

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

“D” 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.549, 550, 551, 552, 553, 554, 555, 556,  
557 & 558/Mds/2014

निर्धारण वर्ष / Assessment Years : 2004-05 to 2007-08

Smt. M. Usha,  
No.263 & 265, J.N. Street,  
Pondicherry – 605 001.

v. The Joint Commissioner of  
Income Tax,  
Pondicherry Range,  
Pondicherry.

PAN : ADHPU 4793 L  
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Sh S. Sridhar, Advocate  
Sh. A.S. Sriraman, Advocate  
प्रत्यर्थी की ओर से/Respondent by : Sh. P. Radhakrishnan, JCIT

सुनवाई की तारीख/Date of Hearing : 05.11.2015

घोषणा की तारीख/Date of Pronouncement : 27.11.2015

### **आदेश /O R D E R**

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

All the appeals filed by the assessee are directed against  
the respective orders of the Commissioner of Income Tax

(Appeals)–VI, Chennai, dated 29.01.2014. 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 S. Sridhar, the Ld.counsel for the assessee, submitted that there was a survey in the premises of one Shri A. Kannan, Proprietor, Vadamalayan Finance, Pondicherry, on 08.09.2011. During the course of survey operation, the Revenue authorities found that the loan debtors are entered in the register called “Kisthi Vasool List Book”. On the basis of Kisthi Vasool List Book, the Assessing Officer found that there was a mention about Usha Ammal for receipt of cash exceeding ₹20,000/- to the extent of ₹20,00,000/-. According to the Ld. counsel, the assessee has not received any money from Shri A. Kannan or M/s Vadamalayan Finance. The Assessing Officer initiated proceedings for levy of penalty under Sections 271D and 271E of the Income-tax Act, 1961 (in short 'the Act') for so-called receipt of loan in cash and repayment of loan in cash exceeding ₹20,000/-. The Chartered Accountant of the assessee by mistake explained before the Assessing Officer that the money was received out of business compulsion. In fact, according to the Ld. counsel, the assessee is

not doing any business at all. Therefore, there is no necessity for the assessee to receive either as loan or otherwise from the proprietor of M/s Vadamalayan Finance. On a query from the Bench, if the assessee is not doing any business, why the assessee obtained PAN, which was referred in the orders of the lower authorities? The Ld.counsel clarified that the assessee was a partner in a textile shop few years ago and the textile business was closed and during the year under consideration, the assessee has no source of income at all. The assessee is also not doing any business. Therefore, the explanation given by the Chartered Accountant that the money was borrowed for business compulsion is factually not correct.

3. Referring to the orders of the CIT(Appeals), the Ld.counsel for the assessee, submitted that the CIT(Appeals) proceeded on the presumption that the assessee's name, signature, the amount received / repaid and the date of receipt figured in the register maintained by the financier Shri A. Kannan. Producing a copy of the so-called register, the Ld.counsel submitted that this is the register produced before the Revenue. This register does not contain the name of assessee or signature. Therefore, the

observation made by the CIT(Appeals) is contrary to the fact on record. According to the Ld. counsel, since the assessee has not received any money from the financier Shri A. Kannan or M/s Vadamalayan Finance, there cannot be any levy of penalty under Sections 271D or 271E of the Act.

4. On the contrary, Sh. P. Radhakrishnan, the Ld. Departmental Representative, submitted that during the course of survey operation, the Revenue authorities found that the assessee has received ₹20,00,000/- from Shri A. Kannan, proprietor, M/s Vadamalayan Finance. By letter dated 09.01.2013, the assessee explained before the Assessing Officer that the loan was received and repaid out of business compulsion. Therefore, the provisions of Section 273B would be applicable. Hence, the assessee requested the Assessing Officer to drop the proceedings under Sections 271D and 271E of the Act. The claim made by the assessee now before this Tribunal and CIT(Appeals) that no money was received from Shri A. Kannan, proprietor, M/s Vadalamayan Finance, is contrary to the statement made by the assessee in the letter dated 09.01.2013. When the assessee claimed that the money was borrowed for business compulsion, it is for the assessee to explain

what was the actual compulsion which made her to receive the money in cash. In the absence of any material, the CIT(Appeals), according to the Ld. D.R., has rightly confirmed the addition.

5. We have considered the rival submissions on either side and perused the relevant material available on record. Admittedly, there was a survey operation in the premises of Shri A. Kannan, proprietor, M/s Vadamalayan Finance, Pondicherry. The Revenue authorities found Kisthi Vasool List Book which disclosed the details of various persons who received loan from the assessee and repaid the same. The assessee claimed that she is one of the borrowers who borrowed money from Shri A. Kannan and repaid the same in cash. From the orders of the lower authorities it appears that the assessee by letter dated 09.01.2013 explained before the Assessing Officer that the money was borrowed for business compulsion, therefore, there cannot be any levy of penalty under Sections 271D and 271E of the Act. In fact, this was the admission made by the assessee. Now the Ld.counsel for the assessee claims that the assessee has no business at all. Therefore, it needs to be examined whether the assessee in fact carrying on any business which necessitated the assessee to borrow money from

Shri A. Kannan. In the absence of any business, naturally there is no reasonable cause for receiving the money in question. However, placing reliance on the Kisthi Vasool List Book for receipt and repayment of money by the assessee exceeding ₹20,000/-, the CIT(Appeals) observed in his order that the assessee's name, signature and amount received / repaid along with date of receipt figured in the register maintained by the financier Shri A. Kannan. However, the assessee disputed the same. The Ld.counsel for the assessee, by producing a copy of the register, claimed that the assessee's signature is not there. According to the Ld. counsel, what is mentioned is Smt. Usha Ammal. There is no reference in the register to indicate that the name of Usha Ammal found therein refers the present assessee. Therefore, it needs to be verified whether there was any signature in the register as observed by the CIT(Appeals). Since the Department has not produced original register before this Tribunal, this Tribunal is of the considered opinion that the matter needs to be reconsidered. Accordingly, the orders of the lower authorities are set aside and the entire issue is remitted back to the file of the Assessing Officer. The Assessing Officer shall reconsider the issue afresh in the light of the material available on record and also bring on record whether the assessee

is in fact carrying on any business. The Assessing Officer shall examine whether the assessee in fact received the money and repaid to Shri A. Kannan and thereafter decide the issue in accordance with law after giving reasonable opportunity to the assessee.

6. In the result, all the appeals of the assessee are allowed for statistical purposes.

Order pronounced on 27<sup>th</sup> November, 2015 at Chennai.

Sd/-	sd/-
(ए. मोहन अलंकामणी)	(एन.आर.एस. गणेशन)
(A. Mohan Alankamony)	(N.R.S. Ganesan)
लेखा सदस्य/Accountant Member	न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,  
दिनांक/Dated, the 27<sup>th</sup> November, 2015.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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