

**IN THE INCOME TAX APPELLATE TRIBUNAL  
"B" BENCH : BANGALORE**

**BEFORE SHRI B.R BASKARAN, ACCOUNTANT MEMBER AND  
SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA No.1096/Bang/2018
Assessment year : 2013-14

M/s R.R Logic Systems Pvt. Ltd., No.89, 1 <sup>st</sup> Floor, V.M Cosma Karthik Nagar, Marathahalli Outer Ring Road Bengaluru-560 037.  PAN – AAFCR 2317 D	Vs.	The Income-tax Officer, Ward-5(1)(1), Bengaluru.
APPELLANT		RESPONDENT

Appellant by	:	Shri Rishabh Singhvi, C.A
Respondent by	:	Smt. P Renuga Devi, J.C.I.T (DR)

Date of hearing	:	27.11.2019
Date of Pronouncement	:	19.12.2019

**ORDER**

*Per B.R Baskaran, Accountant Member :*

The assessee has filed this appeal challenging the order dated 1/11/2017 passed by Id CIT(A)-5, Bengaluru and it relates to the asst. year 2013-14.

2. The grounds of appeal urged by the assessee relates to the following 2 issues :-

- a) Addition of deemed dividend made u/s 2(22)(e) of the Act.
- b) Addition made u/s 40a(ia) of the Act for non deduction of tax deducted at source.

3. The assessee is engaged in providing software consultancy services for semi conductor industry.

4. The first issue relates to addition made u/s 2(22)(e) of the Act as deemed dividend. The AO noticed that the assessee has advanced loan of Rs.12.67 lakhs to one of the directors of the company who held more than 10% of shares in the assessee company. Since the assessee company is closely held company, the AO invoked the provision of sec. 2(22)(e) of the Act in the hands of the assessee company, which has actually lent the money to its shareholder. The AO also noticed that the assessee company had accumulated profits to the tune of loan given by the assessee company to the Director. Accordingly he assessed loan amount of Rs.12.67 lakhs as deemed dividend in the hands of assessee company u/s 2(22)(e) of the Act. The ld CIT(A) also confirmed the same.

5. The ld AR submitted that the provisions of sec. 2(22)(e) of the Act relating to deemed dividend has to be applied in the hands of the shareholder only and not in the hands of the assessee company, being the payer of the loan or advance. He submitted that the assessee herein has advanced money to one of the Directors and hence the cause of action u/s 2(22)(e) of the Act shall arise in the hands of the shareholder only. Accordingly he submitted that the ld

CIT(A) was not justified in confirming the addition made by the AO in the hands of the assessee company.

6. The ld DR supported the order passed by the ld CIT(A).

7. We heard the rival contentions and perused the record. Section 2(22) of the Act defines the word dividend and, as per clause (e) thereof, the loan or advance given to a shareholder who is beneficial owner of shares (not being shares entitled to fixed rate of dividend whether with or without right in participating profits) holding not less than 10% of the voting power or loan given to any concern in which such shareholder is a member or a partner and in which he has substantial interest or any payment for the individual benefit of any such shareholder is treated as dividend, which is called as "deemed dividend". However the quantum of deemed dividend shall be restricted to the extent of accumulated profits possessed by the company. Hence provisions of sec.2(22)(e) of the Act has to be applied in the hands of the shareholder only and not in the hands of the company which has given the loan or advances. Hence we are of the view that the ld CIT(A) was not justified in confirming the assessment of deemed dividend in the hands of the assessee company. Accordingly we set aside the order passed by the ld CIT(A) on this issue and direct the AO to delete the addition.

8. The next issue relates to addition made u/s 40(a)(ia) of the Act. The AR submitted that the assessee had paid rent of Rs.4,43,250/- and audit fee of Rs.65,000/- without deducting tax at source. Accordingly the AO disallowed the both the above said amounts aggregating to Rs.4,97,250/- u/s 40(a)(ia) of the Act. The Id CIT(A) also confirmed the same. The Id AR submitted that the recipients of above said amounts have declared the same in their hands as income and hence the assessee should be granted benefit of second proviso to sec. 40(a)(ia) of the Act.

8. We heard the Id DR on this issue and perused the record. In the interest of natural justice, we are of the view that the assessee may be provided with one more opportunity in this regard. Accordingly we set aside the order passed by Id CIT(A) on this issue and restore this issue to the file of the AO for examining it afresh in accordance with law.

9. In the result, the appeal of the assessee is treated as allowed for statistical purposes.

Order pronounced in the Open Court on **19<sup>th</sup> December, 2019.**

**Sd/-**  
**(Beena Pillai)**  
**Judicial Member**  
Bangalore,  
Dated, 19<sup>th</sup> December, 2019.

**Sd/-**  
**(B.R Baskaran)**  
**Accountant Member**

/ vms /

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore.