

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL  
'C' 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.460/Mds/2017

निर्धारण वर्ष / Assessment Year : 2012-13

M/s Shree Ganesh Ventures,  
No.14A, Ennore High Road,  
Chennai - 600 019.

v. The Income Tax Officer,  
Non Corporate Ward 6(2),  
Chennai - 600 034.

PAN : AADCS 4838 E

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri M.V. Swaroop, Advocate

प्रत्यर्थी की ओर से/Respondent by : Shri N. Madhavan, JCIT

सुनवाई की तारीख/Date of Hearing : 11.05.2017

घोषणा की तारीख/Date of Pronouncement : 03.08.2017

### **आदेश /ORDER**

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

This appeal of the assessee is directed against the order of the Commissioner of Income Tax (Appeals) -5, Chennai, dated 21.12.2016 and pertains to assessment year 2012-13.

2. Shri M.V. Swaroop, the Ld.counsel for the assessee, submitted that the Assessing Officer disallowed a sum of

₹10,89,245/- towards interest paid to the bank. According to the Ld. counsel, the Assessing Officer found that borrowed funds were given to the partners and not used for business purpose. During the relevant year under consideration, no loan was given by the assessee-firm to its partners. The Assessing Officer has simply disallowed the claim of the assessee towards interest payment on the basis of bank statement without referring to any specific transaction. The Ld.counsel further submitted that in the balance sheet there was no reference about advance of money to any of the partners. The Ld.counsel further submitted that the aggregate closing credit balance of partners was ₹311.70 lakhs, whereas, the advance to partners was ₹210.25 lakhs. Therefore, according to the Ld. counsel, the firm owed ₹101.45 lakhs to its partners and not otherwise. Referring to the decision of Jaipur Bench of this Tribunal in Namdev Export, Jaipur v. ITO in I.T.A. No.1104/JP/2011, the Ld.counsel for the assessee submitted that when the aggregate net balance of partner's capital account is credit only and no interest was paid by the firm to its partners on such credit balance, merely because the firm advanced money to one of its partners, no portion of interest can be disallowed in the hands of the partnership firm.

3. On the contrary, Shri N. Madhavan, the Ld. Departmental Representative, submitted that the assessee-firm gave loans during the year under consideration to its partner Shri Raghav Saraf to the extent of ₹45,66,575/- for purchase of property. Similarly, the retired partner Shri Ashok Kumar Saraf was also given a loan of ₹36,51,949/-. Interest was not levied on both the advances. Admittedly, according to the Ld. D.R., the assessee had borrowed loan and loan was not used for the purpose of business and it was used for giving loans to the partner and retired partner. The partner and retired partners received loans from assessee-firm and utilized the same for purchasing the individual properties. Therefore, according to the Ld. D.R., the CIT(Appeals), by placing reliance on the judgment of Madras High Court in CIT v. India Silk House (1984) 18 Taxman 333, confirmed 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 assessee advanced loans to its partner and erstwhile partner. The Revenue claims that the borrowed funds were diverted for non-business purpose by way of giving loan to the

partner and erstwhile partner of the assessee. The assessee now claims that the aggregate credit balance of the partners was ₹311.70 lakhs, whereas, advance was made only to the extent of ₹210.25 lakhs. Therefore, the assessee claims that there was excess capital of ₹101.45 lakhs. Hence, in view of decision of Jaipur Bench of this Tribunal in Namdev Export, Jaipur (supra), there cannot be any disallowance. From the order of the lower authority, it appears that the availability of credit balance to the extent of ₹311.70 lakhs was not taken into consideration. It is not known whether the assessee had sufficient credit balance in the capital account. It is also not known why the assessee borrowed loan? These facts were not examined by both the authorities below. Therefore, the matter needs to be re-examined by the Assessing Officer. Accordingly, the orders of the authorities below are set aside and the entire issue of disallowance of interest on the borrowed funds is remitted back to the file of the Assessing Officer. The Assessing Officer shall re-examine the matter in the light of the material that may be filed by the assessee and thereafter decide the issue afresh in accordance with law, after giving a reasonable opportunity to the assessee.

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

Order pronounced on 3<sup>rd</sup> August, 2017 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 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)-5, Chennai-34
4. Principal CIT-9, Chennai
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.