आयकर अपीलीय अधिकरण, 'सी'/ एस एम सी न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'C' / SMC BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य के समक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER

आयकर अपील सं./**ITA No. 2223/Mds/2016**
निर्धारण वर्ष / Assessment Year : 2012-13

Smt. Ramesh Shobana, C/o. M/s. U. Gopinath & Co, Guru Nivas, No.5/2, Krishnaswamy Avenue, Mylapore, Chennai – 600 004.	v.	The Deputy Commissioner of Income Tax, Non Corporate Circle 2, Chennai – 34.
PAN : BFIPS0708H (अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri V.S. Jayakumar, Advocate
प्रत्यर्थी की ओर से/Respondent by : Shri Sanat Kumar Raha, JCIT

सुनवाई की तारीख/Date of Hearing : 24.01.2017
घोषणा की तारीख/Date of Pronouncement :28.02.2017

आदेश /O R D E R

This appeal of the assessee is directed against the order of Commissioner of Income Tax (Appeals)-2, Chennai dated 31.03.2016 and pertains to the assessment year 2012-13.

2. Shri V.S. Jayakumar, the Ld. counsel for the assessee submitted that the first issue arises for consideration is disallowance

of ₹2,86,186/- under Section 36(1)(iii) of the Income Tax Act, 1961 (in short 'the Act'). According to the Ld. counsel, the Assessing Officer found that the assessee has advanced interest free loans ₹37,30,000/- to her close relatives. According to the Ld. counsel, the assessee has surplus interest free funds in her account. Therefore, disallowance of ₹3,44,622/- towards interest payment is not justified. The assessee has filed all the financial details including the balance sheet in the paper book.

3. On the contrary Shri Sanat Kumar Raha, the Ld. Departmental Representative submitted that the Assessing Officer found that the loan and advance disclosed in the balance sheet to the extent of ₹48,65,756/- includes the interest free loans to the assessee's husband and mother-in-law to the extent of ₹37,30,000/- It is not the case of the assessee that the money was advanced to her husband and mother-in-law on account of any commercial expediency. Since the borrowed funds were diverted for non-business purpose, the Assessing Officer found that the interest paid on borrowed funds to the extent of ₹3,44,622/- cannot be allowed as deduction while computing the taxable income.

4. I have considered the rival submissions on either side and perused the material available on record. The assessee now claims before this Tribunal that there was sufficient interest free funds available on the date of payment of advance to her husband and her mother-in-law. It is not the case of the assessee that there was commercial expediency in making payment to her husband and mother-in-law. The assessee claims that sufficient interest free fund is available. Therefore, this Tribunal is of the considered opinion that the matter needs to be re-examined by the Assessing Officer after examining the balance sheet and other financial details of the assessee. Accordingly, the orders of the lower authorities below are set aside and the disallowance made by the Assessing Officer towards payment of interest on the borrowed funds is remitted back to the file of the Assessing Officer. The Assessing Officer shall re-examine the matter afresh and bring on record the interest free funds available with the assessee including the profit for the year under consideration and thereafter decide the issue afresh in accordance with law after giving reasonable opportunity to the assessee.

5. The next issue arises for consideration is disallowance of ₹5,71,000/- towards chit loss.

6. Shri V.S. Jayakumar, the Ld. counsel for the assessee submitted that the assessee has debited a sum of ₹5,71,000/- towards chit loss. Admittedly, the assessee is engaged in the business of sale of iron and steel. The sale proceeds of irons and steel was deposited in the chit schemes. In that process, the assessee suffered loss. Referring to the judgment of the Madras High Court in the case of V. Rajkumar v CIT (2014) 363 ITR 21, the Ld. counsel submitted that the Madras High Court decided the issue against the assessee. However the circular issued by the Central Board of Direct Taxes (CBDT) in instruction No.1175 of 1936 was not brought to the notice of the Madras High Court. According to the Ld. counsel, the CBDT after referring to the judgment of the Punjab & Haryana High Court in the case of Soda Silicate & Chemical Works v Commissioner of Income Tax (1989) 179 ITR 588 found that the instruction issued in instruction No.1175 cannot be withdrawn even after the judgment of Punjab & Haryana High Court. This circular was reproduced by Cochin bench of this Tribunal in Rajees v ITO (1997) 63 ITD 0330. Therefore, the Ld.

counsel submitted that the issue needs to be considered in the light of the circular issued by the CBDT.

7. On the contrary, Shri Sanat Kumar Raha, the Ld. Departmental Representative submitted that the CIT (Appeals) after referring to the judgment of the Madras High Court in the case of Shri V. Rajkumar (*supra)* found that chit loss cannot be allowed as deduction since the assessee is only a subscriber to the chit scheme promoted by another person.

8. We have considered the rival submissions on either side and perused the material available on record. Admittedly, the assessee is a subscriber to a chit scheme promoted by a third party. The CBDT examined this issue in instruction No.1175 and found that in the case of the subscriber, a few subscribers will be receiving more than what they have subscribed. The excess money received by some of the subscriber is in the nature of interest. The same is taxable as such. The subscriber who takes the money earlier from the chit scheme will necessarily contribute more money to the scheme. Therefore, such person who withdraws the money earlier has to necessarily incur loss. The CBDT found that this loss /

money paid in excess over and above the money received are nothing but the interest paid on the money taken in advance. The CBDT observed that claim of such a loss will have to be considered for the purpose of loans according to the provisions in the Income Tax Act. Referring to the judgment of the Punjab & Haryana High Court in Soda Silicate & Chemical Works (*supra),* the CBDT observed that the earlier instruction in 1175 cannot be withdrawn. This instruction of the CDBT was not brought to the notice of the Madras High Court while deciding the issue in the case of Shri V. Rajkumar (*supra)*. Therefore, this Tribunal is of the considered opinion that the matter needs to be reconsidered by the Assessing Officer after considering the instructions of the CBDT in instruction No.1175. We are conscious that the judgment of the Madras High Court is binding on the authorities in the State of Tamil Nadu and Puducherry. However, the circular issued by the Apex Administrative body of direct taxes also needs to be considered. Since the circular issued by the CBDT was not brought to the notice of the Madras High Court, this Tribunal is of the considered opinion that the mater needs to be reconsidered. Accordingly, the orders of the lower authorities have been set aside and the issue of chit loss is remitted back to the Assessing Officer. The Assessing Officer

shall reconsider the claim of the chit loss after considering the judgment of the Madras High Court in Shri V. Rajkumar and CBDT instruction in instruction No.1175 and thereafter decide the same in accordance with law after giving reasonable opportunity to the assessee.

9. The next issue arises for consideration is disallowance of ₹17,327/- under Section 14A of the Act.

10. Shri V.S. Jayakumar, the Ld. counsel for the assessee submitted that the assessee has not earned any exempt income even though an investment was made. In fact, the Assessing Officer has made disallowance by applying third limb of Rule 8D(2). Referring to third limb of Rule 8D(2) of the Income Tax Rules, the Ld. counsel submitted that 0.5% of the average value of the investment from which the income form part of the total income alone has to be taken into consideration. In this case no income was generated and no income was exempted from taxation. Therefore, the addition made by the Assessing Officer cannot be sustained.

11. We heard Shri Sanat Kumar Raha, the Ld. Departmental Representative also. According to the Ld. D.R., irrespective of the fact that the assessee earned income or not, the expenditure incurred by the assessee has to be disallowed. Therefore, the CIT (Appeals) has rightly confirmed the addition made by the Assessing Officer.

12. I have considered the rival submissions on either side and perused the material available on record. I have also carefully gone through the provisions of Section 14A of the Act and Rule 8D(2) of the Income Tax Rules. Rule 8D(2)(i) clearly provides for disallowance of the direct expenditure. In this case, admittedly there was no direct expenditure. Therefore, there cannot be any disallowance. Rule 8D(2)(ii) provides for disallowance of indirect expenditure which does not directly contributable to any particular income. In this case, no disallowance was admittedly made by the Assessing Officer under Section 8D(2)(ii). Now what remains to be considered is Rule 8D(2)(iii). Rule 8D(2)(iii) provides for disallowance of an amount equal to 0.5% of the average value of the investment income which does not or shall not form part of the total income. In the case before us, no income was generated out

of the investment made by the assessee. Therefore, there was no income which does not or shall not form part of the total income. Hence, there cannot be any disallowance under Rule 8D(2)(iii) of the Income Tax Rules. Therefore, the Assessing Officer is not justified in disallowance of ₹17,327/-. Accordingly, the orders of both the authorities are set aside and the addition of ₹17,327/- is deleted.

13. The next ground of appeal is disallowance of ₹8,91,787/- under Section 56(2)(vii) of the Act.

14. Shri V.S. Jayakumar, the Ld. counsel for the assessee submitted that the assessee's paternal uncle intended to gift ₹8,91,787/- on his behalf. The Assessing Officer found that Shri Gopi Krishnan who in fact transferred the money to the assessee's account was residing in USA is brother's son of assessee's father. Referring to Section 56(2)(vii) of the Act, the Assessing Officer found that Shri Gopi Krishnan who in fact transferred the amount on instruction from his father cannot be considered to be relative within the meaning of Section 56(2)(vii) of the Act. Therefore, the Assessing Officer disallowed the claim of

the assessee. According to the Ld. counsel, brother's son is also a close relative. Therefore, disallowance made by the Assessing Officer cannot be justified.

15. On the contrary Shri Sanat Kumar Raha, the Ld. Departmental Representative submitted that relative means brother or sister of either parents of the individual. In this case, the funds were transferred by one Shri Gopi Krishnan who is neither the brother of the assessee or brother of the assessee's parents. Therefore, the Assessing Officer found that the said Shri Gopi Krishnan cannot be construed as relative within the meaning of the Section 56(2)(vii) of the Act and hence the amount donated by Shri Gopi Krishnan was taken as income of the assessee.

16. I have considered the rival submissions on either side and perused the material available on record. The assessee claims that her paternal uncle namely the brother of the assessee's father intended to gift ₹8,91,787/- to the assessee Since he has no sufficient funds, he requested his son to donate ₹8,91,787/-. No doubt parents brother son was not a relative as provided under Section 56(2)(vii) of the Act. However, when the assessee claims

that the gift was made not by her father's brother son but by her father's brother, this Tribunal is of the considered opinion that the matter needs to be re-examined by the Assessing Officer to find out who in fact gifted the money to the assessee. If the assessee's father's brother intended to gift the money irrespective of the fact that the assessee's cousin brother transferred the funds on the instruction of his father cannot be a reason to disallow the claim of the assessee. It is for the assessee's father's brother either to transfer the funds from his own accounts or he may request his friends or relatives to transfer the funds. If the gift was given to the assessee by her father's brother's instruction, then there cannot be any disallowance. Therefore, the Assessing Officer has to re-examine the matter and bring on record who has in fact intended to gift the money to the assessee. Accordingly, the orders of both the authorities below are set aside and the disallowance made by the Assessing Officer to the extent of ₹8,91,787/- is remitted back to the file of the Assessing Officer. The Assessing Officer shall re-examine the matter afresh and thereafter decide the same in accordance with law after giving reasonable opportunity to the assessee.

17. In the result, the appeal of the assessee is partly allowed for statistical purpose.

Order pronounced on 28th February, 2017 at Chennai.

Sd/-
(एन.आर.एस. गणेशन)
(N.R.S. Ganesan)
न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,
दिनांक/Dated, the 28th February, 2017.

JR.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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