

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम  
**IN THE INCOME TAX APPELLATE TRIBUNAL,  
VISA KHAPATNAM BENCH, VISA KHAPATNAM**

श्री वी. दुर्गराव, न्यायिक सदस्य एवं  
श्री डि.एस. सुन्दर सिंह, लेखा सदस्य के समक्ष  
BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER &  
SHRI D.S. SUNDER SINGH, ACCOUNTANT MEMBER

आयकर अपील सं./**I.T.A.No.620/Vizag/2014**  
(निर्धारण वर्ष / Assessment Year: 2008-09)

DCIT, Central Circle,  
Vijayawada  
(अपीलार्थी / Appellant)

Smt. Sriram Satyavathi,  
Guntur  
[PAN No.AGZPS2069J]  
(प्रत्यार्थी / Respondent)

आयकर अपील सं./**I.T.A.No.179/Vizag/2015**  
(निर्धारण वर्ष / Assessment Year: 2008-09)

DCIT, Central Circle,  
Vijayawada  
(अपीलार्थी / Appellant)

Sri Sriram Venkata  
Srinivasa Rao,  
Piduguralla  
[PAN No.AGZPS2049C]  
(प्रत्यार्थी / Respondent)

अपीलार्थी की ओर से / Appellant by : Shri Debakumar Sonowal, DR  
प्रत्यार्थी की ओर से / Respondent by : Shri G.V.N.Hari, AR

सुनवाई की तारीख / Date of hearing : 09.01.2018  
घोषणा की तारीख / Date of Pronouncement : 19.01.2018

**आदेश / ORDER**

**Per Bench :**

These appeals filed by different assesseees against different orders  
of Commissioner of Income Tax (Appeals)-I, {CIT(A)}, Hyderabad vide

Nos.024 to 025A/DCIT-VIJ/CIT(A)-13-14 dated 26.9.2014 and No.027/CIT(A)/3/Vizag/2013-14 dated 27.2.2015 for the assessment year 2008-09. Since, the facts are identical and issues are common, they are clubbed, heard together and disposed-off by way of this common order for the sake of convenience.

ITA No.620/Vizag/2014 (A.Y. 2008-09):

2. All the grounds of appeal are related to the deletion of addition of ₹ 35 lakhs assessed as deemed dividend u/s 2(22)(e) of the Income Tax Act, 1961 (hereinafter called as 'the Act'). A search u/s 132 of the Act was conducted in the group cases of Bhavanasi Anjaneyulu, Piduguralla, Guntur District on 22.1.2011. During the course of search, a promissory note executed in favour of the assessee by Mr. Ch. Madan Mohan dated 28.11.2007 representing Vijetha Foundation and Constructions Pvt. Ltd.(M/s Vijetha Constructions, in short) for a sum of ₹ 35 lakhs was found and seized as page No.1 of Annexure A/BA/Res./01 dated 21.1.2011. The said sum was paid by cheque No.685243 dated 28.1.2007 drawn on ING Vysya Bank Limited, Madhapur, Hyderabad and the bank account was pertaining to M/s. First Tek Pvt. Ltd. (FTPL), in which the assessee is holding 5000 shares out of total shares of 10000.

Thus, the assessee is holding more than 10% of the share capital, hence, the A.O. called for explanation from the assessee as to why the loan given to M/s. Vijetha Constructions should not be brought to tax u/s 2(22)(e) of the Act in the hands of the assessee. The assessee explained that M/s. First Tek Pvt. Ltd. had advanced a sum of ₹ 35 lakhs to M/s. Vijetha Foundation and Constructions Pvt. Ltd. for purchase of property and as a precautionary measure, a pro note was executed in favour of the assessee by M/s. Vijetha Constructions and no monetary transaction was exchanged between the assessee and M/s. Vijetha Constructions in respect of ₹ 35 lakhs. Hence, submitted that there is no case for treating the said sum as deemed dividend u/s 2(22)(e) of the Act. Not being convinced with the explanation of the assessee, the A.O. held that the contention of the assessee that the promissory note was executed in favour of the assessee as a security is not believable and the said sum required to be brought to tax as deemed dividend u/s 2(22)(e) of the Act, accordingly invoked the provisions of section 2(22)(e) of the Act and made the addition of ₹ 35 lakhs in the hands of the assessee.

3. Aggrieved by the order of the A.O., the assessee went on appeal before the CIT(A) and the Ld. CIT(A) deleted the addition holding that these transactions were purely sale and purchase transactions but not the finance transactions or any loan to hold the payment as a deemed dividend u/s 2(22)(e) of the Act. Hence, the revenue preferred appeal before this Tribunal.

4. During the appeal hearing, the Ld. D.R. submitted that in the search u/s 132 of the Act, a promissory note was found in favour of the assessee and it was observed that the company M/s. First Tek Pvt. Ltd. had advanced a sum of ₹ 35 lakhs to M/s. Vijetha Constructions which in turn has executed promissory note in favour of the assessee, thereby derived the benefit of advance to M/s Vijetha Constructions from the company in which the assessee has substantial interest. The Ld.DR argued that the assessee has derived the monetary benefit and thus the A.O. has rightly invoked the provisions of section 2(22)(e) of the Act and brought to tax in her hands as deemed dividend. The Ld. D.R. further submitted that it is established that the said loan was given to M/s. Vijetha Constructions under instructions from the assessee and hence pro note was in the name of Smt. Sriram Satyavathi. Therefore, the Ld.

D.R. argued that the A.O. has rightly made the addition, which required to be upheld.

5. On the other hand, the Ld. A.R. relied on the orders of the Ld. CIT(A).

6. We have heard both the parties, perused the materials available on record and gone through the orders of the authorities below. During the search in the group cases of Bhavanasi Anjaneyulu, a promissory note for an amount of ₹ 35 lakhs drawn in favour of the assessee was found and seized, which was drawn by M/s. Vijetha Constructions and as per which the amount was paid through cheque No.685243 dated 28.1.2007. The promissory note was dated 28.11.2007. The assessee explained before the A.O. that the cheque bearing No.685243 was pertaining to the bank account of M/s. First Tek Pvt. Ltd. operated in ING Vysya Bank, Madhapur, Hyderabad and the company M/s. First Tek Pvt. Ltd. has advanced a sum of ₹ 35 lakhs to M/s. Vijetha Foundation and Constructions Pvt. Ltd. for purchase of assets and as a precautionary measure, a pro note was executed in favour of the assessee as a security for the amounts advanced by First Tek Pvt. Ltd.

and no amount has been received by the assessee either from M/s. Vijetha Constructions or M/s. First Tek Pvt. Ltd so as to treat the said amount as deemed dividend u/s 2(22)(e) of the Act. The Ld. A.R. submitted the paper book enclosing sale deeds for purchase of flats from M/s. Vijetha Constructions, in Page Nos.22 to 36 and Page Nos.37 to 49. As per the sale deed in page No.22, the company M/s. First Tek Pvt. Ltd. has purchased flat Nos.303 & 503 and page No.29, the company has paid the consideration of ₹ 32 lakhs by way of cheque No.685243 dated 28.11.2007 drawn on ING Vysya Bank Ltd., Madhapur, Hyderabad. The cheque No. and date are one and the same which was stated to be the advance given to M/s. Vijetha Constructions by the assessee. It is noted from the CIT(A) order that M/s. Vijetha Constructions has taken amount of ₹ 1.10 crores vide cheque No.685243 dated 28.11.2007 drawn on ING Vysya Bank Ltd. from M/s. First Tek Pvt. Ltd. against the agreement of sale for flat No.103, 303 & 503 in Midas Touch Apartments, Kondapur, Hyderabad vide registered document bearing No.13846/07 dated 28.11.2007. Subsequently, due to financial problems and international recession as well as local and regional issues, M/s. Vijetha Constructions has given cheques and pro notes in the names of the Directors and their family members of

M/s. First Tek Pvt. Ltd. towards the security. Subsequently, the company has executed the sale deeds for flat No.303 & 503 vide document No.3358/09 & 3359/09 dated 23.7.2009. The fact that the company M/s. Vijetha Constructions has taken the advances for sale of flats was substantiated by the registered sale agreements. The same cheque No. and the dates were mentioned in the promissory note and the sale deeds which fortifies the assessee's contention that the promissory note was obtained as a security. From the balance sheet of assessee, it is observed that there was no such items of loan relating to M/s. Vijetha Constructions. The Ld. CIT(A) has perused the seized material and observed that the promissory note for an amount of ₹ 35 lakhs dated 28.11.2007 in favour of the assessee was a security for the payment made by M/s. First Tek Pvt. Ltd. to M/s. Vijetha Constructions. The deemed dividend is applicable in circumstances of payment made by the company to the shareholder, having beneficial ownership of 10% or more than 10% of the shares, the amount should have been provided by way of loan or advance to shareholder and such amount should be for the benefit of the shareholder and the company should have sufficient reserves. In the instant case, it is established that the payment of ₹ 35 lakhs by cheque No.685243 was towards the

