

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'D' : NEW DELHI)**

**BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
and
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.578/Del./2016
(Assessment Year : 2011-12)**

ACIT, Circle 47 (1),
New Delhi. vs. Shri Madhukar Arenja,
C/o Shri Prem Sharma,
2, Tilak Marg,
New Delhi – 110 001.
(PAN : AAEP A9093R)

**ITA No.6825/Del./2015
(Assessment Year : 2011-12)**

Shri Madhukar Arenja,
C/o Shri Prem Sharma,
2, Tilak Marg,
New Delhi – 110 001.
(PAN : AAEP A9093R)

vs. ACIT, Circle 47 (1),
New Delhi.

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri K. Sampath, Advocate
REVENUE BY : Shri J.K. Mishra, CIT DR
Smt. Naina Soin Kapil, Senior DR

Date of Hearing : 03.09.2019
Date of Order : 04.10.2019

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

Present cross appeals filed by the assessee as well as by the revenue are being disposed off by way of composite order to avoid repetition of discussion.

2. Appellant, ACIT, Circle 47 (1), New Delhi (hereinafter referred to as the 'Revenue') by filing the present appeal being ITA No.578/Del/2016, sought to set aside the impugned order dated 03.11.2015 passed by the Commissioner of Income - tax (Appeals)-16, New Delhi on the grounds inter alia that :-

“1. Whether the loss from business & profession can be carried forward when the business & profession of the assessee is discontinued?”

2. Whether the Ld. CIT(A) was correct in deleting the disallowance of carried forward losses of Rs.1,55,49,577/- when the assessee during the assessment proceedings, himself admitted the fact that from the AY. 2003-04, the assessee has not done any business?”

2. Appellant, Shri Madhukar Arenja (hereinafter referred to as the 'assessee') by filing the present appeal being ITA No.6825/Del/2015, sought to set aside the impugned order dated 03.11.2015 passed by the Commissioner of Income - tax (Appeals)-16, New Delhi on the grounds inter alia that :-

“On the facts and in the circumstances of the case and in law the Ld. CIT(A) erred in:

1. not deciding the following issues raised in appeal:

a) whether proviso to section 72(1) of the Act with regard to set off of loss in relation to discontinued business is referable to Section 336 cases only and not to other assesses;

b) whether the income from business declared in the return has actually accrued to the assessee or was only a notional income and thus not taxable.

2. in confirming the additions made by the Assessing Officer by invoking provisions of section 2(22) (e) of the Act to the extent of Rs.20,57,050/-.

All the above actions being arbitrary, erroneous, unwarranted and unjust must be quashed with directions for relief.”

ITA No.6825/Del./2015 (ASSEESSEE’S APPEAL)

3. Briefly stated the facts necessary for adjudication of the issue at hand are : Assessee being Director of various companies had shown income under head ‘Salary’ from three companies, namely, M/s.Arenja Ind. Ltd., Emem Builders & Dev. Pvt. Ltd. and M/s. Mehak Developers Pvt. Ltd. and has shown income from rentals and other sources. Assessing Officer noticed from the accounts of the assessee that the assessee being shareholder in a company contained debits to the tune of Rs.43,57,050/- and it is also noticed that the assessee was a major shareholder in the company and thereby made the addition of Rs.43,57,050/-.

4. Assessee carried the matter by way of an appeal before the Id. CIT (A) who has restricted the addition to Rs.20,57,050/- made by the AO on account of deemed dividend under section 2(22)(e) of the Income-tax Act, 1961 (for short ‘the Act’) by partly allowing the appeal. Feeling aggrieved, the assessee has come up before the Tribunal by way of filing the present appeal.

5. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed

by the revenue authorities below in the light of the facts and circumstances of the case.

6. Ld. AR for the assessee contended that Shri Ankush Arenja, son of the assessee purchased a property from the company which has deferred left over account balances to Ankush Arenja as part of the understanding which are as under :-

- (i) ***Rs.5,39,500/- amount paid for possession charges;***
- (ii) ***Rs.50,000/- amount paid for A.H. unit charges;***
- (iii) ***Rs.1,20,000/- amount paid for advance maintenance charges;***
- (iv) ***Rs.6,17,550/- amount paid for stamp duty;***
- (v) ***Rs.30,000/- amount paid for registration charged.***

and the amount so debited to Ankush Arenja was later at closing transferred to the assessee who had a running account therein. It is further contended that it was not a transaction by way of either loan or advance or both rather which was traceable to the sale of an immovable property and such entries are having an intimate relationship with the transaction in question.

7. Perusal of para 12 of the impugned order shows that the assessee has brought on record additional evidence before the ld. CIT (A) as to the sale of immovable property by the company in the name of Ankush Arneja, son of the assessee which has not been considered by the ld. CIT (A). Since the additional evidence has not been considered and as such issue in controversy remained unsettled in entirety, the case is required to be remanded to the AO to decide afresh after providing an opportunity of being heard to the assessee to decide the issue in

controversy. Both the parties to the appeal agreed in the interest of justice to remand the matter back to the AO. Consequently, the case is remanded back to the AO to decide afresh by providing adequate opportunity of being heard to the assessee by considering additional evidence sought to be led before Id. CIT (A).

ITA No.578/Del./2016 (REVENUE'S APPEAL)

8. Since the tax effect in the appeal filed by the Revenue is low i.e. less than Rs.50,00,000/-, in view of the CBDT Circular No.17/2019 dated 8th August, 2019 which is applicable retrospectively in view of the decision rendered by coordinate Bench of the Tribunal in case of *Dinesh Madhavlal Patel [TS-469-ITAT-2019(Ahd)] 2019-TIOL-1556-ITAT-AHM dated 14th August, 2019*, the appeal of the Revenue being ITA No.3910/Del/2011 is dismissed on account of low tax effect.

8. Resultantly, the appeal filed by the assessee is allowed for statistical purposes and the appeal filed by the Revenue is dismissed.

Order pronounced in open court on this 4th day of October, 2019.

**Sd/-
(R.K. PANDA)
ACCOUNTANT MEMBER**

**sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

**Dated the 4th day of October, 2019
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-16, New Delhi.
- 5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.