

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'D' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं श्री इंटूरी रामा राव, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND  
SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.258/Chny/2017

निर्धारण वर्ष /Assessment Year : 2012-13

Shri G. Balasubramanian,  
No.5, Vinayagar Koil Street,  
Krishnaswamy Nagar,  
Ramanathapuram,  
Coimbatore – 641 045.

v. The Deputy Commissioner of  
Income Tax,  
Corporate Circle – 2,  
Coimbatore.

PAN : ACBPB 9344 D

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri S. Sridhar, Advocate

प्रत्यर्थी की ओर से/Respondent by : Ms. M. Subashri, JCIT

सुनवाई की तारीख/Date of Hearing : 14.03.2019

घोषणा की तारीख/Date of Pronouncement : 21.03.2019

### **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) -1, Coimbatore, dated 23.11.2016 and pertains to assessment year 2012-13.

2. The first issue arises for consideration is disallowance made by the Assessing Officer under Section 14A of the Income-tax Act, 1961 (in short 'the Act').

3. Shri S. Sridhar, the Ld.counsel for the assessee, submitted that during the year under consideration, the assessee did not earn any dividend income, therefore, there cannot be any disallowance in view of the judgment of Madras High Court in CIT v. Chettinad Logistics (P.) Ltd. (2017) 80 taxmann.com 221.

4. On the contrary, Ms. M. Subashri, the Ld. Departmental Representative, submitted that even though no dividend income was earned by the assessee, 0.5% of investment made during the year shall be deemed to be income of the assessee, therefore, the same has to be disallowed.

5. We have considered the rival submissions on either side and perused the relevant material available on record. Admittedly, the assessee did not earn any exempted income by way of dividend during the year under consideration. Therefore, in view of the judgment of Madras High Court in Chettinad Logistics (P.) Ltd. (supra), there cannot be any disallowance. In view of the above, we

are unable to uphold the orders of the lower authorities. Accordingly, orders of both the authorities below are set aside and the disallowance made by the Assessing Officer is deleted.

6. The next issue arises for consideration is addition made by the Assessing Officer under Section 2(22)(e) of the Act.

7. Shri S. Sridhar, the Ld.counsel for the assessee, submitted that the assessee is one of the Directors in M/s Shree Murugan Flour Mills P. Ltd. According to the Ld. counsel, the Assessing Officer made addition on the ground that M/s Shree Murugan Flour Mills P. Ltd. advanced money to M/s Swamy Traders, which is a proprietorship concern of one Shri V. Kalyanaraman. The Ld.counsel by placing reliance on the accounts of M/s Swamy Traders in the books of M/s Shree Murugan Flour Mills P. Ltd., submitted that during the previous year relevant to assessment year under consideration, no payment was made either by way of advance or loan to M/s Swamy Traders. Therefore, according to the Ld. counsel, the provisions of Section 2(22)(e) of the Act is not applicable at all. According to the Ld. counsel, in the books of M/s GBJ Hotels P. Ltd., M/s Swamy Traders had a credit balance of ₹77,50,000/- as on 01.04.2011. This amount was transferred by

way of credit entries. Therefore, according to the Ld. counsel, there was no loan or advance by M/s Shree Murugan Flour Mills P. Ltd. to the assessee-company. Hence, the addition made by the Assessing Officer to the extent of ₹77,50,000/- is not called for.

8. Referring to the case of M/s Sri Sakthi Transport, the Ld.counsel for the assessee submitted that there are two accounts. One in the name of M/s Sri Sivasakthi Enterprises and another in the name of Sri Sakthi Transport. The transaction between M/s Shree Murugan Flour Mills P. Ltd. and M/s Sri Sivasakthi Enterprises is a commercial transaction. M/s Sri Sivasakthi Enterprises use to purchase wheat from M/s Shree Murugan Flour Mills P. Ltd. Therefore, according to the Ld. counsel, it is a running current account in a commercial transaction between the companies, namely, M/s Shree Murugan Flour Mills P. Ltd. and M/s Sri Sivasakthi Enterprises. Moreover, according to the Ld. counsel, the transaction between M/s Shree Murugan Flour Mills P. Ltd. and Sri Sakthi Transport is also a commercial transaction. According to the Ld. counsel, the assessee gave his personal property as a collateral security for the loan availed by M/s Shree Murugan Flour Mills P. Ltd. In other words, according to the Ld. counsel, the

assessee's personal assets were encumbered for the loan borrowed by M/s Shree Murugan Flour Mills P. Ltd. Since the assessee had to repay the loan taken in the name of M/s Sri Sakthi Transport, according to the Ld. counsel, the repayment was made in the account only to keep a record of such payment made to the bank. According to the Ld. counsel, instead of debiting the account of Sri Sivasakthi Enterprises, the account was debited in the name of Sri Sakthi Transport for a better control of repayment to the bank. The Ld.counsel further explained that the transactions between M/s Shree Murugan Flour Mills P. Ltd. and M/s Sri Sivasakthi Enterprises are purely commercial transactions carried out in the ordinary course of business. Therefore, according to the Ld. counsel, the addition of ₹64,40,000/- as deemed dividend income is not called for. The Ld.counsel placed his reliance on the order of this Tribunal in CAI Industries P. Ltd. v. DCIT in I.T.A. No.356/Mds/2017 dated 21.09.2017, a copy of which is available at page 20 of the paper-book.

9. On the contrary, Ms. M. Subashri, the Ld. Departmental Representative, submitted that Shri V. Kalyanaraman, proprietor of M/s Swamy Traders was examined on 09.03.2015 under Section

131 of the Act. According to the Ld. D.R., he explained that he has not carried out any business activity with the assessee. Cheques were received from various parties and transferred to the assessee herein and his group companies. Therefore, according to the Ld. D.R., the money advanced by M/s Shree Murugan Flour Mills P. Ltd. to M/s Swamy Traders is nothing but a loan or advance, hence, the CIT(Appeals) has rightly confirmed the addition made by the Assessing Officer.

10. Referring to the transaction of M/s Shree Murugan Flour Mills P. Ltd. with M/s Sri Sakthi Transport, the Ld. D.R. submitted that the money was transferred to M/s Sri Sakthi Transport and the assessee has created an illusion as if the transactions were in the normal course of business. According to the Ld. D.R., there was no transaction between M/s Shree Murugan Flour Mills P. Ltd. and M/s Sri Sakthi Transport, therefore, the CIT(Appeals) has rightly confirmed the addition made by the Assessing Officer.

11. We have considered the rival submissions on either side and perused the relevant material available on record. With regard to M/s Swamy Traders, the assessee claims that in the books of M/s GBJ Hotels P. Ltd., M/s Swamy Traders had a credit balance of

₹77,50,000/- as on 01.04.2011. The assessee has produced a copy of the account extract of M/s Swamy Traders in the books of M/s GBJ Hotels P. Ltd. which shows credit balance of ₹77,50,000/- as on 01.04.2011. Therefore, as rightly claimed by the Ld.counsel for the assessee, this amount was transferred to the assessee. Hence, it is not correct to say that M/s Swamy Traders transferred any money to the assessee which was received from M/s Shree Murugan Flour Mills P. Ltd. In view of the above factual situation, this Tribunal is unable to uphold the orders of both the authorities below.

12. Now coming to transaction with M/s Sri Sakthi Transport and M/s Sri Sivasakthi Enterprises, it is not in dispute that M/s Sri Sivasakthi Enterprises use to purchase wheat from M/s Shree Murugan Flour Mills P. Ltd. Therefore, there was a running account between M/s Sri Sivasakthi Enterprises and M/s Shree Murugan Flour Mills P. Ltd. The assessee claims that in respect of the transaction, instead of debiting account of M/s Sri Sivasakthi Enterprises, the amount was debited to Sri Sakthi Transport for better control of repayment to the bank. It is also not in dispute that the assessee encumbered his personal assets for the loan

borrowed by M/s Shree Murugan Flour Mills P. Ltd. The assessee had repaid the amount taken originally in the name of M/s Sri Sakthi Transport which is a proprietorship concern of the assessee. In those circumstances, this Tribunal is of the considered opinion that the transaction is purely a commercial one and the assessee is maintaining running current account. Hence, in view of decision of this Bench of the Tribunal in CAI Industries P. Ltd. (supra), we are unable to uphold the orders of the authorities below. Accordingly, orders of both the authorities below are set aside and the addition made under Section 2(22)(e) of the Act as deemed dividend is deleted.

13. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the court on 21<sup>st</sup> March, 2019 at Chennai.

sd/-  
(इंटूरी रामा राव)  
(Inturi Rama Rao)  
लेखा सदस्य/Accountant Member

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

चेन्नई/Chennai,  
दिनांक/Dated, the 21<sup>st</sup> March, 2019.

Kri.



आदेश की प्रतिलिपि अग्रेषित/Copy to:

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