

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'B' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं  
श्री ए. मोहन अलंकामणी, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND  
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.2210/Mds/2015

निर्धारण वर्ष / Assessment Year : 1997-98

Smt. S. Easwari,  
C/o Shri S. Sridhar, Advocate,  
New No.14, Old No.82, Flat No.5, v. The Deputy Commissioner of  
1<sup>st</sup> Avenue, Indira Nagar, Income Tax,  
Adyar, Chennai - 600 020. Central Circle,  
Salem.

PAN : AACPE 7185 N

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri S. Sridhar, Advocate  
प्रत्यर्थी की ओर से/Respondent by : Shri Sasikumar, JCIT

सुनवाई की तारीख/Date of Hearing : 23.02.2016

घोषणा की तारीख/Date of Pronouncement : 01.04.2016

### **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)-18, Chennai, dated 28.09.2015 and pertains to assessment year 1997-98.

2. Shri S. Sridhar, the Ld.counsel for the assessee, submitted that the only issue arises for consideration is with regard to addition of ₹3,00,000/-. According to the Ld. counsel, the assessee has filed necessary confirmation letters from the creditors. The assessee has borrowed a sum of ₹1,50,000/- from his father Shri S. Ekambaram and another sum of ₹1,50,000/- from a close relative Shri S. Sukumaran. The necessary source for advancing the money by the respective creditors was filed before the Assessing Officer. The Assessing Officer, however, failed to consider the material filed before him. According to the Ld. counsel, the CIT(Appeals) in the first round of litigation directed the Assessing Officer to cross-examine the loan creditors. However, the Assessing Officer understood the order of the CIT(Appeals) that there was no direction from the CIT(Appeals) to re-examine the assessee's claim with regard to source. According to the Ld. counsel, it is for the Assessing Officer to examine the source of the creditors, identity of creditors, their creditworthiness and genuineness of the transaction. Since such an exercise was not done by the Assessing Officer, according to the Ld. counsel, the CIT(Appeals) committed an error by confirming the addition made by the Assessing Officer.

3. On the contrary, Shri Sasikumar, the Ld. Departmental Representative, submitted that in the earlier round of litigation, the CIT(Appeals) directed the Assessing Officer to provide an opportunity to cross-examine the creditors by the assessee. In spite of the opportunity given by the Assessing Officer, the assessee has not availed the opportunity for cross-examination of the creditors. Since the assessee has not availed the opportunity, the Assessing Officer has rightly found that the source of creditors could not be examined. Therefore, the Assessing Officer rightly confirmed the addition.

4. We have considered the rival submissions on either side and perused the relevant material available on record. In respect of the credits, it is mandatory on the part of the Assessing Officer to examine and identify the creditors, their creditworthiness and genuineness of the transaction. In the earlier round of litigation, the CIT(Appeals) has directed the Assessing Officer to provide an opportunity to the assessee for cross-examination of creditors. It does not mean that the Assessing Officer shall not re-examine the source of creditors for advancing money to the assessee. What was advanced by Shri S. Ekambaram is only ₹1,50,000/- and

another sum of ₹1,50,000/- by Shri S. Sukumaran. Therefore, this Tribunal is of the considered opinion that the Assessing Officer has to examine the creditworthiness of the creditors for advancing money to the assessee. Unfortunately, the Assessing Officer failed to do so. Under normal circumstances, this Tribunal would direct the Assessing Officer to re-examine the matter. However, this Tribunal is not doing so in this case, since the assessment year under consideration is 1997-98 and this being second round of litigation. Moreover, in view of smallness of the amount involved in this appeal, remitting back the matter to the file of the Assessing Officer may not be necessary. Therefore, this Tribunal is of the considered opinion that since the creditworthiness of the creditors was not examined by the Assessing Officer inspite of the fact that the assessee has furnished the confirmation letters from the respective creditors, the burden of proof lies on the shoulder of the Assessing Officer. Since the Assessing Officer has not examined the confirmation letters filed by the assessee, the addition cannot be sustained in the hands of the assessee. Accordingly, the orders of the lower authorities are set aside and the addition of ₹3,00,000/- made by the Assessing Officer is deleted.

5. In the result, the appeal of the assessee is allowed.

Order pronounced on 1<sup>st</sup> April, 2016 at Chennai.

sd/-

(ए. मोहन अलंकामणी)

(A. Mohan Alankamony)

लेखा सदस्य/Accountant Member

sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated, the 1<sup>st</sup> April, 2016.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-18, Chennai-34
4. Principal CIT (Central) 2, Chennai
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.