

आयकर अपीलीय अधिकरण, D/'SMC' न्यायपीठ, चेन्नई ।

IN THE INCOME TAX APPELLATE TRIBUNAL
D/"SMC" BENCH, CHENNAI

श्री. चंद्र पूजारी लेखा सदस्य, के समक्ष ।

BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER

I.T.A.No.639/Mds./2017

(Assessment Year : 2007-08)

Shri Mukundan Vijayan,
Flat 1A,Block 6, 1st floor,
Rani Meyyammai Tower,
66,Sathyadev Avenue,
MRC Nagar, R.A.Puram,
Chenni-28.

PAN AAOPM 6199 G

(अपीलार्थी /Appellant)

Vs. The Income Tax officer,
Corporate ward 1(1),
Chennai-34.

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by

: Mr.S.Sridhar,Advocate

प्रत्यर्थी की ओर से/Respondent by

: Mr.B.Sagadevan, JCIT, D.R

सुनवाई की तारीख/ Date of hearing

: 09.11.2017

घोषणा की तारीख /Date of Pronouncement

: 22.11.2017

आदेश / O R D E R

PER CHANDRA POOJARI, ACCOUNTANT MEMBER:

This appeal is filed by the assessee, aggrieved by the order of the Learned Commissioner of Income Tax(A)-1, Chennai dated 13.01.2017 pertaining to assessment year 2007-08.

2. The main grievance of the assessee is with regard to confirming the disallowance of ₹22,98,290/- u/s.2(22)(e) of the Act.

3. The brief facts of the case are that the assessee was a director in M/s Anandram Developers P Ltd with more than 10% holding in equity. Further the assessee was a director in M/s Ravshankar Industries P Ltd with more than 10% holding in equity. During the assessment proceedings in the case of Anandram Developers for the A.Y. 2007-08 it came to light that in the assessee's account, in the books of M/s Anandram Developers, there was a debit entry of Rs.43,85,000/- as on 31.3.2007 with the narration "being the amounts in Mukund Vjayan transferred (equity)". The Id. Assessing Officer found that there was one more director Mr. Tarun Kumar who had more than 10 % holding in M/s Anandram Property Developers and had been debited with an amount of Rs.5,05,000 on 31.3.2007 with similar narration. The above two companies are controlled and managed by the same group of shareholders. Therefore, the AO noted that in the course of assessment proceedings in Anandram Developers P Ltd for A.Y. 2007-08 a sum of Rs.48,27,345/- was

debited in the name of M/s Ravishankar Industries P Ltd through a journal entry with a narration 'being the amounts in Mukund Vijayan transferred (equity)'.

3.1 Further that the audit report dated 3.9.2007 forming part of the annual report of M/s Anandram [Developers for the year ending 31.3.2007 in para 3 reporting interest free loans u/s. 301 of the Companies Act also mentioned this aspect as is evident in para 2 of the order. Noticing that the auditors having qualified that transactions as interest free loans the AO who had initiated reopening of the assessment u/s 147 r.w.s. 148 issued show-cause to the assessee to bring to tax the impugned amount u/s 2(22)(e) of the Act. After considering the replies made by the assessee discussed in detail in paragraphs 2 and 3 of the order, the AO noted the detailed transaction in para 2(c) of the order. The AO also rejected the plea taken by the assessee that mere book entries did not amount to payment by relying on the judicial pronouncement of the Bombay High Court in CIT v. Triumph International Finance (India) Ltd 345 ITR 270 where it was observed "repayment by debit of account to journal entries amounted to repayment as was also similarly held by

the Hon'ble Rajasthan High Court in Rajasthan Synthetics P Ltd v. CIT 256 ITR 331. The AO treated the loan amount of Rs.48,35,000 as deemed divided in the hands of the assessee and keeping in view that reserves & surplus available as on 31.3.2007 in the books of M/s. Anandram Developers was only Rs.25,25,594 and also with regard to the loan debtor of Rs.5,00,000/- in the name of Shri Tarun Kumar restricted the disallowance at Rs.22,95,290 u/s 2(22)(e) as discussed in para 2(e) of the order. Aggrieved by the order of Id. Assessing Officer, the assessee carried the appeal before the Ld.CIT(A). On appeal, the Ld.CIT(A) confirmed the action of Id. Assessing Officer. Against the order of Ld.CIT(A), now the assessee is in appeal before us.

4. Before me, Id.A.R submitted that the Ld.CIT(A) erred in deciding on the subject of applicability of the sec.2(22)(e) by citing various decisions, whereas the appellant has not denied the applicability of the section to the appellant, but only whether the facts of the case attracted the application of the section. The Id.A.R submitted that Ld.CIT(A) failed to appreciate that there has been only book entry in the books of account of the Company on the last

date of the accounting year in the name of the appellant to suit its convenience, whatsoever it may be, and there has been no actual payment to the assessee by way of cheque or bank order by debit in the Bank account of the company accompanied by corresponding credit in the Bank account of the appellant. The Id.A.R submitted that the Commissioner (Appeals) further failed to consider that the impugned entry has been reversed on the 2nd day of April of the succeeding year, which itself proves that there has been no actual payment of any loan to the appellant within the meaning of sec.2(22)(e) of the Act and even the book entry has been nullified by its subsequent reversal and thus taking away the very basis of the impugned addition under s.2(22)(e). The Id.A.R submitted that the Ld.CIT(A) erred in not taking cognizance of the letter issued by the company concerned affirming that no loan was actually provided to the appellant but only a mere book entry was made and it was subsequently reversed. According to Id.A.R, the section 2(22)(e) is not applicable to the appellant's case in the absence of the actual passing of money in cash or by cheque to the appellant and has grossly erred in rejecting the plea advanced by the appellant placing

undue reliance on the book entry, which has been made without the knowledge of the appellant and which has been subsequently reversed, making it a non-est. The Id.A.R pleaded that the order of the CIT(Appeals) in respect of addition u/s.2(22)(e) of the Act may be set aside and additions may be deleted.

5. On the other hand, Id.D.R submitted that as per s.2(22)(e), dividend includes any payment by a company in which public are not substantially interested by way of advance or loan to a shareholder, being a person who is the beneficial owner of shares holding not less than 10% of the voting power, or to any concern in which such shareholder is a member or a partner in which he has a substantial interest 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. The Honb'le Su tome Court in P Sarada V. CIT 229 TR 411 held that withdrawal is by shareholder who had substantial interest by company in which public were not substantially interested and which had accumulated profits from the company amounted to loan; or advance by the company to shareholder attracting s.2(22)(e) The fact that loan or

advance was ultimately adjusted at the end of the year against the credit balance of another shareholder Will not alter the position. In *Tarulata Shyam & Others v. CIT 108 ITR 345 (SC)* it was observed that the provisions of s.2(22)(e) are attracted even in a case where loan advanced to a shareholder was repaid within 23 days. Similarly, in the case of *Sujatha Venkateswaran v. ACIT 61 ITD 485* the Madras ITAT on the facts where loan was taken from closely held company where assessee is a shareholder observed that the commercial profits upto the day of distribution was to be computed and for the purpose it was required to see the accumulated profits for working out the extent of deemed dividend. In *T. Sundaram Chettiar and Another v. CIT 49 ITR 287* the Honb'le Jurisdictional Court have held that "Payment for the purpose of s.2(22)(e) need not be cash payment. A relationship of debtor and creditor between the shareholder and the company is sufficient. The Id.D.R submitted that the reasons advanced by the assessee for non-exigibility of s.2(22)(e) to the impugned transaction cannot be upheld. . The appellant's argument that mere hook entries passed in the books of the company do not constitute loan etc when there was no outflow of funds therefore

cannot support its plea. Similarly the plea that the book entry was made without the knowledge of the appellant who was a mere employee cannot help the case in view of the fact that the appellant was a director with substantial interest in the company. Hence, the Id.D.R supported the order of lower authorities.

6. I have heard both the parties and perused the material on record. There is no dispute that the company is having accumulated profit and the only argument of the Id.A.R is that it is only a journal entry passed by the company, viz. M/s.Anandram Developers Pvt Ltd.,. In my opinion, even journal entry is having a financial implication and it may not be overlooked as decided by the Tribunal in the case of Gurbinder Singh Vs. ACIT reported in (2016) 161 ITD 0256 (Chennai) wherein held that:-

“12. Further, we make it clear that in the Double entry of book keeping, the journal entry is also have the financial implication and it cannot be ignored as argued by the Id.A.R. The journal entries are also to be considered while computing the yearly debit balance in respect of loans and advances.”

In the present case, the assessee is not able to show how it cannot be considered as deemed dividend in the hands of assessee. Accordingly, there is no evidence brought on record to this effect. Hence, the order of the CIT(Appeals) is confirmed.

7. In the result, the appeal of assessee is dismissed.

Order pronounced on 22nd November, 2017.

Sd/-

(चंद्र पूजारी)

(CHANDRA POOJARI)

लेखा सदस्य /ACCOUNTANT MEMBER

Chennai,

Dated the 22nd November, 2017.

K s sundaram.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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