

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'D' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं

श्री अब्राहम पी.जॉर्ज, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND  
SHRI ABRAHAM P. GEORGE, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.351/Mds/2017

निर्धारण वर्ष / Assessment Year : 2012-13

The Assistant Commissioner of  
Income Tax,  
Corporate Circle 3(1),  
Chennai - 600 034.

v. M/s Tamil Nadu Medicinal Plant  
Farms & Herbal Medicine  
Corporation Ltd.,  
Anna Hospital Campus,  
Arumbakkam, Chennai - 600 106.

(अपीलार्थी/Appellant)

PAN : AA ACT 2311 G

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Smt. Sumathi Venkatraman, JCIT

प्रत्यर्थी की ओर से/Respondent by : Shri G. Baskar, Advocate

सुनवाई की तारीख/Date of Hearing : 29.03.2017

घोषणा की तारीख/Date of Pronouncement : 31.05.2017

### **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) – 13, Chennai, dated 29.11.2016 and pertains to assessment year 2012-13.

2. The only issue arises for consideration is disallowance of nomination charges paid by the assessee to the extent of ₹95,39,037/- to Government of Tamil Nadu.

3. Smt. Sumathi Venkatraman, the Ld. Departmental Representative, submitted that the assessee claimed before the Assessing Officer that the Government of Tamil Nadu nominated the assessee as a sole procurement agency for the Government. The Ld. D.R. further submitted that the assessee was nominated to supply medicine to Government Siddha Hospitals. The nomination charges were paid by the assessee to the Government for giving preference in purchase of material. According to the Ld. D.R., the assessee being a State Government undertaking, charging of nomination fee would reduce the profit of the assessee. In other words, the profit of the assessee was taken by promoter of the company, namely, State Government in the name of nomination fees. Therefore, it is nothing but application of income. The Ld. D.R. fairly brought to the notice of the Bench that for the assessment year 2011-12, an identical issue came before this Tribunal in I.T.A. No.1487/Mds/2015. This Tribunal found that the nomination fees/charges paid to the Government cannot be

considered as application of income. It has to be allowed as income paid to the Government by overriding title.

4. On the contrary, Shri G. Baskar, the Ld.counsel for the assessee, submitted that on an identical situation, this Tribunal found that the payment made by the assessee was by overriding title, therefore, there cannot be any disallowance. According to the Ld. counsel, the main object of the Government for creating the assessee as a corporate body is to purchase Siddha, Ayurvedic and Unani medicines through the assessee without any process of tender. Without the grace of Government, the assessee would not have earned any money at all. The assessee was also given a responsibility of developing medicinal plant and manufacturing conventional medicines to the citizens. All the supplies made by the assessee are only to Government Department and institutions. Therefore, according to the Ld. counsel, the co-ordinate Bench of this Tribunal rightly found that the payment of nomination fees is by overriding title, hence, it cannot be considered as application of income.

5. We have considered the rival submissions on either side and perused the relevant material available on record. The contention

of the Ld. Departmental Representative was considered by a co-ordinate Bench of this Tribunal in the assessee's own case for assessment year 2011-12 and it was found that the nomination charges paid by the assessee to the Government is by overriding title, therefore, it cannot be considered to be income of the assessee. In view of the decision of the co-ordinate Bench of this Tribunal, we find no reason to interfere with the order of the lower authority and accordingly the same is confirmed.

6. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced on 31<sup>st</sup> May, 2017 at Chennai.

sd/-

(अब्राहम पी.जॉर्ज)

(Abraham P. George)

लेखा सदस्य/Accountant Member

sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated, the 31<sup>st</sup> May, 2017.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-13, Chennai
4. Principal CIT-3, Chennai-34
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.