

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

**BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER
AND SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER**

**ITA No. 950/Hyd/2015
Assessment Year: 2004-05**

Shri O.S.S. Prasad, vs. ACIT, Central Circle-1,
Hyderabad. Hyderabad.

PAN – AACP08673K
(Applicant)

(Respondent)

Assessee by : Shri S. Rama Rao
Revenue by : Shri S. Srinivas

Date of hearing : 23-04-2018
Date of pronouncement : 27-04-2018

ORDER

PER P. MADHAVI DEVI, J.M.:

This is assessee appeal for the A.Y 2004-05 against the order of the CIT(A)-I, Hyderabad dated 06.08.2014.

2. Brief facts of the case are that there was a search and seizure operation in the case of the assessee on 17.09.2008. The assessee had filed his original return of income on 01.11.2004 admitting an income of Rs. 2,47,280/-. Consequent to the search on 17.09.2008, a notice u/s 153A of the IT Act dated 12.10.2009 was issued to the assessee for the A.Y 2004-05. In response there to the assessee filed his return of income on 22.10.2010 declaring the same income as was originally declared. During the assessment proceedings u/s 143(3) r.w.s 153A of the IT Act, the A.O observed from balance sheet of the

firm M/s Alpha Business Corporation, of which the assessee is the proprietor, that there is a credit balance of Rs. 2,04,317/- in the name of M/s Kakathiya Engineering Equipment Ltd., of which the assessee is a director with more than 10% share holdings. Therefore he brought the said sum to tax as deemed dividend u/s 2(28)(E) of the IT Act. Further, the A.O also observed that the assessee has claimed interest paid as expenditure for business purposes. Holding that such expenditure relates to business and has to be claimed in the profit and loss account of the business concern, the A.O did not allow it. Aggrieved, the assessee preferred an appeal before the CIT(A), who confirmed the order of the A.O and the assessee is in second appeal before us.

3. The Ld. Counsel for the Assessee submitted that undisputedly, the assessee is a shareholder of M/s Kakatiya Engineering Equipment Pvt Ltd., and is also a partner in the firm M/s Alpha business Corporation. He submitted that the company, M/s Kakatiya Engineering Equipment Pvt Ltd., did not have any accumulated profits out of which, the amount was paid to M/s Alpha Business corporation and therefore the sum of Rs. 2,04,317/- has been wrongly considered as deemed dividend. He further submitted that this is trading transaction and not a loan or advance and hence the disallowance has to be deleted.

4. Ld. DR, on the other hand, supported the order of the A.O.

5. Having regard to the rival contentions and material on record, we find that the financial documents of the

company, M/s Kakatiya Engineering Equipment Pvt Ltd., have been filed in the paper book before us and on perusal of balance sheet, we find that the said company did not have any reserve much less accumulated profits. Therefore, the advance or loan allegedly given to M/s Alpha Business Corporation, though the claim of the assessee is that it is for business purposes, cannot be treated as deemed dividend in the absence of accumulated profits. Therefore, the disallowance u/s 2(22)(e) of the IT Act is deleted.

6. As regards the interest paid on loan, the Ld. Counsel for the assessee had submitted that, though the loan has been taken for the business purposes, the interest was not debited to the profit and loss account, but was credited to the loan account and it is for this reason that the A.O has made the disallowance. While the Ld. DR supported the order of the A.O, we find that A.O has clearly held that the loan was for business purposes and therefore, the interest is also relatable to business purposes of the Assessee. The only reason for disallowance is that it is not debited to the profit and loss account. The assessee being an individual, his business income is also taxed in his hands only, though under a separate head of income. Therefore, whether the assessee claims in the profit and loss account or as a separate deduction in the computation of income, it will have no impact on his taxable income and therefore is not a reason to disallow the claim, which is otherwise allowable. Therefore, this addition is also deleted. Accordingly, the assessee's appeal is allowed.

7. In the result, the appeal filed by the assessee is allowed.

Pronounced in the open court on 27th April, 2018.

Sd/-
(S. RIFAUH RAHMAN)
ACCOUNTANT MEMBER

Sd/-
(P. MADHAVI DEVI)
JUDICIAL MEMBER

Hyderabad, Dated: 27th April, 2018

KRK

- 1) *Shri OSS Prasad C/o Sri Rama Rao, Advocate, Flat No. 102, Shriya's Elegance, 3-6-643, Street No. 9, Himayatnagar, Hyderabad-29*
- 2) *ACIT, Central Circle-1, Hyderabad.*
- 3) *CIT(A) -I, Hyderabad*
- 4) *The Addl.CIT, Range-1, Hyderabad*
- 5) *The Departmental Representative, I.T.A.T., Hyderabad.*
- 6) *Guard File.*