

आयकर अपीलीय अधीकरण, न्यायपीठ – “C” कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH: KOLKATA
 (समक्ष) Before श्री ए. टी. वर्की, न्यायीक सदस्य एवं/and श्री एम .बालागणेश, लेखा सदस्य)
 [Before Shri A. T. Varkey, JM & Shri M. Balaganesh, AM]

I.T.A. No. 1338/Kol/2014
Assessment Year: 2009-10

Shri Arun Das Ghosh (PAN: ACM5001G)	Vs.	Income-tax Officer, Wd-30(1), Kol.
Appellant		Respondent

Date of Hearing	24.05.2017
Date of Pronouncement	12.07.2017
For the Appellant	Shri S. M. Surana, Advocate
For the Respondent	Shri S. M. Tauheed, JCIT, Sr. DR

ORDER

Per Shri A.T.Varkey, JM

This is an appeal filed by the assessee against the order of CIT(A)-XIV, Kolkata dated 10.03.2014 for AY 2009-10.

2. At the outset itself the Ld. Counsel for the assessee Shri S. M. Surana, Advocate did not press ground no. 7, so we confirm the addition of Rs.48,000/-. This ground of appeal of assessee is dismissed.

3. The main grievance of the assessee is in respect to ground nos. 2 to 6 wherein the assessee is aggrieved by the action of the Ld. CIT(A) confirming the action of the AO in treating an amount of Rs.55,85,921/- as deemed dividend u/s. 2(22)(e) of the Income-tax Act, 1961 (hereinafter referred to as the “Act”).

4. Brief facts of the case are that the assessee is an individual having income from different heads like remuneration from M/s. Hita Technology Pvt. Ltd. (HTPL) being the director of the company, income from house property, income from his proprietary concern

and other sources. The assessee is owner of proprietary concern in the name of M/s. Digital Data System (DDS). The assessee had audited the accounts of the proprietary concern DDS u/s. 44AB of the Act. The assessee also furnished his personal Balance Sheet along with income and expenditure account for the year ended 31.03.2009. After perusal of the personal Balance Sheet, the AO took note of the fact that the assessee had invested Rs.49,72,600/- in land and building and when asked for details of the said expenditure, the assessee replied that he had purchased a flat in Andheri, Mumbai at a cost of Rs.39.25 lacs and Rs.10.47 lacs was spent for renovation of the existing property at Kolkata. The AO asked for the source of the said investment for which the assessee initially replied that it was from loan of Rs.70,41,621/- taken from the Company HTPL. The AO after taking note of the fact that the assessee had more than 10% voting power in the said company, the AO confronted the assessee as to why the said amount should not be treated as deemed dividend u/s. 2(22)(e) of the Act. The assessee then replied vide letter dated 18.11.2011 that the amount cannot be treated as deemed dividend u/s. 2(22)(e) of the Act because it was neither loan nor advance in his hands. According to the assessee, M/s. HTPL owe Rs.85,78, 268/- to DDS, the proprietary concern of the assessee and the assessee was the sole proprietor of it. According to assessee, the proprietary concern DDS has given goods to M/s. HTPL on credit and thus, the said amount was shown in the book of DDS as sundry debtor to it. It was also stated in the said letter to the AO that in the relevant assessment year the outstanding balance at the beginning of the year i.e. 01.04.2008 was Rs.87,06,575/- credit and at the end of the year it was Rs.85,78,268/- credit in DDS account in the books of HTPL. It was brought to the knowledge of the AO that the amount of Rs.55,85,921/- which was proposed to be treated as deemed dividend by the AO during the financial year has not at any point of time exceeded the said amount of Rs.55,85,921/-. It was also brought to the knowledge of the AO that for the accounting convenience, the assessee maintains only two accounts in the books of M/s. HTPL i.e. one showing a debit balance and other showing credit balance. These facts, according to the assessee, could be deciphered from a perusal of the audited Balance Sheet of M/s. HTPL for the assessment year under consideration which was submitted before the AO. Thus, the assessee contended before the AO that Rs.55,85,921/- which was proceeded against by the AO to be treated as deemed dividend is

clearly erroneous. However, the AO brushed aside the aforesaid facts brought before him (and also before us) for consideration on the reason that it was an afterthought and he treated Rs.55,85,921/- as deemed dividend u/s. 2(22)(e) of the Act. Aggrieved, the assessee preferred an appeal before the Ld. CIT(A) who was also not convinced with the facts brought before his knowledge. He, therefore, confirmed the action of the AO and dismissed the appeal of the assessee. Aggrieved, the assessee preferred an appeal before the Tribunal and has reiterated the aforesaid facts.

5. We have heard rival submissions and gone through facts and circumstances of the case. We note that the assessee has a proprietary concern in the name of DDS. He is also a major shareholder of a Private Limited Company M/s. HTPL. The assessee's return was scrutinized and the AO after perusal of the Balance Sheet found that the assessee had invested Rs.49,72,600/- in land and building. When asked to give the source of the said amount, the assessee had stated initially that it was from the loan of Rs.70,41,621/- from M/s. HTPL. The AO taking note of the fact that the assessee is the major shareholder of M/s. HTPL was of the opinion that the said loan needs to be treated as deemed dividend u/s. 2(22)(e) of the Act. The assessee objected to the same by stating that the assessee had a proprietary concern DDS which had given goods on credit to M/s. HTPL and that M/s. HTPL was sundry debtor to DDS and as on 01.04.2008 owed Rs.87,06,575/- to DDS and that the assessee has drawn an amount of Rs.70,41,621/- from M/s. HTPL which was due for his proprietary concern DDS and, therefore, the amount cannot be treated as a loan or advance. We note that M/s. HTPL owed the proprietary concern of the assessee an amount of Rs.87,06,575/- as on 01.04.2008 and the assessee had only taken Rs.70,41,621/- in the relevant assessment year and still there was a balance of Rs.15,36,648/- owed by the said company to the assessee's proprietary concern DDS. For coming to such a conclusion, we have gone through page 32 of the paper book which is ledger copy maintained by M/s. HTPL from 01.04.2008 to 31.03.2009. We note that the opening balance as on 01.04.2008 was Rs.87,06,575/- which was the outstanding balance towards the assessee's proprietary concern DDS. The assessee on various occasions has drawn amounts from M/s. HTPL which is reproduced at page 5 of the Ld. CIT(A)'s order. From a perusal of the same it

reveals that as on 01.04.2008 the opening balance was Rs.14,55,700/- and on 30.03.2009 he has drawn Rs. 3 lacs thus, there are several drawings in between and total withdrawals comes to Rs.70,41,621/-. It is noted that the confusion was only because the assessee has maintained only two accounts in the books of M/s. HTPL one is showing debit balance when other is showing credit balance. This issue would not have cropped up if transaction from M/s. HTPL was shown to have remitted the money to assessee's proprietary concern DDS and the said amount is again drawn by the assessee from DDS for investment. What the assessee had done is that the assessee has drawn money on behalf of his proprietary concern DDS from M/s. HTPL which was admittedly sundry debtor to it and we note that the opening balance as on 01.04.2008 was Rs.87,06,575/- which was outstanding balance to be paid to the assessee's proprietary concern DDS. In such a scenario, we find merit in the contention of the Ld. AR and we are inclined to accept the explanation given by the assessee and the AO's reason for not accepting these facts was that it was an afterthought, which we find is erroneous for the simple reason that page no. 30 of paper book shows the list of sundry creditor shown in M/s. HTPL. From a perusal of the list of sundry creditors, we note that there was more than 40 sundry creditors and the assessee's proprietary concern DDS is also one of the sundry creditors wherein an amount of Rs.72, 50,875/- is reflected as on 31.03.2008. However, on perusal of page 32 of paper book which is the statement of accounts of DDS in the books of M/s. HTPL shows an opening balance of Rs.87,06,575/- and when asked to reconcile, the Ld. AR drew our attention to the statement of account in the name of Mr. Arun Das Ghosh i.e. assessee in the books of M/s. HTPL (page 33) wherein on 01.04.2008 the amount of Rs.14,55,700/- was already drawn by the assessee on 01.04.2008, (i.e. Rs.72,50,875/- + Rs.14,55,700 comes to Rs.87,06,575/-). Thus, we find the figures have reconciled. Thereafter, we note that on page 30 of the paper book the list of sundry creditors in the books of M/s. HTPL Rs.15,36,648/- is still outstanding and on 31.03.2011 an amount of Rs.80,73,278/- is still outstanding. So, it cannot be stated that it is an afterthought explanation of the assessee to get out of the ken of deemed dividend and the initial reply or nomenclature that it was loan from M/s. HTPL cannot change the character of the amount in question. We are, therefore, inclined to allow the appeal of the assessee on

this ground raised before us and direct the AO to delete the addition of Rs.55,85,921/-. This ground of appeal of assessee is allowed.

6. In the result, appeal of assessee is partly allowed.

Order is pronounced in the open court on 12.07.2017

Sd/-
(M. Balaganesh)
Accountant Member

Sd/-
(Aby. T. Varkey)
Judicial Member

Dated : 12th July, 2017

Jd.(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant – Shri Arun Das Ghosh, Flat No. 8, 4th floor, 20A, Ballygunge Place (East), Kolkata-700 019.
2. Respondent – ITO, Ward-30(1), Kolkata.
3. The CIT(A), Kolkata
4. CIT , Kolkata
5. DR, Kolkata Benches, Kolkata

/True Copy,

By order,

Sr. Pvt. Secretary