

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : SMC : NEW DELHI

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER

ITA No.6938/Del/2017
Assessment Year: 2013-14

Madhulika Makkar,
5/5 West Patel Nagar,
New Delhi.

Vs. DCIT,
Circle 10(1),
New Delhi.

PAN: AAVPM9680M

(Appellant)

(Respondent)

Assessee by	:	Shri Tarun Rohtagi, CA
Revenue by	:	Shri Amit Jain, Sr.DR
Date of Hearing	:	13.03.2019
Date of Pronouncement	:	15.03.2019

ORDER

This appeal by the assessee is directed against the order dated 14th September, 2017 of the CIT(A)-17, New Delhi, relating to Assessment Year 2013-14.

2. Facts of the case, in brief, are that the assessee is an individual and is engaged in the business of placement services under the name and style of M/s Resource Angle. She filed her return of income on 29th September, 2013 declaring nil income. The Assessing Officer, during the course of assessment proceedings observed that the assessee has shown to have received payments/loans of substantial amount. To verify the genuineness of the same, the details of the entities were sought which extended unsecured loan to the assessee. From the various details furnished by the assessee, the

Assessing Officer noted that M/s Mirus Solutions Pvt. Ltd. in which the assessee is a director holding 49% of share has extended the total payment of loan of Rs.40,74,177/- during the year to the proprietorship concern of the assessee, namely, M/s Resource Angle. In addition to this, the sister concern M/s Mirus Solutions Pvt. Ltd. has made payment of Rs.41 lakhs to M/s Resource Angle, proprietor Mrs. Madhulika Makar under the head 'Infrastructure service' extended to the company as per the agreement dated 28th March, 2012. From the details furnished by the assessee, the Assessing Officer further noted that the accumulated reserves and surplus of M/s Mirus Solutions at the end of the F.Y. 31.03.2012 is Rs.40,67,017.62. He, therefore, asked the assessee to explain as to why the provisions of section 2(22)(e) of the Act is not applicable. Rejecting the various explanations given by the assessee and invoking the provisions of section 2(22)(e), the Assessing Officer made addition of Rs.40,67,018/- to the total income of the assessee.

3. Before the CIT(A), it was argued that these are all trade advances, therefore, the provisions of section 2(22)(e) is not applicable. It was argued that M/s Resource Angle had entered into an agreement with M/s Mirus Solutions Pvt. Ltd. for providing infrastructure support services. During the relevant previous year invoices for Rs.41 lac were raised by M/s. Resource Angle on M/s. Mirus Solutions Pvt. Ltd. The said income was offered to tax by the appellant in the return of income. Rs.40,74,177/- was received as advance during the year, Rs.8,00,844/- was directly credited to M/s. Mirus Solutions Pvt. Ltd. client account. Out of Rs.40,74,177/-, Rs.30,86,480/- was directly adjusted towards invoices and only Rs.9,87,697/- was remaining in the advance account at the end of the year

and this amount was adjusted against invoices based in subsequent years. The appellant has further claimed that only a payment of Rs.40,74,177/- has been made by M/s. Mirus Solutions Pvt. Ltd. and no service charges of Rs.41 lac has been paid by M/s. Mirus Solutions Pvt. Ltd. to M/s. Resource Angle. The appellant has also given the details of the expenses incurred by M/s. Resource Angle in providing services to M/s. Mirus Solutions Pvt. Ltd. The appellant has further placed reliance on CBDT Circular No. 19/2017 dated 12.06.2017 as per which advances paid which are in the nature of commercial transactions would not fall within the embed of word 'advance' in section 2(22)(e) of the Act.

3.1 However, the Id.CIT(A) while accepting that these are trade advances, sustained an amount of Rs.9,87,697/- which is the amount outstanding at the end of the year. To be very precise, the relevant observations of the CIT(A) at page 12 of the order reads as under:-

“On the basis of above detailed discussion, judicial pronouncements and after carefully considering the rival submissions, I am of the considered opinion that as section 2(22)(e) of the Act is a deeming provision its provisions are to be strictly construed. Further, at the end of the year there is a debit balance in the account amounting to Rs.9,87,697/-. The advance from Mirus account shows loan taken- from M/s Mirus Solutions amounting to Rs.40,74,177/- and then adjustment against invoice on 29.09.2012 of Rs. 10,64,000 and adjustment against loan of Rs.20,22,480/- on 31.03.2013, leaving a debit balance of Rs.9,87,697/- in the account. Though, there is no provision for trade advance in the agreement, however, even if benefit of doubt is given to the appellant, even then, only the amount adjusted during the same financial year can be treated as trade advance. The closing balance remaining at the end of the year can by no stretch of imagination be taken as a trade advance. Considering the above, the amount of Rs.9,87,697/- out of addition of Rs.40,74,177/- made by the AO squarely falls within the strict definition of section 2(22)(e). The addition is, therefore, partly confirmed and this ground of appeal is partly allowed.”

4. Aggrieved with such order of the CIT(A), the assessee is in appeal by raising the following grounds:-

“1. The Hon'ble CIT(A) erred on facts and in law in upholding the addition to the extent of Rs.9,87,697/- made by the Assessing Officer under section 2(22)(e) of the Income Tax Act ('the Act')

2. The Hon'ble CIT(A) erred on facts and in law in not appreciating that the aforesaid amount was in the nature of trade advance and did not constitute deemed dividend in terms of section 2(22)(e) of the Act.”

5. The Id. counsel for the assessee, at the outset, relying on the following decisions submitted that these are trade advances and, therefore, the provisions of section 2(22)(e) of the Act are not applicable:-

- (i) CIT vs. Creative Dyeing and Printing Pvt. Ltd., 318 ITR 476 (Del);
- (ii) CIT vs. Raj Kumar, 318 ITR 462 (Del);
- (iii) Pradeep Kumar Malhotra vs. CIT, 338 ITR 538 (Cal);
- (iv) CIT vs. Ambassador Travels Pvt. Ltd., 318 ITR 376 (Del); and
- (v) CIT vs. Arvind Kumar Jain, 18 taxmann.com 132 (Del).

6. Referring to CBDT Circular No.19/2017 dated 12th June, 2017, he submitted that the CBDT in the said Circular has held that trade advances which are in the nature of commercial transactions would not fall within the ambit of the word 'advance' in section 2(22)(e) of the IT Act. He accordingly submitted that this being a covered matter in favour of the assessee, the addition sustained by the CIT(A) should be deleted. The Id. counsel for the assessee further referring to various pages of the paper book, submitted that the above advance has specifically been adjusted against the bills raised in the subsequent year.

7. The Id. DR, on the other hand, heavily relied on the order of the CIT(A).

8. I have considered the rival arguments made by both the sides and perused the orders of the authorities below. I have also considered the various decisions cited by the Id. counsel for the assessee. I find the Assessing Officer, in the instant case, has made addition of Rs.40,74,177/- to the total income of the assessee by invoking the provisions of section 2(22)(e) of the Act on the ground that the assessee has received advances of Rs.40,74,177/- as loan from M/s Mirus Solutions Pvt. Ltd., wherein the assessee is substantial shareholder holding 49% of the shareholding. I find the Id.CIT(A) considered the amount as trade advance and after considering the amount declared by the assessee during the year towards the bills raised, restricted the addition to Rs.9,87,697/- which was the closing balance remaining at the end of the year. In the process, he rejected the claim of the assessee that the above amount represents trade advance. It is the submission of the Id. counsel for the assessee that the entire amount received from M/s Mirus Solutions Pvt. Ltd., have been adjusted subsequently against bills raised by the assessee and, therefore, these are all trade advances. Even the balance outstanding at the end of the year has also been adjusted in the subsequent bills raised by the assessee towards services provided.

9. I find merit in the above arguments advanced by the Id. counsel for the assessee. The CBDT vide Circular No.19/2017 dated 12th June, 2017 issued the circular to the extent that trade advances, which are in the nature of commercial

transactions would not fall within the ambit of the word 'advance' in section 2(22)(e) of the Act. The Hon'ble Delhi High Court in the case of *Creative Dyeing and Printing Pvt. Ltd.* (supra) has held that amounts advanced for business transaction do not fall within the definition of deemed dividend u/s 2(22)(e) of the IT Act. The Hon'ble Delhi High Court in the case of *CIT vs. Arvind Kumar Jain* (supra) has held that amount received by the assessee shareholder from a company as a result of trading transaction could not be regarded as deemed dividend merely because it had been shown as unsecured loan in assessee's books of account. The various other decisions relied on by the Id. counsel for the assessee also supports his case. Since the Id.CIT(A) has given a finding that the amount received by the assessee are trade advances for which substantial relief has already been granted and the Revenue was not in appeal before the same, therefore, for the balance trade advance also the provisions of section 2(22)(e), in my opinion, is not applicable. Accordingly, the order of the CIT(A) is set aside and the grounds raised by the assessee are allowed.

10. In the result, the appeal filed by the assessee is allowed.

The decision was pronounced in the open court on 15.03.2019.

Sd/-
(R.K. PANDA)
ACCOUNTANT MEMFBER

Dated: 15th March, 2019

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1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi