

अपीलीयअधिकरण ,'बी' न्यायपीठ,चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, CHENNAI**

श्री धुव्वुरुआर.एलरेड्डी, न्यायिकसदस्यएवंश्री एस जयरामन, लेखा सदस्यके समक्ष
**BEFORE SHRI DUVVURU RL REDDY, JUDICIAL MEMBER AND
SHRI S. JAYARAMAN, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No. 2685/Chny/2019

निर्धारण वर्ष/Assessment Year : 2012-13

Assistant Commissioner of Income Tax,
Corporate Circle 6(2),
Chennai.

Shri. VelayuthamSundaramoorthy,
Vs. L 604, Metrozone, No. 44,
PillaiyarKoil Street,
Anna Nagar,
Chennai – 600 040.

[PAN: BCFPS 5842G]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

आयकर अपील सं./I.T.A. No. 2805/Chny/2019

निर्धारण वर्ष/Assessment Year : 2012-13

Assistant Commissioner of Income Tax,
Corporate Circle 6(2),
Chennai.

Vs. Shri. T. Padmakumar,
R 203, Metrozone, No. 44,
PillayarKoil Street,
Anna Nagar,
Chennai – 600 040.

[PAN: AIZPP 5293M]

अपीलार्थीकीओरसे/ Appellant by

: Shri. A. Sundararajan, Addl. CIT

प्रत्यर्थीकीओरसे/Respondent by

: Shri. M. Karunakaran, Advocate

सुनवाईकीतारीख/Date of Hearing

: 10.03.2020

घोषणाकीतारीख/Date of Pronouncement

: 02.06.2020

आदेश/ O R D E R

PER S. JAYARAMAN, ACCOUNTANT MEMBER:

The Revenue filed these appeals against the common orders of the Commissioner of Income Tax (Appeals)-15, Chennai, in ITA Nos. 159 & 160/2017-18/CIT(A)-15 dated 10.07.2019 for assessment years 2012-13, in the above connected cases with the following common grounds:

- " 1. The order of the Ld. CIT(A) is contrary to the law and facts of the case.*
- 2. The Ld. CIT(A) ought to have appreciated that the issue under consideration was still pending before the Hon'ble Supreme Court in the case of M/s. National Travel Services vs CIT (89 taxmann.com 332 (SC)) and before the Hon'ble Madras High Court in the case of M/s. Subhavarsha Infotech vs. DCIT against the Tribunal order vide ITA Nos. 2365/Chny/2016 and 2805/Chny/2016 dated 05.12.2018.*
- 2.1 The Ld. CIT(A) ought to have noted that the order of the tribunal in the case of M/s. Subhavarsha Infotech vs DCIT in cross appeals vide ITA No. 2365/Chny/2016 and ITA No. 2805/Chny/2016 dated 05.12.2018 confirming the addition in the hands of the M/s. Subhavarsha Infotech was not accepted by the assessee and that the appeal is still pending before the Hon'ble Madras High Court.*
- 3. For these and other grounds that may be adduced at the time of hearing, it is prayed that the order of the Ld. CIT(A) be set aside and that of the Assessing Officer be restored."*

2. The facts in brief are that there was a transfer of fund of Rs.7.54 Crores from M/s Symbiotic Infotech Ltd. to a firm namely, M/ s Subhavarsha Infotech. The three shareholders in the company of M/ s Symbiotic Infotech Ltd., namely Mr.S. Sundaramoorthy, Mr.T. Padmakumar and Mr.J . Selvakumar, were also partners in the firm, M/s Subhavarsha Infotech. Out of the fund transferred of Rs. 7.54 Crores, the firm - M/s Subhavarsha Infotech transferred Rs.4.54 Crores to the above three partners and the remaining Rs.3 Crores to Smt. Priya Rachel, wife

of the one of the partner's/shareholder's close friend and therefore to a third party. By observing that it was a deemed dividend u/s 2(22)(e), the Assessing officer added the entire fund received of Rs.7.54 Crores in the hands of M/ s SubhavarshaInfotech. On the firm's appeal, the CIT(A) deleted the addition of Rs.3 Crores, which was transferred to a third party but confirmed the addition of Rs.4.54 Crores which was transferred to the above three partners . On further appeal by both the firm and the Department, the Hon'ble ITAT, Chennai upheld the addition of the AO in the hands of the firm - M/s SubhavarshaInfotech. The firm accepted the ITAT's order partly to the extent of confirmation of the addition of Rs.4.54 Crores, but appealed against the ITAT's decision in respect of the confirmation of the addition of Rs.3 Crores given to the third party. The firm's appeal is pending before the Hon'ble High Court of Madras.

