

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'F' BENCH,
NEW DELHI

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER

ITA No. 4930/DEL/2016
[A.Y 2007-08]

The A.C.I.T
Circle - 50(1)
New Delhi

Vs.

Shri Ravi Sharma
13/30, Infotech House
G.L. Sikka Marg, East Patel Nagar
New Delhi

PAN: ABKPS 7088 K

(Applicant)

(Respondent)

Assessee By : Shri Kapil Goel, Adv

Department By : Shri Surendra Pal, Sr. DR

Date of Hearing : 30.10.2019

Date of Pronouncement : 31.10.2019

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER,

This appeal by the Revenue is preferred against the order of the Commissioner of Income Tax [Appeals] - 17, New Delhi dated 06.07.2016 pertaining to assessment year 2007-08.

2. The solitary grievance of the revenue is that the ld. CIT(A) erred in deleting the addition of Rs. 1,80,42,924/- on account of deemed dividend u/s 2(22)(e) of the Income tax Act, 1961 [hereinafter referred to as 'The Act' for short].

3. At the very outset, the ld. counsel for the assessee drew our attention to the application dated 16.09.2019 invoking Rule 27 of ITAT Rules to support the order of the ld. CIT(A) on legal ground. It is the say of the ld. counsel for the assessee that the assessee has challenged the reopening of assessment before the ld. CIT(A) and the ld. CIT(A) did not adjudicate upon the grievance on the ground that he has deleted the additions on merits of the case.

4. The ld. counsel for the assessee drew our attention to the reasons for reopening assessment which are placed at page 18 of the paper book, which read as under:

"Accordingly, I am satisfied that there is a failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment for the said assessment year and income of Rs. 1,80,42,924/- chargeable to tax has escaped assessment for the assessment year 2007-08 by

reason of the failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment for 2007-08. I have, therefore, reason to believe that the sum of Rs. 1,80,42,924/- chargeable to tax has escaped assessment for the 2007-98. Thus, the same is to be brought to tax under section 147/148 of the 1.7. Act. 1961."

5. The ld. counsel for the assessee vehemently submitted that the Assessing Officer has borrowed satisfaction from the Assessing Officer of M/s J.C. Infotech Technologies Ltd. Without examining the reserves and surplus of that company, the Assessing Officer formed a belief that the income escaped assessment without applying his mind. The ld. counsel for the assessee relied upon various judicial decisions to support his contentions.

6. Per contra, the ld. DR, in support of the reopening of the assessment, stated that at the stage of reopening the assessment, the Assessing Officer should have prima facie belief and only after reopening assessment, he will go into facts. Therefore, there is no illegality in reopening of the assessment.

7. We have given thoughtful consideration to the rival submissions and have carefully perused the reasons for initiating the proceedings u/s 147 of the Act. The said notice is exhibited elsewhere. A perusal of the same shows that the Assessing Officer of M/s J.C. Infotech Technologies Ltd found that the company has given loans and advances to one of its Directors, who is a major share holder holding 49,400 shares out of total number of shares of 50,000. This information was passed on to the officer of the appellant. On the basis of this information, the Assessing Officer was satisfied that there is a failure on the part of the assessee to disclose fully and truly all material facts and, accordingly, proceeded to reopen the assessment.

8. In our considered opinion, there is no illegality in the formation of belief by the Assessing Officer, in as much as, at the stage of issuing the notice u/s 148 of the Act, all that is required is that the Assessing Officer should have some tangible material evidence to reopen the assessment. The information based on which the notice u/s 148 of the Act was issued is an information received from another Income tax officer and the same cannot be faulted with.

9. The Hon'ble High Court of Delhi in the case of Sonia Gandhi 407 ITR 594 had an occasion to consider a similar issue. The relevant findings of the Hon'ble High Court read as under:

"70. The entire premise of the reassessment notice is that the non disclosure of the taxing event. i.e. allotment of shares (and the absence of any declaration as to value). Deprived the Assessing Officer of the opportunity to look in to records. In the case of Rahul Gandhi, no doubt the assessment originally completed , was under section 143(3) Had he disclosed in his returns or any related documents about the event (Share acquisition) the primary fact would have been on the record ; the Assessing Officer's subsequent action in pursuing that aspect or letting go of it, after inquiry might well have justified the change of second and impermissible opinion on the same subject. However , that is not the case . The TEP and investigation reports of subsequent vintage (after completion of Gandhi's assessment) therefore, constituted tangible material which in terms of ruling in CIT v. Kelvinator of India Ltd (2010) 320 ITR 561 (SC) justified reassessment. In the case of other two assesses (Mrs Soni Gandhi and Oscar Ferandes) the returns filed by them were processed under section 143(1) . Such instances are not treated as 'assessment' Dy.CIT v. Zuari Estate

Development & Investment CO Ltd (2016) 236 Taxman 1 (SC) is an authority on the subject.

10. Respectfully following the decision of the Hon'ble High Court [supra], we uphold the reopening of assessment. Application invoking Rule 27 of the ITAT Rules is, accordingly, dismissed.

