunity should have been given to the Assessing Officer to examine the genuineness of the document either by calling remand report or otherwise. In this case, such an opportunity was not given to the Assessing Officer. Therefore, this Tribunal is of the considered opinion that the matter needs to be reconsidered by the Assessing Officer in the light of the material that was filed before the CIT(Appeals). Accordingly, the orders of the lower authorities are set aside and the entire issue with regard to the claim of set off of loss of the company incorporated in China against the profit of the assessee-company in India, is remitted back to the file of the Assessing Officer. The Assessing Officer shall consider the matter afresh in the light of the material that was filed before the CIT(Appeals) and thereafter decide the same in accordance with law after giving reasonable opportunity to the assessee.

5. In the result, the appeal of the Revenue is allowed for statistical purposes.

Order pronounced on 27<sup>th</sup> November, 2015 at Chennai.

Sd/-  
(ए. मोहन अलंकामणी)  
(A. Mohan Alankamony)  
लेखा सदस्य/Accountant Member

sd/-  
(एन.आर.एस. गणेशन)  
(N.R.S. Ganesan)  
न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,  
दिनांक/Dated, the 27<sup>th</sup> November, 2015.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-1, Coimbatore
4. मुख्य आयकर आयुक्त/CCIT, Coimbatore
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.