

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम

**IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM BENCH, VISAKHAPATNAM
(through web-based video conferencing platform)**

श्री वी. दुर्गा राव, न्यायिक सदस्य एवं श्री डि.एस. सुन्दर सिंह, लेखा सदस्य के समक्ष

**BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER &
SHRI D.S. SUNDER SINGH, ACCOUNTANT MEMBER**

**आयकर अपील सं./I.T.A.No.334/Viz/2019
(निर्धारण वर्ष/Assessment Year:2015-16)**

Dy.Commissioner Income Tax
Central Circle-1
Visakhapatnam

Vs. M/s Grandhi Manoj Kumar
(HUF)
L/R Smt.Grandhi Bharata
Mallika Ratna Kumari,
'V'Square, Dwarakanagar
Visakhapatnam
(प्रत्यर्थी/ Respondent)

(अपीलार्थी/ Appellant)

अपीलार्थी की ओर से/ Appellant by : Shri D.K.Sonowal, CIT, DR
प्रत्यर्थी की ओर से / Respondent by : Shri G.V.N.Hari, AR

सुनवाई की तारीख / Date of Hearing : 23.09.2020
घोषणा की तारीख/Date of Pronouncement : 23.11.2020

आदेश /ORDER

Per Shri D.S.Sunder Singh, Accountant Member :

This appeal is filed by the revenue against the order of Commissioner of Income Tax (Appeals)-3, [CIT(A)], Visakhapatnam in Appeal No.97/2018-19/CIT(A)-3/VSP/2018-19 dated 13.03.2019 for the Assessment Year (A.Y.) 2015-16.

2. All the grounds of appeal are related to the deletion of addition made by the Assessing Officer (AO) u/s 2(22)(e) of the Income Tax Act, 1961 (in short 'Act'). During the assessment proceedings, the AO found that the assessee is the beneficial owner having 75% shareholding in the company M/s Manoj Vaibhav Gems N Jewellers Pvt. Ltd.,(MVGNJPL) formerly known as M/s Vaibhav Empire Pvt. Ltd. (VEPL), which has advanced the sum of Rs.17,49,58,335/-. The said company is having accumulated profits of Rs.59,15,92,870/-, hence assessed the sum of Rs.17,49,58,335/- as deemed dividend u/s 2(22)(e) of the Act. The AO in the assessment proceedings found that the assessee has made the adjustment entry for Rs,17,50,00,000/- on the last day of the financial year 31.03.2014 to the VEPL a/c and reversed the same on 01.04.2014 by debiting the said amount. Therefore, the AO suspected the transaction and called for the details. On verification, the AO found that the company has maintained the ledger account in the name of Shri Grandhi Manoj Kumar(HUF). The total debit transactions were Rs.65,42,67,229/- and credit transaction of Rs.66,94,07,089/- in the books of the assessee maintained in the name of the company M/s Vaibhav Empire Pvt. Ltd. The AO further observed that the assessee is not supplying any goods to M/s VEPL, thus there is no advance for goods except accepting the loans from

the company which required to be brought to tax u/s 2(22)(e) of the Act. Similar addition was also made by the AO for the A.Y.2014-15 in the hands of the assessee. The AO called for the explanation of the assessee and the assessee explained that the entire transactions were trade transactions and duly accounted in the books of assessee as well as M/s VEPL. The assessee further submitted that the transactions were related to purchase of gold plan schemes. The assessee is collecting monthly subscriptions from the subscribers under gold purchase scheme and after completion of the instalment period, HUF gives closure form to its subscribers and refers the customers to redeem their deposit with M/s VEPL, as per terms and conditions of the scheme. The subscribers buy jewellery from VEPL and HUF transfer the funds to the company on behalf of its customers, thus, the assessee explained that the entire transactions were trade transactions and no personal benefit was derived by the assessee directly or indirectly. It was also submitted that on identical facts for the A.Y.2014-15, the AO made the addition u/s 2(22)(e) of the Act and on appeal Hon'ble ITAT dismissed the appeal of the revenue holding that there was no direct or indirect benefit derived by the assessee to tax the same as deemed dividend u/s 2(22)(e) of the Act. The AO examined the explanation of the assessee and not being impressed with the explanation of the assessee, held that the

outstanding as on 31.03.2014 was a loan and the assessee got direct benefit from the company, hence taxed the same as deemed dividend u/s 2(22)(e) of the Act.

3.0. The assessee went on appeal before the CIT(A) and the Ld.CIT(A) deleted the addition following the decision of this Tribunal in the assessee's own case for the A.Y.2014-15. For the sake of clarity and convenience, we extract para No.5.3 to 6 of the CIT(A) order which reads as under :

"5.3. The CIT(A)-3, Visakhapatnam vide order dated 31.10.2017 has held for the A.Y.2014-15 as under :

"4.3(c) I have also perused the ledger account copy of the appellant in the book of VEPL and found that the entries made in the books are journal entries without money being passed on from the company to the appellant. In reality, neither loans nor advances have been given by the company to the appellant. What were transferred are the trade payables as well as receivables. By this transaction there is no benefit direct or indirect derived by the appellant and the Assessing Officer is not correct in stating that the appellant HUF is deriving the benefit out of the entries to the extent of Rs.1,51,39,860/-. Accordingly, the Assessing Officer is directed to delete the addition"

5.4. The ITAT, Visakhapatnam Bench, Visakhapatnam vide order dated 21.08.2018, for the A.Y.2014-15 has held as under:

"18. We have heard both the parties and perused the material placed on record. From the assessment order it is found that the assessee is having running account with M/s. Vaibhav Empire Pvt. Ltd. (VEPL) and as on 31.03.2014, there was credit balance in the books of VEPL and the balance outstanding was Rs.15,98,60,104/-. The account shows the opening Rs.2,67,13,952/- as 31.03.2014 and the same day a sum of Rs.17,50,00,000/- was transferred with journal entry resulting in balance of Rs.20,17,13,952/- credit and there was a debit entry of Rs.4,18,53,812/-, which the AO has considered as loan

and taxed the same as deemed dividend. On close scrutiny of the accounts of the assessee as well the VEPL, it is evident that there was no loan and the receivables are outstanding at Rs.15,98,60,104/- as per the books of the assessee. Therefore, there is no direct or indirect benefit derived by the assessee by withdrawing the amount receivable from the company. Hence, there is no case for making the addition on account of deemed dividend u/s.2(22)(e) of 1X\T. Act. Accordingly, we hold that the Ld.CIT(A) rightly deleted the addition and the order of the CIT(A) is upheld. Hence, the appeal of the revenue on this ground is dismissed."

6.0. I have perused the account copy of M/s.VEPL in the books of the appellant for A.Yrs.2014-15 and 2015-16. It is seen that entries during the above years are similar in nature. The transactions between them are business transactions as brought out by the Assessing Officer at para 7.3 of the order. The non-business transactions are few and mostly are through journal entries and not receipts/payments. As facts being the same, respectfully following the order of CIT(A) for A.Y.2014-15 and that of ITAT for A.Y2014-15, it is held that no direct or indirect benefit is derived by the appellant warranting addition u/s 2(22)(e). The addition accordingly, is deleted."

4.0. Against the order of the Ld.CIT(A), the department is in appeal before us.

5.0. We have considered the rival contentions and find that the Ld.CIT(A) deleted the addition following the order of this Tribunal in the assessee's own case for the earlier assessment year 2014-15 on identical facts. The relevant part of the order of the ITAT was extracted by the Ld.CIT(A) in para No.5.4 of his order which is extracted in para 3.0 of this order. Since the facts are identical and the department did not place any evidence or material to controvert the finding of the Ld.CIT(A) we do not

find any infirmity in the order of the CIT(A) and the same is upheld. The appeal of the revenue is dismissed.

6. In the result, appeal of the revenue is dismissed.

Order pronounced in the open court on 23rd November 2020.

Sd/-

(वी.दुर्गा राव)

(V. DURGA RAO)

न्यायिक सदस्य/JUDICIAL MEMBER लेखा सदस्य/ACCOUNTANT MEMBER

दिनांक /Dated : 23.11.2020

L.Rama, SPS

Sd/-

(डि.एस. सुन्दर सिंह)

(D.S. SUNDER SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER लेखा सदस्य/ACCOUNTANT MEMBER

आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:-

1. राजस्व/The Revenue – Dy.Commissioner Income Tax, Central Circle-1, Visakhapatnam
2. निर्धारिती/ The Assessee– M/s Grandhi Manoj Kumar (HUF), L/R Smt.Grandhi Bharata Mallika Ratna Kumari,'V' Square, Dwarakanagar, Visakhapatnam
3. The Pr.Commissioner of Income Tax (Central), Visakhapatnam
4. The Commissioner of Income Tax (Appeals)-3, Visakhapatnam
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम/DR, ITAT, Visakhapatnam
- 6.गार्डफ़ाईल / Guard file

आदेशानुसार / BY ORDER

// True Copy //

Sr. Private Secretary
ITAT, Visakhapatnam