

आयकरअपील[यअधकरण, अहमदाबाद[यायपीठ 'SMC' अहमदाबाद।  
IN THE INCOME TAX APPELLATE TRIBUNAL  
"SMC" BENCH, AHMEDABAD

BEFORESHRI S.S. GODARA, JUDICIAL MEMBER  
AND SHRI MANISH BORAD, ACCOUNTANT MEMBER

आयकर अपील सं./ ITA No.316/Ahd/2016

[नधाक्षणवष/Assessment Year: 2010-11

Shri Dilip Govindlal Shah, 401/A, Synergy Square, Krishna Industrial Estate, Opp. BIDD Gorwa, Baroda PAN : AJBPS 1830 J	Vs.	Income Tax Officer, Ward 2 (3), Baroda
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आयकर अपील सं./ ITA No. 317/Ahd/2016

[नधाक्षणवष/Assessment Year: 2010-11

Monachem Additives Pvt Ltd, 401/A, Synergy Square, Krishna Industrial Estate, Opp. BIDD Gorwa, Baroda PAN : AAFCM 2738 M	Vs.	Income Tax Officer, TDS-2 Baroda
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<b>अपीलाथ [ (Appellant)</b>		<b>[यथ [ (Respondent)</b>
Assessee by :		Shri S.H. Talati, AR
Revenue by :		Shri N.P. Patel, Sr DR

सुनवाई क[ ताराख/Date of Hearing : 08/09/2017

घोषणा क[ ताराख /Date of Pronouncement: 06/10/2017

**आदेश/O R D E R**

**PER MANISH BORAD, ACCOUNTANT MEMBER:**

These two appeals by different assesseees are directed against respective orders of the learned CIT(A)-5, Vadodara dated 15.10.2015 and 05.10.2015 passed for Assessment Year 2010-11. Since the appeals are connected with each other, these were heard together and are being disposed of by this consolidated order for the sake of convenience.

ITA No.316/Ahd/2016 - ShriDilip G. Shah

2. The grounds raised by the assessee in this appeal read as under:-

*"1. The learned Commissioner of Income-tax has erred in confirming the addition on account of deemed dividend u/s 2(22)(e) of the Act of Rs.21,77,500/-.*

*2. The Learned CIT(A) has erred in confirmed the addition on account of deemed dividend u/s 2(22)(e) of the Income Tax Act in spite the fact that all details and clinching evidences were filed showing that there is no loan received by the Director but it is a current running account of a Director with company in normal course of business.*

*3. The order passed by the learned CIT(A) is bad in law and contrary to the provisions of law and facts. It is submitted that the same be held so now."*

3. The brief facts of the case are that the assessee is one of the directors of one M/s. Monachem Additives Pvt Ltd. From the perusal of assessee's account in the books of M/s. Monachem Additions Pvt Ltd., it was observed that the assessee had taken total loans of Rs.21,77,500/- from M/s. Monachen Additives Pvt. Ltd. during assessment year 2010-11. It was also noticed that during the assessment year 2010-11, the assessee had substantial voting power in M/s. Monachem Additives Pvt. Ltd. as out of the total issuance of 12,60,000 shares of M/s. Monachem Additives Pvt. Ltd., he held 11,05,000 shares as on 31.03.2010. Further, M/s. Monachem Additives Pvt. Ltd. had total accumulated profit of Rs.1,13,54,911/- as on 31.03.2010 in its books. Therefore, the said amount of Rs.21,77,500/- received by the assessee from M/s. Monachem Additives Pvt. Ltd. was required to be treated as deemed dividend in the hands of the assessee in view of the provisions of section 2(22)(e) of the Income-tax Act, 1961. In view of the above, the assessee was required to explain why the loan of Rs.21,77,500/- may not be treated as deemed dividend u/s 2(22)(e) of the Act. The assessee submitted that it had advanced loan to M/s. Monachem Additives P. Ltd. and recovered interest of Rs.26,30,749.97. It had received a sum of

Rs.21,77,500/- from M/s Monachem Additives P. Ltd. during the last 3 days of F.Y. 2009-10. The assessee asserted that it had not received any substantial benefits from M/s. Monachem Additives P. Ltd. The assessee also asserted that it had received interest from M/s Monachem Additives P. Ltd. on the sum advanced to it and had also paid interest to it on sum received from, therefore, the same could not be classified as deemed dividend u/s 2(22)(e) of the Act. However, the Assessing Officer rejected assessee's contentions and held that since the assessee had(i) received a sum of Rs.21,77,500/- from M/s Monachem Additives P. Ltd., (ii) the assessee had substantial shareholding in the creditor company, (iii) public was not substantially interested in M/s Monachem Additives P. Ltd. and (iv) there was adequate accumulated profits in the books of M/s Monachem Additives P. Ltd., the provisions of section 2(22)(e) were attracted in the case. In view of this, the Assessing Officer treated the loan of Rs.21,77,500/- as deemed dividend u/s 2(22)(e) of the Act and added the same to the total income of the assessee.

4. Aggrieved by the order of the Assessing Officer, the assessee went in appeal before the Id. CIT(A), who, after considering the submissions of the assessee, confirmed the action of the Assessing Officer in this regard and upheld the addition made by the Assessing Officer under Section 2(22)(e) of the Act.

5. Further aggrieved, the assessee is now in appeal before us.

6. Before us, learned Counsel for the assessee placed reliance on the judgment of Hon'ble Gujarat High Court in the case of CIT vs. Schutz Dishman Bio-tech Pvt Ltd in Tax Appeal No.958 of 2015, as also the decision of the Coordinate Bench of this Tribunal in the case of DCIT vs. Dishman Pharmaceuticals & Chemicals Ltd in ITA No.2105/Ahd/2012 &

2125/Ahd/2012, wherein the Co-ordinate Bench following the judgment of Hon'ble jurisdictional High Court in the case of Schutz Dishman Bio-tech Pvt Ltd (supra) has observed as under:-

*"8.A perusal of the aforementioned findings of the ld.CIT(A) shows that he has followed the findings given in A.Y. 2006-07 wherein the First Appellate Authority has followed the decision taken in the case of SDBPL. We find that the appeal of SDBPL travelled up to the Hon'ble Jurisdictional High Court of Gujarat wherein the Hon'ble High Court was seized with the following question of law for consideration;-*

*"Whether on facts and in law the ITAT was right in cancelling the order passed u/s 201(1) and 201(A) of the Act, without appreciating that the amount advanced was in the nature of deemed dividend u/s 2(22)(e) of the Act?"*

9.And the relevant findings of the Hon'ble High Court reads as under:-

4. It can thus be seen that the Commissioner as a matter of fact found that the payments were not in the nature of current adjustment. There was movement of fund both ways on need basis. The transactions in the nature of loans and advances are usually very few in number whereas in the present case, such transactions are in the form of current accommodation adjustment entries. The Commissioner therefore, held that the transactions were not in the nature of loans and advances. The Revenue carried the matter in appeal. The Tribunal concurred with the view of the CIT (Appeals) and held that the amounts were not in the nature of Inter Corporate Deposits and were therefore, not to be treated as loans or advances as contemplated in section 2(22)(e) of the Act.

5. The issue is substantially one of appreciation of facts. When the CIT(Appeals) as well as Tribunal concurrently held that looking to large number of adjustment entries in the accounts between two entities, the amounts were not in the nature of loan or deposit, but merely adjustments, application of section 2(22)(e) of the Act would not arise. Consequently, no question of law arises. Tax appeals are dismissed.

10.Considering the findings of the First Appellate Authority in the light of the decision of the Hon'ble Jurisdictional High Court of Gujarat (supra), we do not find any reason to interfere with the findings of the ld. CIT(A). Both these appeals of the Revenue are accordingly dismissed."

7. Learned Departmental Representative, on the other hand supported the orders of the authorities below.

8. We have heard the rival contentions and perused the record placed before us. We observe that the assessee is undisputedly a substantial shareholder of M/s. Monachem Additives Pvt Ltd. Certain facts which have not been discussed by the lower authorities, even though brought on record by the assessee, are that the assessee was carrying on the business under the sole proprietary concern M/s. Monachem Corporation for last 25 years. He intended to expand the business of trading in chemicals. He accordingly established a private company namely M/s. Monachem Additives Pvt Ltd on 25.10.2007. In the initial years, company incurred losses on account of devaluation of rupee and was in an urgent financial need.

9. The assessee was enjoying a cash credit facility from HDFC bank of Rs.3.77 crores. During the year under appeal, assessee almost stopped continuing business in his sole proprietary concern M/s. Monachem Corporation and transferred all of its business to the company M/s. Monachem Additives Pvt Ltd. The cash credit facility from HDFC Bank has not been used regularly. Thereafter, on the instance of the bank, this credit facility was transferred from M/s. Monachem Corporation to M/s. Monachem Additives Pvt Ltd. The reason for bringing above facts on record is in order to examine the nature of transactions entered into between M/s. Monachem Corporation and M/s. Monachem Additives Pvt Ltd.

10. From perusal of paper-book page nos. 1- 13, we find that there are two ledger account of M/s. Monachem Corporation, running in the books of M/s. Monachem Additives Pvt Ltd. One account is named Monachem Corporation

(DR/CR) and another in the name of Monachem Corporation. In the first account, round the year, the amounts have been received in the account of Monachem Corporation on behalf of M/s. Monachem Additives Pvt Ltd for the sales made to various buyers. We find that the sales have been realized in the bank account of M/s. Monachem Corporation because the business was previously carried out in this name. Against the amount received from buyers, lump-sum amounts are regularly transferred to the bank account of M/s. Monachem Additives Pvt Ltd. This is a running account regularly showing the transactions of sales realization and its transfer back to the bank account of M/s. Monachem Additives Pvt Ltd. The last closing balance of Rs.10,33,669.59 has been transferred to the second account in the name of Monachem Corporation.

11. Now turning on to the second ledger account in the name of Monachem Corporation, we find that the assessee was having an opening credit balance of Rs.4.28 crores in the books of M/s. Monachem Additives Pvt Ltd. There are regular transactions for movement of funds to and from between the two parties. The company is regularly providing for interest on the unsecured loans taken from the assessee. As discussed above, that the company was in urgent need of finance/credit facilities and on the insistence of the HDFC Bank, the credit facility was transferred from individual account to the company account. From perusal of all these transactions of movements of fund, we can clearly envisage that these were regular business transactions which cannot be categorized as loan and advance transactions with the intention to provide facility to the shareholder. We find that the judgment of Hon'ble jurisdictional High Court in the case of Schutz Dishman Bio-tech Pvt (supra) is squarely applicable on these facts and we are therefore of the view that the alleged transactions between the sole proprietary concern of assessee M/s. Monachem

Corporation and M/s. Monachem Additives Pvt Ltd are in the form of current accommodation adjustment entries and movement of funds are both ways on need basis and therefore, cannot be treated as loan and advance as contemplated in Section 2(22)(e) of the Act. We, therefore, respectfully following the judgment of Hon'ble High Court in the case of Schutz Dishman Bio-tech Pvt (supra) and in the given facts and circumstances of the case, delete the impugned addition made on account of deemed dividend under Section 2(22)(e) of the Act of Rs.21,77,500/-. Accordingly, the appeal filed by the assessee is allowed.

ITA No.317/Ahd/2016 -Monachem Additives Pvt Ltd

12. The sole ground raised by the assessee in this appeal reads as under:-

*"The learned CIT(A) has erred in confirming the order passed by the ld. AO invoking the provisions of Sec. 201(1)/201(1A) of the Act and raising the demand of Rs.3,46,223/- including interest thereon. It is submitted that the director namely Shri Dilip G. Shah has maintained current account with appellant company, wherein the transactions of debit/credit occurred throughout the year. Thus, the debit balance of Rs.21,77,500/- as reflected in the name of director in the books of appellant company is nothing but the routine commercial transactions involving trade received from the customer on behalf of the company. Thus the action of the ld. AO invoking the provisions of Section 2(22)(e) of the Act in case of director and correspondingly treating the appellant company as assessee in default u/s 201(1)/201(1A) of the Act is incorrect and erroneous. It is submitted that impugned demand raised of Rs.3,46,223/- is totally incorrect, illegal & the same be deleted"*

13. We have heard the rival contentions, perused the material available on record and gone through the orders of the authorities below. Order under Section 201(1)/201(1A) of the Act was passed by the Assessing Officer consequent upon the addition on account of deemed dividend under Section 2(22)(e) of the Act of Rs.21,77,500/-. This issue has been dealt by us in the appeal of Shri Dilip G. Shah in ITA No.316/Ahd/2016 as discussed

hereinabove, wherein it has been held that the business transactions of the assessee cannot be categorized as loan and advance transactions with the intention to provide facility to the shareholder and, therefore, cannot be treated as loan and advance as contemplated in Section 2(22)(e) of the Act and accordingly the addition has been deleted. In view of the matter, the question of demand under Section 201(1)/201(1A) of the Act does not arise; therefore, the same is cancelled. In the result, the appeal filed by the assessee is accordingly dismissed.

14. In the result, the appeal of the assessee bearing ITA No.316/Ahd/2016 is allowed, whereas the appeal of assessee bearing ITA No.317/Ahd/2016 is dismissed as infructuous.

Order pronounced in the Court on 6<sup>th</sup> October 2017 at Ahmedabad.

Sd/-

(S.S. GODARA)  
JUDICIAL MEMBER

Ahmedabad; Dated, 06/10/2017

आदेश क० प्रत/अपील/अपील/अपील/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यक्ष / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-
5. वभागीय प्रमुख, आयकर अपीलार्थी अधिकरण, राजकोट/DR, ITAT, Ahmedabad,
6. गार्डफाईल /Guard file.

Sd/-

(MANISH BORAD)  
ACCOUNTANT MEMBER

आदेशानुसार/ BY ORDER,

TRUE COPY

सहायक पंजीकार (Asstt.Registrar)  
आयकर अपीलार्थी अधिकरण  
ITAT, Ahmedabad