

IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, MUMBAI
BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND
SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER

ITA no.4634/Mum./2015
(Assessment Year : 2006-07)

Dy. Commissioner of Income Tax
Circle-10(2)(2), Mumbai

..... Appellant

v/s

Arunkumar J. Muchhala
Amar Mahal, A.D. Road
Near Chandan Cinema
Mumbai 400 049
PAN - AAHPM5369F

..... Respondent

Revenue by : Shri Rajesh Kumar Yadav
Assessee by : None

Date of Hearing - 31.05.2018

Date of Order - 01.06.2018

ORDER

PER SAKTIJIT DEY, J.M.

Aforesaid appeal by the Revenue is against order dated 27th May 2015, passed by the learned Commissioner (Appeals)-17, Mumbai, deleting the penalty imposed of ₹ 12,82,200, under section 271(1)(c) Income Tax Act, 1961 (for short "*the Act*") for the assessment year 2006-07.

2. Brief facts are, the assessee an individual filed his return of income for the impugned assessment year on 31st October 2006,

declaring total income of ₹ 8,85,213. The return of income filed by the assessee was initially processed under section 143(1) of the Act. Subsequently, the Assessing Officer re-opened the assessment under section 147 of the Act being of the view that the loan advanced of ₹ 22,55,000 by M/s. Muchhala Magic Land Pvt. Ltd. to a partnership firm M/s. Sai Shiv Developers is in the nature of a deemed dividend under section 2(22)(e) of the Act at the hands of the assessee has escaped assessment. In course of the assessment proceedings, though, the assessee contested the claim of the Department that the loan advanced by M/s. Muchhala Magic Land Pvt. Ltd. to M/s. Sai Shiv Developers to be in the nature of deemed dividend, however, the Assessing Officer rejecting the claim of the assessee treated the amount of ₹ 22,55,000 as deemed dividend under section 2(22)(e) of the Act at the hands of the assessee. The assessee challenged the aforesaid addition before the learned Commissioner (Appeals) and thereafter before the Tribunal. In the meanwhile, on the basis of the addition of deemed dividend, the Assessing Officer initiated penalty proceedings under section 271(1)(c) of the Act by issuing a show cause notice to the assessee. Though, the assessee furnished its explanation objecting to the initiation of penalty proceedings, however, the Assessing Officer rejecting the explanation of the assessee passed an order imposing penalty of ₹ 12,82,200 under section 271(1)(c) of the Act alleging furnishing of inaccurate particulars of income.

Assessee challenged the penalty order before the first appellate authority.

3. The learned Commissioner (Appeals) after considering the submissions of the assessee in the context of facts and material on record deleted the penalty on the reasoning that the assessee has not received any loan from M/s. Muchhala Magic Land Pvt. Ltd. to treat it as in the nature of deemed dividend within the ambit of section 2(22)(e) of the Act. While coming to such conclusion, the learned Commissioner (Appeals) relied upon several judicial precedents. Thus he deleted the penalty imposed under section 271(1)(c) of the Act.

4. When the appeal was called for hearing no one was present on behalf of the assessee in spite of service of hearing notice issued through RPAD. In view of the above, we proceed to dispose off the appeal ex-parte qua the assessee after hearing the learned Departmental Representative.

5. The learned Departmental Representative fairly submitted that identical issue relating to addition of deemed dividend arose in assessee's case for assessment year 2008-09 also and the Tribunal relying upon its own orders passed in assessee's case for assessment years 2006-07 and 2009-10 has restored the issue to the Assessing Officer for fresh adjudication. Thus, he submitted that in view of such

decisions of the Tribunal the addition on the basis of which penalty under section 271(1)(c) of the Act was imposed does not survive, hence, penalty imposed by the Assessing Officer will not survive.

6. We have heard the learned Departmental Representative and perused materials on record. As could be seen from the facts on record, the Assessing Officer noticing that M/s. Muchhala Magic Land Pvt. Ltd. has advanced loan of ₹ 22,55,000 to a partnership firm M/s. Sai Shiv Developers, treated the loan amount as deemed dividend under section 2(22)(e) of the Act at the hands of the assessee on the reasoning that the assessee was holding 32.83% equity shares in the company and 34% share in the partnership firm. However, when the dispute relating to the aforesaid addition ultimately reached the second appellate stage, the Tribunal after considering the submissions of the parties restored the issue to the file of the Assessing Officer for fresh adjudication. This fact is evident from the order dated 20th December 2017, passed by the Tribunal in assessee's own case for assessment year 2008-09 in ITA no.1530/Mum./2013. On a perusal of the said order, it is also clear that the disputed addition relating to deemed dividend on the basis of which the impugned penalty under section 271(1)(c) of the Act was imposed by the Assessing Officer is a recurring issue between the assessee and the Department from assessment year 2006-07 to 2009-10 and the Tribunal while deciding

the disputed issue has restored them to the file of the Assessing Officer for fresh adjudication. Thus, from the aforesaid fact, it is very much clear that the addition on the basis of which the penalty under section 271(1)(c) of the Act was imposed by the Assessing Officer is not in existence. That being the case, for this reason alone the impugned penalty imposed under section 271(1)(c) of the Act will not survive and has to be restored to the assessing officer for fresh adjudication , if warranted , depending upon the final outcome of the issue in the assessment proceedings. The appellate order of learned CIT(A) is set aside and the issue is restored to the file of the Assessing Officer for fresh adjudication. We order accordingly.

7. In the result, Revenue's appeal is allowed for statistical purposes.

Order pronounced in the open Court on 01.06.2018

Sd/-
RAMIT KOCHAR
ACCOUNTANT MEMBER

Sd/-
SAKTIJIT DEY
JUDICIAL MEMBER

Pradeep J. Chowdhury
Sr. Private Secretary

MUMBAI, DATED:

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The CIT(A);*
- (4) *The CIT, Mumbai City concerned;*
- (5) *The DR, ITAT, Mumbai;*
- (6) *Guard file*

True Copy
By Order

(Sr. Private Secretary)
ITAT, Mumbai