

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "B", MUMBAI**

**BEFORE D.T. GARASIA, JUDICIAL MEMBER AND
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER**

**ITA NO.477/M/2009, ITA NO.478/M/2009, ITA NO.3645/M/11 &
ITA NO.3646/M/2011**

Assessment Year: 2005-06 & 2006-07

Shri Mehul J. Parekh Concord, 12 th Floor, Bullock Road, Band Stand, Bandra(W), Mumbai - 400050 PAN:AACPP6247L	Vs.	ACIT Central Circle – 45 Mumbai
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Mani Jain, A.R.
Revenue by : Shri R. S. Arneja, CIT-D.R.

Date of Hearing : 24.01.2018
Date of Pronouncement : 14.02.2018

ORDER

Per D.T. GARASIA, Judicial Member:

ITA NO.477/M/09 & 478/M/09

The above titled appeals have been preferred by the assessee against the order dated 10.11.2008 of the Commissioner of Income Tax (Appeals) Central-III, Mumbai [hereinafter referred to as the CIT(A)] relevant to assessment year 2005-06 and 2006-07.

2. The common ground in both these appeal are ground 1 &2 except the figure and ground 3 in A.Y.2006-06 is additional ground.

3. Now we will taken up ground 1 &2 in both the assessment years.

The short facts of the case are as under:-

The search action u/s.132 was conducted on 10.01.2006 in the office premises, factories, godown of M/s.Unimark Remedies Ltd. and residential premises of the directors. The company operates in specialized field of manufacture of Active Pharmaceutical Ingredients (Bulk drugs) and speciality intermediates.

Shri Jayant M. Parekh along with his two sons Shri Mehul Parekh and Shri Sandip Parekh controls the group. The Assessing Officer noted that assessee was having substantial holding in the assessee company of M/s.Unimark Remedies Ltd. On perusal of the seized papers, the Assessing Officer noted that M/s.Unimark Remedies Ltd. has made several payments in cash to Shri Mehul Parekh on various dates but they have not been recorded in the cash book. On perusal of the vouchers entry the amount was wherein the entry appearing IOU. The Assessing Officer was of the view that the company has given by way of advances and same may use by assessee for his own purpose. The narration of the payment was shown in assessment order and AO hold that payment totalling to Rs.3,13,650/- to be treated as income of Shri Mehul Parekh u/s.2(24)(iv) of Income Tax Act.

4. The matter carried to CIT(A) and CIT(A) has dismissed the appeal of the assessee. Similarly, the AO has also made addition of Rs.11,59,800/- u/s.2(24)(iv) of the Act in A.Y.2006-07.

5. The learned AR of the assessee submitted that above payments made by M/s. Unimark Remedies Ltd. to assessee and other persons are not loan and advances. All the payments were made by company to assessee and other persons for incurring business expenditure. The expenditure were incurred and subsequently, assessee and other persons were submitted the accounts and expenditure have been recorded in books of the accounts.

6. On the other hand learned DR relied upon the order of revenue authorities.

7. We have heard the rival contention of both the parties. We find that as per section 2(24)(iv) of the Act, which lays down that any sum paid by any such company in respect of any obligation which, but for such payment, would have been payable by the Director is to be treated as income of the Director. We find that, from the perusal of the payment made by M/s. Unimark Remedies Ltd. through IOU to assessee and such

payments have been made by the company and its was recorded in the books of accounts of the company. We find that payments by company to the assessee and other persons for incurring business expenditure. The expenidutrea was incurred and subsequently assessee and other persons to whom the above payments were made, submitted accounts and expenditures have been recorded in the books of accounts. Therefore, in our opinion, section 2(24)(iv) is not applicable. Therefore, we delete the same. Therefore, we allow the appeal of the assessee on this ground. Therefore, when any payment is recorded in the books of accounts and said amount cannot be treated as income of the assessee, therefore, we allow the ground of appeal.

8. The second ground relates to making the addition of Rs.50,98,528/- by invoking the provision u/s.2(22)(e) of the act. The Assessing Officer noticed that Annexure A3 of several cash payments were recorded as having paid to assessee and this payment was narrated in CIT(A) order which is as under:-

Date	Amount (Rs)	Nature of transaction
29.4.2004	1,85,000	Cash
6.5.2004	11,000	Cash
7.5.2004	30,000	Cash
12.5.2004	26,500	Cash
6.7.2004	50,000	Cash
17.08.2004	50,000	Cash
5.10.2004	84,400	Cash
6.10.2004	1,00,000	Cash
18.10.2004	45,710	Cash
21.10.2004	1,03,560	Cash
30.10.2004	2,60,000	Cash
9.11.2004	20,000	Cash
10.11.2004	1,14,363	Cash
5.1.2004	90,000	Cash
10.1.2005	4,41,000	Purchase of dollars
10.1.2005	5,29,200	Purchase of dollars
15.2.2005	90,000	Cash
1.3.2005	5,00,000	Cash
6.3.2005	6,50,000	Cash

16.3.2005	16,87,395	Cash
23.3.2005	30,000	Cash
Total	50,98,528	

9. The Assessing Officer was of the view that the company had failed to prove the purpose of use of these funds as they were not supported by evidence / bills/ vouchers to prove that these amounts were incurred as expenses. Accordingly, the amount of Rs.50,98,528/- was treated as deemed dividend in A.Y.2005-06 and Rs.47,09,504/- in A.Y.2006-07.

10. Matter carried to CIT(A) and CIT(A) has dismissed the appeal of the assessee.

11. The learned AR submitted that assessee company has made all the payments for meeting out various business expenditures of the company and which were duly incurred by assessee on behalf of the company. The learned AR submitted that there is a payment made to assessee for his personal purpose and same is noted in seized material. The seized material clearly indicates that the other payments made by the company to the appellant were for meeting out day to day business expenditure. The Ld. D.R. supported order of lower authorities.

12. We have heard the rival contentions of both the parties. We find that company has made payment for making the expenses on behalf of the company. We find that the assessee has incurred expenses which have been entered in books of the company. We find that this expenses are not in nature of advances to the assessee. We further observed that the entire payment of this is recorded in books of accounts and when the amount is recorded in books of account it cannot be treated as deemed dividend u/s 2(22)(e) of the Act.

13. In the result appeal is allowed on this ground.

14. Next ground treating the capital gain of Rs.4830484/- on sale of agricultural land. The AO observed that assessee has shown capital gain of Rs.4830484/- on sale of land at Panvel which included consideration received by cheque as well as by cash. The assessee has requested that he has wrongly declared capital gain as the land was sold as agricultural land. Assessee did not file supporting evidence that land in question was agricultural land. Therefore, AO and the Ld. CIT(A) did not allow the claim.

15. The Ld. A.R. submitted before us that he could not submit the evidences before the AO and the Ld. CIT(A). Now, he wanted to submit the evidences before the AO and therefore, he requested to restore the matter back to the file of AO.

16. The Ld. D.R. objected to it.

17. We have heard the rival contentions of both the parties. We find that the Ld. A.R. could not submit the evidences before the AO and the Ld. CIT(A). Now he wanted to submit the evidences before the AO and prayed to restore the matter back to the AO. In the interest of justice and fairplay, we restore this matter back to the file of AO and AO is directed to decide the matter afresh after giving due opportunity of hearing to the assessee as per law.

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

ITA NO.3645/M/11 & 3646/M/11

19. The above titled appeals have been preferred by the assessee against the order dated 20.01.2011 of the Commissioner of Income Tax (Appeals) 38, Mumbai [hereinafter referred to as the CIT(A)] relevant to assessment year 2005-06 and 2006-07.

20. In respect of the above mentioned penalty appeals, the AO and CIT(A) has imposed the penalty on the ground that assessee company had made payments to the Directors which is in nature of deemed dividend u/s.2(22)(e) of the Act and the penalty was imposed for the same. As we held that this

payment is not in the nature of loan and advances, therefore we delete the penalty in both the years.

21. In the result both the penalty appeals are hereby allowed.

Order pronounced in the open court on 14.02.2018.

Sd/-
(G.MANJUNATHA)
ACCOUNTANT MEMBER

Sd/-
(D.T. GARASIA)
JUDICIAL MEMBER

Mumbai, Dated: 14.02.2018.

* MP.

आदेश की प्रतिलिपि □ ग्रेषित/Copy of the Order forwarded to :

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

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण ,मुंबई / ITAT, Mumbai