



IN THE INCOME TAX APPELLATE TRIBUNAL
"D" BENCH, MUMBAI

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER

ITA no.2845/Mum./2018
(Assessment Year : 2014-15)

Dy. Commissioner of Income Tax
Circle-21(3), Mumbai

..... Appellant

v/s

Shri Rupin Hemant Banker
2801, A-Wing, Raheja Atlantis
G.K. Marg, Worli, Mumbai 400 013
PAN - AAHPH2860C

..... Respondent

ITA no.3193/Mum./2018
(Assessment Year : 2014-15)

Shri Rupin Hemant Banker
2801/2802, A-Wing, Raheja Atlantis
G.K. Marg, Lower Parel (West)
Mumbai 400 013
PAN - AAHPH2860C

..... Appellant

v/s

Asstt. Commissioner of Income Tax
Circle-21(3), Mumbai

..... Respondent

Assessee by : Shri Badresh Doshi
Revenue by : Shri Abhijit Patankar

Date of Hearing - 13.01.2020

Date of Order - 18.03.2020

ORDER**PER SAKTIJIT DEY. J.M.**

The captioned cross appeals arise out of order dated 22nd February 2018, passed by the learned Commissioner of Income Tax (Appeals)-33, Mumbai, pertaining to the assessment year 2014-15.

7. The common dispute arising in the aforesaid appeals relates to the addition made/deleted on account of deemed dividend under section 2(22)(e) of the Income Tax Act, 1961 (for short "*the Act*").

8. Brief facts are, the assessee is an individual and derives income from salary earned as a director and interest received. For the assessment year under dispute, the assessee filed his return of income on 13th November 2014, declaring total income of ₹ 21,51,450. As alleged by the Assessing Officer, since the assessee failed to appear before him and did not comply to the statutory notices issued under section 143(2) and section 142(1) of the Act calling for various information, he proceeded to complete the assessment to the best of his judgment under section 144 of the Act on the basis of material available on record. From the information available on record, he found that during the year under consideration, deposits amounting to ₹ 11,36,60,019, was found to have been made in two Bank accounts maintained jointly with his wife in Axis Bank, Nariman Point Branch.

The information further revealed that the aforesaid amount was received from M/s. Maplewood Trading Pvt. Ltd., wherein, the assessee is a director and majority shareholder. Whereas, as per the return of income, the assessee claimed to have received an amount of ₹ 6 lakh from the aforesaid company towards salary. Since, the assessee failed to explain the nature of the deposits made in the Bank accounts by way of receipts from M/s. Maplewood Trading Pvt. Ltd., the Assessing Officer treated the amount as deemed dividend under section 22(2)(e) of the Act and added back to the income of the assessee. Being aggrieved with such addition, the assessee preferred appeal before the first appellate authority.

9. After considering the submissions of the assessee in the context of facts and material on record, learned Commissioner (Appeals) called upon the Assessing Officer to examine them and furnish his report. After considering the submissions of the assessee, the report furnished by the Assessing Officer and other relevant facts, learned Commissioner (Appeals) found that the assessee is a majority shareholder in M/s. Maplewood Trading Pvt. Ltd., and out of the amount received from the said concern an amount of ₹ 53,10,000, was directly received by the assessee which became evident from the bank account. Thus, he held that the amount of ₹ 53,10,000, has to be treated as deemed dividend under section 2(22)(e) of the Act. Further,

he observed that out of the amount received from M/s. Maplewood Trading Pvt. Ltd., and deposited in the Bank account, a sum of ₹ 4,05,00,000, was paid to Vintotak Investments and a further sum of ₹ 4,50,71,119, was paid to Miramac Properties Pvt. Ltd. Whereas, neither the Assessing Officer nor the assessee has furnished any information to show whether the assessee has substantial interest in these two concerns. While observing that, in case, the assessee has a substantial interest in both these concerns, the amount in question would partake the character of deemed dividend under section 2(22)(e) of the Act, he directed the Assessing Officer to verify the actual facts and make the addition accordingly. As far as the balance amount is concerned, learned Commissioner (Appeals) held that since as per the bank account details, such amounts were paid to persons who are in no way connected to the assessee, it cannot be treated as deemed dividend under section 2(22)(e) of the Act. Being aggrieved with the aforesaid decision of learned Commissioner (Appeals), both the assessee as well as the Revenue are in appeal before us.

10. The learned Authorised Representative submitted, the bank accounts wherein the amounts received from M/s. Maplewood Trading Pvt. Ltd., were found to have been deposited, though, are joint accounts, however, assessee's wife is the first holder of such accounts. He submitted, the amount in deposit in the Bank account was actually

advanced as loan to assessee's wife. He submitted, assessee's wife has exclusive control over the bank accounts which is evident from the financial statements of the wife as well as the assessment orders passed in case of assessee's wife. He submitted, the amount received from M/s. Maplewood Trading Pvt. Ltd., has clearly been shown as liability at the hands of assessee's wife. The provision of section 2(22)(e) of the Act very clearly says, for any amount to be considered as deemed dividend, it should be for the exclusive benefit of the shareholder. Therefore, unless the aforesaid fact is established, no addition can be made at the hands of the assessee. The learned Authorised Representative submitted, out of the loan advanced by M/s. Maplewood Trading Pvt. Ltd., an amount of ₹ 5,10,000, was utilized by the assessee, therefore, to some extent there could be a link between the loan advanced and the assessee. However, insofar as the balance amount is concerned, it has no connection with the assessee. He submitted, the assessee has no connection with Vinotak Investments to whom an amount of ₹ 4,05,00,000, was given from the bank account. He submitted, insofar as Miramac Properties Pvt. Ltd. is concerned, the assessee is holding 50% share in the said concern. However, it cannot be said that the assessee is in control of the said concern. Without prejudice, he submitted, if at all any addition under section 2(22)(e) of the Act has to be made, it has to be restricted to 50% corresponding with the shareholding of the assessee in Miramac

Properties Pvt. Ltd. Without prejudice, he submitted, as per section 2(22)(e) of the Act, the addition is to be made to the extent of accumulated profit available with the company advancing loan to the shareholder. He submitted, in case of M/s. Maplewood Trading Pvt. Ltd., securities premium reserve of ₹ 14,46,00,000, cannot be included in accumulated profits. Further, he submitted, security premium reserve was received on allotment of equity shares on 31st March 2014. He submitted, since the said reserve was not available at the time of advancing loan, it cannot be treated as part of accumulated profit. To substantiate the aforesaid claim, learned Authorised Representative sought permission of the Bench to furnish the financial statements of M/s. Maplewood Trading Pvt. Ltd., along with the return of allotment in Form no.PAS-3, as additional evidence. He submitted, since the earlier Counsel failed to bring these facts to the notice of the Departmental Authorities, on the advice of newly appointed Counsel, assessee seeks to file these documents as additional evidence. Thus, he submitted, assessee's claim may be verified with reference to the additional evidence. In support of his contention, learned Authorised Representative relied upon the following decisions:-

- i) DCIT v/s Maipo India Ltd., [2008] 116 TTJ 791 (Del.HC);*
- ii) CIT v/s Madhur Housing And Development Co., [2018] 401 ITR 152 (SC); and*
- iii) Nandlal Kanoria v/s CIT, [1980] 122 ITR 405 (Cal.).*

11. The learned Departmental Representative submitted, the facts on record clearly reveal that the assessee not only has substantial shareholding in the company which advanced the loan to his wife, but he was fully in control not only with the affairs of the company which advanced the loan, but also the bank accounts wherein the loan amount was received. Thus, he submitted, the provision of section 2(22)(e) of the Act is fully attracted. The learned Departmental Representative submitted, once the conditions of section 2(22)(e) of the Act are fulfilled, the entire loan advanced has to be treated as deemed dividend at the hands of the assessee. Therefore, the subsequent utilization of fund from the bank account cannot be a relevant criteria for attracting the provisions of section 2(22)(f) of the Act. Thus, he submitted, the addition made by the Assessing Officer should be restored.

12. We have considered rival submissions in the light of the decisions relied upon and perused the material on record. Undisputed facts are, during the year under consideration assessee's wife had received a loan of ₹ 11,30,60,019, from M/s. Maplewood Trading Pvt. Ltd., which got deposited in two bank accounts held with Axis Bank in the joint names of the assessee and his wife. Before the Assessing Officer, the assessee did not furnish any evidence with regard to the nature of loan advanced along with the supporting details. Therefore, the Assessing

Officer added the entire loan amount as deemed dividend. Before the first appellate authority, the assessee had furnished the details of loan advanced by the company to assessee's wife along with the Bank statements. As could be seen from the facts on record, M/s. Maplewood Trading Pvt. Ltd., is a closely held company and its two directors being the assessee and his wife Smt. Minakshi Banker. While the assessee is having substantial shareholding of 97.71% in the company, his wife is having a negligible shareholding of 2.5% of the overall shares of the company. Further, from the details furnished it is found that M/s. Maplewood Trading Pvt. Ltd., has shown reserve and surplus to the extent of ₹ 22.44 crore as on 31st March 2014. Though, it may be a fact that the bank accounts wherein the loan advanced by the company was deposited were jointly held by the assessee and his wife and the wife being the first holder, however, looking at the shareholding pattern in M/s. Maplewood Trading Pvt. Ltd. and also the fact that the assessee is a joint holder of the bank accounts, it has to be concluded that the entire affairs of the company as well as the transactions in the bank accounts were under the effective control of the assessee and no one else. The name of assessee's wife appearing as the first joint holder in the bank accounts is only a smokescreen created by the assessee to wriggle out of the rigors of section 2(22)(e) of the Act and to safeguard his interest. Therefore, in such circumstances, we have to look at the substance rather than the form.

If the facts are analyzed in right perspective, it leaves no room for doubt that not only the assessee has total control over the affairs of the company which advanced the loan, but also in respect of the bank accounts. Therefore, the conditions of section 2(22)(e) of the Act are clearly attracted.

13. Having held so, now it is necessary to examine to what extent the loan advanced by the company can be treated as deemed dividend at the hands of the assessee. As could be seen, before the first appellate authority, the assessee had furnished the details of loan received in the bank account and its utilization. On analysis of the said details, it is very much clear that an amount of ₹ 53,10,000, has directly accrued to the benefit of the assessee. Therefore, the said amount has to be treated as deemed dividend at the hands of the assessee in terms of section 2(22)(e) of the Act. Therefore, we confirm the decision of learned Commissioner (Appeals) to that extent. As regards the balance amount, it appears from the facts on record that an amount of ₹ 4,05,00,000, was paid to Vinotak Investments and an amount of ₹ 4,50,71,119, was paid to Miramac Properties Pvt. Ltd. Since, assessee's interest in the aforesaid two concerns were not available on record, learned Commissioner (Appeals) had directed the Assessing Officer to verify the relevant facts and decide whether the amount can be added at the hands of the assessee as deemed

dividend. It is relevant to note, in pursuance to the aforesaid direction of learned Commissioner (Appeals), the Assessing Officer had examined the issue factually and found that in Vinotak Investments, the assessee had no shareholding. Accordingly, he excluded the amount of ₹ 4,05,00,000, from being treated as deemed dividend under section 2(22)(e) of the Act. However, insofar as the amount of ₹ 4,50,71,119, paid to Miramac Properties Pvt. Ltd., the Assessing Officer found that the assessee is having 50% shareholding in the said concern. Therefore, he treated the amount paid to Miramac Properties Pvt. Ltd. as deemed dividend at the hands of the assessee. Thus, from the facts on record, it is clear that the ultimate beneficiary of a part of loan advanced by M/s. Maplewood Trading Pvt. Ltd. is either the assessee himself or a concern wherein the assessee has substantial interest. Therefore, to that extent, the decision of learned Commissioner (Appeals) deserves to be upheld.

14. As regards the contention of learned Authorised Representative that in Miramac Properties Pvt. Ltd. the assessee is having 50% shareholding, hence, only 50% of the amount advanced as loan should be treated as deemed dividend, we are unable to accept the same. For the purpose of applying the provision of section 2(22)(e) of the Act, what is required to be seen is, whether the assessee being a shareholder has been benefited either directly or indirectly by the loan

advanced by M/s. Maplewood Trading Pvt. Ltd. to his wife Smt. Minakshi Banker. In the facts of the present case it has been established beyond doubt that assessee has been benefitted by the loan advanced. As regards the contention of learned Authorised Representative that an amount of ₹ 14,46,00,000, being securities premium reserve cannot form part of accumulated profit of M/s. Maplewood Trading Pvt. Ltd., to attract the provisions of section 2(22)(e) of the Act as well as the additional evidence filed to support such contention, we decline to accept the aforesaid plea of the assessee as well as the additional evidence at this stage considering the fact that the assessee had never raised this issue at any stage before the Departmental Authorities and it requires investigation into fresh facts which were never part of record. The decisions relied upon by learned Authorised Representative, on careful examination, were found to be inapplicable to the facts of the present appeal, hence, there is no need to discuss them in detail.

15. As regards the appeal filed by the Revenue, we do not find any merit in the same as the loan amount which has not been utilized by or benefitted the assessee, either directly or indirectly, cannot be treated as deemed dividend. In view of the aforesaid, we uphold the decision of learned Commissioner (Appeals) on the issue.

16. In the result, both the appeals are dismissed.

Order pronounced in the open Court on 18.03.2020

Sd/-
M. BALAGANESH
ACCOUNTANT MEMBER

Sd/-
SAKTIJIT DEY
JUDICIAL MEMBER

MUMBAI, DATED: 18.03.2020

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The CIT(A);*
- (4) *The CIT, Mumbai City concerned;*
- (5) *The DR, ITAT, Mumbai;*
- (6) *Guard file.*

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Assistant Registrar
ITAT, Mumbai