

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'A' 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 Nos.1796 & 1797/Mds/2017

निर्धारण वर्ष / Assessment Years : 2012-13 & 2014-15

M/s T. Abdul Wahid & Co.,
No.55, Vepery High Road,
Chennai - 600 003.

v. The Assistant Commissioner of
Income Tax,
Non-Corporate Circle – 4(1),
Chennai - 600 006.

PAN : AAAFT 0482 B

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri G. Baskar, Advocate

प्रत्यर्थी की ओर से/Respondent by : Ms. S. Vijayaprabha, JCIT

सुनवाई की तारीख/Date of Hearing : 21.09.2017

घोषणा की तारीख/Date of Pronouncement : 17.10.2017

आदेश /ORDER

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

Both the appeals of the assessee are directed against the respective orders of the Commissioner of Income Tax (Appeals) -5, Chennai, dated 27.06.2017 and pertain to assessment years 2012-13 and 2014-15. Since common issues arise for consideration in both the appeals, we heard both the appeals together and disposing of the same by this common order.

2. Shri G. Baskar, the Ld.counsel for the assessee, submitted that the assessee is a partnership firm. One of the partners, namely, Shri Rafeeq Ahmed is holding 35% of shares in M/s Abdul Wahid Tanneries Pvt. Ltd. According to the Ld. counsel, there was a business transaction between Shri Rafeeq Ahmed and M/s Abdul Wahid Tanneries Pvt. Ltd. In fact, the assessee-partnership firm was purchasing finished leather from M/s Abdul Wahid Tanneries Pvt. Ltd. for manufacturing shoe and shoe uppers regularly. During the financial year ending 31.03.2012, according to the Ld. counsel, M/s T. Abdul Wahid & Co. owed to M/s Abdul Wahid Tanneries Limited a sum of ₹6,31,49,548/- towards supply of leather. In order to maintain the working capital ratio, a sum of ₹2 Crores was transferred from sundry creditors to trade running account of M/s Abdul Wahid Tanneries Pvt. Ltd. as a deferred liability which was shown in the balance sheet under the head "Unsecured Loan". According to the Ld. counsel, there was no cash transaction between the assessee-partnership firm and M/s Abdul Wahid Tanneries Pvt. Ltd. The amount outstanding for supply of leather was shown as unsecured loan. Therefore, according to the Ld. counsel, it cannot be construed either as advance or otherwise. It is

a commercial transaction between the assessee-firm and the company, therefore, according to the Ld. counsel, the provisions of Section 2(22)(e) of the Income-tax Act, 1961 (in short 'the Act') is not applicable at all.

3. The Ld.counsel for the assessee further submitted that the assessee-firm is neither a beneficial shareholder nor a registered shareholder. Referring to Section 2(22)(e) of the Act, the Ld.counsel submitted that if at all there was any advance or loan from the company for the benefit of shareholder, the same has to be assessed only in the hands of registered shareholder or beneficial shareholder. According to the Ld. counsel, the assessee-firm is neither a registered shareholder nor a beneficial shareholder, therefore, it cannot be assessed in the hands of the assessee.

4. On the contrary, Ms. S. Vijayaprabha, the Ld. Departmental Representative, submitted that one of the partners, namely, Shri Rafeeq Ahmed was holding 35% of shares in the Pvt. Ltd. company. A sum of ₹ 2 Crores for assessment year 2012-13 was transferred from sundry creditor to unsecured loan. According to the Ld. D.R., the assessee claimed before the Assessing Officer and the CIT(Appeals) that merely because a credit was found in the journal

entry, it cannot be construed as loan or advance. The CIT(Appeals) by placing reliance on the decision of this Tribunal in ACIT v. Gurbinder Singh (2012) 19 taxmann.com 89, found that even though the credit was provided by making journal entries, it has to be assessed as deemed dividend. Hence, according to the Ld. D.R., the CIT(Appeals) has rightly confirmed the order of the Assessing Officer.

5. We have considered the rival submissions on either side and perused the relevant material available on record. It is not in dispute that Shri Rafeeq Ahmed was holding 35% of shares in M/s Abdul Wahid Tanneries Pvt. Ltd. The said Shri Rafeeq Ahmed was also one of the partners in the assessee-firm. The assessee-firm was purchasing finished leather goods from M/s Abdul Wahid Tanneries Pvt. Ltd. on regular basis for manufacturing shoes and shoe uppers. During the financial year 2012-13, an amount of ₹6,31,49,548/- was outstanding to be paid by partnership firm to M/s Abdul Wahid Tanneries Pvt. Ltd. Subsequently, by way of entry in the books of account, an amount of ₹2 Crores for assessment year 2012-13 was shown as unsecured loan. Similarly, for assessment year 2014-15, an amount of ₹90,04,799/- was shown as unsecured

loan. The question arises for consideration is whether these amounts shown as unsecured credit can be assessed as deemed dividend in the hands of the assessee-partnership firm?

