

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

"D" BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं
श्री ए. मोहन अलंकामणी, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.2000/Mds/2013

निर्धारण वर्ष / Assessment Year : 2006-07

The Assistant Commissioner of
Income Tax,
Company Circle VI(4),
Chennai - 600 034.

v. M/s Sphera Minerals Pvt. Ltd.,
1, Subbaraya Avenue,
C.P. Ramasamy Road,
Alwarpet, Chennai - 600 018.

(अपीलार्थी/Appellant)

PAN : AACCP 0379 A

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Sh. Joe Sebastian, CIT

प्रत्यर्थी की ओर से/Respondent by : Sh. B.S. Purushotham, CA

सुनवाई की तारीख/Date of Hearing : 26.05.2015

घोषणा की तारीख/Date of Pronouncement : 26.06.2015

आदेश /O R D E R

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

This appeal of the Revenue is directed against the order of Commissioner of Income Tax (Appeals)-VI, Chennai, dated 30.08.2013 and pertains to assessment year 2006-07.

2. Sh. Joe Sebastian, the Ld. Departmental Representative, submitted that the only issue arises for consideration is with regard to addition made by the Assessing Officer under Section 2(22)(e) of

the Income-tax Act, 1961 (in short 'the Act') as deemed dividend. The Ld. D.R. pointed out that the assessee-company has received ₹6,42,25,343/- from its sister concern M/s Trimex Industries Private Limited. According to the Ld. D.R., both, the assessee-company as well as its sister concern M/s Trimex Industries Private Limited, have common shareholders and Directors. Therefore, according to the Ld. D.R., the provisions of Section 2(22)(e) of the Act is squarely applicable. Referring to the assessment order, the Ld. D.R. pointed out that the assessee-company entered into agreement with third parties and the sister concern has also entered into agreement with third parties for purchasing iron ore. According to the Ld. D.R., the assessee-company under the pretext of receiving advance money from sister concern for purchasing of iron ore, received the advance in violation of Section 2(22)(e) of the Act. According to the Ld. D.R., even though the assessee claims that the transaction between the assessee and its sister concern was commercial in nature, no such commercial requirement was established. Therefore, the receipt of advance of ₹6,42,25,343/- has to be considered as deemed dividend. Hence, the CIT(Appeals) is not justified in allowing the claim of the assessee.

3. On the contrary, Shri B.S. Purushotham, the Ld. representative for the assessee, submitted that the assessee-

company is not a shareholder in M/s Trimex Industries Private Limited. Therefore, according to the Ld. representative, there is no question of applying the provisions of Section 2(22)(e) of the Act in the hands of the assessee. Even otherwise, according to the Ld. representative, the advance was paid by the sister concern for purchasing iron ore. Therefore, there was commercial transaction between the assessee and M/s Trimex Industries Private Limited. Since the money was advanced in commercial transaction, according to the Ld. representative, the provisions of Section 2(22)(e) of the Act will not be applicable.

4. We have considered the rival submissions on either side and perused the relevant material on record. It is not in dispute that the assessee-company is not a shareholder in M/s Trimex Industries Private Limited. Section 2(22)(e) of the Act clearly says that any payment made by a company by way of advance or loan to a shareholder or to the benefit of the shareholder, it has to be treated as deemed dividend under Section 2(22)(e) of the Act. Dividend has to be assessed only in the hands of the shareholders. If the payment was made on behalf of the shareholder or benefit of the shareholder, the assessment has to be made only in the hands of the shareholder on whose benefit the advance was made as deemed dividend under Section 2(22)(e) of the Act. In this case,

even though there are common shareholders/Directors in assessee-company as well as its sister concern M/s Trimex Industries Private Limited, admittedly, the assessee-company is not a shareholder, therefore, addition if any has to be made only in the hands of common shareholders/Directors on whose benefit the advance was made. Since the assessee-company is not a shareholder in M/s Trimex Industries Private Limited, this Tribunal is of the considered opinion that the provisions of Section 2(22)(e) of the Act is not applicable. Therefore, we do not find any reason to interfere with the order of the lower authority. Accordingly, the same is confirmed.

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

Order pronounced on 26th June, 2015 at Chennai.

sd/-

(ए. मोहन अलंकामणी)

(A. Mohan Alankamony)

लेखा सदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated, the 26th June, 2015.

sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

अपीलार्थी/Appellant / प्रत्यर्थी/Respondent / आयकर आयुक्त (अपील)/
CIT(A)-VI, Chennai-34 / आयकर आयुक्त/CIT-VI, Chennai-34 / विभागीय
प्रतिनिधि/DR / गार्ड फाईल/GF.