

आयकर अपीलार्थ आधिकरण, श्री+आयपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL BENCH, CHENNAI
श्री ए. मोहन अलंकामणी, लेखा सदस्य एवं श्री धुवुरु आर.एल रेड्डी, न्यायिक सदस्य के समक्ष
Before Shri A. Mohan Alankamony, Accountant Member &
Shri Duvvuru RL Reddy, Judicial Member

आयकर अपील सं./I.T.A.No.1534/Mds/2017

प्रधानावधि वर्ष/Assessment Year:2012-13

Shri Mukesh Goyal,
8-D, Fourth Block,
Kences Brindaven Apts, No. 175,
Poonamallee High Road, Kilpauk,
Chennai . 600 010.

Vs. The Deputy Commissioner of
Income Tax,
Corporate Circle 4(1),
Chennai 600 034.

[PAN: AAKPM0803D]

(अपीलाथ/ Appellant)

(प्रत्यथ/ Respondent)

अपीलाथ क ओर से / Appellant by : Shri Sanjiv Kumar Shah, C.A.
प्रत्यथ क ओर से/Respondent by : Shri N. Madhan, Addl. CIT
सुनवाई क तारख/ Date of hearing : 01.02.2018
घोषणा क तारख/Date of Pronouncement : 27.02.2018

आदेश / O R D E R

PER DUVVURU RL REDDY, JUDICIAL MEMBER:

This appeal filed by the assessee is directed against the order of the Id. Commissioner of Income Tax (Appeals) 12, Chennai dated 28.03.2017 relevant to the assessment year 2012-13. The only effective ground raised in the appeal of the assessee is that the Id. CIT(A) erred in partially confirming the addition of deemed dividend under section 2(22)(e) of the Income Tax Act, 1961 [Act+in short] for .1,10,63,789/-.

2. Brief facts of the case are that the assessee is engaged in the business of steel trading under the name and style of Shilpa Priya Steels and filed his return of income on 30.09.2012 declaring income of .19,76,620/-. The case of the assessee was selected for scrutiny. The assessee filed all details against the statutory notices.

2.1 On perusal of the balance sheet of the assessee, the Assessing Officer noticed that the assessee has received unsecured loan of .2,00,00,000/- from Siddharth Mercantile P. Ltd. and the assessee holds 19.83% of shares in the above said company. In view of the provisions of section 2(22)(e) of the Act when the assessee was show caused as to why the loan of .2,00,00,000/- should not be treated as deemed dividend, it was the submission of the AR that there are regular business activities between the assessee and the company. Also, he stated that at the year end, the account of the company in the assessee's books have been partially transferred to loan account for presentation and banking DP purpose only which is reversed later in the next year. Further, on perusal of the ledger, the Assessing Officer noticed that the credit transactions of .11,81,54,880/- is more than the purchases and the ratio of credit transactions other than purchase to the total purchase transaction is 9:1. The AR of the assessee argued that some credit transactions are due to inward carriage expenses, but the Assessing Officer noticed that such transactions are few in quantum

as compared to actual bank transfers to the assessee which are higher in volume. Since the assessee does not pay any interest on the advances, the Assessing Officer considered it as deposit with the assessee and moreover, the amounts received by the assessee from the company are of the nature of interest free loans. Accordingly, the Assessing Officer concluded that the amounts transferred to the assessee by Siddharth Mercantile P. Ltd. [total credit transactions less purchase transaction] being ₹.11,81,54,880/- is deemed dividend as per section 2(22)(e) of the Act. However, as the accumulated profits of the company was only ₹.2,55,80,039/-, the deemed dividend was restricted to the same and brought to tax.

3. The assessee carried the matter in appeal before the Id. CIT(A). After considering the submissions of the assessee and facts of the case, the Id. CIT(A) upheld the addition to the extent of ₹.1,10,63,789/- by granting partial relief of ₹.1,55,16,250 [₹.2,55,80,039 . 1,10,63,789].

4. On being aggrieved, the assessee is in appeal before the Tribunal. By filing copy of the CBDT Circular No. 19/2017 dated 12.06.2017, the Id. Counsel for the assessee has submitted that in view of the decision of the CBDT that the trade advances should not be treated as dividend under section 2(22)(e) of the Act, the addition made by the Assessing Officer and restricted by the Id. CIT(A) is not at all warranted and prayed that the addition may be deleted.

5. On the other hand, the Id. DR has submitted that the said decision of the CBDT was not available before the authorities below, this issue may be remitted back to the file of the Assessing Officer to examine the case of the assessee in the light of the above circular.

6. We have heard both sides, perused the materials available on record and gone through the orders of authorities below. The point at issue is whether the unsecured loan received from Siddharth Mercantile P. Ltd., where the assessee holds 19.83% of shares, shall be treated as deemed dividend in view of the section 2(22)(e) of the Act or not. We have perused the CBDT circular, which was relied on by the Id. Counsel for the assessee, wherein, various decisions of various Courts have been held that the amounts advanced for various business/commercial transactions do not fall within the definition of deemed dividend under section 2(22)(e) of the Act. The Id. DR submitted that the above circular was not available with the authorities below for consideration, we remit the matter back to the file of the Assessing Officer to consider the above decision of the CBDT, examine the case of the assessee and decide the issue afresh in accordance with law after affording reasonable opportunity of being heard to the assessee. Accordingly, the ground raised by the assessee is allowed for statistical purposes.

6.1 With regard to the objection of the assessee on levy of interest under section 234B and section 234C of the Act, this ground is not emanating from the order of the Id. CIT(A). Otherwise also, levy of interest under section 234B and 234C of the Act are consequential and depend upon the computation of income of the assessee. Since, we have remitted the main issue back to the file of the Assessing Officer to decide the issue afresh, quantum is yet to be decided, and interest will be charged accordingly. Thus, this ground of appeal is dismissed.

7. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced on the 27th February, 2018 at Chennai.

Sd/-
(A. MOHAN ALANKAMONY)
ACCOUNTANT MEMBER

Sd/-
(DUVVURU RL REDDY)
JUDICIAL MEMBER

Chennai, Dated, the 27.02.2018

Vm/-

आदेश क० प्रतिलिपि अपेक्षित/Copy to: 1. अपीलार्थी/Appellant, 2. प्रत्यर्थी/Respondent, 3. आयकर आयुक्त (अपील)/CIT(A), 4. आयकर आयुक्त/CIT, 5. व्रभागीय प्रतिलिपि/DR & 6. गाडफ़ाईल/GF.