



**IN THE INCOME TAX APPELLATE TRIBUNAL "D", BENCH
MUMBAI**

**BEFORE SHRI C.N. PRASAD, JM
&
SHRI M.BALAGANESH, AM**

**ITA No.6004/Mum/2018
(Assessment Year :2012-13)**

**SA No.124/Mum/2019
(Arising Out of ITA No.6004/Mum/2018)
(Assessment Year :2012-13)**

M/s. Rajeshri Realtors F-803, Pruthvi Classic Modi Park, Irani Wadi No.3, Kandivali (W) Mumbai – 400067	Vs.	Assistant Mumbai Room No.606, 6 th Floor C-12, Pratyaksh Kar Bhavan Bandra Kurla Complex Mumbai - 400051	CIT-33(3),
PAN/GIR No. AAHFR2341E			
(Appellant)	..	(Respondent)	

Assessee by	Shri Ravi Sawana & Shri Sanmati Raonka
Revenue by	Shri A.K. Srivastava
Date of Hearing	10/04/2019
Date of Pronouncement	24/04/2019

आदेश / O R D E R

PER M. BALAGANESH (A.M.):

ITA No.6004/Mum/2018

This appeal in ITA No.6004/Mum/2018 for A.Y.2012-13 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-45, Mumbai in appeal No. CIT(A)-45/ACIT-33(3)/ITA-220/2015-16 dated

09/07/2018 (Id. CIT(A) in short) against the order of assessment passed u/s.143(3) of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 31/03/2015 by the Id. Assistant Commissioner of Income Tax-33(3), Mumbai (hereinafter referred to as Id. AO).

2. The only issue to be decided in this appeal is as to whether the Id. CIT(A) was justified in confirming the addition made towards deemed dividend u/s. 2(22)(e) of the Act in the facts and circumstances of the case.

3. The brief facts of this issue are that the assessee is a partnership firm, engaged in the business as builder and property developer. It has shown income from business in the return income declaring total income of Rs.35,85,795/- in the return filed on 13/09/2012. The Id. AO on perusing the books of accounts of the assessee in the course of assessment proceedings observed that assessee being a partnership firm had received fresh loan of Rs.2,84,78,891 from M/s. Rajeshri Build Craft Pvt. Ltd., On further enquiry, it was revealed that three partners of the assessee firm held 11% shares each in said private limited company. It is not in dispute that the partners of the assessee firm were holding substantial interest in the said assessee firm also. Accordingly, the Id. AO by placing reliance on the decision of Hon'ble Delhi High Court in the case of M/s. National Travel Services reported in 249 CTR 540 (Del) held that the provisions of u/s.2(22)(e) of the Act are directly applicable to the facts of the instant case and accordingly treated the loan amount of Rs.2,84,78,891/- as deemed dividend after satisfying that the lending company had sufficient accumulated profits as per its latest audited balance sheet. The action of the Id. AO was upheld by the Id. CIT(A).

4. Aggrieved, the assessee is in appeal before us.

5. We have heard rival submissions. We find that the issue under dispute is squarely covered by the decision of Hon'ble Jurisdictional High Court in the case of CIT vs. Universal Medicare Pvt. Ltd., reported in 324

ITR 263 (Bombay) wherein it was categorically held that the deemed dividend could be taxed only in the hands of the registered shareholder cum beneficial shareholder. Admittedly, the assessee firm is not a shareholder in M/s. Rajeshri Build Craft Pvt. Ltd., i.e. a lending company. Hence, the provisions of 2(22)(e) of the Act could not be made applicable in the instant case. We also find that the Hon'ble Delhi High Court in the case of CIT vs. Ankitech (P) Ltd., reported in 340 ITR 14(Del) had upheld the same view and that the said decision was approved by the Hon'ble Supreme Court in the case of CIT vs. Madhur Housing and Development Company along with other civil appeals in respect of various persons vide Civil Appeal No.3961/2013 dated 05/10/2017. In this decision, the Hon'ble Supreme Court held that the entire provisions of Section 2(22)(e) had been elaborately dealt with by the Hon'ble Delhi High Court in the case of CIT(A) vs. Ankitech (P) Ltd., referred to supra and completely endorsed the observations of Hon'ble Delhi High Court. We find that the decision relied upon by the revenue in the case of yet another Delhi High Court's decision in the case of M/s. National Travel Services was rendered in the context of the first limb of provisions of Section 2(22)(e) of the Act, whereas the facts before us are falling in second limb of the evidences of Section 2(22)(e) of the Act. Hence, the decision relied upon by the Id. DR is not applicable to the facts of the instant case.

5.1. The Id. AR also placed on record a copy of appellate order passed by the Id. CIT(A)-41, Mumbai in appeal No.CIT(A)-41/IT-126/15-16 dated 01/08/2016 in the case of yet another partnership firm falling within the same group of the assessee in the same set of facts in the context of addition made against deemed dividend from the very same lending company i.e., M/s. Rajeshri Build Craft Pvt. Ltd., wherein the Id. CIT(A) deleted the addition made towards deemed dividend u/s.2(22)(e) of the Act by placing reliance on the decision of Hon'ble Jurisdictional High Court in the case of Universal Medicare Pvt. Ltd., supra among other decisions.

The Id. AR stated that against this order of Id. CIT(A), no appeal was preferred by the revenue before this Tribunal. This fact was not controverted by the Revenue before us.

5.2. In view of the aforesaid observations and respectfully following the aforesaid judicial precedents relied upon hereinabove, we direct the Id. AO to delete the addition made in the hands of the assessee firm towards deemed dividend u/s.2(22)(e) of the Act in the facts and circumstances of the instant case. Accordingly, the grounds raised by the assessee are allowed.

6. In the result, appeal of the assessee is allowed.

S.A.No.124/Mum/2019

This stay application arose out of ITA No.6004/Mum/2018.

7. Since the appeal of the assessee is allowed, the stay petition preferred by the assessee is dismissed as infructuous.

8. In the result, appeal of the assessee is allowed and stay application is dismissed as infructuous.

Order pronounced in the open court on this 24/04/2019

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

Mumbai; Dated 24/04/2019
Karuna Sr.PS

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

सत्यापित प्रति //True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai