

आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ 'ए' अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
“ A ” BENCH, AHMEDABAD

सर्वश्री एन.के. बिल्लैया, लेखा सदस्य एवं महावीर प्रसाद, न्यायिक सदस्य के समक्ष ।
BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER And
SHRI MAHAVIR PRASAD, JUDICIAL MEMBER

आयकर अपील सं./I.T.A. No.1791/Ahd/2014
&
Cross Objection No.249/Ahd/2014
(in I.T.A. No.1791/Ahd/2014)
(निर्धारण वर्ष / Assessment Year : 2008-09)

ACIT, Circle – 2, Bhavnagar	बनाम/ Vs.	Shri Yogendra Ratilal Sheth, Prop: of Shah Construction Co., Vora Bazar, Maniyar Street, Bhavnagar – 364 001
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AHGPS 8315 P		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent) & Cross Objector

Assessee by :	Shri K. Madhusudan, Sr.D.R.
Revenue by :	Shri Tushar P. Hemani, A.R.

सुनवाई की तारीख / Date of Hearing	25/10/2017
घोषणा की तारीख /Date of Pronouncement	27/10/2017

आदेश / O R D E R

PER SHRI MAHAVIR PRASAD, JUDICIAL MEMBER :

This is an appeal filed by the Revenue along with Cross Objection
filed by the Assessee against the order of the Commissioner of Income

Tax(Appeals)-XX, Ahmedabad, dated 24/03/2014 for the Assessment Year (AY) 2008-09, on the following Grounds:

- i. The Ld.CIT(A)-XX, Ahmedabad erred in facts and circumstances of the case in deleting the addition of Rs.43,25,504/- made by the AO on account of deemed dividend u/s.2(22)(e) particularly when prima facie part of the funds were utilized by the assessee for its personal expenses.*
- ii. The Ld.CIT(A) failed to appreciate that the balance funds of Rs.43,25,504/ were used for the advantage of the proprietary concern of the assessee if not for the personal expenses of the assessee.*

2. The relevant facts as culled out from the materials on record are as under:-

In this case, assessee is engaged in Civil Construction activity and during the course of assessment proceedings, it was observed from the Audit Report that the assessee had taken loan of Rs.97,10,630/- from Sunderland Developers Pvt. Ltd. during the year under consideration. Further, the assessee, vide his submission dated September 28, 2010 had stated that he is also the Director of Sunderland Developer Pvt. Ltd. during F.Y. 07-08. Against this, the assessee vide notice u/s.142(1) of the Act dated 20/10/2010, were asked to furnish the details of his shareholding (in %) in the above company. With respect to this, the assessee vide his submission dated 30/10/2010 submitted that he was holding 15% of shares (1500 Equity Shares of Rs 10 each) of Sunderland Developer Pvt. Ltd. during F.Y. 07-08. Further, he also furnished the Balance Sheet of Sunderland Developer Pvt. Ltd., according to which the

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'issued, subscribed & paid-up capital' of the company stood at Rs.1,00,000(10,000 equity shares of Rs.10 each). A notice u/s.142(1) was given the following show-cause:

"As per the audit report, you had taken the loan of Rs.97,10,630/- from Sunderlan Developers Pvt Ltd during FY'07-08. Further, you have also stated in your submission dated 30.10.2010 that you had held 15% of shares of Sunderland Developer Pvt Ltd. during FY 07-08. In view of this, the provisions of section 2(22)(e) of the Act are clear attracted. You are hereby given a show-cause why the addition should not be made to your total income as per the provisions of section 2(22)(e) of the Act. You are also requested to produce the Balance Sheets of Sunderland Developer Pvt. Ltd. on following dates for working out the exact quantum of addition:

<i>Date</i>	<i>Amount Lent</i>
<i>18/04/07</i>	<i>10,00,000</i>
<i>14/05/07</i>	<i>26,00,000</i>
<i>16/05/07</i>	<i>2,00,000</i>
<i>21/06/07</i>	<i>2,00,000</i>
<i>16/08/07</i>	<i>70,000</i>
<i>21/08/07</i>	<i>8,00,000</i>
<i>22/08/07</i>	<i>50,000</i>
<i>05/09/07</i>	<i>10,000</i>
<i>17/09/07</i>	<i>5,00,000</i>
<i>20/09/07</i>	<i>2,50,000</i>
<i>24/09/07</i>	<i>5,00,000</i>
<i>08/10/07</i>	<i>1,00,000</i>
<i>19/10/07</i>	<i>1,00,000</i>
<i>17/12/07</i>	<i>1,50,000</i>
<i>20/12/07</i>	<i>75,000</i>
<i>11/01/08</i>	<i>35,000</i>
<i>17/01/08</i>	<i>3,00,000</i>
<i>28/01/08</i>	<i>50,000</i>
<i>11/03/08</i>	<i>30,00,000</i>

Kindly note that if you do not produce Balance Sheets of Sunderland Developer Ltd as on above dates, decision as deemed fit shall be taken while working out total quantum of addition u/s 2(22)(e) of the Act."

2.2 Against the above show-cause, the assessee replied as under:

"With reference to above, I am in receipt of your above mentioned notices requiring me to file a reply of your show cause notice to be filed of your show cause notice to make addition on quantum within the meaning of section 2(22)e of Income Tax Act 1961. In connection, we would like to state as under:

1. *The transaction carried out during the year in proceedings are of related to business only. During the year under review, Mr. Yogendra R. Sheth (Prop. M/s. Shah construction Co.) has agreed and entered into an MOU with Sunderland Developers Pvt. Ltd. whereby Mr. Yougendra R. Sheth shall make all necessary efforts to expand the business operations of Sunderland Developers Pvt. Ltd. and in consideration Company shall advance M/s. Shah Construction Co. to meet its project related working capital requirements on day to day basis.*
2. *In any case this transaction are in the nature of current accommodation adjustment account and therefore the same are neither loan nor advance as contemplated u/s.2(22)(e) of the "Act".*
3. *Reliance is place on following authorities:-*
 - *NH SECURITIES LTD v. DCIT(2007) 11 SOT 302(BOM)*
 - *ACIT v. Global Agencies (P) Ltd. (2005) 87 TTJ 1086 (DEL)*
 - *CIT v. NAGINDAS M. KAPADIA (1989) 177 ITR 393 (BOM)*
 - *CIT v. CREATIVE DYEING & PRINTING (P) LTD. 318 ITR476 DEL*

Copies of the authorities are filed herewith for your kind reference."

2.3 Against the above reply, the assessee vide notice u/s.142(1) of the Act dated 13/12/2010 was asked to furnish following details:

1. *Please furnish copy of MOU signed by you with Sunderland Developers Pvt. Ltd.*

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2. *Please explain in detail, along with the relevant evidences, following contention put forward by you, vide your submission dated 09/12/2010 filed in this office:*

"2. In any case this transaction are in the nature of current accommodation adjustment account and therefore the same are neither loan nor advance as contemplated u/s.2(22)(e) of the Act."

2.4 But in a period of two days assessee failed to furnish the above detail. Thereafter, addition of Rs.56,29,080/- was made.

3. Against the said order assessee preferred first statutory appeal before the learned CIT(A), who partly allowed the appeal of the assessee.

4. We have gone through the relevant record and impugned order. It is a fact that ld.AO asked the assessee to furnish certain details that to within two days. However, the assessee failed to furnish the details. During the course of appellate proceedings, the assessee has made the written submission with the additional evidences in the form of copy of MOU of the appellant with Sunderland Developers Pvt. Ltd. dtd.05/04/2007 and a copy of resolution passed by Sunderland Developers Pvt. Ltd. under Rule-46A for admission of the aforesaid documents.

4.2 Therefore, a copy of the written submission along with the additional evidences and the request for admission of the additional evidences was forwarded to the AO by ld.CIT on dtd.23/09/2013 calling

for his comments. But in the remand report, the AO has not given any comments that the appellant had not worked according to the terms and conditions of the MOU with SDPL of the Nicolas. Neither any record have been brought on record stating that the financial support given by the SDPL to the appellant was only loans and not the finance for expanding the business of the SDPL. It has not been contended that the financial transactions were not in connection with the MOU between the two parties referred above. In support of the contention, the appellant has also provided copies of the work orders given by Nicholas Piramal to SDPL and the ledger account copies of the Nicholas Piramal from the books of SDPL which clearly establishes the business carried out between the SDPL and Nicholas Piramal in view of the MOU.

5. We are of the considered opinion, the nature of transactions and decisions of various courts, the same cannot be termed as loans and advances and the provisions of Section 2(22)(e) of the Act was rightly deleted except to the amount of Rs.83,733/-. Following amounts which have been taken by the appellant from SDPL for its personal requirements/needs which cannot be said to be in relation to the financial support.

Date	Description	Amount
01/04/2007	LIC Premium	Rs.13,000/-
29/06/2007	LIC Premium	Rs.10,733/-
28/01/2008	Bank	Rs.50,000/-
31/03/2008	LIC Premium	Rs.10,000/-
	Total	Rs.83,733/-

6. We do not find any ambiguity in the order passed by the learned CIT. Therefore, appeal filed by the department is dismissed.

7. So far CO is delay by 12 days and ld. AR has filed an affidavit along with an application for condemnation of delay. Therefore, we condone the delay.

Ld. AR stated that he does not want to press the CO. Therefore, CO is dismissed as not pressed.

8. In the result, appeal filed by the department in ITA No.1791/Ahd/2014 for Asst. Year 2008-09 is dismissed and Cross Objection No.249/Ahd/2014 (in ITA No.1791/Ahd/2014) for Asst. Year 2008-09 is also dismissed.

This Order pronounced in Open Court on	27/10/2017
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Sd/-
एन.के. बिल्लैया
(लेखा सदस्य)
(N.K. BILLAIYA)
ACCOUNTANT MEMBER

Sd/-
महावीर प्रसाद
(न्यायिक सदस्य)
(MAHAVIR PRASAD)
JUDICIAL MEMBER

Ahmedabad; Dated 27/10/2017

ITA No. 1791/Ahd/2014 &
CO No.249/Ahd/2014 (in ITA No.1791/Ahd/2014)
Asst.Year –2008-09

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आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-XX, Ahmedabad.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad