

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 Nos.993, 994 & 995/Mds/2016

&

**C.O. Nos.99, 100 & 101/Mds/2016**

(in ITA Nos.993, 994 & 995/Mds/2016)

निर्धारण वर्ष / Assessment Years : 2010-11 to 2012-13

The Deputy Commissioner of  
Income Tax,  
Central Circle – 1(2),  
Chennai - 600 034.

(अपीलार्थी/Appellant)

v. M/s Saravana Stores (Tex),  
No.45, Ranganathan Street,  
T. Nagar, Chennai - 600 017.

PAN : AAWFS 6761 Q

(Respondent & Cross-objector)

आयकर अपील सं./ITA Nos.1173 & 1174/Mds/2016

निर्धारण वर्ष / Assessment Years : 2010-11 to 2011-12

M/s Saravana Stores (Tex),  
No.45, Ranganathan Street,  
T. Nagar, Chennai - 600 017.

(अपीलार्थी/Appellant)

v. The Assistant Commissioner of  
Income Tax,  
Central Circle – IV(2),  
Chennai - 600 034.

(प्रत्यर्थी /Respondent)

राजस्व की ओर से /Revenue by : Shri S. Bharath, CIT

निर्धारिती की ओर से /Assessee by : Ms. Jharna B. Harilal, CA

सुनवाई की तारीख/Date of Hearing : 23.11.2017

घोषणा की तारीख/Date of Pronouncement : 30.11.2017

**आदेश / O R D E R**

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

The appeals of both the Revenue and assessee are directed against the common order passed by the Commissioner of Income Tax (Appeals)-18, Chennai, dated 27.01.2016. The Revenue's appeals pertain to assessment years 2010-11 to 2012-13 and the assessee's appeals pertain to assessment years 2010-11 and 2011-12. The assessee has also filed cross-objections against the very same order of the CIT(Appeals). Since common issue arises for consideration in all the appeals and cross-objections, we heard all the appeals and cross-objections together and disposing of the same by this common order.

2. There was a delay of 64 days in filing the cross-objections by the assessee. The assessee has filed a petition for condonation of delay. We have heard the Ld. representative and the Ld. D.R. We find that there was sufficient cause for not filing the cross-objections before the stipulated time. Therefore, we condone the delay and admit the appeal.

3. Ms. Jharna B. Harilal, the Ld. representative for the assessee, submitted that the assessee-partnership is engaged in

the business of retail trading in textiles. According to the Ld. representative, there was a search operation in the premises of the assessee and at the residential premises of the partners. According to the Ld. representative, over a period of time, the assessee has given interest-free loans and advances to sister concerns for business purposes and to the partners for construction of business premises. According to the Ld. representative, some of the amounts were deposited in bank account as against the loan borrowed from bank. According to the Ld. representative, the assessee borrowed loan for purchasing vehicles and for working capital purposes. The Assessing Officer disallowed proportionate interest on borrowed loan in proportion of the interest-free advances given to sister concerns. Over a period of time, according to the Ld. representative, the assessee has also expanded the trade in jewellery. The accumulated profit of textile segment was used for starting the jewellery retail business. According to the Ld. representative, the assessee is also engaged in the business of oil, water, bakery and dairy products. The total advances given to sister concerns and partners come to Rs.20,46,38,345/-.

4. The Ld. representative for the assessee further submitted that during the financial year 2002-03, one of the partners Shri

Selvarathinam got separated from family business by way of family partition. This jewellery business of the assessee-firm, Oil division and Saravana Stores Enterprises were taken over by the said Shri Selvarathinam. According to the Ld. representative, other businesses are under the control of assessee's partnership firm. In the process of family partition, the jewellery segment, oil division and Saravana Stores Enterprises are allotted to Shri Selvarathinam. According to the Ld. representative, the assessee's business is a family business and it was carried on in the name of partnership firm for the purpose of convenience. By way of a family arrangement one of the partner was allotted jewellery segment, oil division and Saravana Enterprises, according to the Ld. representative, hence there cannot be any disallowance of interest on the borrowed funds. Only for the purpose of settling the family dispute, the advances made to jewellery business division, oil division and Saravana Stores Enterprises were written off in the Profit & Loss account. Therefore, according to the Ld. representative, there is no question of any disallowance of proportionate interest.

5. On the contrary, Shri S. Bharath, the Ld. Departmental Representative, submitted that in respect of the loans given for the earlier assessment years, the Assessing Officer granted partial

relief even though in respect of the loan, the interest was disallowed. According to the Ld. D.R., even if the loan relates to earlier years, the disallowance requires to be made on the interest debited in each year once the loan was proved to be for non-business purpose. In the absence of any material to show that the loan was advanced out of own funds and not out of borrowed funds, according to the Ld. D.R., the disallowance has to be made, therefore, the CIT(Appeals) is not justified in allowing the partial relief to the assessee. According to the Ld. D.R., the CIT(Appeals) has also placed reliance on the assessee's own case for assessment years 2006-07 to 2009-10 wherein the additions were deleted since there was no incriminating material found during the course of search operation. During the years under consideration, according to the Ld. D.R., the assessment proceeding was pending, therefore, the pending assessment would abate. Hence, according to the Ld. D.R., the Assessing Officer has to pass a composite assessment order including the income which was disclosed in the regular return, therefore, the CIT(Appeals) is not justified in granting partial relief to the assessee.

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

advanced funds to sister concerns and one of the partners. The assessee also borrowed funds for business. The Assessing Officer disallowed proportionate interest on borrowed funds to the extent to which it was advanced to sister concerns and partner. On a query from the Bench, both the representatives of the assessee and Revenue could not clarify how the concerns which received the advances are sister concerns of the assessee. The assessee, being a partnership firm, it is not known whether the assessee-firm holding any shares of other firms. Moreover, the assessee claims that it is a family business and the funds allotted to jewellery division, oil division and Saravana Store Enterprises were written off in the Profit & Loss account since the same were allotted to Shri Selvarathinam on a family settlement. This Tribunal is of the considered opinion that when the funds were written off by way of family partition, then it cannot be construed as diversion of funds. However, both the authorities below had no occasion to consider whether there was family partition and how the other firms which received advances from the assessee-firm are sister concerns of the assessee. In those circumstances, this Tribunal is of the considered opinion that the matter needs to be reconsidered by the Assessing Officer. Accordingly, orders of both the authorities below

are set aside and the entire issue of disallowance of interest is remitted back to the file of the Assessing Officer. The Assessing Officer shall re-examine the matter and bring on record how the other firms which received the advances from the assessee-firm are the sister concerns of the assessee and whether there is any family partition as claimed by the assessee and thereafter decide the issue afresh in accordance with law, after giving a reasonable opportunity to the assessee.

7. The assessee has also filed cross-objections to support the order of the CIT(Appeals). Since the entire issue of disallowance of interest raised in both the assessee's appeals and Revenue's appeals is remitted back to the file of the Assessing Officer, the cross-objections have become infructuous.

8. In the result, all the appeals filed by the Revenue and the assessee are allowed for statistical purposes. However, the cross-objections stand dismissed.

Order pronounced on 30<sup>th</sup> November, 2017 at Chennai.

sd/-

(एस जयरामन)

(S. Jayaraman)

लेखा सदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated, the 30<sup>th</sup> November, 2017.

Kri.

sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. निर्धारिती /Assessee
2. Assessing Officer
3. आयकर आयुक्त (अपील)/CIT(A)-18, Chennai-34
4. Principal CIT -I, Chennai
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.