

IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'G' : NEW DELHI)
BEFORE SHRI R.K.PANDA, ACCOUNTANT MEMBER
AND
SHRI KULDIP SINGH, JUDICIAL MEMBER
ITA No.269/Del./2016, A.Y. 2010-11

M/s. Crystal Infonet Pvt. Ltd.	Vs.	ACIT
C-160, Okhla Industrial Area,		Central Circle-11
Phase-1,		
New Delhi		New Delhi
PAN : AACCC9064B		
(APPELLANT)		(RESPONDENT)

ASSESSEE BY : None
REVENUE BY : Shri S.S.Rana, CIT(DR)

Date of Hearing : 25.11.2019
Date of Order : 29.11.2019

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

The appellant M/s. Crystal Infonet Pvt. Ltd., New Delhi (hereinafter referred to as 'the assessee') by filing the aforesaid appeal, sought to set aside the impugned order dated 23/01/2013 passed by Ld. Commissioner of Income Tax(Appeals)-31, New Delhi qua the Assessment Year 2010-11 on the grounds inter alia that :

“(A) That on the facts and circumstances of the case the learned ITO and the CIT(A) erred in :

1) Making an addition of Rs. 71,99,900/- on account of deemed dividend u/s 2(22)(e) of Income Tax Act.

(B) The Assessee craves leave to add, alter or amend the grounds of appeal at and before the hearing.”

2. Briefly stated the facts necessary for adjudication of the controversy at hand are : AO noticed while examining the information in the case of M/s. Pinewood Information System Pvt. Ltd. that the assessee has received an amount of Rs. 71,99,900/- as an advance. During the year under assessment assessee was holding share capital of M/s. Pinewood Information System Pvt. Ltd. to the extent of 19.61% of total equity. AO by invoking the provisions contained u/s 2(22)(e) proceeded to make addition of Rs. 71,99,900/- given as advance by M/s. Pinewood Information System Pvt. Ltd. to M/s. Crystal Infonet Pvt. Ltd. is taxable as deemed dividend and thereby assessed the total assessee's income of Rs. 75,55,064/-.

3. Since the notice sent to the assessee on recorded address received back un-served with the remarks that assessee left the place of address, the bench has no alternative except to decide the appeal on merit with the assistance of the Ld. DR for the revenue.

4. Assessee carried the matter before the Ld. CIT(A) by way of filing the appeal who has confirmed the addition by dismissing the

appeal. Feeling aggrieved the assessee has come up before the Tribunal by way of filing the present appeal.

5. We have heard the ld. DR, 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. Perusal of the impugned order passed by Ld. CIT(A) goes to prove that the present appeal has been dismissed by relying upon the case of CIT vs. Multiplan (India) Ltd. 38(Del) 320 and Late Tukoji Rao Holkar Vs. CWT (1997) 223 ITR 480 (MP-Indore Bench) which is not within the purview of CIT(A) as he is required to decide the issue on merit even if the assessee has not appeared.

7. Perusal of para 4.4 of the impugned order shows that though Ld. CIT(A) has stated to have decided the present appeal on merit but merit has not been touched rather confirmed the findings of AO without any discussion. For ready perusal operative part of order passed by CIT(A) qua merits of this case is extracted for ready perusal as under :

“I find that the AO has made disallowance u/s 2(22)(e) after giving opportunity to the appellant. I find no merit in the arguments of the appellant made before the AO. I agree with the findings of the AO and hereby uphold the disallowance u/s 2(22)(e).”

8. In view of what has been discussed above, we are of the considered view that the CIT(A) has not decided the appeal on

merit. So to decide the issue once for all this case is set aside to the Ld. CIT(A) to decide afresh after providing opportunity of being heard to the assessee. Consequently, appeal of the assessee stands allowed for statistical purpose.

Order pronounced in open court on this 29th November, 2019.

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

Dated : 29 /11/ 2019

BR

**Sd/-
(KULDIP SINGH)
JUDICIALMEMBER**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)-31, New Delhi.
5. CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI

Date of dictation	25.11.2019
Date on which the typed draft is placed before the dictating Member	25.11.2019
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	

