

IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH, MUMBAI
BEFORE SHRI D. KARUNAKARA RAO, ACCOUNTANT MEMBER
AND
SHRI AMARJIT SINGH, JUDICIAL MEMBER

I.T.A. No.5380/M/2013 (Assessment Year: **2007-2008**)

DCIT-10(1), Mumbai.	बनाम/ Vs.	Shri Praveen B. Napate, 32, Yojak Artek Apts., Madhusudan Kalelkar Marg, Bandra (E), Mumbai-51.
स्थायी लेखा सं./PAN : AAAOB2845C		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से / Appellant by	:	Ms. R.M. Madhavi, DR
प्रत्यर्थी की ओर से/ Respondent by	:	Shri Bhupendra Karkhanis

सुनवाई की तारीख /Date of Hearing : 16.12.2015

घोषणा की तारीख /Date of Pronouncement : 16.12.2015

आदेश / O R D E R

PER D. KARUNAKARA RAO, AM:

This appeal filed by the Revenue on 2.8.2013 is against the order of the CIT (A)-21, Mumbai for the assessment year 2007-2008. In this appeal, Revenue raised the following solitary ground which reads as under:

*"On the facts and circumstances of the case and in law the CIT (A) Erred in deleting the addition of Rs. 55 lakhs representing **deemed dividend u/s 2(22)(e)** of the Act."*

2. At the outset, Ld Counsel for the assessee demonstrate that this is the case where the assessee is merely a beneficial owner of the companies between whom there was a loan transaction recorded in their respective books of accounts. In the assessment, AO invoked the provisions of section 2(22)(e) of the Act in this case of beneficial owner only ignoring the settled legal proposition that the said provisions are not to be invoked in the case of such beneficial owner. For this proposition, he relied on the order of the Tribunal in the case of DCIT vs. Vikas Oberoi (37 Taxman.com 46) (Mum – ITAT), wherein one of us (AM) is a party to the said order [ITA Nos. 4363 to 4364, 4440 & 4495 of 2011, dated 20.3.2013]. The said proposition is approved by the Hon'ble jurisdictional High Court in the case of CIT vs.

Universal Medicare (P) Ltd [2010] 324 ITR 263 (Bom.). Para 8 of the said judgment of the High Court is relevant in this regard.

3. After hearing both the parties and on perusal of the orders of the Revenue Authorities as well as the cited precedents and also considering the above settled nature of the issue that ***unless the assessee is a shareholder, no amount can be taxed as 'deemed dividend' under the provisions of section 2(22)(e) of the Act***, we are of the opinion that the issue raised by the Revenue in the grounds has to be dismissed. As such, the CIT (A) gave relief relying on the judgment of the Delhi High Court in the case of CIT vs. Sunil Chopra in ITA No.106/2011, dated 27.4.2011 and the decision of the ITAT, Mumbai in the case of CIT vs. Ms. Subhamangal Credit Capital Pvt Ltd in ITA No.7238/Mum/2008. Considering the same, we are of the opinion that the decision taken by the CIT (A) is fair and reasonable and it does not call for any interference. Accordingly, the **ground raised by the Revenue is dismissed.**

4. In the result, **appeal of the Revenue is dismissed.**

Order pronounced in the open court on 16th December, 2015.

Sd/-
(AMARJIT SINGH)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक 16/12/2015
व.नि.स./ OKK, Sr. PS

Sd/-
(D. KARUNAKARA RAO)
ACCOUNTANT MEMBER

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai