

**IN THE INCOME TAX APPELLATE TRIBUNAL
“G” Bench, Mumbai**

**Before Shri G. Manjunatha, Accountant Member
and Shri Ravish Sood, Judicial Member**

**ITA No.4217/Mum/2016
C.O No. 174/Mum/2019
(Assessment Year: 2011-12)**

The Income-tax Officer – 15(3)(2);
Room No. 15B, Ground Floor,
Aaykar Bhawan,
Maharishi Karve Marg
Mumbai – 400 020.

M/s Vrisa Infotech Pvt. Ltd
607, 6th Floor, Thacker Tower,
Sector 17, Vashi,
Vs. Navi Mumbai – 400 703.

PAN – AACCV7836N

(Appellant)

(Respondent)

Appellant by: S/shri V. Vinod Kumar, Udol Raj Singh, D.Rs
Respondent by: Shri Kishore B. Phadke, A.R

Date of Hearing: 06.03.2020
Date of Pronouncement: 09.06.2020

ORDER

PER RAVISH SOOD, JM

The present appeal filed by the revenue is directed against the order passed by the CIT(A)-24, Mumbai, dated 24.09.2014 which in turn arises from the order passed by the A.O under Sec.143(3) of the Income Tax Act, 1961 (for short 'Act'), dated 31.03.2014 for A.Y. 2011-12. The revenue has assailed the impugned order on the following grounds of appeal before us:

“1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in directing that the amount of Rs. 87,38,000/- received from M/s Vrisa Creations Pvt. Ltd. should not be treated as deemed dividend u/s 2(22)(e) of the I.T Act, even though the assessee company has received the loans from a company in which the substantial shareholder(s) of the assessee company are holding substantial interest in the said concern.

2. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in directing that the amount of Rs. 2,85,56,335/- received from M/s Shesha-Sai Infraprojects Pvt. Ltd. should not be treated as deemed dividend u/s 2(22)(e) of the I.T Act, even though the assessee company has received the loans from a company in which the substantial shareholder(s) of the assessee company are holding substantial interest in the said concern.

3. The appellant craves to leave, add, amend, alter or vary any of the grounds of appeal at the time and/or before the hearing of the appeal.”

2. Briefly stated, the assessee company which is engaged in the business of a builder and property developer had filed its return of income for A.Y 2011-12 on 10.12.2011, declaring its total income at Rs. 15,25,010/-. The return of income filed by the assessee was processed as such u/s 143(1) of the Act. Subsequently, the case of the assessee was selected for scrutiny assessment u/s 143(2) of the Act.

3. In the course of the assessment proceedings it was observed by the A.O that the assessee had received amounts from two companies viz. (i). M/s Vrisa Creations Pvt. Ltd. : Rs. 87,38,000/-; and (ii). M/s Sessa-sai projects Pvt. Ltd. : Rs. 2,85,56,355. On the basis of the aforesaid facts the A.O called upon the assessee to explain the nature of the said receipts, and explain as to why the same may not be assessed as ‘deemed dividend’ in its hands. In reply, it was submitted by the assessee that the amount received from M/s Vrisa Creation Pvt. Ltd. was towards share application money that was utilised for acquisition of a flat at Bhusari by the assessee company. Insofar the amount received from M/s Sessa-sai Infraprojects Pvt. Ltd was concerned, it was claimed that the same was an advance that was received way back in the F.Y 2008-09 towards booking amount for the offices in a project developed by the assessee company. In the backdrop of its aforesaid claim, it was submitted by the assessee that the respective receipts could not be assessed in its hands as ‘deemed dividend’ within the meaning of Sec. 2(22)(e) of the Act. However, the A.O was not persuaded to subscribe to the contentions advanced by the assessee. It was observed by the A.O that the shareholding pattern of the assessee company and the aforesaid lenders viz. (i). M/s Vrisa Creation Pvt. Ltd; and (ii). M/s Sessa-sai Infraprojects Pvt. Ltd. during the year under consideration was as under:

(A). M/s Vrisa Infotech Pvt. Ltd (assessee company)
 (As on 31.03.2011)

Sr. No.	Name	No. of shares	Share Capital
1.	Praveen Tulsiram Sankpal	9999 shares of 100 each	Rs. 9,99,900/-
2.	Rajshree Praveen Sankpal	1 share of 100	Rs. 100/-
	Total	1000 shares	Rs.10,00,000/-

(B). M/s Sesha-sai Infracprojects Pvt. Ltd.
 (As on 31.03.2011)

Sr. No.	Name	No. of shares	Share Capital
1.	Praveen Tulsiram Sankpal	305100 shares of 10 each	Rs.30,51,000/-
2.	Rajshree Praveen Sankpal	205100 shares of 10 each	Rs.20,51,000/-
	Total	1000 shares	Rs.51,02,000/-

(A). M/s Vrisa Creation Pvt. Ltd.
 (As on 31.03.2011)

Sr. No.	Name	No. of shares	Share Capital
1.	Sesha-sai Infracprojects Pvt. Ltd.	49999 shares of 100 each	Rs.4 9,99,900/-
2.	Rajshree Praveen Sankpal	1 share of 100	Rs. 100/-
	Total	50000 shares	Rs.50,00,000/-

In the backdrop of the aforesaid facts, it was observed by the A.O that Shri Praveen Tulsiram Sankpal was either directly or indirectly holding major shareholding in the assessee company i.e M/s Vrisa Infotech Pvt. Ltd., M/s Sesha-sai Infracprojects Pvt. Ltd and M/s Vrisa Creation Pvt. Ltd. Adverting to the mandate of Sec. 2(22)(e) of the Act, the A.O held a conviction that as the assessee company had received loans from the aforesaid companies in which its substantial shareholder(s) were holding substantial interest, therefore, the respective advances received by the assessee company would fall within the meaning of 'deemed dividend' u/s 2(22)(e) of the Act. Accordingly, the A.O assessed the respective amounts received by the assessee company from the aforementioned concerns viz. (i). M/s Vrisa Creations Pvt. Ltd. : Rs. 87,38,000/-; and (ii). M/s Sesha-sai projects Pvt. Ltd. : Rs. 2,85,56,355 as 'deemed dividend' u/s 2(22)(e) of the Act. After inter alia making an addition of an amount aggregating to Rs. 3,72,94,335/-[Rs. 87,38,000/- (+) Rs. 2,85,56,335/-] as 'deemed dividend' u/s 2(22)(e) of the Act, the income of the assessee was assessed at Rs 6,04,79,060/-.

4. Aggrieved, the assessee inter alia assailed the addition made by the A.O u/s 2(22)(e) of the Act, before the CIT(A). It was observed by the CIT(A) that as the assessee company was

not a shareholder in either of the lender companies viz. (i). M/s Vrisa Creations Pvt. Ltd.; and (ii). M/s Sessa-sai projects Pvt. Ltd., therefore, the receipt of the amounts by the assessee company would not be hit by the mischief of Sec. 2(22)(e) of the Act. Also, it was observed by the CIT(A) that though the assessee company might have received an advance from a company in which one of its shareholder holding not less than 10% equity shares was holding substantial interest, but then, as the assessee company was not a shareholder of the lending company, the provisions of Sdc. 2(22)(e) would not be attracted. The CIT(A) supported his aforesaid view by relying on the judgment of Hon'ble High Court of Bombay in the case of CIT Vs. Impact Containers (P) Ltd. (2014) 367 ITR 346 (Bom) and ACIT Vs. Britto Amusement Pvt. Ltd. (2014) 360 ITR 544 (Bom). On the basis of his aforesaid observations the CIT(A) vacated the addition made by the A.O u/s 2(22)(e) aggregating to Rs. 3,72,94,335/- [Rs. 87,38,000/- (+) Rs. 2,85,56,335/-].

5. The revenue being aggrieved with the order of the CIT(A) has carried the matter in appeal before us. The Id. Departmental representative (for short 'D.R') relied on the assessment order. Per contra, the Id. Authorised representative (for short 'A.R') relied on the CIT(A) order. It was submitted by the Id. A.R that the CIT(A) after duly appreciating that the assessee company was not a shareholder in either of the lender companies had rightly vacated the addition made by the A.O u/s 2(22)(e) of the Act.

6. We have heard the authorised representatives for both the parties, perused the orders of the lower authorities and the material available on record as well as the judicial pronouncements relied upon by them. Admittedly, the assessee company is not a shareholder in either of the aforesaid lender companies viz. (i). M/s Vrisa Creations Pvt. Ltd.; and (ii). M/s Sessa-sai projects Pvt. Ltd. As observed by the **Hon'ble High Court of Bombay** in the case of **CIT Vs. Impact Containers Pvt. Ltd. (2014) 367 ITR 346 (Bom)**, 'deemed dividend can be assessed only in case of a person who is a shareholder of lender company and not in the hands of the person other than shareholder. In our considered view, Sec. 2(22)(e) defines the ambit of the expression 'dividend' which have to be taxed in the hands of the recipient of the dividend i.e the shareholder. The effect of s. 2(22) is to provide an inclusive definition of the expression dividend. Clause (e) expands the nature of payments which can be classified as a dividend. Clause (e) of s. 2(22) includes a payment made by the company in which the public is

not substantially interested by way of an advance or loan to a shareholder or to any concern to which such shareholder is a member or partner, subject to the fulfilment of the requirements which are spelt out in the provision. Similarly, a payment made by a company on behalf, or for the individual benefit, of any such shareholder is treated by cl. (e) to be included in the expression 'dividend'. Consequently, the effect of cl. (e) of s. 2(22) is to broaden the ambit of the expression 'dividend' by including certain payments which the company has made by way of a loan or advance or payments made on behalf of or for the individual benefit of a shareholder. The definition does not alter the legal position that dividend has to be taxed in the hands of the shareholder. As such, the dividend within the meaning of cl. (e) of Sec. 2(22) can only be brought to tax in the hands of the shareholder. Our aforesaid view is fortified by the judgment of the **Hon'ble High Court of Bombay** in the case of **CIT Vs. Universal Medicare (P) Ltd. (2010) 324 ITR 263**. In the totality of the facts of the case, we are inclined to accept the view taken by the CIT(A) that as the assessee company is not a shareholder in either of the aforesaid lender companies viz. (i). M/s Vrisa Creations Pvt. Ltd.; and (ii). M/s Sesha-sai projects Pvt. Ltd., therefore, the amount received from them could not have been brought to tax as 'deemed dividend' within the meaning of Sec. 2(22)(e) in its hands. Accordingly, finding no infirmity in the view taken by the CIT(A), we uphold the same.

7. The appeal filed by the revenue is dismissed in terms of our aforesaid observations.

8. We shall now advert to the cross-objections filed by the assessee, which are found to be merely supportive in nature. On a perusal of the records, we find, that the cross-objections filed by the assessee are admittedly delayed by a period of 300 days. An application alongwith an 'affidavit' explaining the reason leading to delay in filing of the cross-objections has been filed before us. On a perusal of the application seeking condonation of delay in filing of the cross-objections, we find, that the same is stated to have arisen on account of some confusion as regards the issues involved in the appeal, which was thereafter resolved by taking advice of a senior counsel. As the generalized reasoning given to justify the delay involved in filing of the cross-objection does not inspire any confidence, therefore, we decline to condone the same. Be that as it may, as the appeal of the revenue has been dismissed by us, therefore, the cross-objections filed by the assessee which are merely supportive of the order of the CIT(A) are

rendered as infructuous. Accordingly, the cross-objections filed by the assessee are dismissed in terms of our aforesaid observations.

9. Resultantly, both the appeal of the revenue and the cross-objections filed by the assessee are dismissed.

10. Before parting, we may herein deal with a procedural issue that though the hearing of the captioned appeal was concluded on 06.03.2020, however, this order is being pronounced after the expiry of 90 days from the date of conclusion of hearing. We find that Rule 34(5) of the Income-tax Appellate Tribunal Rules, 1962, which envisages the procedure for pronouncement of orders, provides as follows: (5) The pronouncement may be in any of the following manners :— (a) The Bench may pronounce the order immediately upon the conclusion of the hearing. (b) In case where the order is not pronounced immediately on the conclusion of the hearing, the Bench shall give a date for pronouncement. In a case where no date of pronouncement is given by the Bench, every endeavour shall be made by the Bench to pronounce the order within 60 days from the date on which the hearing of the case was concluded but, where it is not practicable so to do on the ground of exceptional and extraordinary circumstances of the case, the Bench shall fix a future day for pronouncement of the order, and such date shall not ordinarily be a day beyond a further period of 30 days and due notice of the day so fixed shall be given on the notice board. As such, “ordinarily” the order on an appeal should be pronounced by the bench within no more than 90 days from the date of concluding the hearing. It is, however, important to note that the expression “ordinarily” has been used in the said rule itself. This rule was inserted as a result of directions of Hon’ble High Court in the case of Shivsagar Veg Restaurant Vs ACIT [(2009) 317 ITR 433 (Bom)] wherein it was inter alia, observed as under:

“We, therefore, direct the President of the Appellate Tribunal to frame and lay down the guidelines in the similar lines as are laid down by the Apex Court in the case of Anil Rai (supra) and to issue appropriate administrative directions to all the benches of the Tribunal in that behalf. We hope and trust that suitable guidelines shall be framed and issued by the President of the Appellate Tribunal within shortest reasonable time and followed strictly by all the Benches of the Tribunal. In the meanwhile (emphasis, by underlining, supplied by us now), all the revisional and appellate authorities under the Income-tax Act are directed to decide matters heard by them within a period of three months from the date case is closed for judgment”.

In the rule so framed, as a result of these directions, the expression “ordinarily” has been inserted in the requirement to pronounce the order within a period of 90 days. The question

then arises whether or not the passing of this order, beyond a period of ninety days in the case before us was necessitated by any “extraordinary” circumstances.

11. We find that the aforesaid issue after exhaustive deliberations had been answered by a coordinate bench of the Tribunal viz. ITAT, Mumbai ‘F’ Bench in DCIT, Central Circle-3(2), Mumbai Vs. JSW Limited & Ors. [ITA No. 6264/Mum/18; dated 14/05/2020, wherein it was observed as under:

“Let us in this light revert to the prevailing situation in the country. On 24th March, 2020, Hon’ble Prime Minister of India took the bold step of imposing a nationwide lockdown, for 21 days, to prevent the spread of Covid 19 epidemic, and this lockdown was extended from time to time. The epidemic situation being grave, there was not much of a relaxation in subsequent lockdowns also. In any case, there was unprecedented disruption of judicial work all over the country. As a matter of fact, it has been such an unprecedented situation, causing disruption in the functioning of judicial machinery, that Hon’ble Supreme Court of India, in an unprecedented order in the history of India and vide order dated 6.5.2020 read with order dated 23.3.2020, extended the limitation to exclude not only this lockdown period but also a few more days prior to, and after, the lockdown by observing that “In case the limitation expired after 15.03.2020 then the period from 15.03.2020 till the date on which the lockdown is lifted in the jurisdictional area where the dispute lies or where the cause of action arises shall be extended for a period of 15 days after the lifting of lockdown”. Hon’ble Bombay High Court, in an order dated 15th April 2020, has, besides extending the validity of all interim orders, has also observed that, “It is also clarified that while calculating time for disposal of matters made time-bound by this Court, the period for which the order dated 26th March 2020 continues to operate shall be added and time shall stand extended accordingly”, and also observed that “arrangement continued by an order dated 26th March 2020 till 30th April 2020 shall continue further till 15th June 2020”. It has been an unprecedented situation not only in India but all over the world. Government of India has, vide notification dated 19th February 2020, taken the stand that, the coronavirus “should be considered a case of natural calamity and FMC (i.e. force majeure clause) maybe invoked, wherever considered appropriate, following the due procedure...”. The term ‘force majeure’ has been defined in Black’s Law Dictionary, as ‘an event or effect that can be neither anticipated nor controlled’ When such is the position, and it is officially so notified by the Government of India and the Covid-19 epidemic has been notified as a disaster under the National Disaster Management Act, 2005, and also in the light of the discussions above, the period during which lockdown was in force can be anything but an “ordinary” period.

10. In the light of the above discussions, we are of the considered view that rather than taking a pedantic view of the rule requiring pronouncement of orders within 90 days, disregarding the important fact that the entire country was in lockdown, we should compute the period of 90 days by excluding at least the period during which the lockdown was in force. We must factor ground realities in mind while interpreting the time limit for the pronouncement of the order. Law is not brooding omnipotence in the sky. It is a pragmatic tool of the social order. The tenets of law being enacted on the basis of pragmatism, and that is how the law is required to be interpreted. The interpretation so assigned by us is not only in consonance with the letter and spirit of rule 34(5) but is also a pragmatic approach at a time when a disaster, notified under the Disaster Management Act 2005, is causing unprecedented disruption in the functioning of our justice delivery system. Undoubtedly, in the case of Otters Club Vs DIT [(2017) 392 ITR 244 (Bom)], Hon’ble Bombay High Court did not approve an order being passed by the Tribunal beyond a period of 90 days, but then in the present situation Hon’ble Bombay High Court itself has, vide judgment dated 15th April 2020, held that directed “while calculating the time for disposal of matters made time bound by this Court, the period for which the order dated 26th March 2020 continues to operate shall be added and time shall stand extended accordingly”. The extraordinary steps taken suo motu by the Hon’ble High Court and Hon’ble Supreme Court also indicate that this

period of lockdown cannot be treated as an ordinary period during which the normal time limits are to remain in force. In our considered view, even without the words "ordinarily", in the light of the above analysis of the legal position, the period during which lockout was in force is to be excluded for the purpose of time limits set out in rule 34(5) of the Appellate Tribunal Rules, 1963. Viewed thus, the exception, to 90-day time-limit for pronouncement of orders, inherent in rule 34(5)(c), with respect to the pronouncement of orders within ninety days, clearly comes into play in the present case."

We have given a thoughtful consideration to the aforesaid observations of the tribunal and finding ourselves to be in agreement with the same, therein respectfully follow the same. As such, we are of the considered view that the period during which the lockout was in force shall stand excluded for the purpose of working out the time limit for pronouncement orders, as envisaged in Rule 34(5) of the Appellate Tribunal Rules, 1963.

Order pronounced under rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1962, by placing the details on the notice board.

Sd/-
(G. Manjunatha)
ACCOUNTANT MEMBER
मुंबई Mumbai; दिनांक 09.06.2020

Sd/-
(Ravish Sood)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,
उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai