

**IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ' A ' Bench, Hyderabad**

**Before Smt. P. Madhavi Devi, Judicial Member
AND**

Shri A. Mohan Alankamony, Accountant Member

ITA No.1417/Hyd/2017		
Assessment Year: 2013-14		
M/s. Quality Care India Ltd Hyderabad PAN:AABCA7624C (Appellant)	Vs.	Dy. Commissioner of Income Tax, Circle 16(1) Hyderabad (Respondent)
Assessee by:	Sri S. Rama Rao	
Revenue by:	Smt. Nivedita Biswas, DR	
Date of hearing:	26/11/2019	
Date of pronouncement:	22/01/2020	

ORDER

Per Smt. P. Madhavi Devi, J.M.

This is assessee's appeal for the A.Y 2013-14 against the order of the CIT (A)-4, Hyderabad, dated 25.05.2017

2. Brief facts of the case are that the assessee company running a super speciality hospital, filed its return of income for the A.Y 2013-14 on 29.11.2013 admitting total income at Rs.24,22,72,410/- and book profit u/s 115JB at Rs.21,37,43,832/-. During the assessment proceedings u/s 143(3) of the Act, the AO observed that there was a closing balance of loans and advances/payable from related party viz., Visakha Hospitals and Diagnostics Ltd (VHDL) of Rs.6,06,24,183/- and Ganga Care Hospital Ltd (GHCL) of Rs.1.00 crore. He observed that these two companies are wholly owned

subsidiaries of the assessee. He also observed that the reserves and surplus of VHDL is Rs.36,56,12,845/-. Since VHDL and GHCL are wholly owned subsidiaries of QCIL i.e. the assessee herein, and there was reserves and surpluses in their hands, the sums advanced by them to QCIL i.e. the assessee herein, AO was of the opinion that such advances were to be treated as deemed dividend u/s 2(22)(e) of the I.T. Act in the hands of the assessee. He, therefore, examined the details of the transactions and observed that the Govt. of Andhra Pradesh has taken an initiative to develop a Health City at Visakhapatnam for which A.P. Industrial Infrastructure Corporation Ltd (APIIC) was assigned the responsibility to assign the land to interested parties to set up Multi Speciality Hospital along with an integrated facility of Para Medical College for Nursing Staff. The assessee company, due to its long standing in the health care industry, has strategically applied to APIIC for allotment of land, in order to facilitate its expansion plans and made an investment to the tune of Rs.10.45 crores and procured the land. Subsequently, Visakha Hospitals and Diagnostics Ltd (VHDL), a 100% subsidiary unit of the assessee had shown interest in setting up the multi speciality hospital in the land proposed to be given by APIIC to the assessee as it is already running its hospital in Vizag under the name of CARE Hospital. The assessee had agreed to the said proposal and in view of the upfront investment in land, it had requested VHDL to repay the amount of Rs.10.45 crores, against which the VHDL had paid the amount of Rs.6.06 crores and the balance amount was proposed to be paid by VHDL after the facility has come into operation. As regards the loans and advances from GHCL, the assessee had submitted that they are for the land proposed to be acquired from Maharashtra Airport Development Company

(MADC) for setting up a multi speciality hospital at Nagpur and handing it over to Ganga Care.

3. Thus, the contention of the assessee was that these are the funds obtained from the subsidiary companies for strategic investments on behalf of the subsidiaries for which the land was allotted to the assessee company in view of its long standing brand image, but the land will be utilized for setting up multi specialized hospitals under the subsidiary companies only. Therefore, according to him, these are the advances for the business purposes and hence do not fall within the purview of deemed dividend u/s 2(22)(e) of the Act.

4. The assessee relied upon the decision of the ITAT Hyderabad Bench, in the case of Jayadarshini Housing in ITA Nos. 1360 to 1363/Hyd/2011. The AO considered the said decision and also considered the fact that the subsidiaries of the assessee have reserves and funds and advanced the funds to the assessee. Thereafter, he held that the said advances would fall within the definition of section 2(22)(e) of the Act and since the assessee is the major shareholder holding substantial interest in the said companies, the deemed dividend is to be brought to the hands of the assessee. He also observed that the land was not transferred to the subsidiary but the land continued to be in the name of the assessee only and therefore, according to the AO, it is not a case of business transaction or trade advances. Thus, he brought that the entire amount of Rs.7,06,24,183/- being the advances from VHDL and GHCL to tax. Aggrieved, the assessee preferred an appeal before the CIT (A) who confirmed the order of

the AO and the assessee is in second appeal before the Tribunal by raising the following grounds of appeal:

“1. The order of the learned CIT (A) is erroneous both on facts and in law.

2. The learned CIT (A) erred in holding that the amount of Rs.7,06,24,183/- is an advance or loan for the purpose of section 2(22)(e) of the I.T. Act. The learned CIT (A) ought to have considered the fact that the amount was paid by an 100% subsidiary for the purpose of its business activity.

3. The learned CIT (A) erred in holding that the amount of Rs.7,06,24,183/- represents deemed income within the meaning of section 2(22)(e) of the I.T. Act and further erred in holding that it represents deemed dividend.

4. Any other ground that may be urged at the time of hearing”.

5. The learned Counsel for the assessee, while reiterating the submissions made before the authorities below, has submitted that the assessee has received these funds in the financial year 2011-12, relevant to the A.Y 2012-13 and therefore, it cannot be brought to tax in the A.Y 2013-14. He referred to Page No.158 of the Paper Book wherein the details of the receipts from VHDL are given. Further, he submitted that he is now filing another paper book containing pages 189 to 217 which are additional evidence filed for the first time before the Tribunal. He submitted that these documents would demonstrate the commercial expediency of receiving funds from VHDL and GHCL. Therefore, he prayed that the same may be admitted and remanded to the file of the AO for re-adjudication of the issue.

6. The learned DR, on the other hand, supported the orders of the authorities below and submitted that the VHDL had all along shown the advance to the assessee as a loan or advance and not as any trade advance. Therefore, it cannot be treated as

the funds advanced for commercial expediency and thus, it is to be taxed as deemed dividend u/s u/s 2(22)(e) of the Act.

7. Having regard to the rival contentions and the material on record, we find from Page 158 of the paper book that the assessee has received a sum of Rs.6,85,00,000/- on different dates, the last day being 23-01-2012, i.e. within the financial year 2011-12 relevant to the A.Y 2012-13. If it was correct, then, the said sum can only be brought to tax in the A.Y 2012-13 and not in A.Y 2013-14. Further, we find that the additional evidence filed by the assessee are the copies of the resolutions of the Board of Directors of the company for setting up of a hospital at Vizag and at Nagpur and also land allotment letters by MADC on receipt of payment from the assessee. At pages 197 and 198 of 207 are the copies of the letters issued by the Ministry of Corporate Affairs dated 31.07.2017 wherein the scheme of merger of Visakha Hospitals VHDL and M/s. Quality Care India Ltd, the assessee herein is approved. It is the argument of the assessee that the business of VHDL has now become the business of the assessee w.e.f. the appointed date i.e. 1.4.2016. In view of these facts, we deem it fit and proper to admit the additional evidence and remand the same to the file of the AO for de novo consideration in accordance with law, particularly, the contention of the assessee that the advances from VHDL were received in the financial year 2011-12. Similarly, with regard to the advances of Rs.1.00 crore from GHCL to the assessee also, the AO may re-examine the issue i.e. the period of receipt of income, whether it had accumulated profits during the relevant period and whether it was for commercial expediency as claimed by the assessee.

8. In the result, assessee's appeal is treated as allowed for statistical purposes.

Order pronounced in the Open Court on 22nd January, 2020.

Sd/-

Sd/-

(A. MOHAN ALANKAMONY) ACCOUNTANT MEMBER	(P. MADHAVI DEVI) JUDICIAL MEMBER
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Hyderabad, dated 22nd January, 2020.

Vinodan/sps

Copy to:

- 1 M/s. Quality Care India Ltd, 6-3-248/1, Road No.1 Banjara Hills, Hyderabad 500034
- 2 Dy. CIT, Circle 16(1) IT Towers, AC Guards, Hyderabad
- 3 CIT (A)-4 Hyderabad
- 4 Pr. CIT – 4 Hyderabad
- 5 The DR, ITAT Hyderabad
- 6 Guard File

By Order