

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "B": NEW DELHI
BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 5759/Del/2014
(Assessment Year: 2008-09)

Devender Kumar Gupta, C/o. Vijay Kumar Gupta, Adv Opp Jain Mandir, Main Bazar, Ballabgarh, Faridabad PAN:AGBPG5221A	Vs.	Addl CIT, Range-20, New Delhi
(Appellant)		(Respondent)

Assessee by :	Shri Vijay Kr Gupta, Adv
Revenue by:	Shri Subhash Verma, Sr. DR
Date of Hearing	10/10/2017
Date of pronouncement	29/12/2017

O R D E R

PER PRASHANT MAHARISHI, A. M.

1. This is an appeal filed by the assessee against the order of the Id CIT(A)-XXII, New Delhi dated 17/04/2014 for the Assessment Year 2008-09.
2. The assessee has raised the following grounds of appeal:-
 - "1. That on the facts and in the circumstances of the present case, the addition of Rs. 4926065/- by the Id AO and confirmation of said addition to the amount of Rs. 3126065/- by the Id CIT(A) is illegal, arbitrary and against the true facts of the case and law on the subject."
3. The brief facts of the case is that the assessee is an individual carrying on proprietary concern in the name of M/s. A-One Wine Sales Agency of trading in liquor. He has also other income through proprietary concern M/s. RS Gupta and Co. which is running a cinema hall. The assessee is also earning capital gain from sale of shares. For the year assessee filed return of income for Rs. 12034170/- on 27.09.2008 which was assessed u/s 143(3) of the Act.

4. The only dispute in this appeal is with respect to chargeability of loan received by the assessee from one M/s. Om Shubam Housing and Constructions Pvt. Ltd where, the assessee is having substantial share holding. For the year, according to the Id Assessing Officer, the assessee has taken loan in his personal passbook as well as in proprietary concern of A-One Wine Sales Agency from the above company. The Id Assessing Officer tabulated the entries at para No. 5 of his assessment order and held that a sum of Rs. 4926065/- is the aggregate amount advance received by the assessee from the above company and therefore, same is chargeable as deemed dividend u/s 2(22)(e) of the Income Tax Act. He rejected the arguments of the assessee that advances even if given for business purposes are also covered. He further held that even if the amount is repaid subsequently, it does not have any consequence. He also rejected the contention of the assessee that he is maintaining a current account with the assessee company. Consequently, vide order dated 30.12.2010 the amount of Rs. 4926065/- was added to the total income of the assessee as deemed dividend. The assessee carried the matter before the Id CIT(A) who upheld all the contention of the Id Assessing Officer, however, reduced the addition to Rs. 3126065/- as according to him there is a double addition to the extent of Rs. 18 lacs. Therefore, the assessee is in appeal before us.
5. The Id Authorised Representative submitted two arguments before us which are as under:-
 - a. That the assessee is maintaining a running account with the company and the deemed dividend does not apply to current account. The reliance was placed on ITO Vs. Gyatri Chakraborty 45 ITR (Trib) 197.
 - b. That advances are given for commercial purposes and therefore he referred to an 'Ikrarnama' wherein the assessee has entered into an

agreement to sale a plot of land to the above company for Rs. 4.95 crores. The circular dated 12.06.2017 issued by the CBDT excludes the above amount.

6. The Id Departmental Representative vehemently contested the argument of the assessee and stated that the assessee is relying on unregistered document to show that the amount advanced is for the purpose of the business of the assessee. He submitted that the agreement is never before the Id Assessing Officer to show that amount advanced is for the purpose of purchase of land. He further stated that there is no confirmation that the above land is sold subsequently to the company by the assessee or not. He further submitted that it is also not known that whether the land is really sold subsequently or not. In short he said that argument of the assessee is just to get out of the clutches of the deemed dividend taxability.
7. We have carefully considered the rival contentions and also perused the orders of the lower authorities. The assessee has stated that above amount of Rs. 3126065/- is pertaining to purchase of land by the company from the assessee. The assessee has submitted an 'Ikrarnama' dated 09.05.2008 which is an unregistered document wherein, it has been stated that a particular parcel of land is agreed between the parties to be sold half portion by the assessee to the Om Shubham Housing and Construction Co. Ltd. for a total consideration of Rs. 4.95 crores and out of which Rs. 1 crores has been received by the assessee in two tranches of Rs. 50 lacs each on 17.03.2008 and 09.05.2008. According to the agreement the registration of the sale deed was required to be completed by 31.12.2012. It is also mentioned in the deed that possession has also been given to the above buyer company. It is also stated by the assessee

that in Assessment Year 2009-10 the above property have been sold and short term capital gain of Rs. 4.95 crores is assessed in the hands of the assessee vide order dated 30.12.2011. On looking at that order we do not find any reference to the agreement shown by the assessee of that particular land. Further, the amount of Rs. 50 lacs paid during the year on 17.03.2008 makes the debit balance of Rs. 5.26 lacs only. Therefore, still a sum of Rs. 26 lacs are required to be explained by the assessee before the lower authorities as the above sum is not covered by the 'Ikrarnama' produced before us. The assessee has stated that it is a current account maintained by the assessee with the company and therefore, the issue of deemed dividend does not arise is contrary to the claim made by the assessee that advances have been received by the assessee for the purposes of sale of land. As the above 'Ikrarnama' was not available with the Assessing Officer, neither it has been discussed by the Id CIT(A) and it is also important to note that above evidence has been admitted by the Id CIT(A) as an additional evidence under Rule 46A of the Act. further, the advances given by the company to the assessee the amount shown in the books of the company is only Rs. 8 lacs as advance paid for the property whereas, the assessee claims that Rs. 50 lacs were paid by the company to the assessee. Further, the total amount outstanding from the assessee is Rs. 29.26 lacs whereas, the amount shown by company as advance for the property is only Rs. 8 lacs. Therefore, the assessee is required to reconcile the amount of advance received from purchase of the property from the company. Even if Rs. 50 lacs are considered as amount received towards purchase of the property still assessee required to be explain further advances of Rs. 20 lacs given on 17.03.2008, Rs. 6 lacs on 19.03.2008, Rs. 12 lacs on 27.03.2008 and Rs. 6 lacs given on 29.03.2008 because after adjusting Rs. 50 lacs, which is stated to have been received towards sale of property, the outstanding amount debit to the account of the assessee as loan from the company is only Rs. 5.26 lacs. Furthermore, it is not ascertainable that agreement entered into by

the company with the assessee was really acted upon or not. These facts have also not been verified by the lower authority. Merely because a sum of Rs. 4.95 crores were taxed in the hands of the assessee does not exhibit that transaction entered into by the assessee during this year are business transaction. Further, the Id CIT(A) as well as the Id Assessing Officer have ignored the fact that trade advances which are in the nature of commercial transactions would not fall within the ambit of word 'advance' in Section 2(22)(e) of the Act as stated by Circular No. 19/2017 dated 12.06.2017. In view of the above facts we set aside the whole issue back to the file of the Id Assessing Officer with a direction to the assessee to show that above sum of Rs. 3126065/- upheld by the Id CIT(A) as deemed dividend in the hands of the assessee is in nature of trade advance and section 2(22)(e) does not apply to it. The Id Assessing Officer may examine the claim of the assessee with respect to the Ikrarnama and correlate the dates of advances paid to the assessee and then decide the applicability of section 2(22)(e) in the hands of the assessee afresh. In the result the solitary ground of appeal of the assessee is allowed with above direction.

8. In the result appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 29/12/2017.

-Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

-Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated:29/12/2017
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi

