

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 No.666/Mds/2015

निर्धारण वर्ष / Assessment Year : 2010-11

M/s Thayer Overseas  
Finance Ltd.,  
No.2, Jayaram Avenue,  
Shastri Nagar,  
Chennai - 600 020.

v. The Assistant Commissioner  
of Income Tax,  
Corporate Circle – 3,  
Chennai - 600 034.

PAN : AA ACT 5591 J

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri G. Baskar, Advocate

प्रत्यर्थी की ओर से/Respondent by : Shri N. Madhavan, JCIT

सुनवाई की तारीख/Date of Hearing : 25.05.2015

घोषणा की तारीख/Date of Pronouncement : 19.06.2015

### **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) – 11, dated 20.02.2015 and pertains to assessment year 2010-11.

2. Shri G. Baskar, the Ld.counsel afor the assessee, submitted that the CIT(Appeals) dismissed the case for non-prosecution. According to the Ld. counsel, the CIT(Appeals) has no power to dismiss the appeal. According to the Ld. counsel, the CIT(Appeals) is expected to dispose the appeal on merit on the ground the appeal raised before him. The Ld. counsel further submitted that one more opportunity be given to the assessee to present the material facts before the CIT(Appeals) so as to enable him to dispose the appeal on merit.

3. On the contrary, Shri N. Madhavan, the Ld. Departmental Representative, submitted that inspite of providing sufficient opportunity, the assessee did not appear before the CIT(Appeals). Therefore, the CIT(Appeals) had no other alternative except to dismiss the appeal.

4. We have considered the rival submissions on either side and perused the relevant material on record. The CIT(Appeals) by following the judgement of M.P. High Court in Estate of Late Tukojirao Holkar v. CIT (223 ITR 480) and the decision of Delhi Bench of this Tribunal in CIT v. Multiplan (India) Pvt. Ltd. (38 ITD 320), dismissed the appeal for non-prosecution. In the case before

M.P. High Court, the reference was dismissed. In the case before the Delhi Bench of this Tribunal in Multiplan (India) Pvt. Ltd. (supra), the case was not admitted because of the defect pointed out by the registry. This Tribunal is of the considered opinion that the judgement of M.P. High Court and the decision of Delhi Bench of this Tribunal are not applicable to the facts of this case. The CIT(Appeals) has not pointed out any defect in the case before him. Once the appeal is validly pending before him, the CIT(Appeals) is expected to dispose on merit irrespective of the fact that the assessee appeared before him. The CIT(Appeals), being the senior most officer of the Department and well versed in income-tax matters, can dispose the appeal on merit on the basis of the material available on record. Even otherwise, Income-tax Act does not enable the CIT(Appeals) to dismiss the appeal for non-prosecution. Since the CIT(Appeals) has not disposed the appeal on merit, this Tribunal is of the considered opinion that the matter needs to be reconsidered by the CIT(Appeals) on merit. Accordingly, the order of the CIT(Appeals) is set aside and the entire issue raised by the assessee is remitted back to his file with a direction to decide the issue afresh in accordance with law, after giving reasonable opportunity to the assessee. It is made clear that if the assessee does not cooperate with him after giving a

reasonable opportunity, it is open to the CIT(Appeals) to dispose of the appeal on merit on the basis of the material available on record.

5. With the above observation, the appeal of the assessee is allowed for statistical purposes.

Order pronounced on 19<sup>th</sup> June, 2015 at Chennai.

sd/-  
(A.Mohan Alankamony)  
(ए. मोहन अलंकामणी)  
लेखा सदस्य/Accountant Member

sd/-  
(N.R.S. Ganesan)  
(एन.आर.एस. गणेशन)  
न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,  
दिनांक/Dated, the 19<sup>th</sup> June, 2015.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-11, Chennai-34
4. आयकर आयुक्त/CIT, Chennai-3, Chennai-34
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.