11. Coming to the merits of the case, facts on record show that during the course of scrutiny assessment proceedings, the Assessing Officer noticed that the assessee has received the following amounts from the company M/s J.C. Infotech Technologies Ltd, in which the assessee was holding around 98% of shares:

Sr.No	Date	Amount
1	21.6.2006	6,000,000/-
2.	08.08.2006	750,000/-
3	08.08.2006	450,000/-
4	08.08.2006	3,00,000/-
5	25.08.2006	1,400,000/-
6	18.09.2006	3,025,000/-
7	14.11.2006	275,000/-
8	28.11.2006	100,000/-
9	11.12.2006	500,000/-
10	11.01.2007	900,000/-
11	11.01.2007	600,000/-
12	14.02.2007	500,000/-
13	07.03.2007	1,500,000/-
14	08.03.2007	1,700,000/-
		1,80,00,000/-

12. The Assessing Officer was of the firm belief that the provisions of section 2(22)(e) of the Act squarely apply on the facts of the case and on finding the balance in reserves and surplus as on 31st march, in the case of M/s J.C. Infotech Technologies Ltd at Rs. 3.81 crores, the Assessing Officer treated the amount received from the company as deemed dividend and made addition of Rs. 1,80,42,924/-.

13. The assessee carried the matter before the Id. CIT(A) and strongly contended that the said amount is security deposit against the property let out by the assessee to the company. It was vehemently contended that the said transaction was a business transaction and outside the ambit of section 2(22)(e) of the Act.

14. After considering the facts and submissions, the Id. CIT(A) held as under:

5.1 In find merit in his argument that there is no favour given by the company to the appellant. The amount of Rs.1.80 crore was paid as a security deposit towards taking on rent the property of the appellant. Except security deposit, no further rent was charged. Looking to the prevailing market rent of the property, there was no favour appeared to be

given to the appellant. Thereby, it was a simple business affair between the appellant and the company. In the case of Gurpreet Singh Chawla Vs. ITO, Ward-13(4), New Delhi in ITA No. 1714/Del/2013, the ITAT, Delhi Bench-C, New Delhi on similar fact held that "On perusal of the above decision, it is important that unless advances it is not gratuitous to' its shareholder but it is to protect the business interest of the company, it falls out of the purview of taxation u/s 2(22)(e) of the Act. Further, it is not a current account but advances in the nature of loan which assessee enjoys, simply on account to being a share holder exceeding specific percentage, then only, the provisions the section 2(22)(e) of the act comes into play. The above view further gets support from the decision of Hon'ble Delhi High Court in the case of CIT 7s. Creative Dying and Printing Pvt. Ltd. [318 ITR 476]. No other contrary decisions were brought to our notice by the Id. DR. In view of the above finding we reverse the finding of the Ld. CIT(A) in confirming the addition of Rs. 11,23,551/- as deemed dividend u/s 2(22)(e) of the Act. We also clarify that in the present

appeal the accumulated profit are to the tune of only Rs.11,23,551/- and the total alleged advances given to the appellant is Rs.23,77,000/- and Rs.15,00,008/- are on account of security deposit and therefore Rs.8,77,000/- are the entries of mutual current account transactions, which are also not deemed dividend in view of above judicial precedents and hence, total addition confirmed of Rs.11,23,551/- by the Id. CIT(A) is deleted. In the result, the appeal of the assessee is allowed." *In view of above facts and the decision of ITAT (Supra), the AO is directed to delete the addition."*

15. Before us, the ld. DR vehemently stated that the contentions of the assessee have not been examined at assessment stage nor it has been examined by the ld. CIT(A) at the appellate stage. It is the say of the ld. DR that the claim of the alleged business transaction is to be examined on facts and, therefore, the matter should go back to the Assessing Officer for verification.

16. Per contra, the ld. counsel for the assessee stated that in the assessment proceedings itself, the assessee has explained that he has rented out some property to the company, rent free, and in pursuance thereof, the company has given security deposit. This fact was very much available with the Assessing Officer who, for some reason, did not accept. It is the say of the ld. counsel for the assessee that however, when same facts were furnished before the ld. CIT(A), the ld. CIT(A), after going through the facts and after drawing support from some judicial decisions, accepted the same as nature of business transaction and deleted the addition.

17. We have given thoughtful consideration to the orders of the authorities below. It is true that during the course of assessment itself the assessee has explained the nature of transactions. It is also true that in the balance sheet of the company M/s J.C. Infotech Technologies Ltd, it has been clearly mentioned that the amount of Rs. 1,80,42,924/- was given to the assessee which was in the ordinary course of business. We find that when same evidence were furnished before the ld. CIT(A), after examining them, the ld. CIT(A) was convinced that the transaction was in the ordinary course of business and provisions of section 2(22)(e) of the Act do not apply.

18. In our considered opinion, when the first appellate authority has given categorical finding after going through facts, no interference is called for.

19. In the result, the appeal of the Revenue in ITA No. 49302/DEL/2016 is dismissed.

The order is pronounced in the open court on 31.10.2019.

Sd/-

**[SUCHITRA KAMBLE]
JUDICIAL MEMBER**

Sd/-

**[N.K. BILLAIYA]
ACCOUNTANT MEMBER**

Dated: 31st October, 2019

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	