

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'A' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं

श्री डि.एस. सुन्दर सिंह, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND  
SHRI D.S. SUNDER SINGH, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.121/Mds/2016

निर्धारण वर्ष / Assessment Year : 2011-12

Shri P.K. Rajasekar,  
Plot No.70, No.12, 4<sup>th</sup> Cross Street,  
Ramakrishnan Nagar, Ernavoor,  
Chennai - 600 057.

v. The Income Tax Officer,  
Non Corporate Ward 6(1),  
Chennai.

PAN : ADVPR 4415 J

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri M. Karunakaran, Advocate

प्रत्यर्थी की ओर से/Respondent by : Shri Shiva Srinivas, JCIT

सुनवाई की तारीख/Date of Hearing : 25.07.2016

घोषणा की तारीख/Date of Pronouncement : 15.09.2016

### **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) – 5, Chennai, dated 15.12.2015 and pertains to assessment year 2011-12.

2. Shri M. Karunakaran, the Ld.counsel for the assessee, submitted that the assessee is engaged in the business of laying

cables. During the year under consideration, the assessee has received a sum of ₹64,85,397/- from M/s Tulip Telecom P. Ltd. The assessee has offered the above said sum of ₹64,85,397/- for taxation. However, while filing the TDS return, M/s Tulip Telecom P. Ltd. appears to have claimed a sum of ₹1,26,84,856/- paid to the assessee. Out of the so-called claim of M/s Tulip Telecom P. Ltd., a sum of ₹58,36,556/- was said to be given credit on 01.07.2010 is totally incorrect. When the assessee contacted the company M/s Tulip Telecom P. Ltd., they said they will rectify the TDS return filed electronically. However, they have not rectified. Since the amount was not paid, according to the Ld. counsel, the same cannot be taken as income of the assessee. According to the Ld. counsel, a wrong entry filed by the deductor cannot be a reason to treat the same as income of the assessee.

3. On the contrary, Shri Shiva Srinivas, the Ld. Departmental Representative, submitted that the assessee claimed that the credit of ₹58,36,556/- given on 01.07.2010 is a wrong entry and M/s Tulip Telecom P. Ltd. has not filed revised TDS return so far. As per the details found in Form 26AS, the assessee has received a sum of ₹1,23,19,906/- from M/s Tulip Telecom P. Ltd. In view of the claim

of the assessee, a letter was addressed to M/s Tulip Telecom P. Ltd. by the Assessing Officer on 6.12.2013. However, the Assessing Officer has not received any reply. The assessee gave another address of M/s Tulip Telecom Pvt. Ltd. at Bangalore. The Assessing Officer has also addressed a letter to Bangalore address. In spite of that, no reply was received from M/s Tulip Telecom P. Ltd. Since M/s Tulip Telecom P. Ltd. could not be contacted, according to the Ld. D.R., the Assessing Officer has no other alternative except to take the particulars contained in Form 26AS as correct. Therefore, according to the Ld. D.R., the CIT(Appeals) has rightly confirmed the order of the Assessing Officer.

4. We have considered the rival submissions on either side and perused the relevant material available on record. The assessee claims that the credit of ₹58,36,556/- said to be given on 01.07.2010 is a wrong entry and the company, namely, M/s Tulip Telecom P. Ltd. failed to rectify the TDS return filed electronically. The Revenue claims that the letter addressed to M/s Tulip Telecom P. Ltd. was not responded. Therefore, the Assessing Officer found that the assessee has not established the claim. Accordingly, the Assessing Officer treated the particulars contained in Form 26AS as

genuine and the difference of ₹61,99,459/-, as per the credit shown in Form 26AS, was taken as undisclosed receipt by the assessee. The main grievance of the assessee is that the credit entry found on 01.07.2010 to the extent of ₹58,36,556/- is a wrong entry.

5. Under the scheme of Income-tax Act, the assessee is expected to pay tax after completion of assessment. In order to ensure the recovery of tax, the Income-tax Act provides payment of tax in advance, before completion of assessment and also provides for deduction of tax at source. When the payer deducted the tax as per the scheme of the Income-tax Act in respect of the payment made by them, the amount deducted by the payer towards TDS has to be treated as payment of tax. If the assessee claims that there was wrong entry and wrong credit, the Assessing Officer has to examine the same with open mind and find out whether there was a genuine credit as found in Form 26AS. M/s Tulip Telecom P. Ltd. is also a tax payer in this country. Therefore, the Revenue cannot shift the burden to the assessee on the ground that M/s Tulip Telecom P. Ltd. could not be contacted. M/s Tulip Telecom P. Ltd. is a company registered under the provisions of Companies Act and

the Directors can very well be contacted by the Assessing Officer and find out what is the error in TDS return.

6. This Tribunal is of the considered opinion that even though the burden of proof is initially on the shoulder of the assessee, the Assessing Officer is also equally responsible to find out whether the credit entry found on 01.07.2010 is genuine or not. The Assessing Officer cannot take advantage of the ignorance or handicap of the assessee and say that there was undisclosed receipt by the assessee. When the assessee claims that the entry as on 01.07.2010 is a wrong entry, the Assessing Officer in all fairness has to examine the same and find out whether there was genuine entry or not. The Assessing Officer was conferred the power of civil court to examine and find out the real nature of transaction. If the Assessing Officer could not exercise the power conferred on him, it is not known how the individual citizen of this country will be able to find out the genuineness of the transaction. Therefore, in order to meet the ends of justice, this Tribunal is of the considered opinion that the Assessing Officer has to find out the address of M/s Tulip Telecom P. Ltd. and its Directors and thereafter find out whether so-called credit of ₹58,36,556/- said to be given on 01.07.2010 is a

genuine transaction or it is a wrong entry. Thereafter, the Assessing Officer has to decide the same in accordance with law. Accordingly, the orders of the authorities below are set aside and the entire issue is remitted back to the file of the Assessing Officer. The Assessing Officer shall re-examine the matter afresh in the light of the material available on record and thereafter decide the same 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 15<sup>th</sup> September, 2016 at Chennai.

sd/- (डि.एस. सुन्दर सिंह) (D.S. Sunder Singh) लेखा सदस्य/Accountant Member	sd/- (एन.आर.एस. गणेशन) (N.R.S. Ganesan) न्यायिक सदस्य/Judicial Member
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चेन्नई/Chennai,  
दिनांक/Dated, the 15<sup>th</sup> September, 2016.  
Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|---|--------------------------|
| 1. अपीलार्थी/Appellant                  | 2. प्रत्यर्थी/Respondent |
| 3. आयकर आयुक्त (अपील)/CIT(A)-5, Chennai |                          |
| 4. Principal CIT-9, Chennai             |                          |
| 5. विभागीय प्रतिनिधि/DR                 | 6. गार्ड फाईल/GF.        |