

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", PUNE – VIRTUAL COURT

BEFORE SHRI R.S. SYAL, VICE PRESIDENT AND
SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER

ITA No. 1926/PUN/2016

निर्धारण वर्ष / Assessment Year : 2012-13

Shri Sanjay Chandan Patel, Plot No.48, Nehru Housing Society, Deopur, Dhule 424 002 PAN : AFCPP5351C	Vs.	DCIT, Circle, Dhule
Appellant		Respondent

Assessee by Shri Sunil Ganoo
Revenue by Shri S.P. Walimbe

Date of hearing 06-10-2020
Date of pronouncement 07-10-2020

आदेश / ORDER

PER R.S.SYAL, VP :

This appeal by the assessee is directed against the order passed by the CIT(A)-1, Nashik on 01-07-2016 in relation to the assessment year 2012-13.

2. The ld. AR did not press ground Nos. 1 and 3 of the appeal, which are hereby dismissed as 'not pressed'. Ground No.4 is general and hence, requires no adjudication.

3. The only ground which survives for consideration is confirmation of addition of Rs.65,36,678/- on account of deemed dividend u/s. 2(22)(e) of the Income-tax Act, 1961 (hereinafter also called 'the Act').

4. Briefly stated, the facts of the case are that the assessee has been a Director of a company, namely, Souvenir Developers (India) Pvt. Ltd., holding more than 20% of shares. The assessee raised certain advances from the company. The Assessing Officer (AO) opined that the amount of loans advanced by the company to the assessee to the tune of Rs.2.72 crore was liable to be considered as deemed dividend u/s.2(22)(e) of the Act subject to the availability of accumulated funds in the hands of the company. When confronted, the assessee submitted that he, along with a partnership firm, namely, Souvenir Developers, offered his personal properties as collateral security to the bank for availing credit facilities by Souvenir Developers (India) Pvt. Ltd. with the understanding that if in future, the assessee needs funds, the company will advance loans to the assessee at the interest rate of 13%, which was close to the interest rate on which the bank had financed the company. The assessee also relied on the judgment of the Hon'ble Calcutta High Court in *Pradip Kumar Malhotra Vs. CIT (2012) 246 CTR (Cal) 493* in support of his contention that the amount of advances received by the assessee was not liable to be considered as deemed dividend. Not convinced, the AO computed the amount of accumulated profits in the hands of company at

Rs.65,36,678/- and made the addition by treating loan advanced to the assessee as deemed dividend u/s.2(22)(e) of the Act. The Id. CIT(A) did not change the fortune of the assessee, which led to the filing of the instant appeal.

5. We have heard the rival submissions through Virtual Court and gone through the relevant material on record. From the computation of accumulated profits, made by the AO on pages 17-19 of the assessment order, of Souvenir Developers (India) Pvt. Ltd., it is seen that the AO reduced a sum of Rs.60,87,413/-, being, the amount taxed as deemed dividend in the hands of the assessee for the A.Y. 2009-10 in addition to another sum taxed in the hands of Kamlakar Sahebrao Patil as deemed dividend for the A.Y. 2011-12. The matter pertaining to the assessee for the A.Y. 2009-10 came up for consideration before the Tribunal. Vide order dated 30-05-2017 in ITA No.1894/PUN/2014, the Tribunal, after considering the entire evidence, remitted the matter to the file of AO for a fresh consideration in terms of directions given in para 5 of the order. Since the facts and circumstances of the issue in the extant appeal are *mutatis mutandis* similar to those for the A.Y. 2009-10 in assessee's own case, respectfully following the precedent, we set aside the impugned order and send the matter

back to the file of the AO for taking a fresh decision in the light of observations made by the Tribunal in assessee's own case for the A.Y. 2009-10.

6. In the result, the appeal is partly allowed for statistical purposes.

Order pronounced in the Open Court on 07th October, 2020.

Sd/-
(PARTHA SARATHI CHAUDHURY)
JUDICIAL MEMBER

Sd/-
(R.S.SYAL)
VICE PRESIDENT

पुणे Pune; दिनांक Dated : 07th October, 2020
सतीश

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. The CIT(A)-1, Nashik
4. The Pr.CIT-1, Nashik
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे
“ए” / DR ‘A’, ITAT, Pune
6. गार्ड फाईल / Guard file

आदेशानुसार/ BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune

		Date	
1.	Draft dictated on	06-10-2020	Sr.PS
2.	Draft placed before author	07-10-2020	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		

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