

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई

**IN THE INCOME TAX APPELLATE TRIBUNAL  
'A' BENCH, CHENNAI**

श्री चंद्र पूजारी, लेखा सदस्य एवं श्रीजी. पवन कुमार, न्यायिक सदस्यकेसमक्ष

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER  
AND SHRI G. PAVAN KUMAR, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A. No.550/Mds/2016

निर्धारण वर्ष /Assessment year : 2011-2012

The Income Tax Officer,  
Corporate Ward 1(3)  
Chennai 600 034.

**Vs.** M/s. Chentech Computer Services  
Pvt. Ltd,  
New No.75A, Old. No.105A,  
Dr. Radha Krishnan Salai,  
Opp. Hotel President,  
Mylapore,  
Chennai 600 004.

**(अपीलार्थी/Appellant)**

**[PAN AAACM 5280H ]  
(प्रत्यर्थी/Respondent)**

अपीलार्थी की ओर से/ Appellant by  
प्रत्यर्थी की ओर से /Respondent by

: Shri. K.N. Dhandapani, IRS, JCIT.  
: Shri. R. Dhiraj, Advocate.

सुनवाई की तारीख/Date of Hearing

: 12-05-2016

घोषणा की तारीख /Date of Pronouncement

: 25-05-2016

**आदेश / ORDER**

**PER G. PAVAN KUMAR, JUDICIAL MEMBER:**

The appeal filed by the Department is directed against order of the Commissioner of Income-tax (Appeals)-1, Chennai in ITA No.197/14-15/A-1, dt 07.12.2015 for the assessment year 2011-2012

passed u/s. 143(3) and 250 of the Income Tax Act, 1961 (herein after referred to as 'the Act').

**2.** The Revenue has raised the following grounds:-

*"2.1 The learned CIT(A) erred in directing the AO to delete the addition of Rs.4,48, 72, 968/- being interest income.*

*2.2. The learned CIT(A) failed to appreciate the fact that the combined reading of the provisions of sections 5 and 145 shows that the total income of an assessee shall include the income on the basis of system of accounting regularly employed by him.*

*2.3. It is submitted that Section 145 is not only for the purposes of recognition of income but it also provides for the method of computation of income under the specified heads and hence the total income of an assessee which has been either received or accrued shall be computed in accordance with the provisions of Section 145.*

*2.4 The learned CIT(A) failed to appreciate that the assessee being a company, is bound to maintain its books on mercantile basis only and ought to have offered the interest income on accrual basis.*

*2.5 The learned CIT(A) ought to have appreciated that once income has accrued, it shall be included in total income. The assessee cannot postpone the income on receipt basis except in the cases of assessee covered by the provision of section 43D.*

*2.6 The learned CIT(A) ought to have followed the decision of the Hon'ble Supreme Court in the case of Shiv Prakash Janak Raj & Co P Ltd (222 ITR 583) wherein it is held that the interest accrues to the assessee notwithstanding the fact that no entries might have been made in the accounts of the assessee".*

**3.** The Brief facts of the case that the assessee is in the business of investment activities and computer software services and

filed return of income electronically on 30.9.2011 admitting Nil income. The case was selected for scrutiny and notice u/s.143(2) and 142(1) of the Act was issue. In compliance to notices, the Id. Authorised Representative appeared from time to time and furnished details. The Id. Assessing Officer on perusal of the balance sheet found that assessee has advanced an amount of ₹37,39,33,896/- to M/s. Maxworth Industries Pvt. Ltd and no interest was charged or admitted on loans and advances. On perusal of the loan agreement, the advance amount carries interest, and the assessee as in earlier assessment years has not charged interest on loans advanced to company and the Tribunal has allowed the appeal of the assessee. The Revenue has not accepted the decision of ITAT and filed an appeal u/s.260A of the Act in Jurisdictional High Court and is pending. The assessee is a limited company and following Mercantile System of Accounting, In the financial statements the income has to be recognized on accrual basis and interest has to be charged on loan. The Id. Authorised Representative submitted that interest shall not be charged on non performing assets (NPA) were the recovery of principle itself is doubtful. But the Assessing Officer found the decision relates to banking and NBFCs were as the assessee company objects and activities are different and supported with judicial decisions and calculated interest accrued on loans and advances at

12% ₹4,48,72,068/-. The assessee obtained secured loan to pay M/s. Redington for investments in M/s. Maxworth and assessed total income ₹4,41,08,721/- and raised demand. Aggrieved by the order, the assessee filed an appeal before Commissioner of Income Tax (Appeals).

