

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई।  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
'C' BENCH: CHENNAI**

श्री जॉर्ज माथन, न्यायिक सदस्य एवं  
श्री इंदूरी रामा राव, लेखा सदस्य के समक्ष

**BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER AND  
SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.1007/Chny/2019

निर्धारण वर्ष /Assessment Year: 2015-16

Shri Bhawarlal Sharma,  
33-A, Karikalan Street,  
Shevapet, Salem-636 002.

**Vs.** The Income Tax Officer,  
Ward-1(2),  
Salem.

**[PAN: AAKHB 0807 J]**

आयकर अपील सं./ITA No.1008/Chny/2019

निर्धारण वर्ष /Assessment Year: 2015-16

Shri Vimal Kumar Sharma,  
33-A, Karikalan Street,  
Shevapet, Salem-636 002.

**Vs.** The Income Tax Officer,  
Ward-1(2),  
Salem.

**[PAN: AAKHV 0308 L]**

आयकर अपील सं./ITA No.1009/Chny/2019

निर्धारण वर्ष /Assessment Year: 2015-16

Shri Laxmi Vallabh Sharma,  
33-A, Karikalan Street,  
Shevapet, Salem-636 002.

**Vs.** The Income Tax Officer,  
Ward-1(2),  
Salem.

**[PAN: AACHL 4238 D]**

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by

: Mr.R.Raghunathan, FCA

प्रत्यर्थी की ओर से /Respondent by

: Mr. R.Clement Ramesh-  
Kumar, Addl.CIT

सुनवाई की तारीख/Date of Hearing

: 29.07.2019

घोषणा की तारीख /Date of Pronouncement

: 29.07.2019

**आदेश / O R D E R**

**PER GEORGE MATHAN, JUDICIAL MEMBER:**

These are the appeals filed by the assessee viz., Shri Bhawarlal Sharma, Shri Vimal Kumar Sharma & Shri Laxmi Vallabh Sharma against the Orders of the Commissioner of Income Tax (Appeals), Salem, in Appeal Nos.119/2017-18, 120/2017-18 & 122/2017-18 dated 08.02.2019 for the AY 2015-16.

**2.** Mr. R.Clement Ramesh Kumar, Addl.CIT, represented on behalf of the Revenue and Mr.R.Raghunathan, FCA, represented on behalf of the assessee.

**3.** It was submitted by the Ld.AR that the assessee were originally not having taxable income. During the relevant AY, as the assessee had generated taxable income, the assessee had filed returns for the first time. It was a submission that the AO did not accept the opening capital balance as disclosed by the assessee and had consequently, treated the same as unexplained cash credits and added to the returned income of the assessee. It was a submission that on appeal, the Ld.CIT(A) had also dismissed the assessee's appeals on the ground that the assessee could not provide any concrete proof to establish the source for the opening capital. It was a submission that as the assessee had adequate opening capital and the same was supported by balance sheet and P&L A/c as

furnished for the immediately preceding AYs, though returns had not filed, as the assesseees did not have any taxable income during the relevant AY, the additions were liable to be deleted.

**4.** In reply, the Ld.DR submitted that during the demonetization time, the assesseees had deposited the amounts in the case of Shri Bhawarlal Sharma (HUF) to an extent of Rs.13,32,000/- Shri Vimal Kumar Sharma (HUF) to an extent of Rs.13,49,000/- and in the case of Shri Laxmi Vallabh Sharma (HUF) to an extent of Rs.13,77,000/-. When the same was questioned, all the assesseees had come up with the explanation that they were doing money lending activities and that they do not have taxable income during the earlier years but had generated taxable income during the relevant AY and therefore, had filed their returns. It was a submission that the AO had disbelieved the assessee's claims as the assesseees were not registered under the Tamil Nadu Moneylenders Act, 1957. It was a further submission that the assesseees had also argued that the incomes of the assesseees during the earlier years were below the taxable limit and therefore, no returns had been filed. It was a submission that if the incomes of the assesseees were below taxable limit, then the funds would have been used for their household expenses itself and there would be no funds available for accretion to the capital as has been claimed. It was a further submission that a perusal of the balance sheet and P&L A/c of the parties produced clearly showed that there were no drawings or minimal drawings which could not have sustained a family

even for one month. It was a further submission that though the assesseees have given names of persons to whom the loans had been given and have produced confirmation letters, the said persons have not been produced before the AO for examination also. It was a submission that the Revenue has no objection if the issues in these appeals are restored to the file of the AO for re-examination.

**5.** We have considered the rival submissions.

**6.** A perusal of the Paper Book filed by the assesseees clearly shows that the assesseees have given confirmation letters obtained from various persons who claimed to have received money from them. It is noticed that the AO has not examined these persons at all. Further, the assesseees shown to have paid salaries, the same has also not been examined by the AO. The AO has also not considered the applicability of the provisions of Sec.269SS & 269T and so on and so forth in respect of the cash transactions. A perusal of the Paper Book clearly shows that the assesseees have received cash amounting to Rs.20,000/- and more during various dates. The AO seems to have disbelieved the statement of the assesseees without doing any detailed examination. This is not permissible. This being so, the issues in these appeals are restored to the file of the AO for re-adjudication. The AO shall be at liberty to call for the production of the debtors for verification. The confirmation letters are also notice to be identical and it also does not talk of rate of interest or the

dates on which the amounts were taken, how taken, if returned, when returned and how returned. It also does not explain as to whether the borrowers were income tax assesseees. In fact, some of them say, they have borrowed money for family, business. Neither says anything in respect of the security provided. This being so, in the interest of natural justice, the issues in these appeals are restored to the file of the AO for re-adjudication after granting the assesseees adequate opportunity to substantiate its case

7. In the result, appeals filed by the assesseees are partly allowed for statistical purposes.

Order pronounced on the 29<sup>th</sup> day of July, 2019 in Chennai.

**Sd/-**

(इंटूरी रामा राव)

**(INTURI RAMA RAO)**

लेखा सदस्य/**ACCOUNTANT MEMBER**

**Sd/-**

(जॉर्ज माथन)

**(GEORGE MATHAN)**

न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 29<sup>th</sup> July, 2019.

TLN

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

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