

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 Nos.1539, 1540, 1541, 1542, 1543 & 1544/Mds/2014
निर्धारण वर्ष / Assessment Years : 1997-98, 1999-2000, 2000-01, 2002-03,
2003-04 & 2005-06

M/s Sri Sakthimiyil Finance Pvt. Ltd.,
C-4, Kongu Complex,
6-D, Paramathi Road,
Namakkal – 637 001.

v. The Deputy Commissioner of
Income Tax,
Company Circle,
Salem.

PAN : AA ECS 8968 G
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri G. Baskar, Advocate
प्रत्यर्थी की ओर से/Respondent by : Shri Sahadevan, JCIT

सुनवाई की तारीख/Date of Hearing : 06.06.2016
घोषणा की तारीख/Date of Pronouncement : 18.08.2016

आदेश / O R D E R

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

All the appeals of the assessee are directed against the
respective orders of the Commissioner of Income Tax (Appeals),
Salem, for the assessment years 1997-98, 1999-2000, 2000-01,

2002-03, 2003-04 and 2005-06. Since common issue arises for consideration in all these appeals, we heard these appeals together and disposing of the same by this common order.

2. Shri G. Baskar, the Ld.counsel for the assessee, submitted that the main grievance of the assessee before this Tribunal is that the Assessing Officer has not made any independent examination of the fact relating to each year. Referring to the order of this Tribunal in the assessee's own case for assessment years 1997-98, 1996-97 and 1998-99 in I.T.A. Nos.1308/Mds/2000, 128 & 842/Mds/01 dated 31.08.2007, a copy of which is available at page 57 of the paper-book, the Ld.counsel for the assessee submitted that this Tribunal directed the Assessing Officer to examine the issue after considering the order of this Tribunal in block assessment as well as in the case of various deposit holders which have already been confirmed as income of the assessee and thereafter decide the issue in accordance with law after giving an opportunity of hearing to the assessee. In spite of this direction, the Assessing Officer has not considered the order of this Tribunal for block assessment. A copy of the order passed by this Tribunal in the assessee's own case for block assessment is available at page

28 of the paper-book. Moreover, according to the Ld. counsel, the Assessing Officer has also made an addition towards sticky loan. According to the Ld. counsel, there was doubt with regard to recovery of sticky loan, therefore, there cannot be any addition with regard to unproven interest.

3. On the contrary, Shri Sahadevan, the Ld. Departmental Representative, submitted that in the block assessment proceeding, the addition made by the Assessing Officer was confirmed by this Tribunal in I.T.A. Nos.1308/Mds/2000, 128 & 842/Mds/01. By order dated 31.08.2007, this Tribunal remitted back to the file of the Assessing Officer in the light of accounting system followed by the assessee and to ascertain whether the change of method is bonafide or not. Accordingly, the Assessing Officer examined the issue. After considering the system of accounting and reason for changing over the method from mercantile to cash system, the Assessing Officer found that there was no bonafide reason for changing the system of accounting. Referring to the disallowance of interest on the unproved capital, the Ld. D.R. pointed out that this Tribunal in I.T.(SS) A. No. 41/Mds/1997 dated 09.04.2002 examined

the issue and disallowed a sum of ₹35,0,000/- as unproven fixed deposit and interest thereon.

4. The Ld. Departmental Representative further submitted that the order of this Tribunal was subject matter of appeal before the High Court and the High Court, in fact, confirmed the order of this Tribunal. The assessee further proceeded before the Apex Court. In fact, the Special Leave Petition filed by the assessee was dismissed by the Apex Court. Therefore, according to the Ld. D.R., it is obvious that the issue of unproven profit and unproven fixed deposit and disallowance of interest on the fixed deposit has reached finality. Hence, according to the Ld. D.R., the Apex Court confirmed the order of this Tribunal by holding that on the unproven fixed deposit there cannot be any allowance on the interest. Referring to the submission of the assessee before the CIT(Appeals), the Ld. D.R. submitted that the assessee is in the business of hire purchase and finance. As per the directions of this Tribunal, the Assessing Officer examined the books of the assessee and method of accounting followed, reason for switching over the accounting system, etc. After careful examination of the material facts, as directed by the Tribunal, the Assessing Officer found that

almost 88.81% of loan advanced by the assessee was locked up with the Directors in the guise of related firms and relatives. The Assessing Officer has also disallowed the interest on the unproven fixed deposit after verification as per the direction of the Tribunal. Therefore, according to the Ld. D.R., it is not correct to say that the directions of this Tribunal were not carried on. According to the Ld. D.R., the assessee could not prove or establish that the fixed deposit on which the interest was paid is a genuine deposit. When the fixed deposit itself is doubtful and it is not in existence, according to the Ld. D.R., there is no question of any payment of interest on such non-existing fixed deposit. Therefore, according to the Ld. D.R., the Assessing Officer has rightly disallowed the payment of interest on the so-called unproven fixed deposit.

4. Referring to sticky loan, the Ld. D.R. submitted that the company has to maintain its books of account on mercantile system only. There is no choice for the company. Therefore, according to the Ld. D.R., switching over of method of accounting to cash system is not justified. Referring to Schedule 9 of balance sheet, which was extracted by the CIT(Appeals) at para 5 of impugned order, the Ld. D.R. submitted that the balance of

₹2,76,47,673/- as on 31.03.1996 was actually ₹3,41,00,675/- as on 31.03.1997. According to the Ld. D.R., in fact, the assessee has extended the loan/advance to the persons who are related to Directors of the assessee-company. The assessee has also extended loan to the related firms and companies. The Ld. D.R. further submitted that the related parties and the companies to whom the amount was advanced, were not paying the interest. The Assessing Officer, after examining the accounts of the assessee, found that there was no reason for shifting the system of accounting from mercantile system to cash system. The Ld. D.R. further pointed out that only to evade the payment of tax, the assessee has shifted the system of accounting. Therefore, the CIT(Appeals) has rightly confirmed the order of the Assessing Officer by placing reliance on the judgment of Apex Court in Southern Technologies Ltd. v. JCIT (2010) 320 ITR 577. This was in fact followed by the Madras High Court in the assessee's own case in the judgment dated 12.02.2013.

5. We have considered the rival submissions on either side and perused the relevant material available on record. In all the appeals, the first issue arises for consideration is disallowance of

interest on the fixed deposit. The assessee claimed payment of interest on the fixed deposit as expenditure. The Assessing Officer found that the issues of assessment of unproven share capital and unproven fixed deposits have reached finality in the block assessment proceeding. In fact, this Tribunal examined the issue of investment in the capital and fixed deposit in the block assessment and found that the assessee itself admitted that the investments in share capital and fixed deposits are their own income. When the fixed deposit and investment in share capital was taken as income of the assessee by the order of this Tribunal in the block assessment, which was admittedly confirmed by the High Court and Apex Court, this Tribunal is of the considered opinion that claiming further interest on such fixed deposits cannot be allowed while computing the taxable income. Therefore, this Tribunal do not find any reason to interfere with the order of the lower authority and accordingly the same is confirmed.

6. Now coming to the issue of sticky loan, the assessee advanced loan to relatives and related companies. The assessee by shifting the method of accounting from mercantile system to cash system, claims that the interest was not received from so-called

persons who are related to the Directors of the assessee-company. This Tribunal is of the considered opinion that as rightly found by the CIT(Appeals), under the Companies Act, the assessee has to mandatorily maintain the books of account on mercantile basis. The shifting of accounting system from mercantile system to cash system is not bonafide as rightly found by both the authorities below. This Tribunal is of the considered opinion that there is no material on record to suggest that there was any difficulty in proving payment amount and interest accrued thereon. In the absence of any evidence, and assessee admittedly advanced the money to the relatives of the Directors, this Tribunal do not find any reason to find fault with the orders of the lower authorities. Therefore, this Tribunal is of the considered opinion that the CIT(Appeals) has rightly confirmed the addition made by the Assessing Officer. Accordingly, the same is confirmed.

7. In the result, all the appeals filed by the assessee stand dismissed.

Order pronounced on 18th August, 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 18th August, 2016.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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