

आयकर अपीलिय अधिकरण, चण्डीगढ़ न्यायपीठ "ए" , चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "A",
CHANDIGARH

श्रीमती दिवा सिंह, न्यायिक सदस्य एवं, डा. बी.आर.आर. कुमार, लेखा सदस्य
BEFORE: SMT. DIVA SINGH, JM & Dr. B.R.R. KUMAR , AM

आयकर अपील सं./ ITA No. 448/Chd/2017

निर्धारण वर्ष / Assessment Year : 2013-14

Sh. Sukhwant Singh 205, Sector 36-A Chandigarh	बनाम	The ACIT Circle-2 Chandigarh
स्थायी लेखा सं./PAN No: AMVPS7107H		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by

: Shri. Tej Mohan Singh

राजस्व की ओर से/ Revenue by

: Sh. Manjit Singh

सुनवाई की तारीख/Date of Hearing

: 26/09/2018

उद्घोषणा की तारीख/Date of Pronouncement

: 29/10/2018

आदेश/Order

PER DR. B.R.R. KUMAR, A.M.:

The present appeal has been filed by the Assessee against the order of the Ld. CIT(A)-2, Chandigarh dt. 14/12/2016.

2. In the present appeal Assessee has raised the following grounds:

1. That the order of the Ld. CIT(A)-2 is not a speaking order, is erroneous, arbitrary, opposed to law and facts of the case.

2. That the Ld. CIT(A)-2 has erred in law as well as on facts in adding an amount of Rs. 1,40,00,000/- on account of advance received by the appellant from M/s Acme Builders Private Ltd. by treating the same as deemed dividend under section 2(22)(e) of the Act.

3. That the Ld. CIT(A)-2 has erred in law as well as on facts in adding an amount of Rs. 11,82,978/- under section 14A as per rule 8D on account of disallowance on investments in shares and capital balance in the partnership firm.

3. Briefly the facts on the issue are that during the relevant year assessee received a loan of Rs. 1,40,00,000/- from M/s Acme Builders Pvt. Ltd. in which assessee is the beneficial owner of shares holding more than 10% of shares in the said company. M/s Acme Builders Pvt. Ltd. had sufficient accumulated reserves and is not in to the business of lending. The Assessing Officer observed that the advance given to the assessee is not in the normal course of the business.

Therefore the Assessing Officer treated the advance received by the assessee from the above company as deemed dividend and made addition of Rs. 1,40,00,000/- under section 2(22)(e) of the Act.

4. The Ld. CIT(A) confirmed the addition on the grounds that the money so received by the assessee was given to the father of the assessee for various purposes and not utilized for purchased of the property on behalf of the company who made the advances.

5. Before us, the Ld. AR submitted that M/s Acme Builders Pvt. Ltd. is engaged in real estate business and assessee held 40% share in this company. The submission made by the assessee before assessing officer was reiterated during proceedings. It was submitted that the advance was made to the assessee for acquiring a property in the name of the assessee and submitted board resolution dated 15/06/2012 before assessing officer. It was submitted that the advance was made for meeting business expediency and were made in ordinary course of business.

5.1 He further submitted fund flow chart for the funds received from M/s Acme Builders Pvt. Ltd. to the assessee and from the assessee to Shri Harpal Singh and from thereto Berkeley Retails Pvt. Ltd. He is also submitted the relevant bank statements during the hearing.

6. The Ld. DR supported the orders of the authorities below.

7. We have gone through the facts on record and find that the amounts have been indeed received by Barkley Retails Pvt. Ltd. which can be considered as a trade advance. Thus we find that, the observation of the Ld.CIT(A) that the advance was utilized for personal purpose and not for meeting the business expediency is based on wrong interpretation of the facts. Hence placing reliance on the judgment of Karnataka High Court in the case of Bagmare Constructions Pvt. Ltd. (ITA No. 473/2013), the addition made is hereby directed to be deleted.

8. This ground of appeal is hereby allowed.

9. The second ground relates to disallowance under section 14A .

10. During the year the assessee has not earned any exempt income. The Assessing Officer has disallowed an amount of Rs. 11,82,978/- under section 14A which the Ld. CIT(A) has confirmed. Honorable Punjab and Haryana High Court in the case of CIT Faridabad v. Lakhani Marketing INC in ITA no. 970/2008 vide

their judgment dated 2-4-2014 have held that the disallowance under section 14A can be made only to the extent of receipt of dividend income. Since in the instant case the assessee has not earned any exempt income no disallowance under section 14A is warranted.

11. As a result, the appeal of the Assessee is allowed.

Order pronounced in the open Court.

Sd/-
दिवा सिंह
(DIVA SINGH)
न्यायिक सदस्य/ Judicial Member
AG
Date: 29/10/2018

Sd/-
डा. बी.आर.आर. कुमार,
(Dr. B.R.R. KUMAR)
लेखा सदस्य/ Accountant Member

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

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File