consideration for purchase of flat from M/s. Vijetha Constructions by M/s. First Tek Pvt. Ltd and none of the conditions or clauses discussed above are applicable in the case of the assessee. Therefore, we hold that the assessee has not derived any benefit out of payment made to M/s. Vijetha Constructions by M/s. First Tek Pvt. Ltd, hence, no case for holding the amount as deemed dividend. Accordingly, we uphold the order of the Ld. CIT(A) and dismiss the appeal of the revenue.

ITA No.179/Vizag/2015 (A.Y. 2008-09):

7. During the search conducted in the business premises of Bhavanasi Anjaneyulu, group cases on 21.1.2011, a promissory note in favour of the assessee was found in the residential premises of Sri Anjaneyulu and was seized as annexure A/BA/Res.PO-1/01 page 3 dated 14.2.2011. In the promissory note, it was recorded that the amount of ₹ 35 lakhs was paid by cheque No.685243 dated 28.1.2007 drawn on ING Vysya Bank Limited, Madhapur, Hyderabad and the account was related to the M/s. First Tek Pvt. Ltd. in which the assessee is holding 5000 shares out of total shares of 10000. Thus, the A.O. held that the said loan was given to M/s. Vijetha Constructions by M/s. First Tek Pvt. Ltd. under the instructions of Sri Sriram Venkata Srinivasa Rao, hence,

the pro note was issued in the name of the assessee, thereby the assessee got the indirect benefit out of the amounts advanced to Vijetha Constructions. Accordingly held the payment as deemed dividend u/s 2(22)(e) of the Act, and brought to tax in the hands of the assessee.

8. Aggrieved by the order of the A.O., the assessee went on appeal before the CIT(A) and the Ld. CIT(A) deleted the addition made by the A.O. following the order in the case of Smt. Sriram Satyavathi discussed in the preceding paragraphs in this order on the similar facts. Hence, the revenue is in appeal before this Tribunal.

9. The facts of the assessee's case are identical to the facts in the case of Smt. Sriram Satyavathi in appeal No.620/Vizag/2014 for the A.Y. 2008-09 discussed in this order. Therefore, following the view taken in the case of Smt. Sriram Satyavathi, we hold that the payment is made towards purchase of flat and cannot be treated as deemed dividend in the hands of the assessee, accordingly we uphold the order of the Ld. CIT(A) and dismiss the appeal of the revenue.

10. In the result, the appeal filed by the revenue in ITA No.620/Vizag/2014 and ITA No.179/Vizag/2015 are dismissed.

The above order was pronounced in the open court on 19<sup>th</sup>Jan'18.

Sd/-

(डि.एस. सुन्दर सिंह)

**(D.S. SUNDER SINGH)**

लेखा सदस्य/**ACCOUNTANT MEMBER**

विशाखापटणम /Visakhapatnam:

दिनांक /Dated : 19.01.2018

VG/SPS

Sd/-

(बी. दुर्गराव)

**(V. DURGA RAO)**

न्यायिक सदस्य/**JUDICIAL MEMBER**

आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:-

1. अपीलार्थी / The Appellant – The DCIT, Central Circle, Vijayawada
2. प्रत्यार्थी / The Respondent – Smt. Sriram Satyavathi, Prop: Sri Satya Lime Syndicate, D.No.9-18/1, Opp: Andhra Bank Street, Piduguralla, Guntur Dist.
3. प्रत्यार्थी / The Respondent – Sri Sriram Venkata Srinivasa Rao, D.No.9-18/1, Opp. Andhra Bank Street, Piduguralla, Guntur Dist.
4. आयकर आयुक्त / The CIT (Central), Hyderabad
5. आयकर आयुक्त (अपील) / The CIT (A)-I, Hyderabad
6. विभागीय प्रतिनिधि, आय कर अपीलीय अधिकरण, विशाखापटणम / DR, ITAT, Visakhapatnam
7. गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

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Sr. Private Secretary  
 ITAT, VISAKHAPATNAM