

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

IN THE INCOME TAX APPELLATE TRIBUNAL

'B' 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.1197/Mds/2016

निर्धारण वर्ष / Assessment Year : 2011-12

Shri Dilipkumar C Patel,
New No.9, Old No.6,
Dhanammal Street, Chetpet,
Chennai - 600 031.

v. The Income Tax Officer,
Business Ward XV (3),
The Income Tax Officer,
Non-Corporate Ward 3(2),
Chennai - 600 034.

PAN : AALPP 6619 B

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : None

प्रत्यर्थी की ओर से/Respondent by : Shri Supriyo Pal, JCIT

सुनवाई की तारीख/Date of Hearing : 17.06.2016

घोषणा की तारीख/Date of Pronouncement : 18.08.2016

आदेश / O R D E R

This appeal of the assessee is directed against the order of the Commissioner of Income Tax (Appeals) – 4, Chennai, dated 08.01.2016 and pertains to assessment year 2011-12.

2. The only issue arises for consideration is with regard to disallowance of interest to the extent of ₹21,82,905/-.

3. No one appeared for the assessee inspite of service of notice. Therefore, I heard the Ld. Departmental Representative and proceed to dispose of the appeal on merit.

4. Shri Supriyo Pal, the Ld. Departmental Representative, submitted that the assessee borrowed loan at the rate of 1.74% and paid interest to the extent of ₹41,69,629/-. The assessee has advanced the borrowed funds to M/s Inject Care Parenterals Pvt. Ltd. at the rate of 0.87% and received interest to the extent of ₹20,30,302/-. The loan was borrowed from DCP Trading Co. and advanced to M/s Inject Care Parenterals Pvt. Ltd. According to the Ld. D.R., the assessee claimed that the loan was advanced to M/s Inject Care Parenterals Pvt. Ltd. as a measure of commercial expediency. The assessee claimed before the Assessing Officer that M/s Inject Care Parenterals Pvt. was a sick industry. Therefore, in order to protect the interest of that company, the loan was advanced at lower rate. According to the Ld. D.R., the Assessing Officer found that the entire transaction was routed through the assessee, which is a tailor made one in order to evade payment of additional tax. According to the Ld. D.R., had there been genuine commercial expediency for advancing money, then M/s DCP Trading Co. could have directly advanced money to M/s Inject Care

Parenterals Pvt. Ltd. This is a method, according to the Ld. D.R., to evade tax by reducing the tax liability. Therefore, according to the Ld. D.R., the CIT(Appeals) has rightly confirmed the order of the Assessing Officer.

5. I have considered the submission made by the Ld. Departmental Representative and perused the relevant material available on record. The assessee apparently borrowed loan from DCP Trading Co. and advanced the substantial amount to M/s Inject Care Parenterals Pvt. Ltd. The rate of interest paid by the assessee to DCP Trading Co. was 1.74%. However, the interest received from M/s Inject Care Parenterals Pvt. is at the rate of 0.87%. Even though the assessee claimed before the lower authorities that the money was advanced due to commercial expediency, it is not known what is the relationship between the assessee and the company to which the money was advanced. The assessee is an individual and the money was advanced to a Pvt. Ltd. company. So, at the best, the assessee can be a shareholder of that company to which the money was advanced. The shareholding pattern of the company to which the loan was advanced by the assessee, is not available on record. It is also not available on record the shareholding pattern of M/s DCP Trading Co. from which the

assessee borrowed the loan. This Tribunal is of the considered opinion that for the purpose of deciding the commercial expediency, the shareholding pattern and interest of the assessee have to be examined.

6. Since the assessee has not appeared before this Tribunal and no material evidence is available on record, this Tribunal is of the considered opinion that giving one more opportunity to the assessee to produce all the necessary material before the Assessing Officer may go a long way in dispensation of justice. Giving such an opportunity would not prejudice the interest of Revenue in any way. This Tribunal is of the considered opinion that giving one more opportunity to the assessee to produce all the necessary material would definitely promote the cause of justice. Accordingly, the orders of the authorities below are set aside and the issue of disallowance of interest to the extent of ₹21,82,905/- is remitted back to the file of the Assessing Officer. The Assessing Officer shall re-examine the issue afresh in the light of the material that may be produced by the assessee and thereafter decide the issue in accordance with law, after giving a reasonable opportunity to the assessee.

7. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced on 18th August, 2016 at Chennai.

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

चेन्नई/Chennai,
दिनांक/Dated, the 18th August, 2016.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-4, Chennai-34
4. Principal CIT-5, Chennai
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.