4. In the appellate proceedings, the Id. Authorised Representative of assessee argued the grounds and explained the advances made by the assessee. M/s. Maxworth Investments Private Ltd has become defunct and has accumulated losses were the recovery of principal itself is a doubtful and furnished written submissions referred at para 5 of the Id. Commissioner of Income Tax (Appeals) order. The Id. Commissioner of Income Tax (Appeals) considered the submissions and the findings is of the opinion that the Assessing Officer has overlooked the submissions on doubtful recovery of the advances of the assessee as in earlier years and the Tribunal has allowed the appeal and observed at para 6 of the order as under:-

*"I have carefully considered the facts, order of the AO, submission made by the Appellant and material on record. I find that the Assessing officer has not rebutted or rejected the contention of the Appellant that the amounts have become irrecoverable. I find that in appellant's own case for the assessment year 2001-2002, 20()2-2003)2()06-L~007,2007 - 2008,2008-2009, 2009-10 and 2010-2011, the ITAT, Chennai in ITA Nos. 1242,1243/2008,216, 217/2011,1968/2011, 1410/2013 and*

770/2015 has allowed the claim of the appellant. In doing so the Hon'ble Tribunal made observations in para 6 (page 3) of order in ITA NO.1242 & 1243/2008 dated 18.5.2009 as under:

*"We have heard both the sides, considered the material on record as well as precedents relied upon and find that the issue raised in these appeals is squarely covered in favour of the assessee by the Hon 'ble Jurisdictional High Court's decision in the case of CIT v. Elgi Finance Ltd (supra) and headnote is as under:*

*Income –Accrual – Non Banking Financial Company – Mercantile System of Accounting – Interest of Non-Performing Assets- To be Considered only after recognizing income form such assets – No income recognized from such assets in consonance with RBI notification and accounting standard – interest computed as taxable income to be deleted – Interest to be taxed in appropriate assessment years on basis of actual receipt – Income Tax Act, 1961.*

*Since the Id. CIT(A) by following the Hon'ble Jurisdiction High Court's decision, such decision which has not been reversed by the Hon'ble Supreme Court, so far it is a binding precedent and the Tribunal sitting within the Jurisdiction of Hon'ble Madras High Court cannot take a different view. As such, we do not find any infirmity of flaw in the impugned order and uphold the same while dismissing the appeals of the Revenue.*

Respectfully, following the decision of the Tribunal, the Id. Commissioner of Income Tax (Appeals) has directed the Assessing Officer to delete the addition. Aggrieved by the order of Commissioner of Income Tax (Appeals), the Revenue has assailed an appeal before Tribunal.

5. Before us, the Id. Departmental Representative argued the grounds on the applicability of provisions of Mercantile Accounting and the Id. Commissioner of Income Tax (Appeals) has erred in directing the Assessing Officer to delete the interest, as the books of account are maintained on the Mercantile Accounting system and income has to be recognized on accrual basis. The Department has filed an appeal against the Tribunal decision for earlier assessment years and is pending. The Id. Commissioner of Income Tax (Appeals) without going into merits of the case relied on the order of Tribunal and deleted the addition and prayed for setting aside the order of Commissioner of Income Tax (Appeals).

6. Contra, the Id. Authorised Representative of assessee reiterated the submissions made before Assessing Officer and Commissioner of Income Tax (Appeals) on the facts and also advances to M/s. Maxworth Investments Private Ltd by the assessee company in earlier years and explained the defunct situation of the company and emphasized on the order of Commissioner of Income Tax (Appeals) were written submissions and order of ITAT in assessee own case was considered. The Id. Authorised Representative relied on the jurisdictional High Court decision in the case of *CIT vs. Elgi Finance Ltd 293 ITR 357* and Apex Court decision in the case of *CIT*

*vs. KICM Investments Ltd 310 ITR (St) 4 (SC)* and prayed for deleting of addition.

7. We heard the rival submissions, perused the material on record and judicial decisions cited. The Id. Departmental Representative argued on the chargeability of interest on advances to M/s. Maxworth Investments Pvt. Ltd on accounting principles and Mercantile system. The Id. Authorised Representative substantiated his arguments with written submissions filed in appellate proceedings explaining the origin of investments and the valid reasons for not charging interest as the company has become defunct and drew our attention to the orders of the Tribunal in assessee's own case in ITA Nos.1242 and 1243/Mds/2008, dated 18.05.2009 for assessment years 2001-02, 2002-03, ITA No.216 & 217/Mds/2011, dated 18.04.2011 for assessment years 2006-07 & 2007008, ITA No.1968/Mds/2011, dated 7.6.2012 for assessment year 2008-09, ITA No.1410/Mds/2013, dated 18.09.2013 for assessment year 2009-2010 and ITA No.770/Mds/2015, dated 22.07.2015 for assessment year 2010-2011. Considering the apparent facts, submissions and Tribunal decisions of assessee's company for earlier assessment years, we are of the opinion, the company has become defunct and has accumulated losses and further recovery is doubtful. We respectfully following the Co-ordinate Bench

decision, dismiss the appeal of the Revenue.

8. In the result, the appeal of the Revenue in ITA No.550/Mds/2016 is dismissed.

Order pronounced on Wednesday, the 25th day of May, 2016, at Chennai.

Sd/-

(चंद्र पूजारी)

**(CHANDRA POOJARI)**

**लेखा सदस्य /ACCOUNTANT MEMBER**

Sd/-

(जी. पवन कुमार)

**(G. PAVAN KUMAR)**

**न्यायिक सदस्य/JUDICIAL MEMBER**

चेन्नई/Chennai

दिनांक/Dated: 25.05.2016

**KV**

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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