

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL 'A' (SMC) BENCH : CHENNAI

श्री अब्राहम पी. जॉर्ज, लेखा सदस्य के समक्ष।

[BEFORE SHRI ABRAHAM P. GEORGE, ACCOUNTANT MEMBER]

आयकर अपील सं./I.T.A. No. 1510/Mds/2017

निर्धारण वर्ष /Assessment year : 2011-2012.

Shri. L. Suryanarayanamoorthy,
49, Rukkammal Street,
Thudiyalur,
Coimbatore 641 034.

Vs. The Deputy Commissioner of
Income Tax,
Corporate Circle 1,
Coimbatore.

[PAN AUUPS 8446A]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by

: Shri. T.N. Seetharaman, Adv.

प्रत्यर्थी की ओर से /Respondent by

: Shri. B. Sagadevan, IRS, JCIT.

सुनवाई की तारीख/Date of Hearing

: 29-08-2017

घोषणा की तारीख /Date of Pronouncement

: 30-08-2017

आदेश / ORDER

Assessee in this appeal is aggrieved on an addition of ₹20,39,185/-, as deemed dividend u/s. 2(22)(e) of the Income Tax Act, 1961 (in short "the Act") which was confirmed by the Id. Commissioner of Income Tax (Appeals)-1, Coimbatore through his order dated 28.03.2017.

2. Facts apropos are that assessee is a director of a company called M/s. Chroma Print (India) Pvt. Ltd. He had filed his return of income for the impugned assessment year disclosing an income of ₹13.21,161/-. Original assessment which was completed u/s. 143(1) of the Act, was later reopened by issuing notice u/s. 148 of the Act on 29.03.2016. During the course of re-assessment proceedings, Id. Assessing Officer noted that assessee had 20% of the equity shares in M/s. Chroma Print (India) Private Limited. As per the Id. Assessing Officer, current account of the assessee with the said company reflected withdrawals by him over and above the credit balances therein. Thus, as per the Id. Assessing Officer Sec. 2(22)(e) of the Act stood attracted. Aggregate amounts received by the assessee from the said company in excess of the credit balance came to ₹20,39,185/-. Said company had reserves and surplus in excess of this amount. The assessment was thereafter completed by making an addition of ₹20,39,185/- to the returned income.

3. Aggrieved, assessee moved in appeal before the Id. Commissioner of Income Tax (Appeals). Contention of the assessee before the Id. Commissioner of Income Tax (Appeals) was that he was the Managing Director of M/s. Chroma Print India Private Limited and had given personal assets as collateral for the purpose of loan raised

by the said company from the bank in addition to a person guarantee. Relying on the judgment of Hon'ble Calcutta High Court in the case of *Pradip Kumar Malhotra vs. CIT 338 ITR 538* assessee argued that, he having offered his personal assets as collateral with the bank, for enabling the company to take a loan, there was a quid-pro-quo. Contention of the assessee was that the amount received by him from the company was not gratuitous but in lieu of the personal guarantee given by him for the loan raised by the company from the bank.

4. However, Id. Commissioner of Income Tax (Appeals) was not impressed by the above arguments. According to him, there was no resolution passed by the Board of Directors of M/s. Chroma Print India Pvt. Limited which could show that money paid by the said company to the assessee was in consideration of his personal guarantee for the loan and immovable property being given as collateral. Though the assessee relied on a letter issued by the State Bank of India, wherein terms and conditions mentioned, deposits of personal properties and personal guarantee in favour of the said bank, for the credit limit sanctioned to the said company, this was not accepted by the Id. Commissioner of Income Tax (Appeals), for want of resolution from the said company. He thus held that facts of the assessee's case were different from those in the case of Pradip Kumar Malhotra (supra)

decided by the Hon'ble Calcutta High Court. He confirmed the addition made by the Id. Assessing Officer.

5. Now before me, Id. Authorised Representative strongly assailing the orders of the lower authorities once again placed strong reliance on the judgment of *Hon'ble Calcutta High Court in the case of Pradip Kumar Malhotra (supra)*. As per Id. Authorised Representative when a loan or advance given to a shareholder as a consequence of a consideration which was beneficial to a company received from such share holder, such advance or loan could not be said to be deemed dividend. Reliance was also placed on the decision of Co-ordinate Bench in the case of *ACIT vs. Smt. G. Sreevidya (2012) 138 ITD 427*. As per the Id. Authorised Representative in the above decision, Co-ordinate Bench had held that every payment made by a company to its shareholder could be loan/advance, would not be considered as deemed dividend when the shareholder concerned had offered personal guarantee and collateral security for the benefit of the company. Reliance was also placed on the decision of Co-ordinate Bench in the case of *ACIT vs. Shri Ravikant Choudhary in ITA No.768/Mds/2012 and C.O.No.93/Mds/2012, dated 17.12.2012*. As per Id. Authorised Representative, Co-ordinate Bench had considered an issue where loan was taken by a shareholder who had shareholding in

excess of 10%, where such shareholder had furnished a bank guarantee for the company. As per the Id. Authorised Representative Co-ordinate Bench had held that furnishing of bank guarantee by a shareholder to secure a loan taken by the company, from a bank, was good enough to exempt the loans taken by the shareholder from the company out of the preview of Sec. 2(22) (e) of the Act.

6. Per contra, Id. Departmental Representative strongly supporting the orders of the authorities below submitted that in all the cases relied on by the Id. Authorised Representative, there was a clear Quid-pro-quo. According to him, in all these cases there was a pre-condition of loans being given to the concerned assessee's. As per Id. Departmental Representative this condition did not appear in assessee's case here. Further, according to him, there was no board resolution which could show that advance given by the company to the assessee was in consideration for the guarantee offered by the assessee to the company. Reliance was also placed on the decision of Ahmedabad Bench of the Tribunal in the case of *Dipesh Lalchand Shah vs. ACIT (2016) 68 taxmann.com 151*.

7. I have considered the rival contentions and perused the orders of the authorities below. There is no dispute regarding

quantum of the amount considered for addition u/s. 2(22) (e) of the Act. Only argument of the assessee is that he had given personal guarantee as well as his personal assets as collateral for the purpose of loans raised by the Company. As per the assessee the advance received by him from the said company was in consideration of these benefits given by him to the said company. In support of this contention, assessee has placed on record a sanction letter dated 28.06.2008 issued by the State Bank of India to M/s. Chroma Print India P. Ltd. At page No.2 of this sanction letter, it is clearly stated that Shri. L. Suryanaraya Moorthy, the assessee had given a personal guarantee for the loan. However, the collateral offered was not by Shri. L. Suryanaraya Moorthy but by Shri. R.Lakshminarayana Moorthy. Thus what assessee offered in the bank was his personal guarantee for the loan taken by M/s. Chroma Print India P. Ltd. Claim of the assessee is that advance of ₹20,39,185/- received by him from M/s. Chroma Print India P. Ltd was in consideration of such personal guarantee. Reliance has been placed on the judgment of Hon'ble Calcutta High Court in the case of *Pradip Kumar Malhotra*. In the said case, the concerned assessee had let out his property to a company in which he was having substantial shareholding. Thereafter he allowed the said property to be given as collateral security to M/s. Vijaya Bank for a loan taken by that company from the Bank. The

Board of Directors of the said company had passed a resolution authorizing the assessee to take an interest free deposit of ₹50,00,000/- as and when required, for making available his property to be given as collateral security to the bank. However, the fact scenario before me is entirely different. There is no property of the assessee offered as collateral security. What was given was only a personal guarantee. There was also no resolution of Board of Directors of M/s. Chroma Print India P. Ltd. wherein it had authorized assessee to take advance. In my opinion the case of *Pradip Kumar Malhotra* has no applicability here.

8. Coming to the decision of Co-ordinate in the case of Smt. G. Sreevidya (supra) again relied on by the Id. Authorised Representative, submission of the assessee's counsel appearing in that case, was that amounts were advanced to the concerned assessee by the company as a precondition for giving bank guarantee and collateral security for the funding of the concerned company. Here on the other hand, assessee had neither given a bank guarantee nor a collateral security for the loans raised by M/s. Chroma Print India P. Ltd. Similar is the case of Shri. Ravikant Choudhary (supra) again decided by the Co-ordinate Bench. What was provided by the concerned assessee was a bank guarantee for the loans raised by the company. In my opinion, a

personal guarantee and a bank guarantee stands poles apart. Further, quid-pro-quo which has been sought to be canvassed as the reason for receiving the advance has not been factually established. There is nothing on record to show that assessee was given the advance by the company as a pre-condition for giving his personal guarantee for the loan raised by the company from its banker. In such circumstances, I am of the opinion that loans taken by the assessee from M/s. Chroma Print India P. Ltd was rightly considered as deemed divided u/s. 2(22) (e) of the Act. I do not find any reason to interfere with the orders of the lower authorities.

9. In the result, the appeal of the assessee stands dismissed.

Order pronounced on Wednesday, the 30th day of August, 2017, at Chennai.

Sd/-

(अब्राहम पी. जॉर्ज)

(ABRAHAM P. GEORGE)

लेखा सदस्य/ACCOUNTANT MEMBER

चेन्नई/Chennai

दिनांक/Dated: 30th August, 2017

KV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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