

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'E': NEW DELHI**

**BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
AND
SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER**

**I.T.A. No.5877/DEL/2014
Assessment Year: 2011-12**

**DCIT, Circle 6(1),
New Delhi.**

**vs Maharishi Ayurveda Products P.Ltd.
A-14, Mohan Coop. Industrial Estate
Mathura Road, New Delhi.
PAN: AACCM5403A**

(Appellant)

(Respondent)

**Assessee by: None
Department by: Ms Rinku Singh,Sr.DR**

Date of Hearing: 28.8.2019

Date of Pronouncement: 20.9.2019

ORDER

PER NARASIMHA K. CHARY, JM

Challenging the order dated 20.8.2014 of the learned Commissioner of Income-tax (Appeals)-IX, New Delhi {for short "Learned CIT(A)"} passed in Appeal No.196/13-14, revenue preferred this appeal.

2. Briefly stated facts are that the assessee is a company engaged in the business of manufacturing and dealing in Ayurvedic and herbal preparation, export of goods and merchandise and healthcare activities. For the Asstt. Year 2011-12, they have filed their return of income on 31.10.2011 declaring an income of Rs.1,73,04,360/-. During the year, the assessee company gave loan to four associated companies where Shri

Anand Prakash Srivastava is a common shareholder in the assessee company as well as four other associated companies and basing on that Id. AO hold that the assessee company to circumvent the provisions of Section 2(22)(e) of the Income-tax Act, 1961 (“the Act”) has made a clever arrangement to benefit the substantial shareholder Shri Anand Prakash Srivastava.

3. In this process the Id. AO observed that the said issue was substantially involved in the Asstt. Year 2009-10 and an appeal against the assessment order for the Asstt. Year 2009-10 is pending before the CIT(A)-IX, New Delhi. In these circumstances, following the earlier year view, Id. AO held that there is a close nexus between the assessee company and the companies whom advances and loans have been made and as per the provisions of Section 8 of the Act which provides that the dividend income for the purpose of inclusion in the total income of an assessee includes any dividend paid within the meaning of Section 2(22)(e) of the Act and, therefore, brought to tax a sum of Rs.6,01,45,000/-.

4. Assessee being aggrieved by such an addition preferred an appeal. Learned CIT(A) in his order observed that in the appeal against the assessment order for the AY 2009-10, the first appellate authority deleted the addition holding that the trail of money transfer to the hands of Shri Anand Prakash Srivastava is not established and hence, the necessary nexus under the provisions of Section 2(22)(e) cannot be inferred. On this premise, Id. CIT(A) deleted the addition on account of Section 2(22)(e). Learned CIT(A) also observed that the view taken by his

predecessor for the Asstt. Year 2009-10 was agreeable to him and on that score, he deleted the addition.

5. Challenging the said finding of the Id. CIT(A), revenue preferred this appeal. Ld. DR heavily relied on the assessment order.

6. At the outset, it is the submission of the Id. AR that as observed by the Id. AO and the Id. CIT(A), the issue relating to Section 2(22)(e) of the Act is directly and substantially involved in the assessment order for the Asstt. Year 2009-10 and in the first appeal, such an issue was decided in favour of the assessee. He further submitted that when the Revenue preferred appeal against the order of the first appellate authority, a coordinate bench of this Tribunal in ITANo.4601/Del/2013 by order dated 30.4.2015, while placing reliance on the decision of the Hon'ble Apex Court in the case of Nalin Behari Lal Singh (1969) 74 ITR 849 (SC) and decision of the Special Bench of the Tribunal in the case of ACIT vs Bhaumik Colour P. Ltd. (2009) 313 ITR (AT)146 (Mum), upheld the finding of the first appellate authority and dismissed the appeal. He further submitted that since the fundamental facts permeating all through these years remain the same, the issue is squarely covered by the decision of the first appellate authority for this year also.

7. We have gone through the record in the light of the submissions made on either side. In the assessment order itself, Id. AO observed that the issue involved in this assessment order was substantially the same in the Asstt. Year 2009-10 and the appeal against the order of AO for such

year are pending as on the date of passing of the assessment order for the Asstt. Year 2011-12. Id. CIT(A), while following the order in assessee's own case for the AY 2009-10 reached a conclusion that though the Id. AO contended that clubbing of other family members as Shri Anand Prakash Srivastava is holding substantial share in assessee company and on that score the provisions of Section 2(22)(e) are applicable, Id. AO had not brought any fact on record making further enquiry that Shri Anand Prakash is individually benefitted from the loan given to the companies where he is a shareholder; that the trail of money transfer to the hands of Anand Prakash is not established and, therefore, necessary nexus under the provisions of Section 2(22)(e) cannot be inferred. While reaching this conclusion, Id. CIT(A) further observed that the order of his predecessor for Asstt. Year 2009-10 in assessee's own case was agreeable to him. Learned CIT(A), therefore, deleted the addition.

8. The findings of the Id. CIT(A) for the Asstt. Year 2009-10 were challenged by the Revenue before the Tribunal and a coordinate Bench of Tribunal by order dated 30.4.2015 in ITA No.4601/Del/2013 while following the binding precedent of the Special bench of this Tribunal in ACIT vs Bhaumik Colour P. Ltd. (supra) and of the Hon'ble Supreme Court in the case of Nalin Behari Lal (supra), upheld the finding of the Id. CIT(A).

9. When the facts are similar and the first appellate authority had followed the binding precedent of the Hon'ble Apex Court in the case of

Nalin Behari (supra) and of the special bench in the case of Bhaumik Colours (supra) as well as the view taken by his predecessor for the AY 2009-10, it cannot be said that the impugned order suffers any illegality or irregularity.

10. Further, when the fundamental facts permeating through all these years remain the same, in view of the decision of the Hon'ble Apex Court in the case of Radha Saomi Satsang, 193 ITR 321 (SC), it is not possible to take a different view, we, therefore, while respectfully following the above decisions, uphold the impugned order and consequently, find the grounds of appeal devoid of merit.

11. In the result, appeal of the revenue is dismissed.

Order Pronounced in the open court on 20th September, 2019.

Sd/-

**(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

sd/-

**(K.NARASIMHACHARY)
JUDICIAL MEMBER**

Dated: 20th September, 2019

VJ

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI

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