

आयकर अपील अाधिकरण, अहमदाबाद ँयायपीठ
IN THE INCOME TAX APPELLATE TRIBUNAL,
"C" BENCH, AHMEDABAD

BEFORE, SHRI WASEEM AHMED, ACCOUNTANT MEMBER

And

SHRI MAHAVIR PRASAD, JUDICIAL MEMBER

आयकर अपील सं./ITA No.832/AHD/2016

अाधरण वष/Asstt. Year: 2009-2010

Prima Automation (India) Pvt. Ltd., Plot No.793 & 810, Santej Village, 3 Km from Science City, Sola-Santej Road, Ahmedabad-382721 PAN: AABCP6889L	Vs.	D.C.I.T, TDS Circle, Ahmedabad.
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(Applicant)		(Respondent)
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Assessee by :	Shri G.C. Pipara, A.R
Revenue by :	Shri L.P. Jain, D.R

सुनवाई का ताराख/Date of Hearing : 14/03/2019

घोषणा का ताराख /Date of Pronouncement: 25/04/2019

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)-8, Ahmedabad [Ld.CIT(A) in short], dated 20/01/2016 arising in the matter of assessment order passed under s. 201(1A) of the Income Tax Act, 1961 (here-in-after referred to as "the Act") dated 11/02/2015 relevant to Assessment Year (AY) 2009-10.

The assessee has raised the following grounds of appeal:

- 1. The learned CIT(A) has erred in law and on facts in confirming the order u/s.201(1A) passed by the Ld. A.O. in respect of loan of Rs.27,04,476/- extended to Shri Vinod V. Patel , u/s.2(22)(e) of the Act and concluded that the appellant company was liable for TDS u/s.194 of the Act and accordingly demand u/s.201(l) and interest thereon u/s.201(1A) has been raised, without proper appreciation of fact of the case. In view of facts and elaborate submissions filed coupled with settled legal position, the impugned demand raised u/s.201(l) and interest thereon u/s.201(1A) requires to be deleted.*
- 2. The learned CIT(A) has further erred in not appreciating the fact that the AO while passing the order u/s. 143(3) of the Act in the case of the Shri Vinod V. Patel, the AO has not made any addition of Rs.27,04,475/- u/s.2(22)(e) in his hand, the question of treating the appellant as an "Assessee in Default" u/s.201(l) of the Act for the said amount and charging of interest u/s.201(1A) of the Act does not arise at all.*
- 3. The learned CIT(A) has erred in not appreciating the fact that the transactions with Shri Vinod V. Patel and debit balance arising during the year is on the normal business transactions and cannot be treated as loan to Shri Vinod V. Patel by the company so as to warrant of provision of section 2(22)(e) of the Act, and therefore there is no violation of section 201(1A) of the Act. Thus the impugned demand requires to be cancelled.*

The appellant craves leave to add, amend, alter, modify or delete any of the above grounds as well as to submit additional grounds at the time of hearing of the appeal.

The issue raised by the assessee is that the Ld. CIT (A) erred in confirming the order of the AO u/s 201(1) read with section 201(1A) of the Act on account of non-deduction of TDS u/s 194 of the Income Tax Act.

2. The facts of the case are that the assessee is a Private Limited Company. The assessee during the year under consideration has extended the loan to Shri Vinod V Patel amounting to Rs. 27,04,476/- who is holding 44%

shares in assessee company. The AO accordingly treated the loan as deemed dividend u/s 2(22)(e) of the Act.

2.1 The AO after treating the deemed dividend as per the provision of section 2(22)(e) further observed that the provision of section 194 of the Act, has been attracted. As such under the provision of section 194 of the Act dividend includes deemed dividend.

In view of the above, the AO considered the assessee as assessee in default u/s 201(1) r.w.s. 201(1A) of the Act due to non deduction of TDS u/s 194 r.w.s. 2(22)(e) of the Act.

2.2 Accordingly, the AO issued show cause notice to the assessee with respect to the above facts. The assessee in reply submitted that the assessment proceedings of Shri Vinod V Patel is pending before the concerned assessing authorities and the respective authorities till now has not made any addition in the income of Shri Vinod V Patel as deemed dividend u/s 2(22)(e) of the Act. Accordingly, the assessee contended that until and unless the AO makes the addition to the total income of Shri Vinod V Patel in the assessment proceedings, the loan amount should not be treated as deemed dividend u/s 2(22)(e) of the Act.

Therefore, the assessee pleaded that as per the provision of section 201(1) and 201(1A) of the Act the assessee should not be considered as assessee in default.

2.3 However the AO disagreed with submissions of the assessee by observing that the proceedings under chapter XVIII-B of the I.T. Act are

independent proceedings. Hence the AO finally treated the assessee as assessee in default and calculated the liability as detailed under:

<i>Nature of Payment</i>	<i>Amount Paid</i>	<i>TDS @ 22.66% u/s 194 (including Edu Cess)</i>	<i>Interest payable u/s.201(1A) @ 1% p.m. on TS not made</i>	<i>Total Liability u/s 201(1)rws 201(1A)</i>
<i>Deemed Dividend</i>	8204476	18,59,134	15,43,081 <i>(computed from 01/04/08 to 11/02/15)</i>	34,02.216

The aggrieved assessee preferred an appeal before the Ld. CIT (A).

3. The assessee the before the Ld. CIT (A) has submitted as detailed under:

1. The jurisdictional AO of the recipient, i.e. Shri Vinod V Patel while framing the assessment order u/s 143(3) has neither raised this issue nor made any addition in the hands of the said recipient on account of deemed dividend.
2. The transaction carried out with Shri Vinod V Patel during the year is under the normal course of business.
3. At the end of the year, i.e., 31-03-2009, there is no debit balance exists in the name of Shri Vinod V Patel in the books of the company.
4. However the Ld. CIT (A) during the proceedings observed certain facts as detailed under:

1. The assessee did not explain the nature of the transaction carried out by it with Shri Vinod V Patel.
2. If the transaction is on account of business expediency, then it is out of the purview of section 2(22)(e) of the Act. But as such the assessee in the present case failed to substantiate the said transaction is for the business purpose.
3. The objects of the company are not for money lending. Therefore the loans advanced by the company are not in the ordinary course of business.

4.1 Therefore all the conditions as provided u/s 2(22)(e) of the Act in treating the loans and advances to the shareholders/directors as deemed dividend have been fulfilled. Further, the other contention of the assessee that the loans and advances had been repaid during the year is not acceptable.

4.2 In view of the above the Ld. CIT (A) considered the payments made by the company are fully covered within the provisions of section 194 of the Act and therefore the TDS should have been deducted on the same. The Ld. CIT (A) accordingly confirmed the order made by the AO u/s 201(1) r.w.s 201(1A) on account of non-deduction of TDS.

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

5. The Ld. AR before us filed the copy of the assessment order of Shri Vinod V Patel which is placed on record and reiterated the submissions as made before the authorities below.

6. On the other hand, the Ld. DR before us vehemently supported the order of authorities below.

7. We have heard the rival contentions of both the parties and perused the materials available on record. The issue in the instant case is that the assessee during the year under consideration has extended the loan to its director/shareholder namely Shri Vinod V Patel for a sum of Rs. 27,04,476/- only who is holding 44% shareholding in the assessee company. Accordingly, the said transaction was treated as deemed dividend as provided u/s section 2(22)(e) of the Act. Therefore, it was required to deduct the TDS u/s 194 of the Act as the dividend includes deemed dividend. The Ld. CIT (A) also confirmed the order of the AO.

7.1 However on perusal of the assessment order of Shri Vinod V Patel passed by the AO under section 143(3) read with section 147 of the Act dated 10th March 2015, it was noted that there was no addition made on account of the loan extended to Shri Vinod V Patel as discussed above. Thus it is clear that there was no deemed dividend income in the hands of Shri Vinod V Patel as alleged by the authorities below.

7.2 Now the question arises about the applicability of the provisions of section 194 of the Act on the alleged the dividend. In the given facts and circumstances, we are of the view that once there is no addition in the hands of Shri Vinod V Patel on account of the dividend under section 2(22)(e) of the Act, then the question of deducting TDS under section 194 does not arise. The learned DR has not brought anything on record contrary to the arguments advanced by the learned AR for the assessee. Accordingly, we are not

impressed with the order of the learned CIT (A). Thus we direct the AO to delete the addition made by him. Hence the ground of appeal of the assessee is allowed.

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

Order pronounced in the Court on 25/04/2019 at Ahmedabad.

**-Sd-
(MAHAVIR PRASAD)
JUDICIAL MEMBER**

**-Sd-
(WASEEM AHMED)
ACCOUNTANT MEMBER**

Ahmedabad; Dated 25/04/2019
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