

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'A' BENCH, CHENNAI

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

श्री एम. बालगणेश, लेखा सदस्य केसमक्ष

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

आयकर अपील सं./ITA No.2651/Mds/2016

निर्धारण वर्ष / Assessment Year : 2012-13

The Assistant Commissioner of
Income Tax, Circle -1,
1st floor, Popular Building,
Mead Street, W.C.C. Road,
Nagercoil – 629 001
Kanyakumari District.

v. M/s Vilavancode Self reliance
Credit Services Ltd.,
No.1/59, F6,
Fr. MXR Complex,
Main Road, Marthandam,
Kanyakumari Dist. – 629 165.

(अपीलार्थी/Appellant)

PAN : AAACV 9211 F
(प्रत्यर्थी/Respondent)

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

प्रत्यर्थी की ओर से/Respondent by : Sh. A.S. Sriraman, Advocate

सुनवाई की तारीख/Date of Hearing : 18.01.2018

घोषणा की तारीख/Date of Pronouncement : 08.02.2018

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) -3, Madurai, dated 13.06.2016 and pertains to assessment year 2012-13 deleting the disallowance made by the Assessing Officer.

2. Shri AR.V. Sreenivasan, the Ld. Departmental Representative, submitted that the assessee is a mutual benefit company engaged in the business of finance. The company was declared as Nidhi company by Ministry of Corporate Affairs. According to the Ld. D.R., in the Profit & Loss account, the assessee claimed an amount of ₹3,18,27,991/- as expenditure towards interest payment on the deposits. The assessee, however, has not deducted tax as required under Section 194A of the Income-tax Act, 1961 (in short 'the Act'). According to the Ld. D.R., when the assessee paid interest to persons / depositors exceeding ₹5000/- during the financial year, then the assessee is required to deduct tax under Section 194A of the Act. The assessee claimed before the Assessing Officer that the depositors furnished Form 15G / 15H for non-deduction of tax. Referring to Rule 29C of Income-tax Rules, 1962, the Ld. D.R. submitted that when the assessee accepts declaration Form 15G / 15H, the same shall be delivered to the Chief Commissioner or Commissioner having jurisdiction to assess the assessee. In fact, Form 15G / 15H shall be furnished to the respective Chief Commissioner / Commissioner on or before 7th day of the month next following the month in which the declaration is furnished to the assessee. Unfortunately,

according to the Ld. D.R., the assessee had not delivered the copies of Form 15G / 15H to the respective Commissioner / Chief Commissioner, therefore, there is no justification for non-deduction of tax. Hence, according to the Ld. D.R., the Assessing Officer has rightly disallowed the interest payment to the extent of ₹78,08,791/- under Section 40(a)(ia) of the Act.

3. On the contrary, Sh. A.S. Sriraman, the Ld.counsel for the assessee, submitted that the depositors furnished Form 15G / 15H, therefore, the assessee has not deducted any tax at source at the time of paying or crediting interest on the deposit. Referring to Section 40(a)(ia) of the Act, the Ld. counsel submitted that if the law requires to deduct tax and the assessee fails to deduct the same, then there can be disallowance. In this case, according to the Ld. counsel, when the recipients of the interest on the deposit filed Form 15G / 15H, then the law does not require the assessee to deduct tax, therefore, there cannot be any disallowance under Section 40(a)(ia) of the Act. Referring to Section 272A(2)(f) of the Act, the Ld. counsel submitted that this Section provides for levy of penalty in case Form 15G / 15H was not furnished to the Commissioner / Chief Commissioner as the case may be. So, according to the Ld. counsel, at the best, the Department may levy

penalty for not furnishing Form 15G / 15H received by the assessee from the depositors and definitely there cannot be any disallowance of interest under Section 40(a)(ia) of the Act.

4. We have considered the rival submissions on either side and perused the relevant material available on record. As rightly submitted by the Ld. D.R., the assessee has not deducted tax at the time of crediting or paying interest on the deposits. When the assessee received Form 15G / 15H from the depositors, then the assessee cannot deduct tax. It is also obligatory on the part of the assessee to file / furnish Form 15G / 15H received from the depositors to the respective Commissioner / Chief Commissioner within the prescribed time. In this case, it is not in dispute that the assessee received Form 15G / 15H but admittedly it was not filed before the Commissioner / Chief Commissioner before the prescribed date. Therefore, this Tribunal is of the considered opinion that when the assessee received Form 15G / 15H, there is no necessity to deduct tax. The law does not require the assessee to deduct tax when the depositors file 15G / 15H. However, there was negligence on the part of the assessee in furnishing the copies of Form 15G / 15H to the respective Commissioner / Chief Commissioner. As rightly submitted by the Ld. counsel for the

assessee, Section 272A(2)(f) of the Act provides for levy of penalty in case such forms were not furnished before the Commissioner / Chief Commissioner. Therefore, at the best, penalty may be levied under Section 272A(2)(f) of the Act and definitely there cannot be any disallowance under Section 40(a)(ia) of the Act.

5. In view of the above, we are unable to uphold the orders of the lower authorities. The orders of both the authorities below are set aside and the addition made by the Assessing Officer is deleted.

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

Order pronounced on 8th February, 2018 at Chennai.

sd/-

(एम. बालगणेश)

(M. Balaganesh)

लेखा सदस्य/Accountant Member

sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated, the 8th February, 2018.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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