2.1 While the above addition was contested in appeal in the ITAT, the AO reopened and assessed one-third of Rs.7.54 Crores in the hands of the above three partners on protective basis. Out of which ,the appeals in respect of two partners namely, Mr.S.Sundaramoorthy and Mr.T.Padmakumar are dealt with in this order. The AO has made the aforesaid protective assessment in the hands of the above two partners relying the case of Madhur Housing and Development company (CA No 3961 of 2013) SC , which upheld the decision of the Hon'ble HC of Delhi in the case of CIT vs Ankitech P Ltd (ITA No. 462 of 2009). Aggrieved,

the above assessee filed appeals before the CIT(A). Before the CIT(A), the assessee has, inter alia, submitted that, since the Hon'ble ITAT, Chennai has already confirmed the addition of deemed dividend to the extent of Rs.4.54 Crores in the hands of the firm, M/s Subhavarsha Infotech and the firm has also accepted the ITAT's decision, further addition of the same amount in the hands of the firm's partners amount to double addition and therefore, the impugned additions should be deleted. With regard to the addition of Rs.3 Crores confirmed by the Hon'ble ITAT, Chennai in the hands of the firm, the firm has not accepted the ITAT's decision and has contested in appeal before the Hon'ble High Court of Madras, on the ground that the said amount was neither received by the firm nor by the partners. The assessee's have pointed out that the aforesaid decision was mentioned by the apex court in the case of National Travel Services Vs. CIT and has referred the earlier decision of the apex court in the case of Madhur Housing & Development Company to a larger bench of the Supreme Court.

2.2 After considering the assessee's submissions, the Ld. CIT(A) held, inter alia, that the AR has furnished a copy of appeal filed by the firm - M/s Subhavarsha Infotech before the Hon'ble High Court against the decision of Hon'ble ITAT, Chennai as mentioned above in which only the confirmation of addition of Rs.3 Crores given to third party has been contested in appeal. After

considering the AR's submission, I am convinced that, since the Hon'ble ITAT, Chennai has already confirmed the addition of Rs.4.54 crores in the hands of the firm - M/s SubhavarshaInfotechand the same has been accepted by firm, further addition of the same amount in the hands of the two partners clearly amounts to double addition. Besides, since the issue under consideration has not reached finality in the apex court, I am of the considered opinion that as of now, in view of the Hon'ble ITAT Chennai's decision of the confirmation of addition of Rs.4.54 Crores, the addition in the hands of the appellants - Mr.S.Sundaramoorthy and Mr.T.Padmakumaron a protective basis by the AO clearly amounts to a double addition and therefore, is unfair and unreasonable, which deserves to be deleted. Accordingly, theLdCIT(A) deleted the addition ofdeemed dividend u/s 2(22)(e) the hands of the two appellants,Mr.S.Sundaramoorthy and Mr.T.Padmakumar are deleted.

3. The Ld. DR submitted the cases on the lines of grounds of appeal, supra. Per contra, the Ld. AR submitted on the same lines submitted before the Ld. CIT(A) and relied on them.

