

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'B' BENCH, CHENNAI

श्रीएन.आर.एस. गणेशन, न्यायिकसदस्य 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 Nos.344, 345, 346 & 347/Chny/2018

निर्धारण वर्ष /Assessment Years :2011-12 to 2014-15

M/s TVS Shriram Growth Fund,  
"Jayalakshmi Estate",  
29, (Old No.8), Haddows Road,  
Chennai - 600 006.

v. The Income Tax Officer,  
Non Corporate Ward 3(5),  
Chennai - 600 034.

PAN : AABTT 5582 H

(अपीलार्थी/Appellant) (प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Sh. R. Vijayaraghavan, Advocate

प्रत्यर्थी की ओर से /Respondent by : Ms. D. Kumutha, JCIT

सुनवाई की तारीख/Date of Hearing : 29.10.2018

घोषणा की तारीख/Date of Pronouncement : 15.11.2018

### **आदेश / O R D E R**

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

All the appeals of the assessee are directed against the common order passed by the Commissioner of Income Tax (Appeals) – 4, Chennai, dated 17.11.2017 and pertaining to assessment years 2011-12 to 2014-15. Therefore, we heard all

these appeals together and disposing of the same by this common order.

2. Sh. R. Vijayaraghavan, the Ld.counsel for the assessee, submitted that in the assessee's own case for assessment years 2009-10 and 2010-11, this Tribunal found that the assessee-Fund is a determinate trust and income of the trust has to be assessed only in the hands of the beneficiaries. According to the Ld. counsel, this Tribunal placed its reliance on the judgment of Karnataka High Court in *India Advantage Fund (2017) 78 taxmann.com 301*. Referring to the interest income, the Ld.counsel submitted that there was a confusion in the mind of the Assessing Officer while giving effect to the order of this Tribunal for the assessment years 2009-10 and 2010-11. Therefore, the assessee had filed Miscellaneous Petition before this Tribunal in M.P. Nos.310 & 311/Chny/2017. According to the Ld. counsel, this Tribunal by an order dated 04.04.2018, found that pass through status was given to the assessee-Fund, therefore, the entire income of the assessee-Fund has to be assessed only in the hands of the beneficiaries and not in the hands of the trust / Fund. In view of this decision of the Tribunal for assessment years 2009-10 and 2010-11, according to the Ld.

counsel, the CIT(Appeals) is not justified in confirming the order of the Assessing Officer.

3. We heard Ms. D. Kumutha, the Ld. Departmental Representative also. According to the Ld. D.R., the beneficiaries did not offer the interest income for taxation. However, they had adjusted against the expenditure relating to dividend. According to the Ld. D.R., the CIT(Appeals) by placing reliance on the remand report submitted by the Assessing Officer, found that the status as a representative assessee is restricted only in respect of the income earned from Venture Capital Fund. Therefore, according to the Ld. D.R., the concept cannot be extended in respect of the interest income earned by the assessee.

4. We have considered the rival submissions on either side and perused the relevant material available on record. This Tribunal in the assessee's own case for assessment years 2009-10 and 2010-11, found that the assessee-trust is a determinate one and beneficiaries are identifiable, therefore, the income of the assessee-Fund has to be assessed only in the hands of the beneficiaries. This finding of the Tribunal in the assessee's own case for assessment years 2009-10 and 2010-11 attains finality. In fact, this

Tribunal for assessment years 2009-10 and 2010-11 in I.T.A. Nos.981 & 982/Mds/2016 has observed as follows:-

“6.7 In the instant case, the assessee has created a trust which was registered and the beneficiaries have been identified by the contribution agreement (PPM) and their shares are also ascertainable with respect to contributions and the units. The Hon'ble High Court considered the issue regarding identification of beneficiaries at the time of formation of the Trust and expressed view that even after execution of the trust deed if the beneficiaries are identifiable and their shares are ascertainable it is sufficient compliance to hold the trust as determinate Trust. In the assessee's case the beneficiaries are identifiable with PPM and their shares are ascertainable as discussed earlier in this order. The facts of the case are similar to that of "India advantage Fund" Supra and the decision rendered by the Hon'ble ITAT Bangalore squarely applies in this case. Respectfully following the decision of the co-ordinate Bench of Bangalore and Hon'ble Karnataka High Court Supra we hold that the assessee's Trust is a determinate trust and the appeal of the assessee is on this issue is allowed.”

5. In respect of interest income, it appears there was a confusion and the assessee filed a Miscellaneous Petition before this Tribunal in M.P. Nos.310 & 311/Chny/2017. This Tribunal by an order dated 04.04.2018 has observed as follows at paras 8 & 9:-

“8. Since the details of the income and expenditure is not available in the Profit & Loss account or in the document filed before this Tribunal, this Tribunal remitted back the matter to the file of the Assessing Officer for a limited verification to collect information from beneficiaries and allow pass through status in the hands of the assessee.

Therefore, the Assessing Officer misunderstood the direction of the Tribunal by picking up same words here and there at para 7.2 at page 34 of the order. Hence, this Tribunal is of the considered opinion that the Assessing Officer is not correct in saying that in case the income is not admitted / incorrectly admitted, it has to be assessed in the hands of the assessee. This Tribunal is of the considered opinion that whether the income is admitted by the respective beneficiaries or not, since pass through status was given to the assessee-Fund, the entire income has to be assessed only in the hands of the beneficiaries and not in the hands of the trust / Fund. The order of this Tribunal is modified / clarified accordingly.

9. In the result, both the Miscellaneous Petitions filed by the assessee are allowed.”

6. In view of the above order of the co-ordinate Bench of this Tribunal, this Tribunal is unable to uphold the orders of both the authorities below. Therefore, as held by this Tribunal for assessment years 2009-10 and 2010-11, the assessee-Fund / trust is a determinate trust and the beneficiaries are identifiable. Therefore, even in respect of interest income irrespective of the fact it was admitted by the beneficiaries or not, a pass through status was given to the assessee. Hence, the entire income of the assessee-Fund has to be assessed only in the hands of the beneficiaries and not in the hands of the assessee-Fund / trust.

7. In view of the above, we are unable to uphold the orders of the authorities below. Accordingly, orders of both the authorities below are set aside and the entire addition made in the hands of the assessee is deleted.

8. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the court on 15<sup>th</sup> November, 2018 at Chennai.

sd/-

(ए. मोहन अलंकामणी)  
(A. Mohan Alankamony)  
लेखा सदस्य/Accountant Member  
चेन्नई/Chennai,

दिनांक/Dated, the 15<sup>th</sup> November, 2018.

Kri.

sd/-

(एन.आर.एस. गणेशन)  
(N.R.S. Ganesan)  
न्यायिक सदस्य/Judicial Member

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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