

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC": NEW DELHI**

BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER

ITA No. 3339/Del/2018
Assessment Year 2014-15

| | | |
|---|-----|------------------------------|
| Estee Advisors P. Ltd. 8 th Floor, Block-1, Vatika Business Park, Sector-49, Sohna Road, Gurgaon Haryana, Pin : 122001 PAN AABCE9657R | Vs. | DCIT, Circle-1(1) Gurgaon |
| (Appellant) | | (Respondent) |

| | |
|-----------------------|---------------------------|
| Assessee by: | Shri Sanjeev Kapoor, CA |
| Department by : | Shri S.L. Anuragi, Sr. DR |
| Date of Hearing | 07/01/2019 |
| Date of pronouncement | 25/03/2019 |

ORDER

The aforesaid appeal has been filed by the assessee against impugned order dated 28.2.2018, passed by Ld. CIT(Appeals) Gurgaon for the quantum of assessment passed u/s 143(3) for the assessment year 2014-15. The assessee is aggrieved by addition of Rs. 6,42,347/- made by the AO as deemed dividend u/s 2(22)(e).

2. The brief facts qua the issue involved are that, Ld. AO during the course of assessment proceedings noted that assessee has raised following sums from its subsidiary company, M/s. Estee Commodities Pvt. Ltd. in which assessee company was having shareholding of more than 10% of the equity shares: -

- Loan amounting to Rs. 3,21,00,000/-
- Technical fees amounting to Rs. 2,56,72,665/-
- Lease Hire charges amounting to Rs. 5,39,328/-

3. In response, to the show cause notice, the assessee submitted that M/s. Estee Commodities Pvt. Ltd. has accumulated losses of Rs. 58.25 lacs as on 31.3.2014, therefore, there is no occasion for invoking the provision of deemed dividend. Ld. AO then asked the assessee to furnish balance sheet and profit and loss account of the subsidiary company for the financial year 2012-13 and 2013-14. On perusal of the same, Ld. AO noted that as on 31.3.2013, Company had reserve and surplus of Rs. 73,62,347/- and therefore deemed dividend has been restricted to the said amount.

4. Ld. CIT(A) held that out of the reserve and surplus amount of Rs. 73,62,347/-, sum of Rs. 67,20,000/- was securities premium reserve and hence only Rs, 6,42,347/- was an opening balance of the surplus as on 31.3.2014 and therefore, he restricted the addition to the extent of Rs. 6,42,347/-.

5. After hearing both the parties and on perusal of the impugned orders, I find that both the authorities have taken the figures of 'reserves and surplus' as on 31st March, 2013, instead of 31st March, 2014 which is relevant for the assessment year 2014-15. The balance sheet showing reserve and surplus of the subsidiary company M/s. Estee Commodities Private Limited as on 31st March, 2013, and as of 31st March, 2014 were as under: -

| <i>Particulars</i> | <i>As at 31st March 2014</i> | <i>As at 31st March 2013</i> |
|---|---|---|
| <i>Securities Premium Reserve</i> | 67,20,000 | - |
| <i>Surplus – Opening balance</i> | 6,42,347 | (-)2,99,948 |
| <i>Add: Net (loss /Profit-transferred from Statement of Profit and Loss</i> | (-)64,69,743 | 9,42,295 |
| <i>Surplus – Closing balance</i> | (-)58,27,396 | 6,42,347 |

6. While invoking the deeming fiction of deemed dividend u/s 2(22)(e), what is required to be seen is that, any such payment which falls within the scope and ambit of clause (e) of sub section 22 of section 2 that it should be to the extent of accumulated profits. *Explanation 2* provides that accumulated profits shall include all the profits of the company upto the date of distribution of payment. If deemed dividend is being taxed in this year, then accumulated profits has to be seen on the date of distribution of the dividend i.e., in the year in which provision of deemed dividend has been invoked. When, assessee had accumulated loss during the year, then no addition on account of deemed dividend can be made in this year. On this ground alone, the addition sustained by the Ld. CIT(A) is directed to be deleted.

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

Order pronounced in the open court on 25th March, 2019.

sd/-

**(AMIT SHUKLA)
JUDICIAL MEMBER**

Dated: 25/03/2019

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1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi