

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A", NEW DELHI
BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER
AND
SHRI O.P. KANT, ACCOUNTANT MEMBER

I.T.A. No. 4944/DEL/2015		
A.Y. : 2011-12		
DCIT, CIRCLE 19(1), NEW DELHI	VS.	M/S ONCQUEST LABORATORIES LTD. 4 TH FLOOR, PUNJABI BHAWAN, 10, ROUSE AVENUE, NEW DELHI - 110 002 (PAN: AAAC09860B)
(ASSESSEE)		(RESPONDENT)

Revenue by : Sh. Subhakant Sahu, Sr. DR.
Assessee by : Sh. M.P. Rastogi, Adv.

ORDER

PER H.S. SIDHU : JM

The Revenue has filed this Appeal against the impugned Order dated 27.05.2015 of the Ld. CIT(A)-7, New Delhi relevant to assessment year 2011-12.

2. The grounds raised in the appeal read as under:-

1) On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs. 3,20,00,000/- made by AO as deemed dividend u/s 2(22)(e) of the Income Tax Act, 1961.

2) The appellant craves to be allowed to add any fresh ground(s) of appeal and / or delete or amend any of the ground(s) of appeal.

3. At the time of hearing, Ld. Sr. DR relied upon the order passed by the Assessing Officer and the Written Submissions dated 20.11.2018 filed by his predecessor Sh. Sridhar Dora, Sr. ITAT, A-Bench, New Delhi.

4. On the contrary, Ld. Counsel for the assessee relied upon the impugned order passed by the Ld. CIT(A) and stated that the Ld. First Appellate Authority has rightly passed the impugned order dated 27.5.2015 by respectfully following the order of the Ld. CIT(A) passed in the assessment year 2010-11 in which the deemed dividend received by the assessee from M/s Puran Associates Pvt. Ltd. would be taxable in the hands of Shri Ashok Chand Burman and Mrs. Minnie Burman, who are shareholders holding substantial interest in M/s Puran Associates (P) Ltd. who holds a substantial interest in the assessee company. He further stated that Ld. First Appellate Authority has rightly directed the Assessing Officer to take necessary action to tax the amount in dispute in the hands of Sh. Ashok Chand Burman and Mrs. Minnie Burman. Therefore, no interference is called in the well reasoned order passed by the Ld. CIT(A) and hence, he requested that the appeal filed by the Department may be dismissed.

5. We have heard both the parties and perused the orders passed by the revenue authorities alongwith written submissions 20.11.2019 filed by the Ld. Sr. DR. For the sake of convenience, the written submissions of the Ld. Sr. DR are reproduced as under:-

"Sub: Written Submission in the above case- reg.

In the above case, the following is humbly is humbly submitted:

Ld. CIT(A) has deleted addition of Rs 3,20,00,000/- made by AO as deemed dividend u/s 2(22){e}of the IT Act.

In page 2 of AO's order:

In AY 2010-11 the assessee company has received a sum of Rs 3.58 crores from M/S Puran Associates Pvt. Ltd.

AO has established that its not a NBFC.

Two persons namely Mr Ashok Chand Burman and Mrs. Mini Burman were the beneficial owners in both the companies i.e. they were having 100% shareholding of Puran Associates Pvt Ltd. And MIs Puran Associates Pvt Ltd was having 99.4% share holding in, M/s Oncguest Laboratories Pvt Ltd. Therefore it was held as deemed dividend u/s 2(22)(e)of the IT ACT.

Case laws: (Copy Enclosed)

1. [2012] 21 taxmann.com 543 (Delhi)

Hon'ble HIGH COURT OF DELHI

Commissioner of Income-tax

v.

*Bharti Overseas Trading Co.**

SANJIV KHANNA AND R.V. EASWAR, JJ.

IT APPEAL NO. 401 OF 2011 +

FEBRUARY 29, 2012

I. Section 2(22) of the Income-tax Act, 1961 - Deemed dividend - Assessment year 2004-05 - Assessee-firm consisted of two partners - They were holding shares in a company - Firm received certain sum from company - Assessing Officer made addition to income treating same as deemed dividend applying section 2(22)(c) as partners were holding more than 10 per cent shares - Whether addition was justified - Held, yes [In favour of revenue]

2.[2011] 14 taxmann.com 14 (Delhi)

Hon'ble HIGH COURT OF DELHI

Commissioner of Income-tax

Vs.

National Travel Services-*

A.K. SIKRI AND M.L. MEHTA, JJ.

