

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH: CHENNAI

श्री एबी टी. वर्की, न्यायिक सदस्य एवं श्री अमिताभ शुक्ला, लेखा सदस्य के समक्ष
BEFORE SHRI ABY T VARKEY, JUDICIAL MEMBER AND
SHRI AMITABH SHUKLA, ACCOUNTANT MEMBER
आयकर अपील सं./ITA No.2366, 2367 & 2370 /Chny/2024
निर्धारण वर्ष /Assessment Years: 2015-16, 2015-16 & 2017-18

Income Tax Officer,
Coimbatore

Cheran Enterprises Private Limited,
No.78, Cheran Towers, Government
Arts College Road,
Coimbatore
Tamil Nadu-641018
[PAN: AACCC5150]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Assessee by

: Shri Shreyansh Kumar Kochar, CA

प्रत्यर्थी की ओर से /Revenue by

: Shri Nathala Ravi Babu, CIT

सुनवाई की तारीख/Date of Hearing

: 03.12.2024

घोषणा की तारीख /Date of Pronouncement

: 04.12.2024

आदेश / ORDER

PER AMITABH SHUKLA, A.M :

The appeals vide ITA No.2366/Chny/2024 for AY 2015-16 vide order bearing DIN & Order No.ITBA/NFAC/S/250/2024-25/1066850730(1) dated 19.07.2024 and ITA No.2367/Chny/2024 for AY 2015-16 vide No.ITBA / NFAC / S / 250 /2024-25/1066924539(1) dated 23.07.2024 and vide ITA No.2370/Chny/2024 for AY 2017-18 and vide ITBA/NFAC/S/250/2024-25/1066850925 dated 19.07.2024 of the Learned Commissioner of Income Tax [herein after "CIT(A), National Faceless Appeal Center[NFAC], Delhi. Through the aforesaid appeal

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the revenue has challenged orders u/s 250 passed by NFAC, Delhi. Through the aforesaid appeals, the revenue has challenged the decision of Ld. CIT(A) in deleting addition of interest income made by the Ld. AO.

2.0 The Ld. Counsel for the assessee submitted that all the above appeals of the revenue are covered in favour of assessee vide order bearing No. ITA 1717, 1730, 1733 & 1734 dated 23.10.2024 of the Hon'ble Coordinate Bench of this Tribunal. Ld. DR would like to rely upon the order of Ld.AO.

3.0 We have heard the rival submissions in the light of material available on records. We have noted that all the three appeals raised by the revenue are on the common issue of taxability of interest income which is presently in dispute and subjudice as well as the corresponding penalty under 271(1) (c). We have also noted the referred decision of Hon'ble Coordinate Bench of this Tribunal at para 14 of the impugned order in ITA numbers 1717, 1730, 1733 and 1734 supra. For the purpose of clarity, the impugned decision is reproduced from page-12 to page-15 hereunder:-

“...its total income as referred to in section 5 of the Act and thus, no tax liability shall arise in its hands.

12.0 The Ld. DR relied upon the order of the Ld AO. It is the case of the revenue that the assessee was a non-filer and the department could get information of the impugned FD and corresponding interest income through proceeding u/s 147 r.w.s 148. The Ld. DR would like to make us to believe that the issue about the confirmed ownership of FD under consideration is still subjudice. The Ld. DR has raised an apprehension , that with the present order of Ld. CIT(A) deleting the addition, in coming future, in case the Hon'ble Courts decide that the said FD belongs to the assessee, then at that stage the revenue would not have any mechanism left with it to tax the same.

13.0 We have heard rival submissions in the light of material available on records. It is an undisputed fact of the case that the assessee was exercising a legal ownership over the impugned FD of Rs.25 Crs maintained with Erode Branch of State Bank of India. It is also an undisputed fact that the assessee has and is contesting the decision of Hon'ble Delhi High Court directing its remission to Canara Bank, Delhi. It is also an undisputed fact that Hon'ble Delhi High Court has directed that the ownership over the said FD is to be kept in open till a final decision qua its ownership is taken by the Hon'ble Court. Thus, in a situation where the ownership per se of the FD is in question, the decision of the Ld. First Appellate Authority in deleting the addition made by the Ld. AO becomes questionable. It is not the case of the assessee that it is not exigible for taxation qua interest earned from the said FD. Its basic case is that because by way of a Court Order, the ownership of the impugned FD has been taken away from it, no tax is payable by it. We also find force in the argument of the assessee , supported by relied upon case laws that it cannot be taxed in respect of an asset over which it does not has any conclusive ownership. The fact of the matter however remains that the issue of final ownership is yet to be decided by the court. The assessee therefore cannot say that it is permanently excluded for taxation qua interest earned from the said FD. To allay the apprehension of revenue, the assessee has filed

