

आयकर अपीलीय अधिकरण, 'बी'/एस एम सी न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

B / SMC 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 Nos.376 & 377/Chny/2018

निर्धारण वर्ष /Assessment Years :2010-11 & 2013-14

Shri Harisingh Hirawat,  
37, Strotten Muthia Mudaly Street,  
Chennai - 600 079.

v. The Income Tax Officer,  
Non Corporate Ward 4(2),  
Chennai - 600 006.

PAN : AAAPH 3587 K

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri Arjun, CA

प्रत्यर्थी की ओर से/Respondent by : Shri B. Sagadevan, JCIT

सुनवाई की तारीख/Date of Hearing : 15.11.2018

घोषणा की तारीख/Date of Pronouncement : 03.12.2018

### **आदेश / O R D E R**

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

Both the appeals of the assessee are directed against the respective orders of the Commissioner of Income Tax (Appeals)-5, Chennai, dated 28.11.2017 and pertain to assessment years 2010-11 and 2013-14. Since common issue arises for consideration in both the appeals, we heard these appeals together and disposing of the same by this common order.

2. Shri Arjun, the Ld. representative for the assessee, submitted that the assessee invested in shares of public limited company. On sale of such shares, according to the Ld. representative, the assessee claimed exemption under Section 10(38) of the Income-tax Act, 1961 (in short 'the Act'). The Assessing Officer by placing reliance on the investigation report said to be received from Investigation Wing of the Department at Kolkata, disallowed the claim of the assessee. According to the Ld. representative, when the assessee invested in the shares of the company, the profit arising on sale of such share is exempted under Section 10(38) of the Act.

3. On the contrary, Shri B. Sagadevan, the Ld. Departmental Representative, submitted that the assessee purchased 3500 shares of M/s Concrete Credit Ltd. According to the Ld. D.R., the assessee could not disclose the mode of delivery. The confirmation letter filed by the assessee does not bear the date of confirmation. Moreover, copy of Demat account was also not filed. Therefore, according to the Ld. D.R., the Assessing Officer concluded that the long term capital gain was a bogus one. On further appeal, the CIT(Appeals) found that the Assessing Officer received information from the Investigation Wing of the Department at Kolkata regarding the bogus entries of capital gain on sale

of shares of M/s Concrete Credit Ltd. Therefore, according to the Ld. D.R., the CIT(Appeals) has rightly confirmed the disallowance.

4. We have considered the rival submissions on either side and perused the relevant material available on record. The assessee admittedly invested in the shares of M/s Concrete Credit Ltd. M/s Concrete Credit Ltd. is a public limited company registered by the Registrar of Companies. It was also allowed to issue public shares. The Assessing Officer appears to have received information from the Investigation Wing of the Department at Kolkata regarding bogus entries of sale of shares of M/s Concrete Credit Ltd. It is not known what is the information the Assessing Officer has actually received. The assessee was not given any opportunity to controvert the said information. Therefore, this Tribunal is of the considered opinion that the assessee should be given an opportunity with respect to the information said to be received from the Investigation Wing of the Department at Kolkata. Accordingly, orders of both the authorities below are set aside and the entire issue is remitted back to the file of the Assessing Officer. The Assessing Officer shall furnish a copy of the report said to be received from the Investigation Wing of the Department at Kolkata and thereafter decide the issue afresh in accordance with law, after giving a reasonable opportunity to the assessee.

5. In the result, both the appeals of the assessee are allowed for statistical purposes.

Order pronounced in the court on 3<sup>rd</sup> December, 2018 at Chennai.

sd/-

(ए. मोहन अलंकामणी)

(A. Mohan Alankamony)

लेखा सदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated, the 3<sup>rd</sup> December, 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)-5, Chennai-34

4. Principal CIT-9, Chennai

5. विभागीय प्रतिनिधि/DR

6. गार्ड फाईल/GF.