

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'C' NEW DELHI

BEFORE SHRI G. D. AGRAWAL, VICE PRESIDENT
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER

I.T.A. No. 1333/DEL/2019
A.Y 2014-15

Hancraft Expo Designs P Ltd. 302-302, Bhikaji Cama Bhawan 3 rd Floor Bhikaji Cama Place New Delhi 110 066 PAN: AABCH1215Q	Vs	DCIT (E) Circle-11(1) New Delhi
(Appellant)		(Respondent)

Appellant by	Sh. Ashutosh Jain, CA & Sh. Udayan Garg, CA
Respondent by	Sh. Amit Katoch, Sr.D.R.

Date of Hearing	04.06.2019
Date of Pronouncement	07.06.2019

ORDER

PER SUCHITRA KAMBLE, JM

This appeal is filed by the assessee against the order dated 28/02/2018 passed by CIT(A)-4, New Delhi for Assessment Year 2014-15.

2. The grounds of appeal are as under:-

"1. That the CIT(A) has erred on facts and in law in confirming the action of the assessing officer in making an addition of Rs. 2,51,65,958, being loan received by the appellant from M/s. Supreme Advertising Pvt. Ltd. during the relevant assessment year, alleging the same to be in the nature of deemed

dividend in terms of section 2(22)(e) of the Income Tax Act, 1961 and taxable in the hands of the recipient, as such.

1.1. That the CIT(A) has erred on facts and in law in holding as above without appreciating that the appellant is not a shareholder in M/s. Supreme Advertising Pvt. Ltd. and, therefore, no addition can be made in the hands of the appellant of the loan received from the payer company as alleged deemed dividend in terms of section 2(22)(e) of the Act.

2. The CIT(A) has erred on facts and in law in confirming the action of the assessing officer in levying interest of Rs. 28,51,989 under section 234B of the Act.

The appellant craves leave to add to, alter, amend, vary, omit, substitute or delete any of the aforementioned grounds of appeal or add a new ground or grounds of appeal at any time before or at the time of hearing of the appeal."

3. The assessee Company is engaged in the business of designing, manufacturing of handicrafts and allied products. During the present Assessment Year the assessee has a total turnover of Rs.4,11,81,663/- as compared to Rs.3,72,96,043/- in the last year. The assessee filed its return of income on 30.09.2014 declaring total income at Rs.2,92,49,729/-. The case was selected for scrutiny and notice u/s 143(2) of the Income Tax Act, 1961 ('the Act') on 22.09.2015 was issued and served upon the assessee. Subsequently notice u/s 142(1) of the Act along with questionnaire was issued on 12.09.2016. In response to notice, C.A., Authorised Representative of the assessee company attended and furnished the details before the Assessing Officer. The Assessing Officer observed that during the year the assessee has taken loans from M/s Supreme Advertising Pvt. Ltd. All the shareholders of M/s. Supreme Advertising Pvt. Ltd. (SAPL) and the assessee company are common. Shri Gajendra Singh Rawat and Smt. Poonam Rawat both are common shareholders having 40% of share holding in both the companies i.e. the assessee company and lender company SAPL. The Assessing Officer held that the assessee company is not a shareholder of SAPL as per the assessee's contention but there is a credit balance throughout the year and the payment is supposedly made on account of the assessee company in the form of loan

which is the admitted position as per the ledger account submitted by the assessee. Therefore, the Assessing Officer has taken all credits amounting to Rs.2,51,65,958/- as 'deemed dividend' u/s 2(22)(e) of the Act in the hands of the assessee and taxed.

4. Being aggrieved by the assessment order, the assessee filed appeal before the CIT(A) and the CIT(A) dismissed the appeal of the assessee.

5. The Ld. AR submitted that assessee's case is covered by the Hon'ble Delhi High Court decision in case of CIT vs. Ankitech Pvt. Ltd. which was now confirmed by the Hon'ble Apex Court (340 ITR 14). The Ld. AR further submitted that the CIT(A) though considered the Hon'ble Delhi High Court's decision has taken into account the Apex Court decision in case of Gopal & Sons (HUF) vs. CIT (2017) 77 Taxman.com 71 (S.C.) and National Travel Services vs. CIT (2018) 89 taxmann.com 332 (SC) but has distinguishing factors. The Ld. AR submitted that the payment made by SAPL to the assessee company is taxable in the hands of SAPL not in the hands of assessee as deemed dividend in terms of provisions of Section 2(22)(e) of the Act.

6. The Ld. DR relied upon the order of the CIT(A) and the assessment order.

7. We have heard both the parties and perused all the material available on record. The Hon'ble Delhi High Court decision in the case of Ankitech Pvt. Ltd. (supra) has been confirmed by the Hon'ble Supreme Court vide order dated 05th October, 2017 and given a finding that the Hon'ble Delhi High Court's decision is a detailed judgment going into Sec. 2(22)(e) of the Act which arises at the correct construction of the said Section. Therefore, the dismissal by the CIT(A) on the ground that decision of Hon'ble Delhi High Court in case of Ankitech Pvt. Ltd. will not be applicable, does not hold good law. Therefore, the appeal of the assessee is allowed.

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

Order pronounced in the Open Court on 07th June, 2019.

Sd/-

**(G. D. AGRAWAL)
VICE PRESIDENT**

Sd/-

**(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

Dated: 07/06/2019

****Gmv***

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

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