

आयकर आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई  
IN THE INCOME TAX APPELLATE TRIBUNAL, 'A' BENCH, CHENNAI  
श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं श्री एस जयरामन, लेखा सदस्य के समक्ष  
**BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND  
SHRI S. JAYARAMAN, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.2816/Chny/2017

निर्धारण वर्ष /Assessment Year: 2012-13

Shri Sivakumar Sanjai,  
C-18/A, Tamil Sangam Road,  
Salem – 636 007.

**Vs.** The ACIT,  
Circle-1,  
Salem.

**PAN: ACXPS8474K**  
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by

: Shri G. Baskar, Advocate

प्रत्यर्थी की ओर से /Respondent by

: Shri AR.V. Sreenivasan, JCIT

सुनवाई की तारीख/Date of Hearing

: 14.08.2019

घोषणा की तारीख /Date of Pronouncement

: 05.11.2019

**आदेश / ORDER**

**PER SHRI S. JAYARAMAN, ACCOUNTANT MEMBER:**

The Assessee filed this appeal against the order of the  
Commissioner of Income Tax (Appeals), Salem in ITA No.286/2014-15  
dated 22.09.2017 for the assessment year 2012-13.

2. Shri Sivakumar Sanjai, the assessee, is an individual doing business and profession of consultancy and sale of Siddha medicine. While making the assessment for the assessment year 2012-13, the assessee claimed Rs.5,65,924/-, interest payment made to Citi Finance loan on the loan taken for the purchase of a land. The AO found that the land was neither used by the assessee for his business nor any income admitted on the same. However, the assessee entered into an agreement of lease for 10 years with M/s. Sivaraj Holiday Inn Pvt. Ltd., to construct a building and received Rs.10,000/- as annual lease. The Assessing Officer treated the lumpsum received at Rs.10,000/- as a capital receipt and refused to admit the assessee's claim of Rs.5,65,924/-. Aggrieved, the assessee filed appeal before the CIT(A). The Id.CIT(A) held, inter-alia, that the assessee purchased a piece of land at a very high price by availing loan, with an interest burden is Rs.5,65,924/-. In order to justify the deductibility of this huge interest, he has got into an agreement with a company M/s. Sivaraj Holiday INN Pvt. Ltd., in which he has substantial interest on a nominal lease rent of Rs.10,000/- per year. This arrangement can be deemed as a colourable devise to reduce the tax burden and hence he dismissed the appeal. Aggrieved the assessee filed this appeal.

3. The Id.AR inviting our attention to the copies of return filed, submitted that the assessee admitted Rs.10,000/- rental income, claimed a standard deduction U/s.24(a) at Rs.3,000/- and admitted the net property income at Rs.7,000/-. However, the assessee claimed the interest on City Finance loan against the income under the head "other sources". Therefore, the Assessing Officer has assessed the property income but failed to allow the interest expenditure on the borrowable made to meet the cost of the site U/s.57(iii). He pleaded that smallness of rent amount should not have lead the Id.CIT(A) to disallow the interest. Relying on various case laws, the Id.AR pleaded that the interest claimed by the assessee should be allowed. When the Bench asked the relationship between the assessee and the other shareholders of M/s. Sivaraj Holiday INN Pvt. Ltd., he replied that it could be father and son or may be with other family members. Per contra, the Id.DR supported the orders of the lower authorities submitting that the arrangement is a colourable device and hence, the interest claim should not be allowed.

4. We heard the rival submissions and gone through the relevant material. From the facts, it is clear that the assessee has availed huge

loan of Rs.55,15,000/- for acquiring a piece of land and incurred an interest burden of Rs.5,65,924/-. It is a plea of the assessee that he has entered into an agreement of lease for 10 years with M/s. Sivaraj Holiday INN Pvt. Ltd. to construct a building, in which he has substantial interest for a nominal lease rent of Rs.10,000/- per year. Therefore, it is not clear from the orders of the lower authorities what are the terms and conditions between the assessee and M/s. Sivaraj Holiday INN Pvt. Ltd., the relationship between both of them, the share holding pattern and rights and liabilities of the owner as well as the lessee, etc. It is not clear as to why the assessee is incurring a huge interest cost and taking such a low income. All these factors were not examined and due decision was not taken. In the facts and circumstances, we deem it fit to remit this issue back for a due examination and for appropriate decision, in accordance with law. The assessee shall lay all materials in support of his contention before the Assessing Officer and comply with the requirements of the Assessing Officer in accordance with law. The Assessing Officer is free to conduct appropriate enquiry as deemed fit, however, he shall furnish due opportunity to the assessee on the materials etc., to be used

against the assessee and on due consideration of the assessee's clarification / explanation shall pass the order in accordance with law.

5. In the result, the appeal filed by the assessee is treated as allowed for statistical purposes.

Order pronounced in the Court on 5<sup>th</sup> November, 2019 in Chennai.

Sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated 5<sup>th</sup> November, 2019

Sd/-

( एस जयरामन )

(S. Jayaraman)

लेखा सदस्य /Accountant Member

**RSR**

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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