

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'C' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं

श्री चंद्र पूजारी, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER

आयकर अपील सं./ITA Nos.470 & 471/Mds/2015

निर्धारण वर्ष / Assessment Years : 2008-09 & 2009-10

The Income Tax Officer,
Corporate Ward 1(4),
O/o Addl. CIT, Corporate Range-1,
Chennai.

v. M/s Dax Networks Ltd.,
New No.4 (Old No.8),
Developed Flats,
Industrial Estate, Perungudi,
Chennai - 600 096.

(अपीलार्थी/Appellant)

PAN : AAACA 3019 N

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri A.V. Sreekanth, JCIT

प्रत्यर्थी की ओर से/Respondent by : Sh. Philip George, Advocate

सुनवाई की तारीख/Date of Hearing : 18.05.2016

घोषणा की तारीख/Date of Pronouncement : 23.06.2016

आदेश / O R D E R

PER N.R.S. GANESAN, JUDICIAL MEMBER:

Both the appeals of the Revenue are directed against the respective orders of the Commissioner of Income Tax (Appeals)-1, Chennai, for the assessment years 2008-09 and 2009-10. Since common issue arises for consideration in these appeals, we heard

both the appeals together and disposing of the same by this common order.

2. Shri A.V. Sreekanth, the Ld. Departmental Representative, submitted that the assessee-company received loan from M/s Cenza Technologies Pvt. Ltd. Referring to the assessment order, more particularly page 2, the Ld. D.R. submitted that M/s Apcom Exports Pvt. Ltd. is holding major shares in the assessee-company as well as in M/s Cenza Technologies Pvt. Ltd. There are other common shareholders in both the companies. According to the Ld. D.R., by virtue of shareholding pattern of the assessee-company in which the shareholders of M/s Cenza Technologies Pvt. Ltd. have substantial interest, the provisions of Section 2(22)(e) of the Income-tax Act, 1961 (in short 'the Act') is applicable in respect of the loan received by the assessee-company from M/s Cenza Technologies Pvt. Ltd. According to the Ld. D.R., M/s Cenza Technologies Pvt. Ltd. had accumulated reserve as on 31.03.2007 to the extent of ₹4,65,61,168/- and as on 31.03.2008, the accumulated reserve was ₹5,08,95,731/-. Therefore, it is obvious that the lending company has accumulated profits far exceeding the loan amount. The Ld. D.R. further submitted that since the

shareholders are beneficiaries, the loan received by the assessee has to be assessed as deemed dividend income.

3. On the contrary, Sh. Philip George, the Ld.counsel for the assessee, submitted that the assessee-company is not a shareholder in M/s Cenza Technologies Pvt. Ltd. Referring to Section 2(22)(e) of the Act, the Ld.counsel submitted that when a loan or advance received by a shareholder or by any person for the benefit of shareholder, the same has to be treated as deemed dividend in the hands of shareholder. According to the Ld. counsel, the debt can be assessed only in the hands of shareholder and not anybody else. Therefore, even assuming that a loan received by the assessee is for the benefit of shareholder of M/s Cenza Technologies Pvt. Ltd., at the best, the same can be assessed only in the hands of shareholders of M/s Cenza Technologies Pvt. Ltd. and definitely not in the hands of the assessee. Therefore, according to the Ld. counsel, the CIT(Appeals) has rightly deleted the addition made by the Assessing Officer.

4. We have considered the rival submissions on either side and perused the relevant material available on record. We have carefully gone through the provisions of Section 2(22)(e) of the Act.

Section 2(22)(e) clearly says that any payment by a company in which public are not substantially interested, by way of advance or loan to a shareholder, being a person who is the beneficial owner of shares holding not less than 10% of the voting power, or any concern in which such shareholder is a member or a partner and in which he has a substantial interest, or any payment by any such company on behalf or for the individual benefit of any such shareholder, to the extent to which the profit was accumulated has to be treated as deemed dividend under Section 2(22)(e) of the Act. Under the scheme of the Income-tax Act, deemed dividend income has to be assessed only in the hands of shareholder who is holding the shares. Therefore, when the advance or loan given by the company was to be treated as dividend, the same has to be assessed only in the hands of the shareholder of that company and not anybody else. Therefore, for any reason, the loan or advance is made to third party for the benefit of individual shareholder, as rightly contended by the Ld.counsel for the assessee, at the best, the same can be assessed in the hands of shareholder for whose benefit, the loan or advance was made.

5. In the case before us, M/s Apcom Exports Pvt. Ltd. is a common shareholder in the assessee-company as well as in M/s

Cenza Technologies Pvt. Ltd. which advanced loan to assessee-company. Therefore, it is obvious that the loan or advance was made for the benefit of M/s Apcom Exports Pvt. Ltd. In such circumstances, the deemed dividend income at the best can be assessed only in the hands of M/s Apcom Exports Pvt. Ltd. If the Revenue comes to a conclusion on the basis of material available on record that the loan or advance made by M/s Cenza Technologies Pvt. Ltd. was for the beneficial interest of any other shareholder of M/s Cenza Technologies Pvt. Ltd., the addition under Section 2(22)(e) of the Act can be made only in the hands of such beneficial shareholder and definitely not in the hands of the assessee. In view of the admitted fact that the assessee-company is not a shareholder of M/s Cenza Technologies Pvt. Ltd., this Tribunal is of the considered opinion that the CIT(Appeals) has rightly deleted the addition made by the Assessing Officer. Therefore, this Tribunal do not find any reason to interfere with the order of the lower authority and accordingly the same is confirmed.

5. In the result, both the appeals filed by the Revenue are dismissed.

Order pronounced on 23rd June, 2016 at Chennai.

sd/-

(चंद्र पूजारी)

(Chandra Poojari)

लेखा सदस्य/Accountant Member

sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated, the 23rd June, 2016.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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