

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "G", NEW DELHI

BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER
AND
SHRI L.P. SAHU, ACCOUNTANT MEMBER

	I.T.A. No. 274/DEL/2016	
	A.Y. : 2012-13	
JITENDRA KUMAR GUPTA 219, RAILWAY ROAD, MEERUT - 250002 UTTAR PRADESH (PANI AARPG5507B)	VS.	ACIT, CIRCLE-1, MEERUT
(APPELLANT)		(RESPONDENT)

Assessee by : Sh. Sumit Goyal, CA
Department by : Sh. Kaushlendra Tiwari, Sr. DR.

ORDER

PER H.S. SIDHU : JM

Assessee has filed this Appeal against the impugned Order dated 17.12.2015 passed by the Ld. CIT(A), Meerut relevant to assessment year 2012-13 on the following grounds:-

"1. That the Authorities have erred in law and facts by adding an amount of Rs. 1,67,00,000/- as deemed dividend u/s. 2(22)9e) of the Income Tax Act, 1961.

2. That the authorities below have erred in law and facts by treating advance payment of Rs. 1,67,00,000/- against sale of industrial land, received from the company in which the Assessee is Director and share holder as deemed dividend u/s. 2(22)(e) of the Income Tax Act, 1961.

3. That the authorities below have erred in law and facts of the case is not considering the various details, pleadings

and written submissions made from time to time during the course of assessment proceedings.

4. That the demand of Rs. 70,81,930/- created, pursuant to these assessment, which are disputed demand, be kindly stayed till the disposal of the appeal.

5. That the several observation as made and inference as drawn are untenable, incorrect, unwarranted and uncalled for.

6. That the interest charged u/s. 234B & 234C of the Income Tax Act, 1961 is illegal on various and legal grounds.

7. That the appellant may take any other ground or grounds at the time of hearing of appeal before the ITAT with the kind permission of the Ld. CIT(A), Meerut.

2. The brief facts of the case are that Assessee filed return of income on 29.9.2012 declaring Rs. 4,90,94,040/- income in it is an individual and Director/ Share holder in the Company in which Public are not substantially interested. The case of the assessee was selected for scrutiny through CASS and statutory notice u/s. 143(2) of the Income Tax Act, 1961 dated 23.9.2013, fixing the date of hearing for 03.10.2013 was issued, which was served upon the assessee. Another notice u/s. 142(1) alongwith questionnaire were issued on 22.11.2013. In response to the aforesaid notices, the AR of the assessee attended the proceedings from time to time and filed the details / replied as called for. AO noted that Assessee has taken huge sum from IHDP Globals Private Limited as per copy of account given in the assessment order and issued a show cause for treating it as deemed divided u/s. 2(22)(e) of the Act. Assessee

claimed that advance was received against sale of land by assessee to company in which he is Director / Substantial share holder and copy of unregistered agreement was filed. Assessee further stated that agreement was terminated and copy of termination agreement on plain paper was also filed. The Board Resolution in support of his claim were also filed before the AO. AO had made the addition of Rs. 1,67,00,000/- as deemed divided by applying the provision of section 2(22)(e) of the Act and completed the assessment u/s. 14(3) of the Act at Rs. 6,57,94,040/- and Agricultural income Rs. 2,02,567/- vide order dated 30.01.2015.

3. Aggrieved with the assessment order dated 30.1.2015, the assessee preferred an appeal before the Ld. CIT(A), who vide his impugned order dated 17.12.2015 has dismissed the appeal by confirming the addition in dispute.

