

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCH 'SMC-B', BANGALORE**

BEFORE SHRI A.K. GARODIA, ACCOUNTANT MEMBER

**ITA No. 1014 (Bang) 2019
(Assessment year : 2006 – 07)**

Shri Manoj Tharian,
No. 3001, 5th Cross, 12th 'A' Main,
HAL II Stage, Indiranagar,
Bangalore – 560008.
PAN. AAJPT2181L

Appellant

Vs

DCIT Circle 12 (1),
Bengaluru.

Respondent

&

**ITA No. 1015 (Bang) 2019
(Assessment year : 2006 – 07)**

M/s Microgenesis Techsoft Pvt. Ltd.,
No. 3001, 5th Cross, 12th 'A' Main,
HAL II Stage, Indiranagar,
Bangalore – 560008.
PAN. AAECM1175F

Appellant

Vs

DCIT Circle 12 (1),
Bengaluru.

Respondent

Assessee by : Shree Balaram Rao, Advocate

Revenue by : Shri Ganesh R. Ghale, Standing Counsel

Date of hearing : 23-10-2019

Date of pronouncement : 25-10-2019

ORDER

PER A. K. GARODIA, A.M.:

These two appeals are filed by two different but connected assesseees and these are directed against two separate orders of CIT (A), 4 Bengaluru both dated 13.03.2019 for A. Y. 2006 - 07. Both these appeals were heard together and are being disposed of by way of this common order for the sake of convenience.

2. It was submitted by the learned AR of the assessee that Ground No. 1 in both appeals is general and the grounds in respect of validity of reassessment as per Ground No. 2 & 3 in ITA No. 1014/Bang/2019 and as per Ground No. 3 & 4 in ITA No. 1015/Bang/2019 are not pressed and accordingly, these grounds are rejected as not pressed.

3. Thereafter, he submitted that the issue on merit to be decided in these two appeals is regarding addition made by the AO of Rs. 15 lacs in each case u/s 2 (22) (e) of I. T. Act. He pointed out that the company M/s MicroGenesis CADsoft Private Limited has given loan of Rs. 20,44,466/- to M/s MicroGenesis Techsoft Private Ltd. and Manoj Tharian is a beneficial shareholder holding shares to the extent of 49.88% in the lender company and 90% in the second company. He also pointed out that Rs. 544,466/- was paid by M/s MicroGenesis CADsoft Private Limited to M/s MicroGenesis Techsoft Private Ltd. On account of reimbursement of expenses for F. Y. 2005 – 06 and hence, the balance amount of Rs. 15 lacs was added by the AO as deemed dividend u/s 2 (22) (e) on substantive basis in the hands of the company M/s MicroGenesis Techsoft Private Ltd. And the same amount was added in the hands of Shri Manoj Tharian also on protective basis and both these additions are upheld by CIT (A).

4. He submitted that addition of same income in both cases is not justified. He placed reliance on the judgment of the special bench of the tribunal rendered in the case of ACIT vs. Bhaumik Colour Pvt. Ltd. As reported in 118 ITD 1. He pointed out that as per this tribunal order, addition can be made in the hands of the shareholder and since Shri Manoj Tharian is shareholder of the lender company. The addition in his hands may be confirmed but the addition in the hands of the company should be deleted. Learned DR of the revenue supported the orders of CIT (A)

5. I have considered the rival submissions. This is undisputed fact Mr. Manoj Tharian is holding substantial shares in the lender company and respectfully following this tribunal order rendered in the case of ACIT vs. Bhaumik Colour Pvt. Ltd. (Supra), I confirm the addition in the hands of Shri Manoj Tharian is shareholder of the lender company. The addition in his hands may be confirmed on substantive basis and delete the addition in the hands of the company.

6. In the result, ITA No. 1014/Bang/2019 is dismissed and the appeal in ITA No. 1015/Bang/2019 is partly allowed.

Order pronounced in the open court on the date mentioned on the caption page.

Sd/-
(A.K. GARODIA)
ACCOUNTANT MEMBER

Bangalore

D a t e d : 25.10.2019

/MS/

Copy to :

- 1 Appellant
- 2 Respondent
- 3 CIT(A), Bangalore
- 4 CIT
- 5 DR, ITAT, Bangalore.
- 6 Guard file

By order,

AR, ITAT, Bangalore