

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'D' BENCH, CHENNAI,
CAMP AT COIMBATORE**

**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**

आयकरअपीलसं./I.T.A.Nos.2275/Chny/2018 & 22/Chny/2019
(निर्धारणवर्ष / Assessment Years: 2013-2014 & 2014-15)

Shri. S.V. Sreenivasan,
278, East Arunachalam Street,
R.S. Puram,
Coimbatore 641 002.

Vs The Deputy Commissioner of
Income Tax,
Corporate Circle,-2,
Coimbatore

PAN: AIQPS 8095P

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/ Appellant by

: Shri S. Sridhar, Advocate

प्रत्यर्थीकीओरसे/Respondent by

: Shri Pavitran Kumar, JCIT

सुनवाईकीतारीख/Date of hearing

: 05.02.2020

घोषणाकीतारीख /Date of Pronouncement

: 05.02.2020

आदेश /O R D E R

PER BENCH:

These appeals of the assessee are directed against the orders of the Commissioner of Income Tax (Appeals)-1, Coimbatore, dated 15.06.2018 and 08.11.2018 and pertains to the assessment years 2013-14

& 2014-15 respectively. Therefore, we heard both the appeals together and disposing off by this common order.

2. The common issue arises for consideration in both the appeals is with regard to Section 2(22) (e) of the Income Tax Act, 1961 (in short 'the Act').

3. Shri. S. Sridhar, the Ld. Counsel for the assessee submitted that the assessee has received advance for purchasing land for the company. The assessee has also advanced Rs.2 Crores to the company during the year 2010-2011 which was lying in the credit of books of accounts for the year ended 31.03.2013. The Assessing Officer found that the money advanced by the assessee to the company and the advance made by the company to the assessee are two separate and distinct accounts. Therefore by following the judgment of Hon'ble Madras High Court in the case of *Sunil Kapoor vs. CIT, (2015) 63 taxmann.com 97 (Mad)* found that the money received by the assessee from company for purchase of land is a deemed dividend. Inviting our attention to para 19 of the very same judgment, the Id. Counsel submitted that five ingredients, as propagated by the Hon'ble Supreme Court in the case of *Smt. Tarulata Shyams vs. CIT, (1977) 108 ITR 345* was not considered by the AO.

Therefore, the same may be remitted back to the file of the Assessing Officer for re-consideration.

4. On the contrary, Shri Pavitran Kumar, the Ld. Departmental Representative, admitted that there are two different and distinct accounts. Therefore as held by the Hon'ble Madras High Court in the case of *Sunil Kapoor (supra)*, the AO has rightly taken the money received from the company as deemed dividend. The Ld. DR further submitted that there is no need for remanding back the issue to the file of the Assessing Officer. When the attention of the Ld. DR was drawn to the observation made by the Madras High Court in para 19, the Ld. DR very fairly submitted that this was not considered by the AO.

5. We have considered the rival submissions on either side and perused the relevant material available on record. Admittedly, there are two separate and distinct accounts maintained by the company, one is for money received by the assessee to the extent of Rs.2 Crores and another account for the money advanced to the assessee for purchase of land. The fact that the five ingredients as pointed out by the Supreme Court in the case of *Tarulata Shyam (supra)* was not examined and brought on record by the AO as well as CIT(A) is not in dispute. Therefore, this Tribunal is of the considered opinion that this matter needs to be re-examined by the

AO. Accordingly the orders of the both lower authorities below are set aside and the entire issue is remitted back to the file of the AO for reconsideration. The AO shall re-examine the material with the light of the five ingredients as pointed by the Apex Court in the case of *Smt. Tarulata Shyams (supra)* and brought on record, whether the transaction of advance made by the company to the assessee falls within the ambit of five ingredients as pointed out by the Apex Court, thereafter the AO shall decide the issue afresh after giving a reasonable hearing of opportunity of hearing to the assessee.

6. The assessee has also taken one more ground in ITA No.22/CHNY/2019 for the assessment year 2014-2015 with regard to the expenditure disallowed u/s.14A of the Act.

7. The Ld. Counsel fairly submitted that he is not pressing this issue on the instruction from the assessee. The Ld. Counsel made an endorsement to this effect in the appeal folder as this ground was not pressed. Accordingly, the ground with regard to disallowance made by the AO u/s.14A of the Act is rejected.

8. In the result, the appeals filed by the assessee in ITA No.2275/Chny/2018 for assessment year 2013-2014 is allowed for

statistical purposes, whereas ITA No.22/CHNY/2019 for assessment year 2014-2015 is partly allowed for statistical purposes.

Order pronounced in the court on 5th February, 2020 at Camp at Coimbatore.

Sd/-

(एस जयरामन)

(S. Jayaraman)

लेखासदस्य/Accountant Member

Sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिकसदस्य/Judicial Member

चेन्नई/Coimbatore.

दिनांक/Dated, the 5th February, 2020.

KV

आदेशकीप्रतिलिपिअग्रेषित/Copy to:

1. अपीलार्थी/Appellant

2. प्रत्यर्थी/Respondent

3. आयकरआयुक्त (अपील)/CIT(A)

4. आयकरआयुक्त/CIT

5. विभागीयप्रतिनिधि/DR

6. गार्डफाईल/GF