

**IN THE INCOME TAX APPELLATE TRIBUNAL
RAJKOT BENCH, RAJKOT
[Conducted through E-Court at Ahmedabad]**

**BEFORE SHRI MAHAVIR PRASAD, JUDICIAL MEMBER And
SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No. 119/RJT/2017
(निर्धारण वर्ष/Assessment Year : 2007-08)

Shri Prakashbhai Dhirubhai Thakkar 49-B, Panchavati Society Street No.3 Kalawad Road, Rajkot	बनाम/ Vs.	The Income Tax Officer Ward-2(2)(5) Rajkot
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAYPT4729R		
(अपीलार्थी/Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से/ Appellant by :	Shri D.M. Rindani, AR
प्रत्यर्थी की ओर से/Respondent by:	Shri Praveen Verma, Sr.DR

सुनवाई की तारीख/ Date of Hearing	13/02/2019
घोषणा की तारीख /Date of Pronouncement	20/02/2019

आदेश / O R D E R

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The captioned appeal has been filed at the instance of the Assessee against the order of the Commissioner of Income Tax (Appeals)-2, Ahmedabad [CIT(A) in short] vide appeal no.CIT(A)-2/0251/2014-15 dated 20/02/2017 arising in the assessment order passed under s.143(3) r.w.s.147 of the Income Tax Act, 1961(here-in-after referred to as "the Act") dated 23/03/2015 relevant to Assessment Year (AY) 2007-08.

2. The assessee has raised following grounds of appeal:-

- 2 -

1. *The learned Commissioner of Income Tax, (appeals)-2, Rajkot has erred in dismissing the appeal and whereby upholding the action taken by the AO for reopening the assessment and passed the order u/s.143(3) r.w.s. 147 of the I T Act is unwarranted, unjustified and bad in law.*
2. *The learned Commissioner of Income Tax, (Appeals)-2, Rajkot has erred in dismissing the appeal and whereby upholding the assessed the total income of Rs.3,59,220/- as against the returned income of Rs.2,44,2290/- is unwarranted, unjustified and bad in law.*
3. *The learned Commissioner of Income Tax, (Appeals)-2, Rajkot has erred in dismissing the appeal and whereby upholding the making the addition within the meaning of section 2(22)(e) of the I T Act as discussed Para 4,5 & 6 of the assessment order and interest income added to the total income amounting to Rs.1,15,000/- is unwarranted, unjustified and bad in law.*
4. *The learned Commissioner of Income Tax, (Appeals)-2, Rajkot has erred in dismissing the appeal and whereby upholding the wrongly mentioned the facts in his body of order vide Para 4, 5 & 6 it is totally against the facts of the case and passed the order and reduced the loss is unwarranted, unjustified and bad in law.*

3. At the time of the hearing, the assessee did not advance any argument challenging the validity of the assessment framed u/s.143(3) r.w.s.147 of the Act. Therefore, we dismiss the same.

4. The only effective issue raised by the assessee is that the Ld.CIT(A) erred in confirming the order of the Assessing Officer by holding the sum of Rs.1,15,000/- as deemed dividend u/s 2(22)(e) of the Act.

- 3 -

5. Briefly stated facts are that the assessee is an individual and drawn his income under the head 'salary'. The assessee is also a Director in a Private Limited Company, namely Parth Laboratories Pvt.Ltd. The assessee is a beneficial owner of shares in such a company holding 10.76% shares of the company. The Assessing Officer during the assessment proceedings found that the assessee has received a sum of Rs.1,15,000/ as a loan from Parth Laboratories Pvt. Ltd. which is deemed dividend as per the provisions of section 2(22)(e) of the Act. Accordingly, the addition was made by the Assessing Officer on account of deemed dividend to the total income of the assessee.

6. The aggrieved assessee preferred an appeal to the Ld.CIT(A). The assessee before the Ld.CIT(A) submitted that it had taken the loan from the company in the earlier years for house construction. At that relevant time, the net worth of the company was negative. Therefore, the same cannot be treated as deemed dividend u/s 2(22)(e) of the Act.

7. However, the Id.CIT(A) rejected the contention of the assessee by observing as under:

“Having considered facts and circumstances of the case I find that assessee has not been able to controvert the facts that the assessee had taken loan of Rs.1,15,000/- from the said company during the year, her share holding was 10.67%, and that the company had accumulated profits. The contention of assessee regarding loans in 1994-95 to 1995-96 and company having losses at that time is not relevant during the current year. The assessee has thus failed to show how the said loan did not attract provisions of Section

- 4 -

2(22)(e). In my considered opinion the contentions of the assessee are not tenable and action of A.O. calls for no interference. The Ground of appeal is rejected.”

8. Being aggrieved by the order of Ld.CIT(A), the assessee is now in appeal before us.

9. The Ld.AR before us filed a paper-book running from page Nos.1 to 6 and submitted that the assessee had not taken any loan from the company during the year. Therefore, the same cannot be treated as income of the assessee. The Ld.AR in support of his contention drew our attention on the copies of the ledger for the period 01-04-2004 to 31-03-2010 which are available in record.

10. On the other hand, the Ld.DR vehemently supported the orders of the authorities below.

11. We have heard the rival contentions and perused the material available on record. There is no ambiguity that the provisions of section 2(22)(e) of the Act will be applied in the year in which the specified person has taken a loan from the company. The Ld.AR before us first time has taken a plea that the assessee has not received any loan during the year. As per the Ld.AR, the loan was taken in the earlier years and in the year under consideration part of it was re-paid.

12. On perusal of the paper-book, we note that all these details of the loan were available before the authorities below, but the plea that the

- 5 -

loan was taken in the earlier years was not taken before the authorities below. On perusal of the order of Ld.CIT(A), we note that the assessee has received loan during the year. Thus, we are of the view that the facts of the case are not very clear. Therefore, we are inclined to restore this issue to the file of Assessing Officer for fresh adjudication as per the provisions of law. We also direct that if the assessee has not taken any loan during the year from the company, then no addition on account of deemed dividend is warranted. Hence, the ground of appeal of the assessee is allowed for statistical purposes.

13. In the result, the appeal of the assessee is partly allowed for statistical purposes.

This Order pronounced in Open Court on	20 /02/2019
---	--------------------

Sd/-
(MAHAVIR PRASAD)
JUDICIAL MEMBER

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER

Ahmedabad; Dated 20/02/2019

- 6 -

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-2, Rajkot
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण,राजोकट/DR,ITAT, Rajkot
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER.

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, राजोकट / ITAT, Rajkot