IT APPEAL NOS. 219, 223

AND 1204 OF 2010 AND 309 OF 2011

JULY + 11, 2011+

Section 2(22) of the Income-tax Act, 1961 - Deemed dividend - Whether to attract provisions of section 2(22)(e), person to whom loan or advance is made should be a

shareholder as well as beneficial owner - Held, yes - Whether for purpose of section 2(22)(e), a partnership firm having purchased shares through its partners in company which has paid loans is to be treated as a shareholder and it is not necessary that it has to be 'registered shareholder' of company - Held, yes [In favour of revenue]

3. 2018-TIOL-31-SC-IT

Hon'ble SUPREME COURT OF INDIA

NATIONAL TRAVEL SERVICES

Vs

COMMISSIONER OF INCOME TAX, DELHI-VIII

Whether the provisions of Sec 2(22)(e) get attracted as soon as a shareholder, not necessarily a member of the company or its register, is found to be the beneficial owner of the shares - YES: SC

Whether, for the invocation of provisions of Sec 2(22)(e), the requirement of a registered shareholder who is also needed to be a beneficial owner of shares, is mutually contradictory - YES: SC"

5.1 After hearing both the parties and perusing the orders passed by the revenue authorities alongwith the written submissions dated 20.11.2019 filed by the Ld. Sr. DR on which Mr. Subhakant Sahu,

Sr. DR relied upon, we are of the view that the assessee has filed its original return electronically on 30.9.2011 declaring loss of Rs.25,40,716/- which was processed u/s. 143(1) of the Act by the Assessing Officer and later the case of the assessee was selected for scrutiny by issuing the notice dated 6.8.2012 u/s. 143(2) of the Act which was served upon the assessee. In response to the notice dated 6.8.2012 the AR of the assessee appeared and filed the necessary evidences in support of the claim of the assessee which was examined by the Assessing Officer. After examining the necessary evidences filed by the Ld. Counsel for the Assessee, the AO was of the view that assessee company is a Private Limited Company and is engaged in the business of Healthcare Diagnostics. In the immediate preceding year an addition of Rs. 3,58,95,735/- was made in the hands of the assessee company u/s. 2(22)(e) of the I.T. Act, as the assessee company has received a sum of Rs. 3,58,95,735/- from M/s Puran Associates Pvt. Ltd. The AO was of the view that in the assessment year 2010-11 it was held that M/s Puran Associates Private Limited was deriving income from purchase and sale of shares and substantial part of business activity was not from lending of money as prescribed for being a NBFC company and therefore, it could not be treated as claimed of being a NBFC company. Further, it was pointed out that two persons namely Mr. Ashok Chand Burman and Mrs. Mini Burman were the beneficial owners in both the companies i.e. they were having 100% shareholding of M/s Puran Associates Pvt. Ltd. and M/s Puran Associates Pvt. Ltd. was having 99.4% share holding in M/s Oncquest Laboratories Pvt. Ltd. Therefore, it was held that the loan taken by the assessee company from M/s Puran Associates Pvt. Ltd. fulfills all the conditions laid down in section 2(22)(e) of the Act for

treating the amount of loan as deemed dividend in the hands of the assessee company.

5.2 During the year under consideration, M/s Puran Associates Pvt. Ltd. has given a loan of Rs. 3,20,00,000/- to the assessee company and as the fact of the case are similar to the immediately preceding year, the amount of loan given by M/s Puran Associates Pvt. Ltd. was considered as deemed dividend in the hands of the assessee company and was added to the income of the assessee company u/s. 2(22)(e) of the I.T. Act and AO completed the assessment u/s. 143(3) of the I.T. Act, 1961 on 28.2.2014.

5.3 Aggrieved by the assessment order dated 28.2.2014, the assessee filed the appeal before the Ld. CIT(A), who vide his impugned order dated 27.5.2015 has allowed the appeal of the assessee and deleted the addition in dispute by holding that the amount of Rs. 3,20,00,000/- cannot be taxed as deemed dividend u/s. 2(22)(e) of the Act in the hands of the assessee company who was not the share holder of the lender company. Ld. CIT(A) further observed that in the assessment year 2010-11 the deemed dividend in dispute was received by the assessee company from M/s Puran Associates Pvt. Ltd. would be taxed in the hands of Sh. Ashok Chand Burman and Mrs. Minnie Burman who are shareholders holding substantial interest in M/s Puran Associates Pvt. Ltd. who holds a substantial interest in the assessee company and are the share holders in both the companies. Ld. CIT(A) has rightly directed the Assessing Officer to take necessary action to tax the amount in dispute in the hands of Sh. Ashok Chand Burman and Mrs. Minnie Burman.

5.4 Keeping in view of the facts and circumstances as explained above, we are of the view that no interference is called for in the well reasoned order dated 27.05.2015 passed by the Ld. First Appellate Authority, therefore, we uphold the action of the Ld. CIT(A) on the issue in dispute and reject the ground raised by the Revenue.

6. In the result, the Revenue's Appeal stands dismissed

Order pronounced on 13/11/2019.

Sd/-

**[O.P. KANT]
ACCOUNTANT MEMBER**

Sd/-

**[H.S. SIDHU]
JUDICIAL MEMBER**

Date 13/11/2019

SRBHATNAGAR

Copy forwarded to: -

1. Assessee -
2. Respondent -
3. CIT
4. CIT (A)
5. DR, ITAT

TRUE COPY

By Order,

Assistant Registrar, ITAT, Delhi Benches