

IN THE INCOME TAX APPELLATE TRIBUNAL RANCHI 'E-COURT' AT KOLKATA

Before Shri J. Sudhakar Reddy, AM & Shri S.S. Godara, JM

ITA No.61/Ran/2018
Assessment Year:2013-14

M/s Budhia Agencies Pvt. Ltd. Sri Vinay Kumar Jalan, M/s O.P. Jalan and Associates Consultants LLP, 48 Cart Sarai Road, Upper Bazaar, Ranchi, Jharkhand, PIN-834001.	बनाम / V/s.	DCIT, Circle-1, Ranchi
PAN No.AAABC8716G		
अपीलार्थी /Appellant	..	प्रत्यर्थी /Respondent

अपीलार्थी की ओर से/By Appellant	Shri Vinay Kumar Saha, Advocate
प्रत्यर्थी की ओर से/By Respondent	Shri N. S. Khalkho, JCIT, Sr. DR
सुनवाई की तारीख/Date of Hearing	01-09-2020
घोषणा की तारीख/Date of Pronouncement	16-09-2020

आदेश /O R D E R

Per S. S. Godara:

This assessee's appeal for assessment year 2013-14 arises against the Commissioner of Income-tax (Appeals), Ranchi's order dated 02.01.2018 passed in case No.CIT(A),Ranchi/10094/2016-17 involving proceedings u/s 143(3) of the Income Tax Act, 1961; (in short 'the Act').

Heard both the parties. Case file persued.

2. The assessee's sole substantive grievance raised in the instant appeal challenges correctness of both the lower authorities' making section 2(22)(e) deemed dividend addition of Rs.16,00,000/- in the course of assessment framed on 03.03.2016 and enhanced to Rs.18,76,414/- in the lower appellate order under challenge. Both the

learned representatives invited our attention to the CIT(A)'s findings on the impugned addition issue as under:

“ [5.14] The ledger of the appellant in the books of M/s. Republic Tractor Motor (P) Ltd. show that the total amount advanced was Rs.18,76,414/- and not Rs.16,00,000/- added by the Ld. Assessing Officer. The appellant vide its reply to notice u/s.251 (1)(a) r.w.s.251(2) of the Act has admitted that that the appellant had paid Rs.5,00,000/- on 01.06.2012 to its sister concern M/s. Republic Tractor Motor Pvt. Ltd. in the form of Hand Loan which was received back on 13.06.2012 through cheque and the account was squared off. Thereafter on 18.06.2012 a sum of Rs.2,00,000/- was again received from its sister concern M/s. Republic Tractor Motor Pvt. Ltd. in the form of Hand Loan against which Rs.4,76,414/- was paid on 30.09.2012. Thereafter on 14.11.2012 a sum of Rs.9,00,000/- was paid to its sister concern M/s. Republic Tractor Motor Pvt. Ltd. in the form of Hand Loan which was received back on 15.11.2012 through cheque and again the account was squared off and at the end of the year, a sum of Rs.2,76,414/- was outstanding.

[5.15] In Tarulata's case (supra) the law as laid down was that a loan or advance by a controlled company to its shareholder would attract tax liability though such a loan might be repaid subsequently even during that year. Again, the Bombay High Court in Navnit Lal C. Javeri v. K. K. Sen, from which the aforesaid appeal was taken to the Supreme Court, has observed "The tax is attracted at the point of time when the said loan is borrowed by the members. "The section covers both ".....by way of advance or loan to a shareholder,..... ”

[5.16] Considering the above, and in terms of the provisions of 251(1)(a) r.w.s. 251(2) of the Act, the amount deemed to be dividend u/s. 2(22)(e) of the Act is taken at Rs.18,76,414/- in place of Rs.16,00,000/- added by the Ld. Assessing Officer leading to enhancement of Rs.2,76,414/-.”

3. Learned authorized representative vehemently contends that the impugned deemed dividend addition is not sustainable in the eyes of law. His case as per page 4 of the paper-book indicating the assessee's ledger in the books of M/s Republic Tractor Motor Pvt. Ltd. is that it had been receiving and paying the various sums between 01.06.2012 to 15.11.2012 for meeting day to day exigency involving sister concerns only instead of a loan inviting deemed dividend addition. This clinching aspect has gone unrebutted from the Revenue side. We observe in this backdrop that the mere fact that the assessee having met its business exigency of funds requirement

coming from its group concerns by way of a running account does not attract deemed dividend u/s 2(22)(e) of the Act. Case law 2019-TIOL-1455-HC-AHM-IT PCIT vs. Dishman Pharmaceuticals and Chemicals Ltd. and Pradip Kumar Malhotra vs. CIT (2011)338 ITR 538(Cal) and decision in 2019-TIOL-1354-ITAT-DEL DCIT vs. Shri Amit Kumar Jain hold that the impugned deeming fiction does not come into play in the case of a running account involving group entities meeting day to day business exigency(ies) with each other's funds. We therefore hold that both the learned lower authorities have erred in making the impugned addition in assessee's hands.

4. We also sought now from both the parties as to whether these two entities satisfy statutory requirements of stake holding or not. We are informed that these two entities i.e the assessee herein the M/s Bhudia Agencies Pvt. Ltd. and M/s Republic Tractor Motor Pvt. Ltd. have common shareholders only. Be that as it may, since we have deleted the impugned addition on running account ground instead of loan transactions, we refrain ourselves from dealing with this latter aspect.

5. This assessee's appeal is allowed.

Order pronounced in open court on 16/09/2020.

Sd/-
(J. Sudhakar Reddy)
Accountant Member

Sd/-
(S. S. Godara)
Judicial Member

Kolkata;
Date: 16/09/2020
RS

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. अपीलार्थी/Appellant- M/s Budhia Agencies Pvt. Ltd.
2. प्रत्यर्थी/Respondent- DCIT, Circle-1, Ranchi

3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण / DR, ITAT,
6. गार्ड फाइल / Guard file.

//True copy//

By order/आदेश से,

Sr. Private Secretary