4. Against the impugned order dated 17.12.2015, assessee has filed the Appeal before the Tribunal.

5. At the time of hearing, Ld. Counsel of the assessee has filed a Paper Book containing pages 1 to 35 containing various documents having the copy of ledger a/c of assessee in the books of M/s IHDP Global (P)ltd; breakup of ledger a/c into – loan a/c and advance against prorty a/c; SCN dated 9.1.2015; reply to AO dated 15.1.2015 of SCN; agreement to sale dated 10.5.2011; Board Resolution dated 10.5.2011 (for agreement ot sale); termination agreement dated 11.11.2011; Board Resolution dated 11.11.2011 (for termination of agreement to sale); purchase deeds of

property; submission to CIT(A) dated 16.7.2015; submission to CIT(A) dated 27.10.2015 and Date wise running ledger a/c of all transactions with IHDP Global (P) Ltd. However, with regard to addition of Rs. 1,67,00,000/- confirmed by the Ld. CIT(A) on account of the deemed dividend, the assessee's counsel has stated that during the year the company gave Rs. 1,67,00,000/- to the assessee. It is not in the nature of advance or loan within the meaning of section 2(22)(e) of the Act. However, it is an advance given by the company to the assessee against purchase of property being industrial land at Khasra NO. 84/1 & 100/1, Village Rethani, Meerut, measuring 4185 sq.mtrs. But the said agreement got terminated vide termination agreement dated 11.11.2011 and the nature of said payments are not simplicitor loan or advance but it is a trade advance for business purposes, which is outside the purview of section 2(22)(e) of the Act. To support his contention, he relied upon the CBDT Circular No. 19/2017 dated 12.6.2017 relating to settled view on Section 2(22)(e) of the Income Tax Act, trade advances – reg. and also relied upon the case law Sunil Sethi (2009) 26 SOT 95 (Del).

6. On the contrary, Ld. DR relied upon the orders of the authorities below and filed the written submissions citing therein the various case laws. The case laws cited by the Ld. DR in the written submissions are reproduced hereunder :-

"Sub: Written Submission in the above case- reg.

In the above case, assessee claim that the transactions are commercial in nature so covered by the board circular is not acceptable as CIT appeal has discussed the nature of transaction in detail and found it not commercial in nature. It is also humbly submitted that the following decisions may kindly be considered with regard to deemed dividend' u/s 2(22)(e) of I.T.Act:

1. *Miss P. Sarada Vs CIT [96 Taxman 111 229 ITR 444. 144 CTR 209] (where Hon'ble Supreme Court held that advances made by company to assessee would have to be treated as deemed dividends paid on dates when withdrawals were allowed to be made and subsequent adjustment of account made on very last day of accounting year would not alter position that assessee received notional dividends on various dates.*

CIT Vs Miss P. Sarada [21 Taxman 94]

where Hon'ble Madras High Court held that Amount of impugned excess withdrawals, even though adjusted against credit balance before close of year, was assessable as deemed dividend in assessee's hands in terms of section 2(22)(e)

2. *Gopal And Sons (HUF) Vs CIT [2017] 77 taxmann.com 71 (SC)/[2017] 245 Taxman 48*

(SC)/[2017] 391 ITR 1 (SC)/[2017] 291 CTR 321 (SC)

where Hon'ble Supreme Court held that even if HUF is not a registered shareholder in lending company, advances/loans received by HUF is taxable as deemed dividend under section 2(22)(e).

if Karta-shareholder has substantial interest in HUF.

3. *CIT Vs Mukundray K. Shah [2007] 160 Taxman 276 (SC)/{2007] 290 ITR 433 (SC)/[2007] 209 CTR 97 (SC)*

A search conducted at assessee's premises led to seizure of a diary, which contained purchasing of nine per cent RBI relief bonds by assessee from funds received from two firms 'B' and 'C' in which he was a partner. Tribunal' after examination of cash flow statement held that two firms were used as conduits by assessee; that 'A' had made payments to 'B' and 'C' for benefit of assessee, which enabled him to buy nine per cent RBI Relief Bonds and upheld finding of Assessing Officer. Upheld addition u/s 2(22)(e) of I.T. Act.

4. *Puneet Bhagat v. ITO (157 ITD 353)*

Where Hon'ble ITAT Delhi held that deemed dividend-Loans and advances to share holders-Loans received ,by the company would be treated as deemed dividend in hands of P and S in proportion to theirshareholdings.

5. *Addl CIT Vs Shri Chandrakant V Gosalia [2015-TIOL-1187-ITAT-MUM]*

where Hon'ble ITAT Delhi held that mere repayment of money borrowed by the shareholder will not escape him from the provisions of section 2(22)(e), and thus, it can be treated as deemed dividend.

6. *Sunil Kapoor Vs CII [2015]63 taxmann.com 97 (Madras)/[2015] 235 Taxman 279 (Madras)*

where Hon'ble Madras High Court held that where assessee, holding 60 per cent shares of a company, took personal loan from accumulated surplus of said

company, said amount would be treated as deemed dividend under section 2(22)(e), after reducing therefrom amount repaid by assessee during year

7. *Shashi Pal Agarwal Vs CIT [2015] 54 taxmann.com 289 (Allahabad)/[2015] 229 Taxman 307 (Allahabad)/[2015] 370 ITR 720 (Allah,abad)*

where Hon'ble Allahabad High Court held that where lending of money was not part of business of lending companies, loan/advance given to assessee-shareholder would be treated as deemed dividend under section 2(22)(e)

8. *Star Chemicals (P.) Ltd Vs CIT [72 Taxman 279, 203 ITR 11,114 CTR 185]*

where Hon'ble Bombay High Court held that provisions of section 2(22)(e) would apply to a company which had taken loan from its subsidiary

9. *CIT v Sunil Chopra [2011] 12 taxmann.com 496 (Delhi)/[2011] 201 Taxman 316 (Delhi)/[2011] 242 CTR 498 (Delhi)*

Tribunal deleted addition accepting assessee's contention that said advances were received against sale of property under terms of agreement dated 18-9-2003 and, therefore, money was taken by assessee in line of his business of real estate. Hon'ble Delhi High Court held that there was great perversity and infirmity in findings and observations' of Tribunal and, therefore, impugned order was to be set aside.

10. *M. Amareswara Rao v. Dy.CII [157 ITD 657/13~ DTR 153/178 TTJ 700]*

where Hon'ble ITAT Vishakhapatnam held that deemed dividend-Loan-beneficial ownership of more than 10 per cent shares in a closely held company- Assessable as deemed dividend."

7. We have heard both the parties and perused the records especially the impugned order, written submissions filed by both the parties as well as the Paper Book filed by the assessee's counsel, containing copy of ledger a/c of assessee in the books of M/s IHDP Global (P)ltd; breakup of ledger a/c into – loan a/c and advance against prorty a/c; SCN dated 9.1.2015; reply to AO dated 15.1.2015 of SCN; agreement to sale dated 10.5.2011; Board Resolution dated 10.5.2011 (for agreement ot sale); termination agreement dated 11.11.2011; Board Resolution dated 11.11.2011 (for termination of agreement to sale); purchase deeds of property; submission to CIT(A) dated 16.7.2015; submission to CIT(A) dated 27.10.2015 and Date wise running ledger a/c of all transactions with IHDP Global (P) Ltd. We find that in this case assessee is a share holder of more than 10% shares in IHDP Globals (P) Ltd. and during the year, the company gave funds totaling Rs. 1,67,00,000/- to the assessee which has been added by the AO u/s. 2(22)(e) of the Act and later the Ld. CIT(A) confirmed the findings of AO. We further note that during the year the company gave Rs. 1,67,00,000/- to the assessee. In my opinion it is not in the nature of advance or loan within the meaning of section 2(22)(e) of the Act. However, it is an advance given by the company to the assessee against purchase of property being industrial land at Khasra NO. 84/1 & 100/1, Village Rethani, Meerut, measuring 4185 sq.mtrs.,

which is evident from page no. 13-27 of PB a copy of purchase deed showing ownership of property to assessee, page no 10 of PB copy of Board Resolution dated 10.5.2011 by the Company, Page no. 7 to 9 of PB a copy of agreement to sale dated 10.5.2011. But the said agreement got terminated vide termination agreement dated 11.11.2011 and the nature of said payments are not simplicitor loan or advance but it is a trade advance for business purposes, which is outside the purview of section 2(22)(e) of the Act. We further note that in this case, the position was rather reverse i.e. the assessee being a Director and share holder of the company, was providing frequent advances to the company for its business requirements and the company was having credit balance of the assessee in its books, the op. cr. bal. in this year was Rs.7,82,149/- & the cl. cr. bal. was Rs.2,37,47,149/- (Page No. 1 of PB). The assessee never charged any interest from the company. The Co. in its books, opened the consolidate ledger a/c. of assessee for loan taken and for advance given against purchase of property, however during proceedings, bifurcated loan a/c and advance against property a/c was furnished (Page no. 2 PB). Thus it is a case of advance given for purchase of property. It is also noted that the purchase agreement not being registered cannot be a reason for not accepting the contents of the agreement when it is witnessed by two persons also (page no. 7-9 of PB). In our opinion, the effect of non registration, at the most, can be only to the extent that it may affect its enforceability in the court of law but the contents of agreement cannot be denied in the absence of registration. In this case,

the registration was not considered necessary since there was no doubt of any dispute at a later stage between the parties. Similarly termination agreement being unregistered cannot be a reason for doubting its contents when it is also witnessed by two persons. (Page no. 11 of PB). The only effect of non registration, can be the doubtfulness of its legal enforceability but non registration cannot deny the contents. The observation of CIT (A) that the agreement is dt.10.05.11 which mentions advance payment of Rs.14,00,000/- vide cheque dt.12.05.11, is not possible. This observation was unfounded since post dated cheque was issued at the time of execution of agreement. Hence, the addition in dispute made by the AO and confirmed by the Id. CIT(A) is untenable and therefore, we delete the same. Our aforesaid view is fortified by the CBDT Circular No. 19/2017 dated 12.6.2017 relating to settled view on Section 2(22)(e) of the Income Tax Act, trade advances – reg. wherein it is stipulated that trade advances, which are in the nature of commercial transactions would not fall within the ambit of the word 'advance' in section 2(22)(e) of the Act. We further find force from the decision in the case of Sunil Sethi (2009) 26 SOT 95 (Del) wherein on similar and identical facts and circumstances, it was held that "Deemed Dividend – AY 2004-05 – Assessee was a Director of a Company holding 50% of its share capital – In course of assessment proceedings, AO found that assessee had received a sum during relevant previous year from said company – Assessee explained that said amount was received to purchase a suitable business premises but as deal could not be finalized,

he returned said amount to company – AO rejected said explanation and added amount so received to assessee’s income by invoking provisions of Section 2(22)(e) – Whether since amount was given for business purposes, and assessee could validity perform such act on behalf of company in accordance with authority held by him through Resolution of Board of Directors of Company, amount in question could not be considered as deemed dividend. However, after perusing the case laws cited by the Ld. DR, we find that the same are on distinguished facts, hence, are not applicable in the present case.

8 In the background of the aforesaid discussions and respectfully following the precedent, as aforesaid, we delete the addition in dispute and allow the ground raised by the assessee.

9. In the result, the Appeal of the is allowed.

Order pronounced on 29/11/2017.

Sd/-
[L.P. SAHU]
ACCOUNTANT MEMBER

Sd/-
[H.S. SIDHU]
JUDICIAL MEMBER

Date 29/11/2017

“SRBHATNAGAR”

Copy forwarded to: -

1. Appellant -
2. Respondent -
3. CIT
4. CIT (A)
5. DR, ITAT

Assistant Registrar, ITAT, Delhi Benches