during present proceedings an affidavit , principally to the effect that in the event of ownership of the said FD vested back to him, it shall be liable for payment of due taxes on the interest income for the relevant period. Accordingly, we set aside the order of the Lower Authorities and direct the assessing officer to consider and re adjudicate afresh, the issue of taxation of interest income over the impugned FD, only once the Hon'ble High Court decides upon its ownership. Accordingly, the grounds of appeal raised by the revenue in ITA-1717/Chny/2024 for AY 2013-14 are allowed for statistical purposes only.

15.0 ITA-1730/Chny/2024 for AY 2014-15

As discussed herein above, the facts of the case for this appeal are also identical to those in ITA-1717/Chny/2024 for AY 2013-14 supra therefore the decision taken therein would apply mutatis mutandis. Accordingly, the grounds of appeal raised by the revenue in ITA-1730/Chny/2024 for AY 2014-15 are also allowed for statistical purposes only.

ITA-1733/Chny/2024 for AY 2013-14 & ITA-1734/Chny/2024 for AY 2014-15

The above appeals vide ITA numbers 1733 & 1734 made by the Revnue are regarding action of the Ld AO in imposing penalty u/s 271(1) (c) for AY's 2013-14 & 2014-15 respectively and the decision of Ld CIT (A) in quashing the same . Through our decision in ITA no's 1717 & 1730 supra we have held as under :-

“....Accordingly, we set aside the order of the Lower Authorities and direct the assessing officer to consider and re adjudicate afresh, the issue of taxation of interest income over the impugned FD, only once the Hon'ble High Court decides upon its ownership...”. Thus where the quantum additions stand set aside there wouldn't be any tax on concealed income for levy of penalty. Therefore in the light of above directions to the Ld AO we also set aside the orders of lower authorities. The Ld AO may decide the issue of imposition of penalty if any as per law upon his decision on taxation of impugned interest income from FD's. Accordingly the grounds of appeal raised by the

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revenue in ITA's number 1733 & 1734 are allowed for statistical purposes only.

In the result the appeal of the revenue is allowed for statistical purposes only....”

4.0 In respectful compliance to the decision of Hon'ble Coordinate Bench in assessee's own case supra and in view of the fact that no change of facts of present assessment years is discernable qua those available in appeal decided supra, Ld. AO is directed to comply with the directions given in above appeals for present appeal also. Thus, the decision taken in ITA 1717 and 1730 supra shall apply mutatis mutandis in present appeals of revenue raised vide ITA No.2366/Chny/2024 for AY 2015-16 and ITA No.2370/Chny/2024 for AY 2017-18. Similarly, the decision taken in ITA number 1733 and 1734 shall apply mutatis mutandis in revenue's appeal ITA No.2367/Chny/2024 for AY 2015-16.

5.0. In the result, the appeals of the revenue are decided as under:-

ITA Nos	Assessment Year	Result
ITA-2366/Chny/2024	2015-16	The appeal of the revenue is allowed for statistical purposes only.
ITA-2367/Chny/2024	2015-16	The appeal of the revenue is allowed for statistical purposes only.
ITA-2370/Chny/2024	2017-18	The appeal of the revenue is allowed for statistical purposes only.

Order pronounced on 4th, December-2024 at Chennai.

Sd/-

(एबी टी. वर्की)

(ABY T VARKEY)

न्यायिक सदस्य / Judicial Member

Sd/-

(अमिताभ शुक्ला)

(AMITABH SHUKLA)

लेखा सदस्य /Accountant Member

चेन्नई/Chennai, दिनांक/Dated: 4th, December-2024.

KB/-

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT - Coimbatore
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF