आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ 'सी', मुंबई ।

IN THE INCOME TAX APPELLATE TRIBUNAL "C", BENCH MUMBAI

BEFORE SHRI R.C.SHARMA, AM
&
SHRI PAWAN SINGH, JM

आयकर अपील सं./**ITA No.6011/Mum/2013**

(**निर्धारण वर्ष /** Assessment Year :2010-2011)

ITO-1(1)(2), Mumbai	Vs.	M/s Coral Cosmetics Ltd., Cambatta Bldg., 42, Maharshi Karve Road, Mumbai-400020
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : **AAACC 2037 Q**		
(अपीलार्थी **/Appellant**)	..	(प्रत्यर्थी / **Respondent**)

राजस्व **की ओर से** /Revenue by :Ms. Bharti Singh

निर्धारिती **की ओर से** /Assessee by : Shri Vijay Mehta

सुनवाई की तारीख / **Date of Hearing : 03/08/2016**

घोषणा की तारीख/**Date of Pronouncement 12/08/2016**

आदेश / O R D E R

***PER R.C.SHARMA (A.M)*:**

This is an appeal filed by the revenue against the order of CIT(A), Mumbai, for the assessment year 2010-2011, wherein following grounds have been taken by the revenue :-

> *1. "Whether on the facts and in the circumstances of the case, and in law the Ld. CIT(A) was justified in entertaining, adjudicating and passing order on the charge of dividend distribution tax u/s 115-0 of the Act, when such charging of dividend distribution tax is not an appealable order uls 246A of the Act?;*
>
> *2. Without prejudice to the Ground of Appeal No. 1 above, whether on the facts and in the circumstances of the case and in Law, the Ld. CIT(A) was justified in holding that the issue of bonus shares does not entail release of assets of the company to attract provisions of sec. 2(22)(a) of the Act requiring dividend distribution tax to be paid by the assessee?"*
>
> *3. "Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the addition on account of cessation of liability u/s 41(1) of the Act when the*

> *litigation in the form of an SLP before Supreme Court had come to an end by the Hon'ble Court holding the appeal by the assessee a defective appeal?"*

2. Ground No.1 was not pressed by ld. DR, the same, is, therefore, dismissed in limine as not pressed.

3. We have heard rival contentions and found from the record that during the year under consideration, the assessee company had issued equity shares by way of bonus shares to its existing shareholders. The share capital of the assessee company as on 31/3/2009 consisted of 50,000 equity shares of Rs.10/- each fully paid up as against general reserve at Rs;5,42,62,295 as on that date. The assessee company had issued 49,50,000 equity shares of Rs.10/- each fully paid up by way of bonus shares to its equity shereholders. The said bonus shares were issued out of the amount lying in the general reserve account. Accordingly, an amount of Rs.4,95,00,000 was transferred from general reserve account and capitalized. The AO treated the said bonus shares issued to the shareholders as liable to dividend distribution tax under the provisions of Section 2(22)(a) of the Act.

4. By the impugned order, the CIT(A) set aside the order of the AO after having the following observation :-

> *6.4 I have carefully considered the facts and circumstances of the case, assessment order and submissions of the appellant. The decision in the case of Hansur Plywood works Ltd. Vs. CIT (229 ITR 112) as relied by the appellant for the sake of clarity is reproduced again that -*
>
> *In this case, neither in form nor in substance, has there been any distribution of profits by the company in making the bonus issue. If the substance and not the form of the transaction is looked to, the issue of bonus shares was, in the language of Viscount Cave, J. "a*

bare machinery" for capitalizing profits and there was not distribution of profit of the shareholder. "

The appellant has also relied on the decision of authority for advance ruling which is also in support of the arguments submitted by the appellant.

6.5 Section 2(22) is "a deeming provision and must receive a strict interpretation." (CIT Vs. Martine Burn Ltd.- 182 ITR). In .term of section 2(22)(a), as applied by the AO on this transaction, the only requisite laid down by this clause is that distribution should entail a release of the assets of the company to the shareholders. If there is no release of assets, there is no dividend. This aspect of the case, viz. of the release of assets, arises in the following situation:

"Section 205(3) of the Companies Act, 1956, states that 'no dividend shall be payable except in cash: provided that nothing in this clause shall be deemed to prohibit the capitalization of profits or reserves of a company for the purpose of issuing fully paid up bonus shares of paying up, any amount for the time being unpaid on any shares held by the members of the company.'

The Companies Act, 1956 contains a provision requiring the company to file with the Registrar-

"In the case of bonus shares, return stating the number and nominal amount of such shares comprised in 'the allotment and the name, addresses and occupation of the allottees and a copy of the resolution authorizing the issue of such shares." .

The implication of these provisions is that in the case of a bonus shares, there is no release of any asset of the company, since the profit is capitalized for purpose of increase of share capital. The same is also enacted by the Regulations of Schedule I, Table A 'of the Companies Act, 1956.

When any action is taken by the company under the aforesaid Regulations, it would be seen that no part of the assets of the company is distributed or paid to any shareholder. The funds standing to the credit of the reserve account or the profit and loss account or .which are 'otherwise available for distribution are all genuinely capitalized, the paid up share capital being correspondingly increased. What the shareholders get is merely a paper certificate as evidence of their interest in the new issued capital or the additional capital on the old partly paid shares of the company, as the case may be. The transaction would take nothing out of the company's coffers and put nothing into the pockets of the shareholder. The very language of sub-paragraph (2) of Regulation 96 that the sum resolved to be capitalized shall not be paid in cash, but shall be applied in paying up amounts for the time being unpaid on the old shares or new shares to be issued, denotes that there is

no release of any of its assets by the company. In such a situation, on the language of sub-clause (a) of section 2(22) of the Income-tax Act the issue of such bonus shares does not constitute a dividend."

In view of the above facts and circumstances of the case and also as held in the case of Shashibala Navnitlal Vs.CIT(1964) 54 ITR 478 (Guj) that 'when bonus shares are issued/credited as fully paid up out of capitalized accumulated profit, there is distribution of capitalized accumulated profits "but such'- distribution does not entail release of assets of the company so as to fall within section 2(64)(a) of the 1922 Act', I find that section 2(22)(a) is not applicable.

6.6 It is also important that the AO has' considered and distinguished this matter with reference to section 115-0 of the Act. This section applies to the distributed profits of the domestic companies. The operative word in this section is 'any amount declared, distributed, or paid by such company by way of dividends (whether interim or otherwise)' .In any case operation of section 115-0 is dependent' on declaration, distribution or payment of dividend or interim dividend which does not include the case of deemed dividend as envisaged u/s 2(22) of the I.T. Act.

6.7 Otherwise also, the question of taxability of dividend arises only when there are amounts/transactions falling under the category of section 2(22), deemed dividends and/or 115-0 - distribution of profits by W.fjy of dividend. Here on this issue the contention of the AO that the issue of bonus shares .amounts to distribution of deemed dividend within the meaning of section 2(22)(a) of the IT. Act pg. 12 of the assessment order is based on the view that "the bonus shareholders became legally entitle to the proportionate share in all assets of the company".

6.8 However, the requirement of "distribution" - 'entailing release of assets of the company' appearing in this sub-section is prima-facie not fulfilled as understood by the AO. The extended interpretation that legal entitlement in the assets of the company at some' future point by" virtue of holding'; bonus shares amounts to distribution of assets is neither provided u/s 2(22) nor intended by the statute. As such the question arising out of addition made by the AO under reference is answered in negative as per decision of Hansur Plywood works Ltd Vs'. CIT (229 ITR 112). Similarly, there is no operation and applicability of section 115-0 of the Act on this issue as mentioned by AO in' para-9(j) pg.13 of the assessment order because there is no distribution of dividend in terms of section 115-0 as well as in terms of section 2(22) of the Act. Hence, for the reasons above, under the facts and circumstances of the case, ground no. 3 of the appeal is allowed and taxability of Rs.4,,95,00,000/- u/s 115-0 of the Act as held by the AO vide the said assessment order is deleted.

5. The AO also made addition u/s.41(1) of the Act for cessation of liability towards M/s Colgate Palmolive India Ltd. This addition has been discussed by the AO in para-'6 of the assessment order. Rs.75,33,226/- was appearing in the books of the assessee ,as security deposits of Colgate Palmolive Ltd. it has been observed by the AO that the confirmation of the above liability was sought from M/s Colgate - Palmolive (India) Ltd: by issue of notice u/s 133(6) of the Act. M/s Colgate Palmolive (India) Ltd. vide letter dtd.14.12.2012 have stated that there are no transactions with the assessee company in the FY:2009-10. They have also confirmed vide letter dtd.31.12.2012 that there is no amount payable or receivable from Coral Cosmetics as on 31.03.2010.

6. By the impugned order the CIT(A) deleted the addition after observing as under :-

> *7. I have carefully considered the assessment order, submissions of the appellant and facts and circumstances of the ,case. The appellant has furnished copies of SLP filed in the Hon. Apex Court and SLP is stated to be pending for, decision on the issue of amount under question. It appears that. the. AO had added the amount to the income of the appellant based on the letter received in response to section 133(6) of the IT Act sent by the AO to M/s Colgate Palmolive India Ltd. It is on record that the amount of Rs.75,33;226/- is lying credit to the account of M/s Colgate Palmolive India Ltd. in the books of the appellant and issue is also pending litigation in .the Apex Court. It has been further stated that the appellant is not aware of surrender of claim by M/s Colgate Palmolive India Ltd. receivable from the appellant. The appellant has also sought the reply received from M/s Colgate Palmolive India Ltd. surrendering such claim for the purpose of confirmation, as noted in the reply of the appellant, filed before the AO. In the reply of the appellant before the AO this matter has been clarified in para-7, 8 and 9 noted in the assessment order as follows:*
>
> *7. In your above referred notice you have mentioned that a copy of the communication received from Colgate is enclosed.. However we find that inadvertently the same was not attached to the said notice. We therefore request you to kindly hand over the same to*

us so that in the next few days we can' ask Colgate to confirm to us that they have relinquished their claim on the said' amounts.

In these circumstances the assessee, company will be advised to write back the aforesaid amount even though the aforesaid litigation is pending in the Supreme Court. in the current financial year ending on s i" March, 2013 and we will write back the amount in the current Financial Year '2012-13 i.e. Assessment Year 2013-14, if advised,

8. In any view of the matter, it is respectfully submitted that the aforesaid liability of Rs.75,33,226/- has not ceased till date and therefore, the question of treating the aforesaid amount as income of the assessee company in the year ended 31st March, 2010 relevant to A. Y. 2010-11 is incorrect, contrary to the facts on record and contrary to the law.

9. The assessee company, therefore, most humbly submits that no part of the amount of Rs.75,33,226/- can be added to its income in the A. Y. 2010-11 as the said liability has not ceased but it is subsisting as on 31st March, 2010."

7.3 The legal position is quite clear that "unilateral entries in accounts will not amount to cessation of liability", as per decision in the case of CIT Vs. Sugauli Sugar Works Pvt. Ltd. (1999) 236 ITR (SC). In this particular case the appellant ,is acknowledging the liability and same is duly .reflected 'in the books' of accounts. The appellant has also shown the willingness to .write-off the said liability after verification' with M/s Colgate Palmolive India Ltd. based on the letter/record by the AO. However, somehow the exercise of verification and writing-off in the books of the appellant is not carried out and completed in this assessment year which is under appeal. At the same time the SLP No. 9820 of 2006 referred above is also pending in the Hon. Supreme Court by which it is clear that the issue is not settled. Under the circumstances, I am unable to hold that the liability acknowledged and accepted in the books of the appellant, can be unilaterally written-off on the basis of third party letter and taxed u/s 41(1) of the IT. Act without being written-off in the books of the appellant. There may be reasons to do so but only when the liability is settled between both the parties and written off in the books of accounts of both the parties. In view of the above, ground no.4 is allowed and addition made by the AO for cessation of liability is deleted."

7. Against the above order of CIT(A), revenue is in further appeal before us.

8. Ld.AR placed on record decision of Authority For Advance Rulings, New Delhi in case of Briggs of Burton (India) Pvt. Ltd. In re, 274 ITR

595(AAR), wherein it was held that when a company allots bonus shares to its existing equity shareholders, company is not required to deduct tax at source as distribution of accumulated profits by the company through issue of bonus shares through existing shareholders would not bring it within the mischief of Section 2(22) of the Act.

9. Decision of Hon'ble Gujarat High Court in the case of Shashibala Navnitlal, 54 ITR 478 and the decision of Hon'ble Supreme Court in the case of Dalmiya Investments Company Ltd. 52 ITR 567 and Hansur Plywood Works Pvt. Ltd, 95 Taxman 460 (SC) were also relied on by ld. AR.

10. We have considered rival contentions and carefully gone through the orders of authorities below. As per our considered view the issue of bonus shares by the assessee company does not entail the release by the assessee company to its shareholders all or any part of the assets of the company.

11. The Hon'ble Supreme Court in the case of CIT v. Dalmia Investment Co. Ltd. (52 ITR 567) held that the conversion of reserves into capital does not involve the release of profit to the shareholders; the money remains where it was, that is to say, employed in the business. Furthermore, the Supreme Court in the case of Hansur Plywood Works Ltd. v. CIT (229 ITR 112) held that issuance of bonus shares does not amount to distribution of accumulated profit of a company.

12. The Authority for Advance Rulings in the case of Briggs Burton (India) Pvt. Ltd 274 ITR 595) held that at the stage of issue of bonus

shares there was no release of assets of the company and therefore, the Legislative intent in section 2(22)(a) and (b) is that the issue of bonus/preference shares to equity shareholders should not be treated as deemed dividend at the time of issue.

13. In view of the above discussion, we do not find any infirmity in the order of CIT(A) for holding that issue of bonus shares does not amount to deemed dividend within the meaning of provisions of Section 2(22)(a) of the I.T.Act.

14. With regard to cessation of liability, we found that the litigations commenced by the assessee company by filing a writ petition in respect of the unutilised MODVAT Credit of Rs.98,19,113/- was still pending in the Supreme Court and therefore, the liability to pay the sum of Rs.60,47,226/- by the assessee company to M/s. Colgate Palmolive India Ltd. was still subsisting. After applying the proposition of law laid down by the decision of Hon'ble Supreme Court in the case of Sugauli Sugar Works Pvt. Ltd. (1999) 236 ITR (SC) to the facts of the instant case, the CIT(A) has correctly came to the conclusion that the unilaterally right back of the amount by M/s. Colgate Palmolive India. Ltd. does not amount to cessation of liability in the hands of the assessee company. Detailed finding recorded by CIT(A) are as per material on record, therefore, do not require any interference on our part.

15. We also found that the assessee has offered the same in its income for the assessment year 2013-2014 after the Court's verdict, accordingly, there is no infirmity in the order of CIT(A).

16. In the result, appeal of the revenue is dismissed.

Order pronounced in the open court on this 12/08/2016.

Sd/-	**Sd/-**
(PAWAN SINGH)	**(R.C.SHARMA)**
न्यायिक सदस्य / JUDICIAL MEMBER	**लेखा सदस्य / ACCOUNTANT MEMBER**

मुंबई Mumbai; दिनांक Dated 12/08/2016

प्र.कु.मि/pkm, नि.स/ PS

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

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

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार

(Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / **ITAT, Mumbai**