

आयकर अपीलिय अधिकरण "बी" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, PUNE

श्री डी. करुणाकरा राव, लेखा सदस्य, एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष ।
BEFORE SHRI D. KARUNAKARA RAO, AM AND SHRI VIKAS AWASTHY, JM

आयकर अपील सं. / ITA No.956/PUN/2016

निर्धारण वर्ष / Assessment Year : 2011-12

Assistant Commissioner of Income Tax,
Central Circle – 2, Nashik

.....अपीलार्थी / Appellant

बनाम / V/s.

Chaudhary Cars Pvt. Ltd.,
11, Swed Bindu, Shanti Nagar,
Yawal Road, Bhusawal,
Jalgaon – 425201

PAN : AADCC7960R

.....प्रत्यर्थी / Respondent

Assessee by : Shri Nikhil Pathak
Revenue by : Dr. Vivek Agarwal

सुनवाई की तारीख / Date of Hearing : 25-07-2018

घोषणा की तारीख / Date of Pronouncement : 18-10-2018

आदेश / ORDER

PER VIKAS AWASTHY, JM :

This appeal by the Revenue is directed against the order of Commissioner of Income Tax (Appeals)-12, Pune dated 25-02-2016 for the assessment year 2011-12.

2. The brief facts of the case as emanating from records are : The assessee is a dealer of Toyota Cars. A search and seizure action u/s. 132 of the Income Tax Act, 1961 (hereinafter referred to as "the Act") was carried out in the case of Chaudhari Group, Bhusawal on 04-10-2011. The assessee company belongs to Chaudhari Group. The assessee had filed return of income for assessment year 2011-12 u/s. 139 of the Act on 30-09-2011 claiming loss of Rs.1,14,19,255/-. In response to the notice u/s. 153A of the Act, the assessee vide communication dated 09-10-2013 intimated the Assessing Officer to treat the return filed u/s. 139 as return filed in response to notice issued u/s. 153A of the Act. In assessment proceedings the Assessing Officer made additions on account of unproved sundry creditors Rs.83,62,502/- and deemed dividend Rs.3,68,27,750/-.

Aggrieved by the assessment order dated 19-03-2014 passed u/s. 143(3) r.w.s. 153A of the Act, the assessee filed appeal before the Commissioner of Income Tax (Appeals). The Commissioner of Income Tax (Appeals) vide impugned order deleted both the additions made by Assessing Officer. Against the findings of Commissioner of Income Tax (Appeals) the Revenue is in appeal before the Tribunal by raising following grounds :

- A. *On the facts and circumstances of the case, the Ld. CIT (A) is justified in deleting the addition of Rs.83,62,502/- made by the AO on account of Uproven Creditors.*
- B. *On the facts and circumstances of the case, whether the Ld. CIT (A) is justified in deleting the addition amounting to Rs.3,68,27,750/- made by the AO on account of suppression of deemed dividend u/s. 2(22)(e) of the Act.*
- C. *Any other ground that may be urged at the time of hearing."*

3. Dr. Vivek Agarwal representing the Department submitted that during the course of assessment proceedings the Assessing Officer asked the assessee to furnish confirmations from the creditors. The assessee

failed to furnish the confirmations, hence, the addition of Rs.83,62,502/- was made by the Assessing Officer. During First Appellate proceedings the assessee filed confirmations but the same were not subjected to verification by the Assessing Officer. Mere furnishing of confirmations is not sufficient unless their veracity is verified. To support his submissions the ld. DR placed reliance on the following decisions :

- i. Commissioner of Income Tax Vs. Jansampark Advertising & Marketing (P.) Ltd., 375 ITR 373 (Delhi);
- ii. Suresh Kumar T. Jain Vs. Income Tax Officer, 136 TTJ 247 (Bangalore).

3.1 In respect of deemed dividend the ld. DR submitted that in the Balance sheet for the year ending 31-03-2011 the assessee had shown Rs.3,68,27,750/- as loan taken from its sister concern M/s. B.N.C. Power Projects Ltd. Shri Bhagwat Narayan Chaudhary is the common and substantial shareholder of both the companies having interest to the extent of 98% in M/s. B.N.C. Power Projects Ltd. and 28% in assessee company. The Commissioner of Income Tax (Appeals) while deleting the addition has failed to consider this vital fact. The ld. DR submitted that the order of Commissioner of Income Tax (Appeals) may be set aside and the findings of Assessing Officer should be restored.

4. On the other hand Shri Nikhil Pathak appearing on behalf of the assessee vehemently defended the findings of Commissioner of Income Tax (Appeals) and prayed for dismissing the appeal of Revenue. The ld. AR reiterated his submissions made before the First Appellate Authority. The ld. AR pointed that the confirmations filed by the assessee before the Commissioner of Income Tax (Appeals) were referred to the Assessing Officer for his comments and further verification by the Commissioner of

Income Tax (Appeals). The Assessing Officer in remand proceedings without conducting any enquiry disbelieve the confirmations filed by the assessee from the creditors. The Commissioner of Income Tax (Appeals) vide very reasoned order accepted the confirmations filed by the assessee and deleted the addition.

4.1 In respect of ground No. 2 relating to addition on account of deemed dividend u/s. 2(22)(e) of the Act, the ld. AR submitted that the assessee had engaged M/s. B.N.C. Power Projects Ltd. for construction of showrooms and sheds etc. for its Toyota Cars dealership. The amount of Rs.3,68,27,750/- was the amount payable/paid by the assessee to M/s. B.N.C. Power Projects Ltd. for construction contract. The assessee had deducted TDS under the provisions of section 194C on such payments. The only mistake committed by the assessee at the time of assessment was that an amount of Rs.13,52,023/- (Balance Outstanding) was shown as unsecured loans instead of other creditors. In the audited Balance sheet and tax audit report the amount was shown as creditors. Thus, the amount of Rs.13,52,023/- payable by the assessee to M/s. B.N.C. Power Projects Ltd. was on account of construction contract bills. It is not a case where the assessee/appellant has received loan from M/s. B.N.C. Power Projects Ltd. rather it is a case where the assessee had paid money to M/s. B.N.C. Power Projects Ltd. against the invoices raised for construction of its showroom.

5. We have heard the submissions made by representatives of rival sides and have perused the orders of authorities below. The Revenue in appeal has raised two grounds. The ground No. 1 is with respect to deletion of addition of Rs.83,62,502/- made on account of unproved creditors. A perusal of the documents on record shows that the assessee

has filed confirmations from the creditors in First Appellate proceedings. The Commissioner of Income Tax (Appeals) forwarded confirmations to Assessing Officer for his comments and further necessary enquiries. However, the Assessing Officer without conducting any enquiry disbelieved the confirmations filed by the assessee. We are of considered view that the Assessing Officer has failed to discharge his duty in conducting enquiry and verifying the veracity of confirmations. The Assessing Officer is empowered u/s. 131 to summon the creditors. However, he failed to exercise the same. The assessee had discharged his primarily onus by filing the confirmations. Thereafter it was incumbent upon the Assessing Officer to test the genuineness of the same. The Commissioner of Income Tax (Appeals) has observed that out of total creditors amounting to Rs.83,62,502/-, the credit balance of Rs.72,89,775/- was in respect of M/s. Toyota Kirloskar Motor Pvt. Ltd. alone. Since, the assessee is a dealer of Toyota Cars, no doubt can be raised on genuineness of such creditors. As regards the other creditors i.e. M/s. Dhanraj Traders, M/s. Nikhil Comforts and M/s. Shree Nidhi Technologies, the assessee had made purchases from the aforesaid parties. The Assessing Officer has not raised any doubt over the purchases made. It is only the closing balance in the accounts of said parties which have been doubted by the Assessing Officer. The Assessing Officer in the remand proceedings has simply rejected the confirmations without verifying the same. The assessee cannot be penalized for any dereliction in the duty by Assessing Officer. We do not find any infirmity in the order of Commissioner of Income Tax (Appeals) in deleting the addition. Accordingly, ground No. 1 raised by the Revenue is dismissed.

6. In ground No. 2 the assessee has assailed deleting the addition of Rs.3,68,27,750/- u/s. 2(22)(e) of the Act. The Assessing Officer made

addition of the aforesaid amount on the presumption that the assessee has received loan of Rs.3,68,27,750/- from its group company M/s. B.N.C. Power Projects Ltd. The ld. AR has explained that it is not a case where the assessee has taken loan from its group company rather the assessee has paid the amount to M/s. B.N.C. Power Projects Ltd. for carrying out construction of the showroom and shed for its Toyota Cars dealership. It was further pointed that on the payments made to M/s. B.N.C. Power Projects Ltd., the assessee has deducted tax at source u/s. 194C of the Act. The payments are made against the invoices raised for construction activities carried out by M/s. B.N.C. Power Projects Ltd. for the assessee. We find that the Commissioner of Income Tax (Appeals) has sought remand report from the Assessing Officer on this factual aspect. The Assessing Officer without conducting any enquiry or examining the books has reiterated his stand taken during assessment proceedings. The Commissioner of Income Tax (Appeals) deleted the addition by observing as under :

“I have considered the details furnished by the appellant and from the same it is obvious that no amount was received by the appellant from M/s. BNCPPPL by way of cheque or cash which can be treated as loan/advance. On the contrary all the payments have been made by the appellant which has been adjusted against the construction invoice of Rs.3,68,27,750/- raised by M/s. BNCPPPL. A Journal entry was passed debiting the asset showroom construction and, crediting M/s. BNCPPPL by Rs.3,68,27,750/-. In fact appellant has deducted TDS on the payments made against the construction contract. Appellant had furnished all the relevant document like work contract order issued by the appellant, copy of invoices raised by M/s. BNCPPPL, copy of return of income and 26AS form of M/s. BNCPPPL wherein TDS deducted and contracts amount paid by the appellant was reflected. It is absolutely clear that no money was received by the appellant from M/s. BNCPPPL during the year under consideration, hence, question of deemed dividend in the hands of the appellant does not arise. Other legal issue raised by the appellant as to whether deemed dividend should be taxed in the hands of concern who is not beneficial share holder in the lending company or in the hands of share holder having substantial interest in both the concerns has become infructuous. Addition made by the AO of Rs.3,68,27,750/- u/s 2(22)(e) is deleted and ground raised by the appellant is allowed.”

7. The ld. DR has failed to controvert the findings of Commissioner of Income Tax (Appeals). We do not find any reason to interfere with the well reasoned findings of the First Appellate Authority. Therefore, the same are upheld and ground No. 2 raised in the appeal by Revenue is dismissed.

8. In the result, the impugned order is upheld and the appeal of Revenue is dismissed.

Order pronounced on Thursday, the 18th day of October, 2018.

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|--------------------------------------|---------------------------------|
| Sd/- | Sd/- |
| (डी. करुणाकरा राव/D. Karunakara Rao) | (विकास अवस्थी / Vikas Awasthy) |
| लेखा सदस्य / ACCOUNTANT MEMBER | न्यायिक सदस्य / JUDICIAL MEMBER |

पुणे / Pune; दिनांक / Dated : 18th October, 2018

RK

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त (अपील) / The CIT(A)-12, Pune
4. The Pr. CIT (Central), Nagpur
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच,
पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति // True Copy//

आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary,
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune