

IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH : BANGALORE

BEFORE SHRI N.V. VASUDEVAN, JUDICIAL MEMBER
AND SHRI JASON P. BOAZ, ACCOUNTANT MEMBER

ITA No.1336/Bang/2013
Assessment year : 2008-09

The Deputy Commissioner of Income Tax, Circle 11(3), Bangalore.	Vs.	Shri Syed Mateen Aga, No.47, 'Eureka', Church Street, Bangalore – 560 001. PAN: ACWPA 8235F
APPELLANT		RESPONDENT

Appellant by	:	Dr. K. Shankar Prasad, Jt. CIT(DR)
Respondent by	:	Shri R. Chandrashekar, Advocate

Date of hearing	:	07.04.2015
Date of Pronouncement	:	10.04.2015

ORDER

Per N.V. Vasudevan, Judicial Member

This appeal by the Revenue is against the order dated 17.7.2013 of the CIT(Appeals)-I, Bangalore relating to assessment year 2008-09.

2. The effective ground of appeal reads as follows:-

“2. The CIT(A) has erred in holding that the receipt of Rs.19,58,687 during the year from M/s Fairy Food Products Pvt. Ltd. cannot be considered as deemed dividend u/s. 2(22)(e) as the same was received for business purposes only and falls within the purview of the exception in sub-clause (ii) of clause (e) of section 2(22) without appreciating that the exception comes into

operation only when payments are made in the ordinary course of business, where the lending of money is a substantial part of the business of the company, while in the present case lending of money is not a substantial part of the business of Fairy Food Products Pvt. Ltd.”

3. The facts material for adjudication of aforesaid grounds of appeal is as follows. The assessee is an individual. He derives income from salary, house property, income from business etc. On verification of the balance sheet of the assessee as on 31.3.2008, the AO noticed that the assessee had received an advance of Rs.93,34,854 from a company by name M/s. Fairy Food Products Pvt. Ltd. [FFP]. The assessee was a director of FFP and was holding more than 20% of the paid-up share capital. The provisions of section 2(22)(e) of the Act reads as follows:-

(22) "dividend" includes—

(a)

(b)

(c)

(d)

(e) any payment by a company, not being a company in which the public are substantially interested, of any sum (whether as representing a part of the assets of the company or otherwise) [made after the 31st day of May, 1987, by way of advance or loan to a shareholder, being a person who is the beneficial owner of shares (not being shares entitled to a fixed rate of dividend whether with or without a right to participate in profits) holding not less than ten per cent of the voting power, or to any concern in which such shareholder is a member or a partner and in which he has a substantial interest (hereafter in this clause referred to as

the said concern)] or any payment by any such company on behalf, or for the individual benefit, of any such shareholder, to the extent to which the company in either case possesses accumulated profits ;”

4. According to the AO, since the assessee was a beneficial owner of shares holding not less than 10% of the voting power, the advance received by the assessee from FFP had to be assessed as deemed dividend in the hands of the assessee. It is not in dispute that the company FFP possessed accumulated profits equivalent to the advance to the assessee.

5. The assessee submitted before the AO that the advance in question was given by FFP for purchase of mango from the Assessee and was in the usual course of business of the assessee and FFP and therefore, the advance in question cannot be treated as deemed dividend u/s. 2(22)(e) of the Act. The assessee also pointed out that in the A.Y. 2006-07, the advance given by FFP was treated as deemed dividend by the AO, but was deleted by the CIT(Appeals).

6. The AO was of the view that the order of CIT(Appeals) for A.Y. 2006-07 had not been accepted by the Revenue and appeal had been filed before the Tribunal. The AO therefore treated the sum of Rs.93,34,854 as deemed dividend in the hands of the assessee and brought the same to tax.

7. Before the CIT(Appeals), the assessee pointed out that the sum of Rs.93,34,852 was a closing balance as on 31.3.2008 and that during the previous year, the amount of advance given by FFP to the assessee was only a sum of Rs.19,58,687. The CIT(A) considered the above submission and found the same to be correct. The CIT(A) further held that the advance received by the assessee during the previous year was for business purpose only and therefore would come under the purview of exception i.e., sub-clause (ii) of clause (e) of section 2(22) of the Act. Following were the relevant observations of the CIT(Appeals):-

“In the instant case the appellant submitted that the outstanding balance of Rs.93,34,854/- as on 31/03/2008 was received as advance from M/s Fairy Food Product(P) Ltd pertaining to earlier years. From the ledger extracts it is seen that the outstanding balance as on 01/04/2007 was Rs.2,19,35,409/- and after repayment the amount reduced to Rs.93,34,854/-. In view of this fact it is contended that the deemed dividend could not arise for the current assessment year. I have examined the ledger extract for the year ending 31/03/2007 and 31/03/2008 from it transaction would be:

Opening Balances as on 1.4.2007	Rs. 2,19,35,409	
Less- payment made during the year	<u>Rs. 1,45,59,242</u>	Rs.73,76,167
Further advances made during the A.Y. year Closing Balance as on 31.03.2008	Rs. 2,38,94,096	
Less-opening Balance as on 01.04.2008	<u>Rs. 2,19,35,409</u>	

Rs.19,58,687

Closing Balance as on
31/03/2008

Rs.93,34,852

From the details given above, closing balance as on 31.3.2008 as per ledger account shown at Rs.93,34,854/-; the appellant received further advance of Rs. 19,58,687 during the year and if at all that extent to have been considered new advance for the purpose of section 2(22)(e) of the Act.

In fact, the appellant's contention in this regard is partially correct because the total transactions up to 31/03/2008 appears at Rs.2,38,94,096 and after reducing, the opening balance of Rs.2,19,35,409/- balance would be Rs.19,58,687/- represents new advance received during the year.

On a perusal of the ledger account, the advance made to the appellant by M/s. Fairy Food Products (P) Ltd. for purchase of vehicle on behalf of the company for Rs.33,00,000/- and as per ledger account mangoes supplied to the extent of Rs.21,05,442/-. Thus advance received from the company for business purpose only and comes under the purview of exception i.e. sub-clause (ii) of Clause (e) of section 2 (22) of the Act.

In view of the facts stated above, the AO is not justified in adding of Rs.93,34,854/- as deemed dividend U/s 2(22)(e) of the Act and the same is directed to delete.”

8. Aggrieved by the order of the CIT(Appeals), the Revenue has preferred the present appeal before the Tribunal. It is clear from the ground raised that the Revenue does not dispute the fact that the advance given by FFP to the assessee during the previous year was only a sum of Rs.19,58,687 and only this sum can be considered for addition u/s. 2(22)(e) of the Act.

9. Before the Tribunal, it transpired that in the appeal against the order of CIT(Appeals) for the A.Y. 2006-07, the Tribunal had set aside the order of the CIT(Appeals) and directed the AO to examine as to whether the advance in question was in connection with the business of the assessee and FFP.

10. The Id. DR submitted before us that clause (ii) of section 2(22)(e) on which the Id. CIT(A) placed reliance for deleting the addition made by the AO refers to only advance or loan made by a company in the ordinary course of its business, where the lending of money is substantially part of the business of the company. According to him, FFP's substantial part of business was not lending of money and this aspect has not been considered by the CIT(Appeals). According to him, at best, the matter has to be remanded, as was done by the Tribunal in A.Y. 2006-07, to the AO to examine as to the nature of loan or advance by FFP to the assessee and applicability of clause (ii) of section 2(22)(e) of the Act.

11. The Id. counsel for the assessee placed reliance on the order of the CIT(Appeals).

12. We have considered the rival submissions. In our view, the submissions made by the Id. DR before us are acceptable. From a perusal of the order of the CIT(Appeals), it is clear that the nature of business of the company had not been considered by the CIT(A). It is therefore necessary to ascertain the nature of business of the company and the purpose for

which the advance was given to the assessee by the company and thereafter decide the issue with regard to the applicability of sub-clause (ii) of clause (e) of section 2(22) of the Act. We accordingly set aside the order of the CIT(Appeals) and remand the issue to the AO for fresh consideration, as was done by the Tribunal for the A.Y. 2006-07. The AO will afford opportunity of being heard to the assessee.

13. For statistical purposes, the appeal of the Revenue is allowed.

Pronounced in the open court on this 10th day of April, 2015.

Sd/-

(JASON P. BOAZ)
Accountant Member

Sd/-

(N.V. VASUDEVAN)
Judicial Member

Bangalore,
Dated, the 10th April, 2015.
/D S/

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.
6. Guard file

By order

Assistant Registrar/
Senior Private Secretary
ITAT, Bangalore.