



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

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

**ITA No.6131/Mum/2017 & 6132/Mum/2017
(Assessment Year :2012-13 & 2013-14)**

Dy. Commissioner of Income Tax – 11(1)(1), Mumbai, Room No.204, Aayakar Bhavan, M.K.Marg Mumbai – 400 020	Vs.	M/s. Ritika Hotels Pvt. Ltd., Amar Mahal, Anand Rao Devle Road, Juhu, Mumbai – 400 049
PAN/GIR No. AABCR0837Q		
(Appellant)	..	(Respondent)

Revenue by	Shri D.G. Pansari
Assessee by	Shri D.C. Jain
Date of Hearing	09/04/2019
Date of Pronouncement	24/04/2019

आदेश / O R D E R

PER M. BALAGANESH (A.M):

These appeals in ITA Nos.6131/Mum/2017 & 6132/Mum/2017 for A.Y.2012-13 & 2013-14 arise out of the order by the Id. Commissioner of Income Tax (Appeals)-18, Mumbai in appeal No.CIT(A)-18/IT-179/AC-11(1)(1)/15-16 dated 28/06/2017 (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 27/03/2015 by the Id. Assistant Commissioner of Income Tax-11(1)(1), Mumbai (hereinafter referred to as Id. AO). Since identical issues are involved in these appeals,

they were heard together and are being disposed off by this consolidate order, for the sake of convenience. The facts of A.Y.2012-13 are taken up for adjudication and the decision rendered thereon would apply with equal force for A.Y.2013-14 also except with variance in figures.

2. The first issue involved in this appeal is with regard to deletion of disallowance u/s.14A of the Act by the Id. CIT(A).

2.1. We have heard the rival submissions. We find that the Id. CIT(A) had deleted the disallowance made by the Id. AO u/s.14A of the Act on the ground that assessee has not earned any exempt income during the year under consideration. It is now well settled by the Hon'ble Supreme Court in the case of Essar Teleholdings Ltd reported in 401 ITR 445 (SC) that no disallowance u/s.14A of the Act could be made when there is no exempt income claimed by the assessee. Hence, we do not find any infirmity in the order of Id. CIT(A) in this regard. Accordingly Ground No.1 raised by the revenue for both the years is dismissed.

2.2. The next common issue to be decided in this appeal is as to whether the Id. CIT(A) was justified in deleting the addition made u/s.41(1) of the Act in the facts and circumstances of the case.

3. The brief facts of this issue are that the assessee is a builder and developer and deriving both business income as well as rental income. During the course of assessment proceedings, the assessee was required to furnish party wise details of various sundry creditors shown in the balance sheet together with the movement of those creditors giving break-up of opening balance, purchases made during the year, payments made during the year and closing balance. The same was duly produced before the Id. AO and the Id. AO observed that in respect of 19 parties there was no movement in the accounts of those creditors because opening and closing balance were remaining same and accordingly, he came to the conclusion that those creditors ceased to exist as on the balance sheet date. Accordingly, the Id. AO invoked provisions of Section

41(1) of the Act and made an addition of Rs.75,17,483/- in the assessment for want of supporting documentary evidences from the side of the assessee and for not proving the fact that the said liabilities still exist on the balance sheet date.

3.1. Before the Id. CIT(A), the assessee pleaded that it had not claimed any allowance or deduction in respect of those sundry creditors reflected by the assessee. It was also pleaded that no benefit was obtained in respect of such liabilities and there was no cessation of remission thereon during the year. Those liabilities still continue to remain as payable on the balance sheet date. It was also pleaded that those sundry creditors pertain to capital supplies made by those parties to the assessee for construction of building for educational trust i.e., Sai baba Educational Trust at Thane as well as construction of Suraj Plaza at Thane. It was pleaded that both the projects were under construction and the expenses incurred thereon were reflected in 'work in progress' account from year on year and no expenses thereon were claimed as revenue expenditure either by the assessee in the return or have been allowed in the assessment proceedings in the earlier year by the revenue. Accordingly, it was pleaded that the provisions of Section 41(1) of the Act could not be made applicable to the facts of the instant case. The Id. CIT(A) duly appreciated the said fact that no deduction was claimed by the assessee in the earlier years. The Id. CIT(A) also further observed that merely because a particular liability is barred by limitation it cannot be said that it ceased to exist. He further held that the provisions of Section 41(1) of the Act could be applied only when the assessee unilaterally expressed its intention not to pay the dues either due to limitation of time or due to any other reason even when the same was demanded by the concerned sundry creditors. With these observations, he deleted the addition made u/s.41(1) of the Act.

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

5. We have heard rival submissions. We find that the factual finding given by the Id. CIT(A) as reiterated hereinabove were not controverted by the revenue before us. It is not the case of the revenue that the assessee had claimed deduction or allowance in the earlier years with regard to these sundry creditors. It is not in dispute that these sundry creditors pertain to capital account transactions and hence, does not fall within the ambit of a trading liability of the assessee. Hence, we hold that the Id. CIT(A) had rightly deleted the addition made u/s.41(1) of the Act in the facts and circumstances of the case. Accordingly, the ground Nos. 2 & 3 raised by the revenue for both the years are dismissed.

6. Accordingly, the appeal of the revenue for A.Y.2012-13 is dismissed.

7. The next issue to be decided in the appeal of the revenue for A.Y.2013-14 is as to whether the Id. CIT(A) was justified in deleting the addition made towards deemed dividend u/s.2(22)(e) of the Act in the facts and circumstances of the case.

8. The brief facts of this issue are that the Id. AO observed that the assessee company had received loan of Rs.34,00,000/- from Muchhala Magic Land Pvt. Ltd. The assessee was asked to provide the shareholding pattern, return of income, computation of income and audit report of Muchhala Magic Land Pvt. Ltd. From the details so filed by the assessee, the Id. AO observed that Mr. Arunkumar J Muchhala is holding 32.18% of shares of Rithika Hotels Pvt. Ltd., i.e., the assessee company and was also holding 32% shares in Muchhala Magic Land Pvt. Ltd. The Id. AO also observed that as on 31/03/2012, Muchhala Magic Land Pvt. Ltd. had accumulated profits of Rs.5,25,64,264/- and as on 31/03/2013 of Rs.3,02,70,140/-. Accordingly, the Id. AO held that all the conditions prescribed in para 10.3 of Circular No.495 were duly complied with by the assessee and hence, the loan of Rs.34,00,000/- received by the assessee

from Muchhala Magic Land Pvt. Ltd., is to be treated as deemed dividend u/s. 2(22)(e) of the Act and accordingly, the Id. AO added the same to the total income of the assessee.

9. The assessee before the Id. CIT(A) stated that it has a current account with Muchhala Magic Land Pvt. Ltd., wherein there is an opening debit balance of Rs.32,26,000/- and there was a receipt of Rs.50,000 during the year and the closing balance stood at Rs.31,76,000/-. The copy of ledger account of the assessee in the books of Muchhala Magic Land Pvt. Ltd was filed. It was specifically stated that assessee company was not holding any shares in Muchhala Magic Land Pvt. Ltd., i.e., the lending company, in support of which, the assessee company produced the entire list of share holders of Muchhala Magic Land Pvt. Ltd. It was specifically pleaded that in order to attract the provisions of Section 2(22)(e) of the Act, the payment should be made to a shareholder being a person who is beneficial holder of shares and who has a substantial interest in the company having minimum 10% of voting power thereon. Reliance in this regard was placed on the decision of Hon'ble Jurisdictional High court in the case of CIT vs. Universal Medicare (P) Ltd., reported in 324 ITR 263 (Bom).

10. The Id. CIT(A) on perusal of the list of shareholders of Muchhala Magic Land Pvt. Ltd., observed that assessee company is not holding any shares in the said company. Hence, he held that the provisions of Section 2(22)(e) of the Act cannot be applied to the facts of the instant case. He also placed reliance on the decision of the Co-ordinate Bench of Kolkata Tribunal in the case of Gayatri Chakraborty vs. ITO wherein it was held that a loan account is different from current account and in the instant case, the assessee had maintained current account transactions with Muchhala Magic Land Pvt. Ltd., and hence the provisions of Section 2(22)(e) of the Act could not be attracted thereon. With these

observations, he deleted the additions made towards deemed dividend u/s.2(22)(e) of the Act in the sum of Rs.34 lakhs for the A.Y.2013-14.

11. Aggrieved, revenue is in appeal before us.

12. We have heard rival submissions. The Id. DR before us vehemently argued that Muchhala Magic Land Pvt. Ltd., is not engaged in the business of lending. Hence, the observation made by the Id. CIT(A), that assessee had maintained current account transactions with it and that the loan account is different from current account, is incorrect. He argued that the provisions of the Income Tax Act does not bifurcate between the two. Per contra, the Id. AR vehemently relied on the order of the Id. CIT(A). We find that there is no need in the facts of the instant case to look into the dispute as to whether the assessee had maintained a current account with Muchhala Magic Land Pvt. Ltd.,(lending company) and that the provisions of Section 2(22)(e) of the Act could indeed be made applicable to the same as the assessee had been given relief by the Id. CIT(A) on the ground that it was not holding any shares in the lending company. In our considered opinion, that this is a primary condition to be satisfied in order to invoke the provisions of Section 2(22)(e) of the Act. Reliance in this regard is placed on the decision of Hon'ble Delhi High Court in the case of CIT vs Ankitech (P) Ltd & Ors reported in 340 ITR 14 (Del) which in turn followed the decision of Hon'ble Jurisdictional High Court in the case of CIT vs Universal Medicare (P) Ltd reported in 324 ITR 263(Bom). We also find that the decision of Hon'ble Delhi High Court in the case of Ankitech P Ltd had been approved by the Hon'ble Supreme Court in the case of CIT Delhi vs Madhur Housing and Development Company in Civil Appeal No. 3961 of 2013 along with other civil appeals vide order dated 5.10.2017 by fully endorsing the views of the Hon'ble Delhi High Court supra. Accordingly, we hold that assessee company is

not a shareholder in the lending company and hence, the provisions of Section 2(22)(e) of the Act cannot be made applicable in the facts of the instant case. We find that the Id, CIT(A) had rightly deleted the addition in this regard. Accordingly, ground No.4 raised by the revenue for the A.Y.2013-14 is dismissed.

13. Ground No.4 & 5 for A.Y.2012-13 and ground No.5 & 6 for A.Y 2013-14 raised by the revenue are general in nature and does not require any specific adjudication. Accordingly both the appeals of the revenue are dismissed.

14. In the result, appeals of the revenue are dismissed.

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

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

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

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

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.

BY ORDER,

सत्यापित प्रति //True Copy//

(Asstt. Registrar)
ITAT, Mumbai