

IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH 'D', KOLKATA
(Before Shri S. S. Ravi, J.M. & Dr.A.L.Saini, A.M.)

ITA No. 2192/Kol/2017 : Asstt. Year : 2013-14

A.C.I.T, Cir-50(1), Kolkata (ASSEESSEE/Department)	Vs	Shri Ranjit Kumar Saha PAN: ALQPS 1759K (RESPONDENT/Assessee)
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C.O. No. 40/Kol/2018

[arising out of ITA No. 2192/Kol/2017, A.Y 2013-14]

Shri Ranjit Kumar Saha PAN: ALQPS 1759K (CROSS OBJECTOR)	Vs	A.C.I.T, Cir-50(1), Kolkata (RESPONDENT)
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Department by : Shri C.J. Singh, Id.Sr.DR
Assessee by : Shri Subash Agarwal, Advocate, Id.AR

Date of Hearing : 14-11-2018	Date of Pronouncement:30.11.2018
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ORDER

Per Dr. A.L.Saini, A.M.:

The captioned appeal filed by the Revenue and cross objections filed by the Assessee, pertaining to assessment year 2013-14, are directed against the order passed by the Commissioner of Income-tax (Appeals)-13, Kolkata, in Appeal No. 182/CIT(A)-13/2016-17/ Kol, dated 28-06-2017, which in turn arises out of an order passed by the Assessing Officer u/s. 143(3) of the Income-Tax Act, 1961 (in short, the Act), dated 22-02-2016.

2. At the outset, the Ld. DR submitted that the department's appeal for assessment year 2013-14 and bearing ITA No. 2192/Kol/2017 was delayed in filing by a period of six days

ITA No. 2192/Kol/2017
& CO No. 40/Kol/2018
Ranjit Kumar Saha

due to the file being on transit movement through the proper channel. He drew our attention to the delay condonation application and the affidavit in this regard and prayed that the delay be condoned.

The Ld. AR opposed the prayer for condonation of delay and submitted that the appeal should be dismissed.

Having heard both the parties and after having gone through the affidavit as well the delay condonation, application, we are of the considered opinion that in the interest of justice, the delay deserves to be condoned. We, accordingly, condone the delay.

3. At the outset itself, the Id. Counsel for the assessee informed the Bench that the assessee does not want to press the cross objection, (CO. No. 40/Kol/2018 arising out of ITA No. 2192/Kol/2017 for the A.Y 2013-14). The Id. DR for the Revenue does not raise any objection. Therefore, we dismiss the Cross Objection filed by the assessee, as not pressed.

4. Now, we take up the Revenue's appeal, in ITA No. 2192/Kol/2017, for A.Y 2013-14, wherein the grounds of appeal raised by the Revenue are as follows:-

1. Ld.CIT (A) has erred in holding that provision of section 2(22)(e) is not attracted as there was no loan to the assessee but it was current account with the company and when the assessee in his audited account has accepted that it was unsecured loan.

2. Ld.CIT (A) has erred in holding that provision of section 2(22)(e) is not attracted since the company enjoys rent free accommodation on the property owned by the assessee when nothing is said in the statute.

3. Ld.CIT(A) has erred in holding that provision of section 2(22)(e) is not attracted as the assessee mortgaged his property for obtaining loan by the company when it was mere a collateral security.

3. Ld.CIT(A) has erred in holding that provision of section 2(22)(e) is not attracted as the assessee mortgaged his property for obtaining loan by the company when it was mere a collateral security.

5. The facts of the case which can be stated quite shortly are as follows. During the assessment proceedings it was noted by the AO that the assessee was a director and shareholder of M/s. I.P Traders Pvt. Ltd. and holding more than 10 equity shares and voting rights therein. It was noted from the accounts of the said company that it possessed accumulated profits in the year during which loan was granted to the assessee. Therefore, the assessee was asked to explain as to why the loan to the tune of Rs.12,28,07,051/- should not be treated as deemed dividend in the hands of the assessee in accordance with the provisions of section 2(22) (e) of the Act. In response, the assessee filed a written submission on 01-12-2015 requesting AO, not to invoke the provisions of section 2(22) (e) of the Act, as the transactions are mutual in nature. After this, the AO issued notice u/s. 131 of the Act, on 13-01-2016, asking the assessee to appear in person on 15-01-2016, to examine the issue further. In response to notice u/s. 131, Mr. Ranjit Kumar Saha, the assessee appeared on 15-01-2016 and his statement was recorded under oath by the AO. During the course of recording of his statement, Mr. Ranjit Kumar Saha, the assessee has replied to the question asked by AO, which is given below for ready reference:-

“Q. 5: what is nature of activities of the business earned on by the companies in which you are a director?”

Ans: From I. P. Traders Pvt Lid 100% export of Raw Cotton, From R.G. Nirman a property has taken for development which is under construction and no business is carried on from it there is no business done from R. G. Nirman Pvt. Ltd.”

From the above reply, the AO noted that there was clear contradiction between the written submission filed on 01.12.2015 and reply given by the assessee during the course of statement recorded u/s 131 of the Act. Therefore, AO held that since there was no business activity in the R. G. Nirman Pvt. Ltd, the transaction cannot be treated as mutual. Further, the AO noted that the annexure - III of the Tax audit report for F.Y. 2012-13 relevant to

ITA No. 2192/Kol/2017
& CO No. 40/Kol/2018
Ranjit Kumar Saha

A.Y. 2013-14 clearly reflected these transactions as loans or deposit taken or accepted. In view of the above the assessee's contention that the transactions are mutual in nature cannot be accepted.

6. The AO then referred the provisions of section 2(22) (e) of the Act, which provides that loans taken by the beneficial owner of the share shall be treated as deemed dividend to the extent the company possesses 'accumulated profits'. The AO noted the 'Reserve & Surplus' of M/s. IP Traders Pvt. Ltd was to the tune of Rs.4,98,30,830/-, out of the same, a sum of Rs.1,01,09,475/- represents 'Capital Reserve' and Rs. 2,90,90,000/- represents 'securities premium', therefore, these were excluded from accumulated profits. Hence the accumulated profit for the purpose of section 2(22)(e) of the Act was worked out to the tune of Rs.1,06,31,355/- (Rs.4,98,30,830 – Rs.2,90,90,000 – Rs.1,01,09,475). The AO noted that the loan amount of Rs.12,28,07,051/- received from M/s. I.P Traders Pvt. Ltd, a sum of Rs.1,06,31,355/- was treated as deemed dividend in the hands of the assessee in terms of section 2(22) (e) of the Act and added to the total income of the assessee.

7. Aggrieved by the stand so taken by the Assessing Officer, the assessee carried the matter in appeal before the Commissioner of Income-tax (Appeals), Kolkata, who has deleted the addition made by the Assessing Officer. The Id CIT(A) noted that the amount so received or paid was for the mutual benefit. The Id CIT(A) further noted that these were purely business transactions, as it was evident that the money was kept rotating within 3-4 days generally, which was purely relating to business. It was neither financials nor it was long term loan, it was for mutual support relating to business, hence Id CIT(A) deleted the addition of Rs.1,06,31,355/-.

8. Aggrieved by the order of the Commissioner of Income-tax (Appeals), the Revenue is in appeal before us.

9. The Id. DR for the Revenue has submitted has submitted before us that the Id. CIT(A) has merely copied the assessee's submissions and make it part of his order and did not apply his mind. There is no basis, on which he makes his conclusion that the transactions between I.P Traders Pvt. Ltd, and the assessee is of mutual benefit to both parties. It is a mere statement with no *locus standi*. He has not brought on record any finding e.g. funds position of the assessee and the company on the dates of receipts of such loans by both parties taken from each other, based on which he could have arrived at commercial expediency and therefore mutual benefit. Mere statement that both parties have taken loans from each other is not enough. In the case of R G Nirman P Ltd, the CIT(A) has confirmed the addition stating that there is no link with commercial expediency or further mutual benefit. As per AO, in page 2 of his order, (vide question No.5 asked by the assessee during the course of recording of statement of Mr. Ranjit Kumar Saha), the said company is stated to have taken a property for development which is under construction. Property development is a long-term affair running into several years. But if CIT(A) sees commercial expediency and mutual benefit in the case of I P Traders Pvt. Ltd, which is involved in export of bales to Bangladesh, which is a continuous running affair and each transaction has a short life span of a few days, then why not in the case of R G Nirman Pvt. Ltd, has such finding been made? The truth is that constant short term receiving and returning of loans is seen as bearing commercial expediency but not any long-term transaction. Conversely, if no commercial expediency and mutual benefit was found in the case of R G Nirman Pvt Ltd, then the same should hold true for that of I P Traders Pvt Ltd. Hence, addition made by the AO to the tune of Rs.1,06,31,355/-, in the case of I P Traders Pvt Ltd should sustain.

10. On the other hand, the Id. Counsel for the assessee has submitted that the assessee, Shri Ranjit Kumar Saha has given, as well as taken money from M/s. I.P Traders on account of current account and mutual transactions. The money received was for 3-4 days whereas fund was also provided to the company, M/s. IP Traders Pvt. Ltd. As for example, Rs. 95

ITA No. 2192/Kol/2017

& CO No. 40/Kol/2018

Ranjit Kumar Saha

lacs, 2.25 Crore & 1.85 Crore was paid on 25.05.12, 29.05.12 & 30.05.12 respectively. Both the concerns were in the nature of exports of Bales to Bangladesh and the amount so received or paid was for the mutual benefit of both the concerns for the export/import comes to them. Sometimes in the name of company and sometimes individuals. These are purely business transaction and it is kept rotating with 3-4 days generally, which were purely relating to business. It was neither financials nor it was long term loan, it was for mutual support relating to business. Therefore, the order passed by the Id. CIT(A) deleting the addition should sustain.

9. We have given a careful consideration to the rival submissions and perused the material available on record. We note that Revenue's solitary grievance relates to addition of Rs. 1,12,06,321/- made by the Ld. Assessing Officer treating the same as deemed dividend by applying the provisions of section 2(22)(e) of the Act. During the year under consideration, the proprietary concern of the assessee i.e., M/s. Pinaki Traders received a loan of Rs.1,12,06,321/- from M/s. I. P. Traders Pvt Ltd and M/s. R.G. Nirman Pvt Ltd. Mr. Ranjit Kumar Saha is a beneficial owner in M/s. I. P. Traders Pvt Ltd and M/s. R.G. Nirman Pvt Ltd as he is holding 31.26% and 41.77% of the shareholding respectively in both the companies. The accumulated profit of M/s. I.P. Traders Pvt Ltd is to the tune Rs.1,06,31,355/- and of M/s. R.G. Nirman Pvt Ltd is Rs. 5,74,966/-. As the loan given by the said company is more than the accumulated profit hence the accumulated profit of both the companies of Rs. 1,12,06,321/- (Rs.1,06,31,355 + Rs. 5,74,966) is considered as deemed dividend in the hands of Mr. Ranjit Kumar Saha and taken and added to the total income of the assessee as income from business. The Revenue is in appeal before us for Rs. Rs.1,06,31,355/- deleted by Id CIT(A) treating the same as current account and mutual transaction.

After examining the details submitted at the appeal stage, it was observed by the Id CIT(A) that in the instant case the Assessee had mortgaged its property to Bank for the Business of IP Traders and the Companies namely M/s I P Traders Pvt. Ltd. and RG Nirman Pvt. Ltd.

ITA No. 2192/Kol/2017
& CO No. 40/Kol/2018
Ranjit Kumar Saha

enjoys rent free office space from the Assessee. We note that the transaction is mutual and current account transaction. The amount was advanced by the company to the assessee purely on the terms of commercial expediency and it is also proved from the chart showing day to day transaction and working of interest thereon, that the transactions are on current account and mutual benefits:

Ledger		I.P Traders Pvt. Ltd		1-Apr-2012 to 31- Mar-2013		
Balance	From	To	Total Days	Rate	Interest	
2500000.00Cr	09-05-12	15-05-12	6 days	11.50%	4726.03 Cr	
5500000.00Cr	15-05-12	22-05-12	7 days	11.50%	12130.14Cr	
4000000.00Dr	22-05-12	25-05-12	3 days	11.50%	3780.82 Dr	
9500000.00Dr	25-05-12	29-05-12	4 days	11.50%	11972.60Dr	
22500000.00Dr	29-05-12	30-05-12	1 days	11.50%	7089.04 Dr	
18525000.00Dr	30-05-12	12-06-12	13 days	11.50%	75876.37Dr	
2525000.00Dr	12-06-12	16-06-12	4 days	11.50%	3182.19 Dr	
1025000.00Dr	16-06-12	19-06-12	3 days	11.50%	968.84 Dr	
7975000.00Dr	19-06-12	13-07-12	24 days	11.50%	6034.11 Cr	
10275000.00Cr	13-07-12	14-07-12	1 days	11.50%	3237.33 Cr	
14275000.00Cr	14-07-12	17-07-12	3 days	11.50%	13492.81Cr	
19275000.00Cr	17-02-12	23-07-12	6 days	11.50%	36437.67Cr	
14275000.00Cr	23-07-12	24-07-12	1 days	11.50%	4497.60Cr	
1200000.00Cr	08-08-12	13-10-12	66 days	11.50%	24953.42Cr	
10000000.00Cr	13-10-12	08-11-12	26 days	11.50%	8191.78 Cr	
10000000.00Cr	27-11-12	11-12-12	14 days	11.50%	44109.59Cr	
20000000.00Cr	11-12-12	18-12-12	7 days	11.50%	44109.59Cr	
14400000.00Cr	18-12-12	19-12-12	1 days	11.50%	4536.99 Cr	
10000000.00Cr	19-12-12	26-12-12	7 days	11.50%	22054.79Cr	
5200000.00Cr	26-12-12	27-12-12	1 days	11.50%	1638.36 Cr	
19200000.00Cr	27-12-12	28-12-12	1 days	11.50%	6049.32 Cr	
17700000.00Cr	28-12-12	05-01-13	8 days	11.50%	44613.70Cr	
14900000.00Cr	05-01-13	11-01-13	6 days	11.50%	28167.12Cr	
14400000.00Cr	11-01-13	14-01-13	3 days	11.50%	13610.96Cr	

8400000.00Cr	14-01-13	19-01-13	5 days	11.50%	13232.88Cr
18400000.00Cr	19-01-13	22-01-13	3 days	11.50%	17391.78Cr
18300000.00Cr	22-01-13	25-01-13	3 days	11.50%	17297.26Cr
16800000.00Cr	25-01-13	04-02-13	10 days	11.50%	52931.51Cr
10800000.00Cr	04-02-13	07-02-13	3 days	11.50%	10208.22Cr
700000.00Cr	14-02-13	19-02-13	5 days	11.50%	1102.74Cr
3300000.00Dr	19-02-13	23-02-13	4 days	11.50%	4158.90 Dr
8300000.00Dr	23-02-13	26-02-13	3 days	11.50%	7845.21Dr
13300000.00Dr	26-02-13	27-02-13	1 days	11.50%	4190.41Dr
17300000.00Dr	27-02-13	28-02-13	1 days	11.50%	5450.68Dr
18694551.00Dr	28-02-13	01-03-13	1 days	11.50%	5890.06Dr
20194551.00Dr	01-03-13	04-03-13	3 days	11.50%	19088.00Dr
29594551.00Dr	04-03-13	06-03-13	2 days	11.50%	18648.62Dr
24200000.00Dr	06-03-13	14-03-13	8 days	11.50%	60997.26Dr
11000000.00Dr	14-03-13	15-03-13	1 days	11.50%	3465.75 Dr
8500000.00Dr	15-03-13	18-03-13	3 days	11.50%	8034.25 Dr
12500.00 Cr	18-03-13	23-03-13	5 days	11.50%	19.69 Cr
				Grand Total	248406.39 Cr

It is abundantly clear from the date wise chart, mentioned above, and submitted by the assessee, during the appellate proceedings that the assessee, Mr. Ranjit Kumar Saha have given as well as taken money from I P Traders Pvt. Ltd. The money received was for 3-4 days whereas fund was also provided to the Company M/s. I P Traders Pvt. Ltd. As for example Rs. 95 Lacs, 2.25 Crore & 1.85 Crore was paid on 25.05.12, 29.05.12 & 30.05.12 respectively. Both the concerns were in the business of exporting of Bales to Bangladesh and the amount so received or paid was for the mutual benefit of both the concerns for the export/import comes to them. Sometimes transactions were in the name of company and sometimes in the name of individuals. These are purely business transaction, as it is evident that the money is kept rotating with 3-4 days generally, which was purely relating to business. It was neither financials nor it was long term loan, it was for mutual support relating to business.

the Assessee. Considering the facts narrated above we note that addition was deleted by the Hon'ble Delhi High Court in case of CIT vs. Creative Dyeing & Printing (P) Ltd [2009] 318 ITR 476 (Delhi), wherein facts were similar to that of assessee and it was held by the Hon'ble Delhi High Court that the amount was advanced by the company to the assessee purely on the terms of commercial expediency and similar view was taken by the coordinate Bench of Kolkata Tribunal in the case of ITO vs Smt. Gayatri Chakraborty (2016) 45 ITR 197, wherein it was held as follows:

"...the current account between the Assessee and the Director was a mutual account which was reciprocal demands between the parties and did not benefit the assessee alone. It was thus held that section 2(22)(e) cannot be invoked in the current account transaction"

Therefore, considering the factual position and judicial precedents noted above, we are of the view that transactions were on current account between the Assessee and the company and was a mutual account which was reciprocal demands between the parties and did not benefit the assessee alone, that being so, we decline to interfere in the order passed by the Id CIT(A), his order on this issue is hereby upheld and grounds of appeal raised by the Revenue is dismissed.

11. In the result, the appeal filed by the Revenue and cross objection filed by the Assessee, both are dismissed.

Order Pronounced in the Open Court on 30-11-2018

Sd/-

(S. S. Ravi)
Judicial Member

Sd/-

(Dr. A.L.Saini)
Accountant Member

Dated:30 -11-2018

*PRADIP (Sr.PS)

Copy of the order forwarded to:

ITA No. 2192/Kol/2017
& CO No. 40/Kol/2018
Ranjit Kumar Saha

1. The Assessee/Revenue : The ACIT, Cir50(1), Kolkata, Uttarapan Market, Ultadanga, Kolkata-54.
2. The Respondent/Assessee; Shri Ranjit Kumar Saha, AE-542, Salt Lake City, Sector-1, Kolkata-64.
3. The CIT-I,
4. The CIT(A)-I,
5. DR, Kolkata Benches, Kolkata

True Copy, By order,

Asst. Registrar
ITAT, Kolkata Benches