

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं श्री एस जयरामन, लेखा सदस्य केसमक्ष

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

आयकर अपील सं./ITA No.2254/Mds/2016

&

C.O. No.133/Mds/2016

(in I.T.A. No.2254/Mds/2016)

निर्धारण वर्ष / Assessment Year : 2007-08

The Assistant Commissioner of
Income Tax,
Central Circle – 1(4),
Chennai - 600 034.

v. M/s R.R. Industries Ltd.,
R.R. Tower – III,
Thiru vi ka Industrial Estate,
Guindy, Chennai - 600 032.

(अपीलार्थी/Appellant)

PAN : AAACR 3594 H

(Respondent & Co-objector)

अपीलार्थी की ओर से/Appellant by : Shri Asish Tripathy, JCIT

प्रत्यर्थी की ओर से/Respondent by : Shri R. Venkatesh, CA

सुनवाई की तारीख/Date of Hearing : 12.09.2017

घोषणा की तारीख/Date of Pronouncement : 21.09.2017

आदेश /O R D E R

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

The appeal of the Revenue is directed against the order of the Commissioner of Income Tax (Appeals) -3, Chennai, dated 30.03.2016 for the assessment year 2007-08. The assessee has also filed cross-objection against the very same order of the

CIT(Appeals). Therefore, we heard the appeal and the cross-objection together and disposing of the same by this common order.

2. There was a delay of 9 days in filing the appeal by the Revenue. The Revenue has filed a petition for condonation of delay. We have heard the Ld. D.R. and the Ld. representative for the assessee. We find that there was sufficient cause for not filing the appeal before the stipulated time. Therefore, we condone the delay and admit the appeal.

3. Shri Asish Tripathy, the Ld. Departmental Representative, submitted that the assessee-company was holding more than 10% of shares in M/s Hanudev Investments Pvt. Ltd. and M/s Rishab Infopark Pvt. Ltd. The assessee-company has received unsecured loan of ₹2,54,05,731/- from M/s Hanudev Infopark Pvt. Ltd. Similarly, the assessee has received ₹84,30,876/- from M/s Rishab Infopark Pvt. Ltd. Since the assessee is having more than 10% of shares, according to the Ld. D.R., the Assessing Officer found that the loan received by the assessee has to be assessed as deemed dividend under Section 2(22)(e) of the Income-tax Act, 1961 (in short 'the Act') Accordingly, after reopening the assessment under Section 147 of the Act, the Assessing Officer assessed the deemed

dividend at ₹3,38,36,607/-. On appeal by the assessee, according to the Ld. D.R., the CIT(Appeals) found that in the assessee's own case for assessment year 2009-10, a similar addition made by the Assessing Officer was deleted. The CIT(Appeals) found that share premium account cannot be construed as accumulated profit, therefore, the addition made by the Assessing Officer was deleted. According to the Ld. D.R., the share premium collected by the assessee also has to be treated as accumulated profit for the purpose of Section 2(22)(e) of the Act.

4. On the contrary, Shri R. Venkatesh, the Ld. representative for the assessee, submitted that Section 2(22)(e) of the Act clearly says that to the extent to which the company possesses accumulated profit, the loan or advance has to be treated as deemed dividend. Referring to the balance sheet of M/s Hanudev Inforpark Pvt. Ltd., a copy of which is available at page 18 of the paper-book, the Ld. representative submitted that there was no accumulated profit for the year under consideration. Similarly, the balance sheet of M/s Rishab Infopark Pvt. Ltd., which is available at page 21 of the paper-book, the Ld. representative submitted that there was no accumulated profit for the year under consideration in

that company also. The Ld. representative for the assessee further submitted that share premium is a capital contribution, therefore, the same cannot be considered as profit of the company. For the year under consideration, there was no accumulated profit, according to the Ld. representative, hence, the CIT(Appeals) has rightly deleted the deduction made by the Assessing Officer.

5. Referring to the cross-objection, the Ld. representative for the assessee submitted that apart from supporting the order of the CIT(Appeals), the assessee has also raised a ground with regard to reopening of assessment under Section 147 of the Act. According to the Ld. representative, even though the assessment was reopened within the period of four years, the Assessing Officer had no material other than what was filed by the assessee at the time of filing of return of income for reopening the assessment. Hence, according to the Ld. representative, the reopening is invalid in law.

6. 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 which reads as follows:-

“2(22) “dividend” includes -

- (a)
- (b)
- (c)
- (d)

(e) any payment by a company, not being a company in which the public are substantially interested, of any sum (whether as representing a part of the assets of the company or otherwise) made after the 31st day of May, 1987, by way of advance or loan to a shareholder, being a person who is the beneficial owner of shares (not being shares entitled to a fixed rate of dividend whether with or without a right to participate in profits) holding not less than ten per cent. of the voting power, or to any concern in which such shareholder is a member or a partner and in which he has a substantial interest (hereafter in this clause referred to as the said concern) or any payment by any such company on behalf, or for the individual benefit, of any such shareholder, to the extent to which the company in either case possesses accumulated profits ; but “dividend” does not include—

(i) a distribution made in accordance with sub-clause (c) or sub-clause (d) in respect of any share issued for full cash consideration, where the holder of the share is not entitled in the event of liquidation to participate in the surplus assets ;

(ia) a distribution made in accordance with sub-clause (c) or sub-clause (d) in so far as such distribution is attributable to the capitalised profits of the company representing bonus shares allotted to its equity shareholders after the 31st day of March, 1964, and before the 1st day of April, 1965 ;

(ii) any advance or loan made to a shareholder or the said concern by a company in the ordinary course of its business, where the lending of money is a substantial part of the business of the company ;

(iii) any dividend paid by a company which is set off by the company against the whole or any part of any sum previously paid by it and treated as a dividend within the meaning of sub-clause (e), to the extent to which it is so set off ;

(iv) any payment made by a company on purchase of its own shares from a shareholder in accordance with the provisions of section 77A of the Companies Act, 1956 (1 of 1956) ;

(v) any distribution of shares pursuant to a demerger by the resulting company to the shareholders of the demerged company (whether or not there is a reduction of capital in the demerged company).

Explanation 1.— The expression "accumulated profits", wherever it occurs in this clause, shall not include capital gains arising before the 1st day of April, 1946, or after the 31st day of March, 1948, and before the 1st day of April, 1956 ;

Explanation 2.— The expression "accumulated profits", in sub-clauses (a), (b), (d) and (e), shall include all profits of the company up to the date of distribution or payment referred to in those sub-clauses, and in sub-clause (c) shall include all profits of the company up to the date of liquidation, but shall not, where the liquidation is consequent on the compulsory acquisition of its undertaking by the Government or a corporation owned or controlled by the Government under any law for the time being in force, include any profits of the company prior to three successive previous years immediately preceding the previous year in which such acquisition took place ;

Explanation 3.— For the purposes of this clause,—
(a) "concern" means a Hindu undivided family, or a firm or an association of persons or a body of individuals or a company ;
(b) a person shall be deemed to have a substantial interest in a concern, other than a company, if he is, at any time during the previous year, beneficially entitled to not less than twenty per cent. of the income of such concern ;"

7. A bare reading of Section 2(22)(e) of the Act clearly says that to the extent of accumulated profit, the loan or advance received by the assessee-company can be treated as dividend for assessment. In the case before us, even though the Assessing Officer found that there was some accumulated profit, the balance sheet filed by the assessee before this Tribunal indicates that there was no accumulated profit. For the assessment year 2007-08, in the case of M/s Hanudev Infopark Pvt. Ltd., the company does not have accumulated profit but only has share premium account. In the case of Rishab Infopark Pvt. Ltd., there is actually reduction in the amount due to them during the year which is clearly indicated in the balance sheet. Therefore, in the absence of any accumulated profit in the case of M/s Hanudev Infopark Pvt. Ltd. and M/s Rishab Infopark Pvt. Ltd., the share premium cannot be treated as accumulated profit. Therefore, the CIT(Appeals) has rightly deleted the addition made by the Assessing Officer by placing reliance on the order of this Tribunal for assessment year 2009-10. This Tribunal do not find any reason to interfere with the order of the lower authority and accordingly the same is confirmed.

8. Since the order of the CIT(Appeals) is confirmed on merit, it may not be necessary for the Tribunal to go into the issue of reopening.

9. In the result, both the appeal filed by Revenue and the cross-objection filed by the assessee stand dismissed.

Order pronounced on 21st September, 2017 at Chennai.

sd/-

(एस जयरामन)

(S. Jayaraman)

लेखा सदस्य/Accountant Member

sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated, the 21st September, 2017.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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