

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'A' NEW DELHI
BEFORE SHRI J. SUDHAKAR REDDY, ACCOUNTANT MEMBER
AND
SMT SUCHITRA KAMBLE, JUDICIAL MEMBER
I.T.A .No. 2095/DEL/2013
(ASSESSMENT YEAR-2009-10)

ACIT Circle-1(1), Room No. 390, C. R. Building, I. P. Estate New Delhi (APPELLANT)	Vs	Alankit Assignment Ltd. 205-208, Anarkali Complex Jhandewalan Extension New Delhi AAACA9483E (RESPONDENT)
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Appellant by	Sh. K. K. Jaiswal, DR
Respondent by	Sh. Amit Goel, CA

Date of Hearing	02.06.2016
Date of Pronouncement	20.06.2016

ORDER

PER SUCHITRA KAMBLE, JM

This appeal is filed against the order dated 10/01/2013 passed by CIT(A)-IV, New Delhi, for Assessment Year 2009-10.

2. The grounds of appeal are as follows:

- “1. *Whether the CIT(A) has erred in law and on facts in deleting the addition of Rs.33,79,166/- on account of deemed dividend u/s 2(22)(e) ignoring the fact that in the loan books of the assessee company was treated as deemed dividend to the extent of accumulated profits calculated on pro rata basis.*”

3. The assessee company is in the business of Register & Transfer Agent, depository participants and share group. The assessee filed return of income declaring income of Rs.6,04,285/-. During the course of assessment proceeding the assessee was asked to provide copy of accounts related to its concerns. The Assessing Officer observed that M/s. Alankit Technologies Ltd. has loan account with Alankit Assigning Ltd. The assessee company is a majority share holder, registered and beneficial of Alankit Technologies Ltd. It is the assessee's case that the loan was given by a subsidiary company who is in the business of advancing loan, i.e. Alankit Technologies Ltd. The Assessing Officer held that all the conditions laid down in Section 2 (22) (e) of the Act were satisfied in respect of loan from Alankit Technologies Ltd. to the assessee company. The Assessing Officer further observed that the case is not covered by any of the exceptions provided in Clauses (i) to (v) of the said Section. Therefore, a sum of Rs. 33,79,166/- was held as deem dividend in the hands of the assessee company to the extent of accumulated profits of Alankit Technologies Ltd. and is added under the head income from other sources. The assessee went in appeal before the CIT(A).

4. The CIT(A) discussed various case laws and held that the Assessing Officer was not justified in applying provisions of Section 2(22) (e) of the Income-tax Act. The revenue is in appeal before us.

5. The Ld. DR submitted that the assessee at no point of time has given receipts or documents as relates to loan opting from a company in which the assessee company is a major share holder and beneficiary. Thus, the Assessing Officer has rightly invoked Section 2(22)(e).

6. The Ld. AR relied upon the order of the CIT(A) and also on the decision of the Hon'ble Bombay High Court in the case of CIT vs. Parle Plastics Ltd. [2011] 196 Taxman 62 (Bom) wherein Para 11 held as follows:-

"..... The expression used under clause (ii) of Section 2(22) is "substantial part of the business". We would, therefore, have to ascertain the meaning of the

word "substantial", appearing in the expression "substantial part of the business". Stroud's Judicial Dictionary, Fifth Edition, gives the first meaning of word "substantial" as "A word of no fixed meaning, it is an unsatisfactory medium for carrying the idea of some ascertainable proportion of the whole". The decision of Terry's Motors Lt. v. Rinder [1948] S.A.S.R. 167) is given in support of this meaning. In the meaning no.8, while considering "substantial amount", it is stated that out of a rent of £80 p.a., £13 p.a. attributable to the amount paid for furniture, was a substantial amount, on the basis of the decision in Maclay v. Dixon 170 L.T. 49. In meaning no.15, relying upon the decision of Ladbrooke (Football) 17 v. William Hill (Football) [1964] 1 W.L.R. 273, it is said that in deciding whether the reproduced part of copyright material is a "substantial" part of the whole, it is the quality rather than the quantity of the part that should be considered. Black's Law Dictionary, Sixth Edition defines the word "substantial" as "of real worth and importance; of considerable value; valuable; belonging to substance; actually existing; real; not seeming or imaginary; not illusive; solid; true; veritable. Something worthwhile as distinguished from something without value or merely nominal." No decision was cited before us wherein a view has been taken that in order to show that a part of the whole to be treated as "substantial part", the part must exceed 50% of the whole. In our view, the expression "substantial part" does not connote an idea of being the "major part" or the part that constitutes majority of the whole. If the legislature really intended that more than 50% of the business of the lending company must come from the business of lending, nothing prevented the legislature from using the expression "majority of business". If the legislature at all intended that a particular minimum percentage of the business of a lending company should come from the business of lending, the legislature could have specifically provided for that percentage while drafting clause (ii) of Section 2(22) of the Act. The legislature had deliberately used the word "substantial" instead of using the word "major" and/or specifying any percentage of the business or profit to be coming from the lending business of the lending company for the purpose of clause (ii) of Section 2(22) of the Act. We would give an illustration to ascertain the meaning of the expression "substantial business" or "substantial income" of a company. In the modern days, large number of companies do not restrict to one or two businesses. They carry on numerous activities and carry on numerous businesses and have numerous business divisions. Let us take a case of a first company which has 3 divisions of works consisting of three different types of business. Turn over as well as the profit of the first division is 40%; turnover and profit of second division is 30% and the turnover and profit of the third line of business is 30% . In the case of this company no part of the business has turn over exceeding 50% and no part of the business company generates profit of

more than 50% of the total. In such a case can it be said that none of the businesses of the said company is a substantial business of the company. In our view not. The first business which constitutes 40% of the turnover and contributes 40 % to the profit would be the single largest part of the business of the company, the second and third divisions of the business, each of which contributes 30% of the turn over as well as profit of the company, though not the major and not even single largest part of the business of the company, would still be a substantial part of the business of the company, because if any part of the three divisions of the business of the company was to be closed down, that would result in loss of turn over and/or business of 30%, ordinarily no company would regard such part of the business as insignificant. As rightly observed in Stroud's Judicial Dictionary, it is not possible to give any fixed definition of the word "substantial" in relation to "a substantial business of a company". Any business of a company which the company does not regard as small, trivial, or inconsequential as compared to the whole of the business is substantial business. Various factors and circumstances would be required to be looked into while considering whether a part of the business of a company is its substantial business. Sometimes a portion which contributes substantial part of the turnover, though it contributes a relatively small portion of the profit, would be substantial part of the business. Similarly, a portion which relatively a small as compared to the total turnover, but generates a large, say more than 50 % of the total profit of the company would also be substantial part of its business. Percentage of turnover in relation to the whole as also the percentage of the profit in relation to the whole and sometimes even percentage of a manpower used for a particular part of business in relation to the total man power or working force of the company would be required to be taken into consideration. Employees of a company are now called its "human resources" and, therefore, the percentage of "human resources" used by the company for carrying on a particular division of business may also be required to be taken into consideration while considering whether a particular business forms substantial part of its business Undisputedly, the capital employed by a company for carrying on a particular division of its business as compared to the total capital employed by it would also be relevant while considering whether the part of the business of the company constitutes "substantial part of the business" of the company."

7. We have perused all the records and heard both the parties. While invoking Section 2(22)(e) there are certain parameters on which the Assessing Officer has to make an addition. The Assessing Officer also has to take cognizance to the exception to the said Section. The Assessing Officer has not

done the same. In the present case, the CIT(A) after going through all the records as well as submissions of the assessee, has given a clear finding that in the case of Alankit Technologies Ltd. out of total assets of Rs. 2,85,14,90/- about 70% of assets are deployed in loans and advances. The total profit of Alankit Technologies Ltd. as per profit and loss account is Rs.28,23,306/- whereas the interest income is Rs.6,55,814/-. Thus, the interest income is approximately 23.23%. The interest income has been shown as business income by Alankit Technologies Ltd. The various judgments specifically supports the facts of the assessee's case that Lending is the substantial part of the business of the Alankit Technologies Ltd. Accordingly the assessee's case is covered by the exemption provided in Clause (ii) of Section 2(22)(e). The CIT (A) has given a correct finding and there is no necessity of interfering with the same. In light of the decision in the case of CIT Vs. Parle Plastics Ltd. (Supra) the appeal of the Revenue does not sustain.

8. In result, the appeal of the Revenue is dismissed.

The order is pronounced in the open court on 20th of June, 2016.

**Sd/-
(J. SUDHAKAR REDDY)
ACCOUNTANT MEMBER**

**Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

Dated: 20/06/2016
*R. Naheed **

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR

ITAT NEW DELHI

		Date	
1.	Draft dictated on	02/06/2016	PS
2.	Draft placed before author	03/06/2016	PS
3.	Draft proposed & placed before the second member	.2016	JM/AM
4.	Draft discussed/approved by Second Member.		JM/AM
5.	Approved Draft comes to the Sr.PS/PS	20.06.2016	PS/PS
6.	Kept for pronouncement on		PS
7.	File sent to the Bench Clerk	20.06.2016	PS
8.	Date on which file goes to the AR		
9.	Date on which file goes to the Head Clerk.		
10.	Date of dispatch of Order.		