

आयकर अपीलीय अधिकरण, सुरत न्यायपीठ, सुरत
IN THE INCOME TAX APPELLATE TRIBUNAL
SURAT BENCH, SURAT
श्री सी.एम.गर्ग, न्यायिक सदस्य तथा श्री ओ.पी.मीना, लेखा सदस्य के समक्ष
BEFORE SHRI C.M.GARG, JUDICIAL MEMBER
AND SHRI O.P.MEENA, ACCOUNTANT MEMBER

आ.अ.सं./I.T.A. No.2211/AHD/2015/SRT
निर्धारण वर्ष/Assessment Year : 2009-10

Shirish P Shah, Ashoka Pavalion-A, Opp.Kapadia Health Club, New Civil Road, Surat.	Vs.	The Income Tax Officer, Ward- 3(1), Surat.
[PAN: ABIPS 4478 F]		
अपीलार्थी Appellant		प्रत्यर्थी/ Respondent

निर्धारिती की ओर से /Assessee by	Shri Hiren R.Vepari - AR
राजस्व की ओर से /Revenue by	Shri Dileep Kumar - Sr.DR

सुनवाई की तारीख/ Date of hearing:	12.10.2018
उद्घोषणा की तारीख/Pronouncement on	14.11.2018

आदेश /O R D E R

PER O. P. MEENA, ACCOUTANT MEMBER:

1. This appeal filed by the Assessee is directed against the order of learned Commissioner of Income Tax (Appeals)-II, Surat(in short “the CIT (A)”) dated 14.05.2015 pertaining to Assessment Year 2009-10 which in turn has arisen from the order passed by the Income Tax Officer, Ward-3(1), Surat(in short “the AO”) dated 28.03.2014 under section 143(3) r.w.s 147 of Income Tax Act,1961 (in short ‘the Act’).

2. Ground No.1 & 2 states that the ld.CIT(A) has erred in treating the business transaction as deemed dividend within the meaning of section 2(22)(e) of the Act without appreciating that purchase and sale transactions between the appellant and the closely held company which resulted in business advances but construing the same as purely loan and advances and thereby erred in confirming action of the AO.

3. The short facts are that it was noticed that the assessee was holding 16.20% shares in M/s.Shripad Conchem Pvt. Ltd., from whom he had received the amount of Rs.1,60,000/- as SCC, Rs.4,10,000/- as loan and Rs.8,78,569/- as loan and advances as per the balance sheet of the Act company. The AO find that the amount of Rs.8,90,000/- was received during the year for which no evidence was furnished regarding the claim of that amount advance was towards the business transactions. The perusal of ledger account revealed that the assessee has been receiving one way payment and there is no evidence indicating any supply of goods or services by the assessee and therefore the amount of Rs.8,78,566/- was treated as deemed dividend and added to the total income.

4. The assessee carried the matter before the CIT(A) wherein it was contended that the whole transaction was done on account of commercial expediency and as the appellant did not have adequate finance, therefore on his request advance were given to the appellant to enable him to start production and supply of goods. It was submitted that this advance was business requirement. The assessee has relied on several case always in support of his contentions. However, the CIT(A) observed that the perusal of the details shows that the claim that the amount received from M/s. Shripad Conchem Pvt. Ltd., is a business advance and not loans is not supported by any evidence. No details of any transaction for which the advance has claimed by him has been furnished. Therefore, the primary onus casted upon the appellant to prove the genuineness of the transaction with supporting evidences is upon the assessee which has not been discharged. It was further observed that it is evident that the appellant had received loan/advances from M/s. Shripad Conchem Pvt. Ltd., in which the appellant was holding 16.20% shares. Therefore, the failure of the appellant to furnish any evidence makes it evident that the transactions between the company and

the appellants falls within the purview of section 2(22)(e) of the Act, therefore, the addition made by the AO of Rs.8,78,569/- was upheld.

5. Being aggrieved, the assessee has filed this appeal before the Tribunal. The Id.Counsel submitted that the assessee was carrying on proprietary business in the name and style of Shripad building product and said unit supply material to Shripad Construction (unit of Shripad Conchem Pvt. Ltd.,) therefore, the whole transactions are made in the ordinary course of business. The assessee has received advances 8.90 lakhs and supplied goods to said unit. Therefore, the whole transaction are done on account of commercial expediency. It was further submitted that the assessee has four current accounts in the books of Shripad Construction (division Shripad Construction Pvt. Ltd.,) the balance in current account no.1) (-)75,400/- in current account 2 Rs.4,10,000/-, current account 3 Rs.8,78,570/- which has been considered as a deemed dividend, u/s.2(22)(e) and current account no.4 showing closing balance Rs.1,35,000/-. The assessee has also filed copy of ledger account at page 3 in respect of loan amount received at Rs.8,90,000/- and balance at Rs.8,78,569/-.

Therefore, it was contended that the amount of Rs.8,90,000/- received during the year was towards mobilization of advances to enabling assessee to make production and supply of goods. Therefore, provision of Section 2(22)(e) are not attracted. It was further submitted that the addition is to be sustained should be out of accumulated profit as adjusted as on the date of receipt on advance and should be to in the ration of shareholding at 16.20% as per the decision of ITAT Pune Bench in the case of Keval Kumar Jain vs. ACIT [2013] 144 ITD 672/37 taxmann.com 248 (Pune Tribunal) (PB, Page 138). Accordingly to which the assessee has filed and working of accumulated profit at Rs.73,37,078/- and current years profit at Rs.3,84,110/-. Accordingly, as per shareholding of 16.20% the accumulated profit has been worked out at Rs.4,19,232/- in which a sum of Rs.1,85,000/- is required to be added, accordingly, the total addition if sustained may be at Rs.6,04,232/-.

6. *Per Contra*, the Id.Senior Departmental Representative supported the order of the Lower Authorities. We have heard the rival submissions and perused the material on record. The perusal of copy of account submitted by the assessee at paper book, page

no.3 shows that the assessee has received a sum of Rs.8,90,000/- during the period from 02.05.2008 to 12.03.2009 and there is no re-payment against this loan nor any adjustment on account of book, entries or sale of goods. Therefore, the contention of the assessee that loan and advances received by the assessee are on account of business advance is not supported by any evidence. Therefore, the Lower Authorities are right in treating the same as loan and advances covered by the definition of section 2(22)(e) of the Act. As far as the contention of the counsel that in the light of decision of Pune Tribunal in the case of Keval Kumar Jain (supra) wherein it was held that while determining amount taxable u/s.2(22)(e), addition has to be restricted to such percentage of accumulated profits as corresponds to assessee's shareholding in company in question. Since the assessee was a shareholder M/s. Shripad Conchem Pvt. Ltd. and was owning 16.20% shares in the company, therefore, the amount of deemed dividend in the light of decision of Co-ordinate Bench of Pune Tribunal in Keval Kumar Jain (supra) be restricted. The ld.Counsel has furnished a working which comes at Rs.6,04,232/- (Rs.4,19,232/- + Rs.1,85,000/-). In view of these facts, the addition to the extent of Rs.8,78,569/- is

reduced to Rs.6,04,232/-. Accordingly, ground no.1 & 2 appeal of the assessee is therefore partly allowed.

7. In the result, appeal of the assessee is partly allowed.

8. The order pronounced in the open court on 14.11.2018.

Sd/-

(सी.एम.गर्ग /C.M. GARG)

न्यायिकसदस्यतथा/JUDICIAL MEMBER

Sd/-

(ओ.पी.मीना/O.P.MEENA)

लेखासदस्यकेसमक्ष /ACCOUNTANT MEMBER

सुरत/ Surat, दिनांक Dated: 14th November, 2018/S.Gangadhara Rao, Sr.PS

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/Guard file of ITAT.

By order

/ / TRUE COPY / /

Assistant Registrar, Surat