

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 केसमक्ष

**BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI S. JAYARAMAN, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No. : 202/Mds/2017
निर्धारण वर्ष / Assessment Year :2011-12

M/s. Best Cheran Spintax India Limited,
SF No.198, Elanthakuttai Village,
Veppadai, Pallipalayam – 638 006.

The ACIT,
v. Circle-1,
Salem

PAN: AACCB8241P

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri S. Sridhar, Advocate
प्रत्यर्थी की ओर से/Respondent by : Shri G.M. Dass, CIT

सुनवाई की तारीख/Date of Hearing : 24.05.2017
घोषणा की तारीख/Date of Pronouncement : 31.05.2017

आदेश /O R D E R

PER N.R.S. GANESAN, JUDICIAL MEMBER:

This appeal of the assessee is directed against the order of the Commissioner of Income Tax (Appeals), Salem dated 06.12.2016 and pertains to the assessment year 2011-12. The only issue arises for consideration is assessment of deemed dividend U/s.2(22)(e) of the Income Tax Act, 1961 (in short 'the Act').

2. Shri S. Sridhar, the Ld. counsel for the assessee submitted that admittedly the assessee company received Rs.10.38 crores as loan from M/s. Cheran Spinners Ltd. The assessee company is not a shareholder in M/s. Cheran Spinners Ltd. However, there are some common shareholders in both the companies. Referring to the judgment of the Madras High Court in CIT v. Ennore Cargo Container Terminal P. Ltd in T.C (A) Nos. 105 & 106 of 2017 dated 27.03.2017, found that the assessment has to be made only in the hands of the registered shareholders. In this case, according to the Ld. counsel, the assessee is admittedly not a registered shareholder of M/s. Cheran Spinners Limited. Therefore there cannot be any assessment in the hands of the assessee. At the best, it can be assessed only in the hands of the shareholders of the assessee company if at all there was a finding that on whose benefit the money was received by the assessee company.

3. On the contrary Shri G.M. Dass, the Ld. Departmental Representative submitted that the money was advanced by M/s. Cheran Spinners Limited to the assessee's company. Even though, the assessee company is not a registered shareholder of M/s. Cheran Spinners Limited, the money was advanced for the benefit of the shareholders of the assessee company. Referring to

the judgment of the Apex court in Gopal and Sons (HUF) v CIT, Kolkatta, civil appeal No.12274 of 2016, the Ld.DR submitted that on identical situation, the Apex court found that the assessment can be made in the hands of HUF. This judgment of the Apex court was distinguished by the Madras High Court in M/s. Ennore Cargo Container Terminal P Ltd. (supra). According to the Ld.DR, the judgment of the Apex Court in Gopal and Sons HUF (supra) is very much applicable. Hence, the CIT(Appeals) has rightly confirmed the order of the AO.

4. We have considered the rival submissions on either side and perused the material available on record. The question arises for consideration is when the assessee company is not a registered shareholder of M/s. Cheran Spinners Ltd, whether there can be any assessment under deemed dividend U/s.2(22)(e) of the Act in respect of the sum received by the assessee. This was examined by the Madras High Court in M/s. Ennore Cargo Container Terminal P Ltd (supra). The Madras High Court found that both registered and beneficial shareholders are two individuals and the assessee company is neither a registered shareholder nor beneficial shareholder. Therefore it was found that the judgment of the Apex court in Gopal and Sons HUF (supra) is not applicable at

all. In view of the judgment of the Madras High Court in Ennore Cargo Container Terminal P. Ltd (supra), this Tribunal is of the considered opinion that the assessment U/s.2(22)(e) of the Act, has to be made only in the hands of the registered shareholder. The assessee company admittedly is not a registered shareholder. There cannot be any assessment in the hands of the assessee, as rightly submitted by the Ld. counsel for the assessee. At the best, it can be assessed only in the hands of the so called common shareholders of the assessee company. In view of the above, we are unable to uphold the orders of the lower authorities. Accordingly the orders of both the authorities below are set aside and the addition made by the AO is deleted.

6. In the result, the appeal of the assessee stands allowed.

Order pronounced on 31st May, 2017 at Chennai.

Sd/-

(एस जयरामन)

(S. Jayaraman)

लेखा सदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated, the 31st May, 2017.

JR.

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 |

Sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member