

INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "A": NEW DELHI  
BEFORE SMT BEENA A PILLAI, JUDICIAL MEMBER  
AND  
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 4089/Del/2016  
(Assessment Year: 2012-13)

Asst. Commissioner of Income Tax, Circle-50(1), New Delhi	Vs.	M/s. Bentex Control & Switch Gear Co, B-65/3, Baraina Industrial Area, Phase-II, Naraina, New Delhi PAN: AAAPB6531D
(Appellant)		(Respondent)

Revenue by :	Shri S. N. Pandey, Sr. DR
Assessee by:	Shri Satyajeet Goyal, CA
Date of Hearing	16/05/2019
Date of pronouncement	17/05/2019

O R D E R

PER PRASHANT MAHARISHI, A. M.

1. This appeal is filed by the Asst Commissioner Of Income Tax, Circle - 50 (1), New Delhi in ITA No. 4089/Del/2016 against the order of the learned Commissioner Of Income Tax (Appeals) – 17, New Delhi dated 04/05/2016 for Assessment Year 2012 – 13 where the addition made by the learned AO in the hands of the assessee of Rs. 29500000/- u/s 2 (22) (e) of the Act is deleted by the learned CIT(A). The learned AO has raised in fact 5 grounds of appeal however all of them are revolving around the addition of Rs 29500000/-.
2. The brief facts of the case shows that assessee is a partnership firm having 4 partners engaged in the business of manufacturing and sale and purchase of electrical goods such as electrical meter, multiple circuit board and other electrical goods. The assessee filed its return of income declaring total income of INR 4029610/- on 31/1/2013. The case of the assessee was picked up for the scrutiny and it was found by the learned assessing officer that assessee has shown to have received unsecured loan of substantial amount from M/s. Karan Technofab Ltd in which partner Mr.

Kapil Chopra & Mr. Satish Chopra of the assessee firm are directors. The learned AO noted that assessee firm has received a loan of Rs. 295,00,000/- from the above company. The learned AO further enquired about the shareholding pattern of the above lender company as well as the audited balance sheet along with all its annexure. Based on this he found that assessee firm has substantial interest in the above company and according to the balance sheet as on 31/3/2011 the reserve and surpluses amounted to INR 35,341,000/-. Therefore the learned assessing officer noted that assessee has received a loan from the above company as an advance of rupees Rs. 2,95,00,000/- and the transaction is squarely covered u/s 2 (22) (e) of the Income Tax Act. Therefore the AO issued the show cause notice to the assessee to explain that why the above income should not be considered as deemed dividend income of the assessee under the above provisions. The assessee submitted that Assessee Company is neither a registered shareholder of any of the company not the beneficial owner of the shares of the said company. However it was admitted that the partners of the assessee firm do have substantial interest in all these 5 companies. With respect to the deposit of Rs. 295,00,000/- from the said company nothing further was submitted. Therefore the learned assessing officer on the perusal of the explanation given by the assessee held that the loans and advances given by the company in which the public are not substantially interested and at the time of giving of the loan the lender company was having Rs. 3,53,41,000/- as reserves and surplus. Further, he noted that the partners of the assessee firm are directors in the lender company and both the partners are having substantial interest 30% in the assessee firm. Therefore the learned Assessing Officer applied the provisions of Section 2 (22) (e) of the Income Tax Act and made the addition of Rs. 295,00,000/- as deemed dividend in the hands of the assessee. Consequently the order u/s 143 (3) of the Act was passed on 20/03/2015 where the returned income of the assessee of INR 5029610/- was assessed at INR 35807960/-.

3. The assessee aggrieved with the order of the learned Assessing Officer preferred an appeal before the learned CIT(A). The learned CIT(A) vide order on 04/05/2016 deleting the above addition holding that assessee was

not holding any shares in the above said company and therefore for the purpose of invoking the provisions of Section 2(22)(e) was not justified. He was of the opinion that in absence of any shareholding in the company from where the advances were received the addition cannot be made. Accordingly the above addition was deleted by the para No. 4 of the order of the learned CIT(A).

4. The learned departmental representative vehemently supported the order of the learned assessing officer noted that all the conditions specified u/s 2(22)(E) of the act are fulfilled and therefore the addition has been correctly made in the hands of the assessee from.
5. The learned authorised representative stated that the assessee does not have any shareholding in the lender company, therefore in absence of any shareholding in the hands of the assessee the addition cannot be made in the hands of the assessee for the loan obtained from the above company.
6. We have carefully considered the rival contention and perused the orders of the lower authorities. It is an admitted fact that assessee is not having any shareholding in the company which is granted loan. In absence of any shareholding in the hands of the assessee firm deemed dividend cannot be taxed in the hands of the assessee. Dividend income is required to be taxed only in the hands of shareholder. In view of this we do not find any infirmity in the order of the learned CIT – A in deleting the addition of Rs. 295,00,000 made in the hands of the assessee.

Order pronounced in the open court on 17/05/2019.

-Sd/-  
(BEENA A PILLAI)  
JUDICIAL MEMBER

-Sd/-  
(PRASHANT MAHARISHI)  
ACCOUNTANT MEMBER

Dated:17/05/2019  
A K Keot

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

ASSISTANT REGISTRAR  
ITAT, New Delhi