6. We have carefully gone through the provisions of Section 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 ;”

7. From the above provisions, it is obvious that deemed dividend has to be assessed either in the hands of beneficial

shareholder or the registered shareholder. In the case before us, the assessee is not a registered shareholder. It is also not the case of the Revenue that the assessee is a beneficial shareholder. Admittedly, one of the partners of the assessee-firm, namely, Shri Rafeeq Ahmed was the registered shareholder holding 35% of shares in M/s Abdul Wahid Tanneries Pvt. Ltd. It is not the case of the Revenue that the assessee-firm invested its own funds through Shri Rafeeq Ahmed in the shares of M/s Abdul Wahid Tanneries Pvt. Ltd. Moreover, no material is also available on record to suggest that assessee-partnership firm invested its own funds in the name of Shri Rafeeq Ahmed in the shares of M/s Abdul Wahid Tanneries Pvt. Ltd. In those circumstances, this Tribunal is of the considered opinion that the assessee-partnership firm cannot be construed either as registered shareholder or as beneficial shareholder. Therefore, the assessee cannot be assessed under Section 2(22)(e) of the Act. At the best, it may be considered in the hands of the individual partner who is the shareholder in the company.

8. In view of the above, we are unable to uphold the orders of the authorities below. Accordingly, the orders of both the authorities

below are set aside and the addition made by the Assessing Officer under Section 2(22)(e) of the Act is deleted.

9. The assessee has taken one more ground regarding disallowance of interest on the delayed payment of sales tax.

10. Shri G. Baskar, the Ld.counsel for the assessee submitted that the interest on delayed payment of sales tax is only compensatory in nature, therefore, it cannot be disallowed while computing total income.

11. We have heard Ms. S. Vijayaprabha, the Ld. Departmental Representative also. Delayed payment of interest is compensatory in nature, therefore, this Tribunal is of the considered opinion that for delayed payment of sales tax, the interest paid by the assessee cannot be disallowed while computing the total income.

12. The next issue arises for consideration is disallowance of ₹68,538/-.

13. Shri G. Baskar, the Ld.counsel for the assessee, submitted that while computing the total income, the assessee itself disallowed the interest on the TDS amount. The Assessing Officer without

verifying the computation, disallowed the same once again. Therefore, it needs to be verified.

14. We have heard Ms. S. Vijayaprabha, the Ld. Departmental Representative also. Since the assessee claims that the interest on TDS was already disallowed, this Tribunal is of the considered opinion that the Assessing Officer needs to verify the same. Accordingly, the orders of both the authorities below are set aside and the issue of disallowance of ₹68,538/- towards interest on TDS amount is remitted back to the file of the Assessing Officer. The Assessing Officer shall re-examine the matter and decide the issue in accordance with law, after giving a reasonable opportunity to the assessee.

15. The next issue arises for consideration is disallowance of ₹92,116/- being the interest paid on credit card.

16. Shri G. Baskar, the Ld.counsel for the assessee, submitted that this amount was paid only for the purpose of business, therefore, there cannot be any disallowance.

17. On the contrary, Ms. S. Vijayaprabha, the Ld. Departmental Representative, submitted that it cannot be said that the credit card

was used only for the purpose of business. Since personal element cannot be ruled out, the Assessing Officer has rightly disallowed the payment of ₹92,116/-.

18. We have considered the rival submissions on either side and perused the relevant material available on record. The assessee claims that interest paid on credit card is only for the purpose of business and the Department contends that the personal element cannot be ruled out. In those circumstances, this Tribunal is of the considered opinion that the expenditure incurred by the assessee through credit card needs to be examined. If the payment was made only for business purpose, then there cannot be any disallowance of interest. In case, the credit card was used for meeting personal expenditure, then such expenditure cannot be allowed. Therefore, these aspects need to be verified. Accordingly, orders of both the authorities below are set aside and the issue is remitted back to the file of the Assessing Officer. The Assessing Officer shall re-examine the matter afresh and decide the issue in accordance with law, after giving a reasonable opportunity to the assessee.

19. The next issue arises for consideration is with regard to disallowance of Customs duty to the extent of ₹5,36,187/-.

20. Shri G. Baskar, the Ld.counsel for the assessee, submitted that the Assessing Officer disallowed ₹5,36,187/- on the ground that there was no evidence for payment of Customs duty. According to the Ld. counsel, the Customs duty was actually paid and the assessee is willing to provide evidence before the Assessing Officer.

21. We have heard Ms. S. Vijayaprabha, the Ld. Departmental Representative also. Since the assessee is ready to provide the evidence, this aspect can be verified by the Assessing Officer on the basis of the evidence that may be filed by the assessee for payment of Customs duty. Accordingly, the orders of both the authorities below are set aside and the issue of disallowance of ₹5,36,187/- towards the payment of Customs duty is remitted back to the file of the Assessing Officer. The Assessing Officer shall re-examine the issue on the basis of the material that may be filed by the assessee and decide the issue afresh in accordance with law, after giving a reasonable opportunity to the assessee.

22. In the result, the appeal for assessment year 2012-13 in I.T.A. No.1796/Mds/2017 is allowed and the appeal for assessment year 2014-15 in I.T.A. No.1797/Mds/2017 is allowed for statistical purposes.

Order pronounced on 17th October, 2017 at Chennai.

sd/-

(ए. मोहन अलंकामणी)

(A. Mohan Alankamony)

लेखा सदस्य/Accountant Member

sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated, the 17th October, 2017.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-5, Chennai
4. Principal CIT-9, Chennai.
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.