4. We heard the rival submissions. The relevant issue to be considered here is, whether the addition of deemed dividend u/s 2(22)(e) of Rs.4.54 Crores already confirmed by the Hon'ble ITAT, Chennai in the hands of the firm — M/s

SubhavarshaInfotechcan now be considered also in the hands of the above partners protectively. We have gone through the order of this tribunal in the case of M/s SubhavarshaInfotechVs. DCIT in cross appeals vide ITA No.2365/CHNY/2016 and 1TA No.2805/CHNY/2016 dated 5-12-2018. The relevant portion is extracted as under:

" 13. We have considered the rival contentions and perused the orders of the authorities below. There is no dispute that a sum of Rs. 7,54,00,000/- was received by the assessee as advance from MIs. Symbiotic Infotech P. Ltd. There is also no dispute that the said Company had two different accounts in the books of the assessee, one for trading advances and other for non-trading loans/ advances, and the sum of Rs. 7,54,00,000/- was not a trading advance. It is also not disputed that MIs. Symbiotic Infotech P. Ltd. had accumulated profits of Rs. 28,09,06,827/- as on 31.03.2012. Assessee had relied on a judgment of Hon'ble Jurisdictional High Court in the case of Printwave Services P. Ltd (supra). Lower authorities had taken a view that the said judgment applied only to Companies and not to partnership firms, who were the recipients of loans/advances. We are of the opinion that this view taken by the id. Commissioner of Income Tax (Appeals) cannot be faulted. Hon'ble Supreme Court in the case of National Travel Services (supra) while referring a similar issue to a larger Bench had expressed serious doubt on the view taken by the Hon'ble Delhi High Court in the case of CIT vs. Ankitech Pvt. Ltd (2012) 340 ITR 14 and the judgment of their Lordship in Madhur Housing and Development Co. (supra). Here before us, admittedly, the shareholders were the same as the partners of the assessee firm and the facts are very similar to the one before Hon'ble Apex Court in National Travel Services (supra).

14. Coming to the question of relief given to the assessee for the sum of Rs. 3,00,00,000/- given by the assessee firm to Smt. Priya Rachel, it is an admitted position that Smt. Priya Rachel was the wife of one of friends of a partners. Or in other words, assessee could not have advanced the loan of Rs. 3,00,00,000/-

, she was not closely related to one of the partners. No doubt, id. Authorised Representative argued that such loan given to Sm. Priya Racherl did not individually benefit any partners or firm and hence Section 2(22) (e) of the Act would not apply. However, we are of the opinion that such a narrow definition to the word "individual benefit" cannot be given. The benefit will include direct or indirect things. Partner whose friend's wife received the advance had indirectly benefited from the advance received by the assessee from M/s. Symbiotic Infotech P. Ltd. We are therefore of the opinion that Id. Commissioner of Income Tax (Appeals) fell in error in giving relief of Rs. 3,00,00,000/- to the assessee. In these circumstances, we dismiss the grounds 6 to 10 of the assessee and allow the appeal of the Revenue."

4.1 On receipt of the above order, the firm, M/s Subhavarsha Infotech has accepted the ITAT's decision to the extent of Rs.4.54 Crores and therefore it reached finality . With regard to the addition of Rs.3 Crores confirmed by the Hon'ble ITAT, Chennai, supra , in the hands of the firm, the firm has not accepted the ITAT's decision and has contested in appeal before the Hon'ble High Court of Madras which is pending now . In such facts and circumstances, the Ld CIT(A) 's decision "since the issue under consideration has not reached finality in the apex court, I am of the considered opinion that as of now, in view of the Hon'ble ITAT Chennai's decision of the confirmation of addition of Rs.4.54 Crores, the addition in the hands of the appellants - Mr.S.Sundaramoorthy and Mr.T.Padmakumaron a protective basis by the A O clearly amounts to a double addition and therefore, is unfair and unreasonable, which deserves to be

deleted.” does not require any interference and hence the Revenue’s above appeals are dismissed.

5. In the result, the Revenue’s above appeals are dismissed.

Order pronounced on Tuesday, 02nd day of June, 2020 at Chennai.

Sd/-

(धुव्वुरु.आर.एल रेड्डी)
(DUVVURU R.L REDDY)

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated: 02nd June, 2020

JPV

आदेशकीप्रतिलिपिअग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त) अपील(/CIT(A)
4. आयकरआयुक्त/CIT
5. विभागीयप्रतिनिधि/DR
6. गार्डफाईल/GF

Sd/-

(एसजयरामन)
(S. JAYARAMAN)

लेखासदस्य/Accountant Member