

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'A' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं श्री एस जयरामन, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND  
SHRI S. JAYARAMAN, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.1149/Mds/2017

निर्धारण वर्ष / Assessment Year : 2006-07

The Income Tax Officer,  
Non Corporate Ward - 8(2),  
Chennai - 600 034.

v. M/s Ritambara Associates,  
No.34, Poonamallee High Road,  
Koyambedu, Chennai - 600 107.

PAN : AAIFR 6551 P

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri AR.V. Sreenivasan, JCIT

प्रत्यर्थी की ओर से/Respondent by : Shri Sandeep Bagmar, Advocate

सुनवाई की तारीख/Date of Hearing : 12.07.2017

घोषणा की तारीख/Date of Pronouncement : 03.08.2017

### **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) – 19, Chennai, dated 08.02.2017 and pertains to assessment year 2006-07.

2. Shri AR.V. Sreenivasan, the Ld. Departmental Representative, submitted that the assessee, partnership firm received advance of ₹ 82,09,775/- from M/s Lanson Motors Pvt. Ltd.

out of its accumulated profit. According to the Ld. D.R., the partners of the assessee-firm have substantial interest and holding substantial shares in M/s Lanson Motors Pvt. Ltd. Therefore, according to the Ld. D.R., the Assessing Officer treated the advance of ₹ 82,09,775/- as deemed dividend under Section 2(22)(e) of the Income-tax Act, 1961 (in short 'the Act'). However, on appeal by the assessee, the CIT(Appeals) deleted the same on the ground that the assessee-firm is the sister concern of M/s Lanson Motors Pvt. Ltd. According to the Ld. D.R., the assessee-firm is holding substantial interest in the shares of M/s Lanson Motors Pvt. Ltd., therefore, the deemed dividend has to be assessed in the hands of the assessee only.

3. On the contrary, Shri Sandeep Bagmar, the Ld.counsel for the assessee, submitted that the assessee-firm is not a shareholder in M/s Lanson Motors Pvt. Ltd. According to the Ld. counsel, the individual partners invested their own funds in the shares of M/s Lanson Motors Pvt. Ltd. The partnership firm itself was established by a partnership deed dated 15.10.2005. The investments in the shares in the name of individual partners were made before the partnership firm itself came into existence. Therefore, according to

the Ld. counsel, it cannot be said that the partnership firm invested its own fund in the name of its partners. Since the partners invested their own funds, according to the Ld. counsel, the partnership firm cannot be considered as beneficial owner of shares, therefore, the CIT(Appeals) has rightly deleted the addition made by the Assessing Officer.

4. We have considered the rival submissions on either side and perused the relevant material available on record. It is not in dispute that the partnership firm came into existence only on 15<sup>th</sup> October, 2005 by means of partnership deed. The investment in shares of M/s Lanson Motors Pvt. Ltd. was made by the partners of the assessee-firm before the partnership firm itself came into existence, therefore, it cannot be said that the partnership firm invested its funds. Hence, the partnership firm cannot be assessed for receiving advance from M/s Lanson Motors Pvt. Ltd. This Tribunal is of the considered opinion that the partnership firm cannot be considered as beneficial owner of the shares. It is a well settled principle of law that the deemed dividend has to be assessed only in the hands of registered shareholder or beneficial shareholder. In this case, the individual partners are the registered and beneficial

shareholders. Therefore, at the best, the advance of ₹82,09,775/- has to be assessed only in the hands of individual partners.

5. In view of the above, this Tribunal do not find any 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 3<sup>rd</sup> August, 2017 at Chennai.

sd/-

(एस जयरामन)

(S. Jayaraman)

लेखा सदस्य/Accountant Member

sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated, the 3<sup>rd</sup> August, 2017.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-19, Chennai-34
4. Principal CIT, Central-2, Chennai
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.