

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'C' NEW DELHI**

**BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER
AND
SHRI L.P. SAHU, ACCOUNTANT MEMBER**

**I.T.A .No.-5907/Del/2017
(ASSESSMENT YEAR-2011-12)**

JINENDRA KUMAR JAIN, C/O RAJ KUMAR & ASSOCIATES, CHARTERED ACCOUNTANTS, L-7A, LGF, SOUTH EXTENSION, PART-2, NEW DELHI – 110 049 PAN No. AAFPJ7404C) (APPELLANT)	vs	ACIT, CIRCLE 59(1), NEW DELHI
Appellant by	Shri Raj Kumar, CA	
Respondent by	Shri Sridhar Dora, Sr. Dr.	

ORDER

PER H.S. SIDHU, JM

This appeal filed by the Assessee is directed against the Order dated 7.9.2017 of the Ld. CIT(A)-37, New Delhi relevant to assessment year 2011-12 on the following grounds: -

1. *That the show cause notice issued u/s. 271(1)© are fatally defective, more so, do not specify as to whether issued for concealment of income or for furnishing inaccurate particulars of income, thus illegal and unsustainable, making the impugned penalty order levying penalty of Rs. 12,96,955/- without jurisdiction and illegal.*
2. *That under the facts and circumstances, no penalty can be levied on deemed income u/s. 2(22)(e) of the I.T. Act.*

3. 3. *That without prejudice, on merits, under the facts, no penalty u/s. 271(1)© should be levied.*

2. Facts narrated by the revenue authorities are not disputed by both the parties, hence, the same are not repeated here for the sake of convenience.

3. At the time of hearing, Ld. Counsel of the Assessee, has stated that ITAT vide its order dated 19.11.2018 in quantum appeal No. 4126/Del/2014 has deleted all the additions except Rs. 13,634/- which was not pressed by the assessee in quantum appeal. In this behalf he filed the copy of the Tribunal's Order dated 19.11.2018 in assessee's own case and he requested that penalty on the addition of Rs. 13,634/- may be deleted.

4. On the other hand, Ld. DR relied upon the orders of the authorities below.

5. We have carefully considered the submissions and perused the records. We find that in assessee's own case in ITA No.4126/Del/2014 for A.Y. 2011-12 vide order dated 19.11.2018, the Tribunal had adjudicated the issues and deleted the quantum additions, except the addition of Rs.13,634/- being not pressed. For the sake of convenience, we are reproducing the relevant portion of the Tribunal's order dated 19.11.2018 as under:-

“9. We have considered the rival submissions. The facts noted above are not in dispute. The Hon'ble Supreme Court in the case of CIT vs. Mukundray K. Shah (2007) 290 ITR 433 (SC) held that “the true test is whether the payment by Company was for the benefit of the assessee who was Managing Director.” The Hon'ble Delhi High Court in the case of CIT vs.

Creative Dyeing and Printing P. Ltd., (2009) 318 ITR 476 (Del.) held that “business transactions did not attract provisions of Section 2(22)(e) of the I.T. Act”. The Hon’ble Calcutta High Court in the case of Pradip Kumar Malhotra vs. CIT (2011) 338 ITR 538 (Cal.) held that “shareholder permitted to mortgage its property for Company and received loan, therefore, provisions of Section 2(22)(e) of the I.T. Act would not be attracted”. PB-22 is rent agreement between assessee, his wife and M/s. Designarch Infrastrucutre Pvt. Ltd., for letting-out property. PB-20 is confirmation whereby it is confirmed that advance rent of Rs.12,50,000/- through cheque was given to the assessee for rent of 25 months. Similarly, rent security deposit of Rs.2,80,000/- equivalent to four months rent was given to assessee (Shri Jinendra Kumar Jain). It is, therefore, clear from the evidence on record that assessee in fact, has let-out the joint property to the tenant company and has received advance as well as security deposit of the aforesaid amounts. The authorities below rejected the claim of assessee because the amount of advance rent and security deposit is not mentioned in the rent agreement. Learned Counsel for the Assessee also referred to the return filed by assessee to show that rent have been offered for taxation and all transactions are through banking channel. Therefore, merely advance rent and security deposit is not mentioned in the rent agreement would not prove that assessee has not received the advance rent and security

deposit from the tenant and let-out the property in question. Since the amount is paid as regards the tenanted premises, therefore, it is in normal ordinary transaction of letting out of property. Therefore, it could not be treated as loan or advance so as to attract the provisions of Section 2(22)(e) of the I.T. Act. Similarly, assessee received advance of Rs.26 lakhs on account of Agreement to Sell through banking channel. Copy of the Agreement to Sell is filed on record, which is not disputed by the authorities below. It appears that while referring to the tenanted property, A.O. has taken the same property in the assessment order and under misconception of facts made the addition on account of deemed dividend. In fact, it is an Agreement to Sell of property bearing 31, Shankar Vihar, Delhi-92, which Ld. CIT(A) has corrected. The Ld. CIT(A) noted that assessee is not in business of lending money. Therefore, the contention of assessee that it was a genuine business transaction is not acceptable. However, it is not the case of the assessee because assessee claimed that the Company agreed to purchase the property from the assessee on certain terms and conditions. The said purchase under the agreement by the Company would benefit the Company. Thus, finding of the Ld. CIT(A) is not justified. It is not in dispute that it was the property of the assessee and if assessee received advance against the sale of the property, it could not be treated as deemed dividend. The genuineness of the Agreement to Sell is not in dispute. Therefore, provisions of Section

2(22)(e) of the I.T. Act is not attracted in the case of the assessee. Similarly, assessee received an amount of Rs.1,35,000/- on account of imprest. Confirmation is filed at page-36 of the paper book, in which, it is clearly confirmed that Company has given official imprest amount of Rs.1,35,000/- to the assessee for incurring certain expenses in connection with seeking professional work for the Company. Therefore, explanation of assessee is substantiated that it was an ordinary business transaction and that small imprest amount was given to the assessee to incur expenditure on behalf of the Company. Therefore, provisions of Section 2(22)(e) would not be attracted in this case. Considering the totality of the facts and circumstances of the case noted above, it is clear that all the amounts in question have not been given to the assessee for his personal benefit but these amounts have been given for the benefit of the Company. These were ordinary business transactions and as such, would not attract the provisions of Section 2(22)(e) of the I.T. Act, 1961. We, accordingly, set aside the Orders of the authorities below and delete the above additions. Appeal of Assessee is partly allowed.

10. In the result, appeal of Assessee is partly allowed.”

6.1 Keeping in view of the facts and circumstances of the case, we find that the additions on which the penalty in dispute was levied, has already been deleted by the ITAT, except the addition of Rs. 13,634/- which was not pressed by the assessee in quantum appeal,

vide order dated 19.6.2018 in ITA No. 4126/Del/2014 (AY 2011-12) in assessee's own case as aforesaid, hence, the penalty in dispute will not survive on the additions in dispute, except the penalty on the addition of Rs. 13,634/- which was not pressed by the assessee in quantum appeal before the Tribunal. Accordingly, we delete the penalty in dispute and sustain the penalty on the addition of Rs. 13,634/-.

7. In the result, the appeal filed by the Assessee stands partly allowed.

Order pronounced on 19.12.2018.

Sd/-

(L.P. SAHU)
ACCOUNTANT MEMBER

Sd/-

(H.S. SIDHU)
JUDICIAL MEMBER

Dated: 19/12/2018

SR BHATNAGAR

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI