

आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणे में ।  
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, PUNE

(Through Virtual Court)

BEFORE SHRI ANIL CHATURVEDI, AM AND  
SHRI PARTHA SARATHI CHAUDHURY, JM

आयकर अपील सं. / ITA No. 1322/PUN/2017

निर्धारण वर्ष / Assessment Year : 2013-14

Shri Bhairavnath Trimbak Kadlag,  
Shop No.5, Mohit Apartment,  
Near Janalaxmi Bank,  
Veer Savarkar Nagar, Jail Road,  
Nashik Road,  
Nashik-422 101  
PAN: ABPPK7318H

.....अपीलार्थी / Appellant

**बनाम / V/s.**

The Assistant Commissioner of Income Tax,  
Circle-1, Nashik.

.....प्रत्यर्थी / Respondent

Assessee by : Shri Sanket Joshi  
Revenue by : Shri Prashant Gadekar

सुनवाई की तारीख / Date of Hearing : 20.08.2020

घोषणा की तारीख / Date of Pronouncement : 20.08.2020

**आदेश / ORDER**

**PER PARTHA SARATHI CHAUDHURY, JM :**

This appeal preferred by the assessee emanates from the order of the  
Ld. CIT(Appeal)-1, Nashik dated 15.03.2017 for the assessment year 2013-14  
as per the following grounds of appeal on record :

*“On facts and in law,*

1. *The learned CIT(A) erred in confirming the addition u/s.2(22)(e) of Rs.30,00,000/- made by the A.O on account of deemed dividend without appreciating that the said addition was not warranted on facts and in law.*
2. *The learned CIT(A) erred In holding that the amount of Rs.30,00,000/-advanced by the company, M/s. B.T. Kadlag Construction Pvt. Ltd. [BTKCPL] wherein the assessee is a substantial shareholder to the firm, M/s. Renuka Construction, wherein the assessee is a partner having substantial interest is to be treated as deemed dividend within the meaning of section 2(22)(e) of the Act.*
3. *The learned CIT(A) failed to appreciate that the assessee had mortgaged his personal assets having market value of more than Rs.42 lacs for the purposes of obtaining finance for the company, BTKCPL and hence, the amount of Rs.30 lacs advanced by BTKCPL to the firm, M/s. Renuka Construction wherein the assessee was a partner was against the said favour bestowed by the assessee upon the company and hence, the said advance could not be considered to be a gratuitous loan within the meaning of section 2(22)(e) and therefore, the addition made by the A.O. was not justified.*
4. *The learned CIT(A) erred in not appreciating that the ratio laid down by Hon'ble Kolkata High Court in the case of Pradeep Kumar Malhotra [338 ITR 538] was squarely applicable in the instant case and hence, the deeming provisions u/s 2(22)(e) were not attracted to the case of the assessee.*

*Without prejudice to the above contention, assuming without admitting that the provision of section 2(22)(e) are attracted in the instant case, it is submitted as under-*

5. *The learned CIT(A) ought to have appreciated that the share of the appellant individual in the partnership firm, M/s. Renuka Construction was only 25% and hence, out of the loan of Rs.30 lacs advanced by the company BTKCPL to the said firm, the assessee was entitled to withdraw only 25% of the funds i.e. Rs.7.50 lacs and hence, considering the intention of Legislature behind enacting the deeming provisions of section 2(22)(e), the addition u/s 2(22)(e) should have been restricted only to Rs.7.50 lacs and not the entire amount of Rs.30 lacs advanced to the firm.*
6. *The learned CIT(A) failed to appreciate that the ratio laid down by Hon'ble Supreme Court in the case of G. Narsimhan (died) [236 ITR 327] wherein it has been held that any legal fiction has to be carried to its logical conclusion and hence, following the said ratio and considering the intention of Legislature behind introducing the deeming provisions of section 2(22)(e), only the amount of 25% of the total loan advanced by the company to the firm M/s. Renuka Construction should have been considered as deemed dividend in the hands of the appellant.*

*7. The appellant craves, leave to add, alter, amend and delete any of the above grounds of appeal.”*

2. At the time of hearing through video conference, the Ld. AR of the assessee submitted that grounds No.1 and 7 are general in nature. In view of the submissions of the Ld. AR, no adjudication is required with regard to **Ground No.1 and Ground No.7.**

2.1 The Ld. AR of the assessee further submitted that he is not pressing the grounds No.5 and 6. In view of the submissions of the Ld. AR, **Grounds No.5 and Ground No. 6 are dismissed as ‘not pressed’.**

2.3 The only effective grounds for adjudication are **grounds No.2, 3 and 4** which relates to the addition made u/s.2(22)(e) of the Act on account of deemed dividend.

3. The brief facts on the issue are that the assessee is an individual and derives income from salary, business, and profession and from other sources. The assessee e-filed his return of income on 12.09.2013 declaring total income at Rs.35,46,618/-. The case of the assessee was selected for scrutiny under CASS. The Assessing Officer issued notices u/s.143(2) and 142(1) of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’) on 02.09.2014 and 25.06.2015 which were duly served on the assessee. The Assessing Officer passed assessment order u/s.143(3) of the Act and assessed total income at Rs.65,46,618/- by making addition of Rs.30,00,000/- u/s.2(22)(e) of the Act on account of deemed dividend.

4. We have perused the case records and heard the rival contentions. We have also analyzed the facts and circumstances in this case and considered the judicial pronouncements placed on record. The Ld. AR has placed on record paper book which is also considered. In this case, the Assessing Officer passed assessment order u/s.143(3) of the Act assessing the total income at Rs.65,46,618/- by making addition of Rs.30,00,000/- u/s.2(22)(e) of the Act on account of deemed dividend.

5. That on perusal of the order of the Ld. CIT(Appeal), we find that there was no representation at the time of hearing before the Ld. CIT(Appeal) by the assessee in person nor through his Authorized Representative and neither any written submissions were filed. This is evident from Para 2.1, 2.2 and 2.3 of the Ld. CIT(Appeal)'s order. The Ld. CIT(Appeal) after considering the assessment order, facts of the case and materials available on record as per annexures to Form-35 has passed the appellate order confirming the addition on account of deemed dividend u/s.2(22)(e) of the Act.

6. The Ld. AR of the assessee placing reliance in the paper book filed before us stated that the copy of submissions before the Ld. CIT(Appeal) was placed on record and he has considered the same while passing his order. However, as evident from records, the Ld. CIT(Appeal) has passed his order on 15.03.2017 whereas, the submissions of the assessee was filed on 16.03.2017 i.e. one day subsequent to the passing of the order by the Ld. CIT(Appeal). Therefore, the Ld. CIT(Appeal) has passed the appellate order only on the basis of the assessment order, Form-35, statement of facts and grounds of appeal. It is also true as evident from the order of the Ld. CIT(Appeal) that sufficient opportunities were provided to the assessee. However, there was not even a single compliance from the assessee on the

given dates of hearing.

6.1 At the time of hearing before us, the Ld. AR placed strong reliance on the decision of the Hon'ble Calcutta High Court in the case of Pradip Kumar Malhotra reported in 338 ITR 538 which was subsequently followed by couple of decisions of the Pune Bench of the Tribunal in ITA No.1918/PUN/2016 dated 12.12.2018 and ITA Nos.789 to 791/PUN/2017 dated 28.03.2019. The Ld. AR admitted that these decisions were not submitted before the Ld. CIT(Appeal). The Ld. AR further contended that the facts of the present case are substantially identical to the facts in the aforesaid referred judgments and therefore, placing reliance on them relief may be given to the assessee.

7. The Ld. DR vehemently argued that in spite of giving several opportunities to the assessee by the Ld. CIT(Appeal), the assessee has not complied with the notices of hearing nor has cared for appearing before the First Appellate Authority for prosecuting his appeal. The Ld. DR has placed strong reliance on the order of the Ld. CIT(Appeal) and submitted that while upholding the addition made by the Assessing Officer, the Ld. CIT(Appeal) referred to plethora of judgments, of which, some of them are of the Hon'ble Apex Court in which there is no reference to the referred judgments of the Ld. AR and facts are also substantially different.

7.1 That further whether the facts of the assessee's case are identical to the facts of the referred judgments by the Ld. AR, this needs to be verified at the First Appellate stage and therefore, the matter may be remitted back to the file of Ld. CIT(Appeal) for adjudication on merits vis-à-vis various case laws placed on record. That further even the factual documents relied by the assessee was not filed before the Ld. CIT(Appeals). That though several

opportunities were given to the assessee by the Ld. CIT(Appeal), we find that in the interest of justice and for the fact that the Income Tax Laws are within the ambit of welfare legislation one more opportunity may be given to the assessee and therefore, we are of the considered view that the matter should be restored to the file of the Ld. CIT(Appeal) wherein he is directed to examine the facts of the assessee's case in terms of Section 2(22)(e) of the Act and various case laws referred by the Ld. AR of the assessee. At the same time, the assessee is directed to be present before the Ld. CIT(Appeal) either in person or through the Authorized Representative or file detailed written submissions along with relevant documents which he wants to rely upon for representing his case on merits. The evading nature of the assessee, evading the process of law should be discouraged. Whenever any Quasi-Judicial Authority issues any notice that should be complied with and respected by the assessee then only the process of natural justice is fulfilled.

8. In view of the above facts and circumstances, we set aside the order of the Ld. CIT(Appeal) and remit the matter back to his file for adjudication while complying with the principles of natural justice and as per our directions stated hereinabove.

9. In the result, **appeal of the assessee is partly allowed for statistical purposes.**

Order pronounced on 20<sup>th</sup> day of August, 2020.

Sd/-  
**ANIL CHATURVEDI**  
**ACCOUNTANT MEMBER**

Sd/-  
**PARTHA SARATHI CHAUDHURY**  
**JUDICIAL MEMBER**

पुणे / Pune; दिनांक / Dated : 20<sup>th</sup> August, 2020.

SB

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeal)-1, Nashik.
4. The Pr. CIT-1, Nashik.
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, "बी" बेंच,  
पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

// True Copy //

आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary  
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.

|    |  | Date       |          |
|----|--|------------|----------|
| 1  | Draft dictated on                                  | 20.08.2020 | Sr.PS/PS |
| 2  | Draft placed before author                         | 20.08.2020 | Sr.PS/PS |
| 3  | Draft proposed and placed before the second Member |            | JM/AM    |
| 4  | Draft discussed/approved by second Member          |            | AM/JM    |
| 5  | Approved draft comes to the Sr. PS/PS              |            | Sr.PS/PS |
| 6  | Kept for pronouncement on                          |            | Sr.PS/PS |
| 7  | Date of uploading of order                         |            | Sr.PS/PS |
| 8  | File sent to Bench Clerk                           |            | Sr.PS/PS |
| 9  | Date on which the file goes to the Head Clerk      |            |          |
| 10 | Date on which file goes to the A.R                 |            |          |
| 11 | Date of dispatch of order                          |            |          |