

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "SMC" : DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER

ITA.No.4007/Del./2018
Assessment Year 2011-2012

Shri Harsh Dhir, R/o. 14, Navjeevan Vihar, New Delhi – 110 017. PAN ADMPD0596P	vs.	The Income Tax Officer, Ward-10(3), New Delhi.
(Appellant)		(Respondent)

For Assessee :	Ms. Kanik Jain, Advocate.
For Revenue :	Shri S.L. Anuragi, Sr. D.R.

Date of Hearing :	25.02.2019
Date of Pronouncement :	05.03.2019

ORDER

This appeal by assessee has been directed against the order of Ld. CIT(A)-34, New Delhi, dated 27th March 2017, for the assessment year 2011-2012, challenging the addition of Rs.16 lacs on account of deemed dividend under section 2(22)(e) of the Income Tax Act, 1961.

2. The A.O. noted that assessee is a shareholder of M/s. Dhir International Private Limited having substantial interest as per the details filed by the assessee. During the year and consideration, the assessee has received loan and

advance from this company in a sum of Rs.16 lacs on two dates i.e., 4th June, 2010 Rs.11 lacs and on 12th January, 2011, Rs.5 lacs. The A.O. asked the assessee as to why the same be not added on account of deemed dividend under section 2(22)(e) of the Income Tax Act, 1961. The assessee filed the details to explain this issue. The A.O. however, noted that similar details filed in preceding assessment year 2009-2010 before his predecessor and reply of the assessee have not been accepted. The assessing officer, accordingly, made the addition of Rs.16 lacs under section 2(22)(e) of the Income Tax Act, 1961.

2.1. The assessee submitted before the Ld. CIT(A) that these amounts are nothing but repayment. The Ld. CIT(A), however, on the same reasoning as given by the A.O. dismissed the Appeal of assessee.

3. The Learned Counsel for the Assessee, at the outset, submitted that the ITAT, Delhi C-Bench in the case of the same assessee for preceding A.Y. 2009-2010 in ITA No.4940/Del./2012 vide Order dated 21st October, 2014,

deleted the addition. She has submitted that issue is covered by this order of the Tribunal. Copy of the Order of the Tribunal is placed on record and provided to the Ld. D.R. who has merely relied upon the Order of the A.O.

4. After considering the rival submissions of both the parties, I am of the view that the issue is covered in favour of the assessee by the above order of the ITAT, Delhi-C Bench in the case of same assessee for preceding A.Y. 2009-10 (supra), in which, in para 10, the Tribunal decided the issue in favour of the assessee as under :

“The remaining two amounts i.e. Rs.14,50,000/- and Rs.10,50,000/- are debited to another account titled as Harsh Dhir Loan account in the books of DIPL, which is annexed herewith as Annexure 'A'. However, at the time of hearing before us, it is submitted by the learned counsel that the title of the account is factually incorrect and, in fact, all the transactions noted in this account are in respect of cheque discounting by the assessee

through DIPL. That the DIPL had a facility of discounting of cheque with the bank, therefore, the assessee issued cheque in the name of DIPL and they paid the similar amount to the assessee and got the cheque discounted through bank. He pointed out that for each and every transaction, there is a contra entry immediately within a few days and almost every time, the payment made by the assessee is earlier or on the same day. Except in two cases wherein the assessee paid the cheque of Rs.25 lakhs which was repaid by them by two cheques of Rs.14,50,000/- and Rs.10,50,000/-, there is a delay of one day and that is probably because that DIPL delayed the deposit of the assessee's cheque with their bank. On a perusal of this account, we found the contention of the assessee to be correct. For each and every transaction, there is a contra entry almost simultaneously. In most of the cases, the cheque paid by the assessee is a day earlier than

the cheque received from DIPL. However, in respect of Rs.25 lakhs only, we find that the sum of Rs.25 lakhs is credited to the account of the assessee on 17.2.2009 and the payment of Rs.25 lakhs i.e. by two cheques of Rs.14,50,000 and Rs.10,50,000/- is debited to assessee's account on 16.2.2009. Considering these facts, we agree with the assessee's contention that the cheque was given by the assessee simultaneously and it is only a delay of deposit of that cheque by one day by DIPL. Considering the totality of the facts and the arguments of both the sides, in our opinion, the sum of Rs.14,50,000/- and Rs.10,50,000/- cannot be treated to be in the nature of loan and advance so as to treat the same as deemed dividend within the meaning of Section 2(22)(e)".

4.1. In this case the assessee filed the details before A.O. but the A.O. on the same reasoning as given in assessment year 2009-10, rejected the explanation of assessee. No independent reasons have been given by the

A.O. for making the addition. Therefore, the order of the Tribunal is relevant for A.Y. 2009-10 in which similar addition have been deleted. Following the same order, I set aside the orders of the authorities below and delete the entire addition.

5. In the result, appeal of assessee allowed.

Order pronounced in the open Court.

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Delhi, Dated 05th March, 2019

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'SMC' Bench, Delhi
6.	Guard File.

// BY Order //

Assistant Registrar : ITAT Delhi Benches :
Delhi.