

आयकर अपीलीय अधीकरण, न्यायपीठ – “B” कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH: KOLKATA
 (समक्ष) Before श्री जे. सुधाकर रेड्डी, लेखा सदस्य एवं/and श्री ऐ. टी. वर्की, न्यायीक सदस्य)
 [Before Shri J. Sudhakar Reddy, AM & Shri A. T. Varkey, JM]

I.T.A. No. 266/Kol/2020
Assessment Year: 2015-16

Assistant Commissioner of Income-tax, Circle-43, Kolkata.	Vs.	Shri Ramesh Chandra Kataria (PAN: AFYPK7865C)
Appellant		Respondent

Date of Hearing (Virtual)	16.12.2020
Date of Pronouncement	05.01.2021
For the Appellant	Shri Imokaba Jamir, CIT, DR
For the Respondent	Shri S. S. Gupta, AR

ORDER

Per Shri A.T.Varkey, JM

This appeal preferred by the revenue is against the order of Ld. CIT(A)-13, Kolkata dated 19.12.2019 for A Y 2015-16.

2. The main grievance of the revenue is against the action of the Ld. CIT(A) in allowing the grounds of appeal raised by the assessee against the addition of Rs. 10.10 cr. made by the AO u/s. 2(22)(e) of the Income-tax Act, 1961 (hereinafter referred to as the “Act”). The main plea which has been taken into consideration by the Ld. CIT(A) is that the advance of Rs.10.10 cr. which was received (by M/s. Suman Jeweller) from the sister concern (M/s. Rohit Jeweller Pvt. Ltd.) was for business purpose in which assessee had substantial interest was in the nature of normal trade advance which has been later adjusted against the actual sale of gold ornaments partly and balance repaid subsequently, which facts goes on to prove the business transaction and happened due to business expediency and were transaction which were carried in the normal course of business and hence, do not attract the mischief of the provision as provided in section 2(22)(e) of the Act and that the assessee’s case is covered by the CBDT Circular No. 19/2017 dated 12.06.2017 and consequently Section 2(22)(e) of the Act is not attracted and therefore the AO’s action of making addition was deleted. Against this action of the Ld. CIT(A) giving relief to the assessee, the Revenue has preferred this appeal before us.

3. The admitted facts in this case is that the assessee Shri Ramesh Chandra Kataria is a partner of M/s. Suman Jeweller (82.27% shareholding) and was also a director of M/s. Rohit Jeweller Pvt. Ltd. (50% shareholding). The AO noted that M/s. Suman Jeweller had received an advance of Rs. 10.10 cr. from M/s. Rohit Jeweller Pvt. Ltd. in the relevant assessment year (AY 2015-16). The AO noted that M/s. Rohit Jeweller Pvt. Ltd. had accumulated the profits of Rs.12,62,27,687/- as per the company's Balance Sheet as on 31.03.2015 and hence he added the entire amount of Rs.10.10 cr. as taxable in the hands of the assessee u/s. 2(22)(e) of the Act. The only plea that needs to be examined is whether assessee's case on facts falls in the CBDT Circular No. 19/2017 dated 12.06.2017 wherein the CBDT based on the decision of the Hon'ble Constitutional Courts have exempted certain kind of trade transaction in the nature of commercial transaction which would not fall in the ambit or attract the rigor of Section 2(22)(e) of the Act. For that we need to reproduce circular No. 19/2007 dated 12.06.2017 which reads as under:

Sub: Settled View on section 2(22)(e) of the Income Tax Act, trade advances -reg.

Section 2(22) clause (e) of the income Tax Act, 1961 (the Act) provides that 'dividend' includes any payment by a company, not being a company in which the public are substantially interested of any sum by way of advance or loan to a shareholder, being a person who is the beneficial Owner of share (not being shares entitled to a fixed rate of dividend whether with or without a right to participate in profits holding not less than ten per cent of the voting power. or to any concern in which such shareholder is a member or a partner and in which he has a substantial interest (hereafter in this clause referred to as the said concern) or any payment by any such company on behalf, or for the individual benefit, of any such shareholder, to the extent to which the company in either case possesses accumulated profits.

2. The Board has observed that some Courts in the recent past have held that trade advances in the nature of commercial transactions would not fall within the ambit of the provisions of section 2(22) (e) of the Act. Such views have attained finality.

2.1 Some illustrations/examples of trade advances/commercial transactions held to be not covered under section 2(22) (c) of the Act are as follows:

i. Advances were made by a company to a sister concern and adjusted against the dues for job work done by the sister concern. It was held that amounts advanced for business transactions do not to fall within the definition of deemed dividend under section 2(22) (e) of the Act. (CIT vs. Creative Dyeing & Printing Pvt. Ltd., Delhi High Court).

ii. Advance was made by a company to its shareholder to install plant and machinery at the shareholder's premises to enable him to do job work for the company so that the company could fulfill an export order. It was held that as the assessee proved business expediency, the advance was not covered by section 2(22)(e) of the Act. (CIT Vs. Amrik Singh, P&H High Court).

iii. A floating security deposit was given by a company to its sister concern against the use of electricity generators belonging to the sister concern. The company utilised gas available to it

from GAIL to generate electricity and supplied it to the sister concern at concessional rates, it was held that the security deposit made by the company to its sister concern was a business transaction arising in the normal course of business between two concerns and the transaction did not attract section 2(22)(e) of the Act. (CIT, Agra vs. Atul Engineering Udyog, Allahabad High Court).

3. In view of the above it is a settled position that trade advances, which are in the nature of commercial transactions would not fall within the ambit of the word 'advance' in section 2(22)(e) of the Act. Accordingly, henceforth, appeals may not be filed on this ground by officers of the Department and those already filed, in Courts/Tribunals may be withdrawn/not pressed upon.

4. The above may be brought to the notice of all concerned. [Emphasis given by us]

*Sd/- Neetika Bansal
Deputy Secretary to Government of India”*

4. The Ld. CIT(A) took note of the facts brought to his notice during the first appellate proceedings as discerned from a perusal of the impugned order which shows that assessee brought to the notice of the Ld. CIT(A) that its case falls in the ken of the aforesaid CBDT circular and therefore claimed that Section 2(22)(e) of the Act is not attracted in the facts of its case because the trade advance from the sister company was for the purpose of normal business / commercial activity and occurred due to business expediency and does not fall in the ambit of Section 2(22)(e) of the Act, which plea was accepted by the Ld CIT(A) and he gave relief to the assessee. In order to prove that its case falls in the ken of the CBDT circular (supra), before us, the Ld. AR Shri S.S. Gupta pointed out that the two concerns i.e. M/s. Suman Jeweller and M/s. Rohit Jeweller Pvt. Ltd. earlier had operated from the same premise and had common display of their stocks to cater to the customers/buyers of both concerns. According to the Ld. AR, in this assessment year, M/s. Suman jeweler shifted to a different place in Burrabazar whereas M/s. Rohit Jeweller Pvt. Ltd. continued to operate from Camac Street. Therefore, the stock of the two concerns which earlier were maintained at the same place was split between the two premises. The Ld. AR referred to the ledger copies placed in the paper book from where he drew our attention to the fact that M/s. Suman Jeweller not only received money from M/s. Rohit Jeweller Pvt. Ltd. but also paid or repaid funds to M/s. Rohit Jeweller Pvt. Ltd. throughout the year under consideration as normal business transactions. According to Ld. AR, the money received from the sister concern M/s. Rohit Jeweller Pvt. Ltd. was paid by M/s. Suman Jeweller to sundry creditors for goods purchased from M/s. Emareld Jewel Industry India Ltd. (hereinafter referred to as M/s. EJIIL), M/s. Mallick Jewellers etc. against purchases made from them. It was pointed

out by the Ld. AR that out of the realization from the sundry debtors, M/s. Suman Jeweller made repayment to M/s. Rohit Jewellers Pvt. Ltd. It was brought to our notice that M/s. Suman Jeweller specializes in selling of casting light weight gold ornaments and was also one of the dealers of M/s. EJIL (market leader in manufacturing of casting light weight jewellery, Coimbatore, Tamilnadu). The Ld. AR drew our attention to the fact that M/s. Suman Jeweller made purchases from M/s. EJIL of about Rs.26.7 cr. and the amount was paid by M/s. Suman Jeweller to M/s. EJIL to the tune of Rs.26.7 cr.

5. Further according to the Ld. AR, M/s. Rohit Jeweller wanted to explore during the relevant assessment year the overseas markets using stocks of casting light weight gold jewellery obtained from M/s. Suman Jeweller (which was specialized in casting light weight) which in turn was purchased from M/s. EJIL. According to the Ld. AR, in terms of the arrangement between M/s. Suman Jeweller and M/s. Rohit Jeweller Pvt. Ltd. there was no requirement as such to maintain stock in itself but was to have access to the casting light weight gold jewellery obtained from M/s. EJIL which is with M/s. Suman Jeweller. In order to part finance such stock to be maintained by M/s. Suman Jeweller, M/s. Rohit Jeweller Pvt. Ltd. was required to pay short term advances to M/s. Suman Jeweller from time to time to enable it to procure casting light weight gold jewellery. Thus, according to the Ld. AR, the stock which was maintained by M/s. Suman Jeweller was to meet the business requirement of ready export order to be executed by M/s. Rohit Jeweller Pvt. Ltd.

6. According to Ld. AR, the said overseas business venture of the sister concern M/s. Rohit Jeweller Pvt. Ltd. did not turn out to be fruitful as thought of, since the overseas buyers did not finalize the orders on samples or stocks of Emerald Brands for various reasons. According to the Ld. AR, the overseas buyers were directly dealing with M/s. EJIL and this was one of the reasons why M/s. Rohit Jeweller Pvt. Ltd. could not fetch the anticipated export orders, as M/s. EJIL was active in the overseas market. The Ld. AR pointed out that the quantitative closing stock of M/s. Suman Jeweller was to the tune of approximately Rs.8 cr. as on 31.03.2015 when compared with the stock as on 31.03.2014 was only about Rs. 4 cr. and this was mainly due to bulk excess stocking from M/s. EJIL which contributed about 74% of the closing stock. According to the Ld. AR, the outstanding of Rs.10.10 cr. was attributed to huge stock of gold ornaments left with M/s. Suman Jeweller which had to sell the said stock in the domestic market later on low profit

margin so as to use the said realization for repayment of trade advances from M/s. Rohit Jeweller Pvt. Ltd. The Ld. AR drew our attention to the details of purchases made by M/s. Rohit Jeweller Pvt. Ltd. from M/s. Suman Jeweller and corresponding sales by M/s. Rohit Jeweller Pvt. Ltd. which have been depicted in two tables which were placed before us. Thus, according to Ld. AR, the purchases of casting light weight gold ornaments in excess by from M/s. Suman Jeweller from M/s EJIL were against the anticipated export orders from M/s Rohit Jeweller Pvt. Ltd. and that on failure of M/s. Rohit Jeweller Pvt. Ltd. to place export orders, the advances taken from M/s Rohit Jeweller Pvt. Ltd. were refunded by M/s. Suman Jeweller to M/s. Rohit Jeweller Pvt. Ltd. through sales in domestic markets. According to the Ld. AR, within 01-02 years both M/s. Rohit Jeweller pvt. Ltd. and M/s. Suman Jeweller disposed off the huge stock and the trade advance from M/s. Rohit Jeweller Pvt. Ltd. to M/s. Suman Jeweller was brought down to nil. Thus, according to Ld. AR, the transaction between the sister concerns were purely in the nature of trade advance with purchase and sale of gold ornaments and it cannot be termed as loan/advance as envisaged in section 2(22)(e) of the Act. It was also brought to our notice that in the subsequent assessment year i.e. AY 2016-17 M/s. Rohit Jeweller Pvt. Ltd. has purchased gold ornaments worth Rs.7.35 cr. from M/s. Suman Jewellers and accounts between the two was finally settled in the FY 2016-17. Thus, according to ld. AR, the trade advances between the sister concerns were akin to that of running current account were both debit and credit of money took place intermittently/regularly between the two concerns. Therefore, according to the Ld. AR, the Ld. CIT(A) correctly appreciated the aforesaid facts by taking note that the aforesaid facts of the assessee's case falls squarely in the settled exemption given in CBDT Circular No. 19/2017 dated 12.06.2017, which action of Ld. CIT(A) according to him does not require any interference.

7. Per-contra, the Ld. CIT, DR assailing the action of the Ld. CIT(A) contended that the assessee being a partner of M/s. Suman Jeweller having shareholding of 82.27% had received advance of Rs.10.10 cr. from M/s. Rohit Jeweller Pvt. Ltd. wherein the assessee had 50% shareholding, and the AO noted that M/s Rohit Jeweller Pvt. Ltd. having accumulated profit of Rs. 12.62 cr. the AO rightly added Rs.10.10 cr. u/s. 2(22)(e) of the Act. According to the Ld. DR, the AO noted that the amount taken as advance from M/s. Rohit Jeweller Pvt. Ltd. was given to the sundry creditors for the goods purchased by M/s. Suman jeweler and thus formed the working capital of M/s. Suman jeweler. According to

the Ld. DR, it can be seen that the funds received from M/s. Rohit Jeweller Pvt. Ltd. was utilized by M/s. Suman jeweler mainly for making payment to the sundry creditors for the goods purchased from M/s. EJIL, M/s. Mallick Jewellers, M/s. Palak jewelers, M/s. Pipu Jewellers etc. and according to Ld. CIT, DR the AO noted that the source of repayment made to M/s. Rohit Jewellers Pvt. Ltd. was out of the realization received from the sundry debtors to whom M/s. Suman Jeweller has sold goods and, therefore, the repayment of Rs.7.7 cr. was sourced from the sundry debtors. Therefore, in the said facts the AO had concluded that the advance amount of Rs. 10.10cr. received by the partnership firm M/s. Suman Jeweller from M/s. Rohit Jeweller Pvt. Ltd. is not in the nature of normal business transaction and the exemption given in CBDT Circular No. 19/2017 dated 12.06.2017 is not applicable to the assessee's case and the AO rightly added Rs. 10.10 cr. u/s 2(22)(e) of the Act which according to Ld. CIT DR is correct and therefore, the order of the Ld. CIT(A) in deleting the addition is erroneous and needs to be reversed.

8. We have heard rival submissions on facts and law on the issue and gone through the records. We note that the main plea of the assessee is that advance taken by M/s Suman Jeweller from M/s Rohit Jeweller Pvt. Ltd. does not fall in the mischief stated in deeming provision u/s. 2(2)(e) of the Act because it falls in the exemption given in the CBDT Circular No. 19/2017 dated 12.06.2017(supra). The assessee's claim was that the advance received by the M/s Suman Jeweller was purely a trade advance in the nature of commercial transaction between the two sister concerns which was due to business expediency and, therefore, would not fall within the ambit of the provision of section 2(22)(e) of the Act. This claim of the assessee was upheld by the Ld. CIT(A) taking note that the amount of Rs.10.10cr. which was given by M/s. Rohit Jeweller Pvt. Ltd. to the M/s. Suman Jeweller was a trade advance which in the facts discussed supra are in the nature of commercial transaction and would not fall within the ambit of the word "advance" as envisaged in section 2(22)(e) of the Act. We have to remind ourselves that while exercising our appellate jurisdiction it is settled position of law that we have to examine whether the impugned order of the Ld. CIT(A) is erroneous or not. If the Ld. CIT(A)'s view is not factually or legally not erroneous, then we cannot substitute our views with that of the Ld. CIT(A). So we have to examine whether there is any error in facts or law on the issue under consideration. For that we need to find whether the advance of Rs. 10.10 cr. was trade advance which was in the nature of a commercial transaction so that it does not fall in the

ambit of advance as envisaged in section 2(22)(e) of the Act. We have taken note of the facts considered by the Ld. CIT(A) in the impugned order which we have discussed from Para 4 to 6 (supra) which are not repeated to avoid repetition and for the sake of brevity. Further to the said facts the Ld. AR drew our attention to page 53 of the paper book from which we note that Rs. 10.10 cr. was advanced to the assessee on 31.03.2015 which is evident from the ledger account placed in paper book page 53. The Ld. AR drew our attention to page 54 and 55 of the paper book wherein we note that the opening balance of the ledger account from 01.04.2015, 31.03.2016 (AY 2016-17) the opening balance brought forward from this AY was to the tune of Rs. 10.10 cr. and M/s. Suman Jeweller has made the sale of gold ornaments worth Rs. 2.04 cr on 16.10.2015 to M/s Rohit Jeweller Pvt. Ltd. which fact is corroborated from invoice kept at page 59 of the paper book. Likewise, from the ledger kept of page 54/55 of PB it is discernible that M/s. Suman Jeweller has made a sale on 08.12.2015 of gold ornaments worth Rs. 2.44 cr. to M/s. Rohit Jeweller pvt. Ltd which fact is corroborated from the invoice kept at page 60 of the paper book. Likewise, M/s. Suman jeweler has sold gold ornaments worth Rs. 1.16 cr. on 17.12.2015 to M/s. Rohit Jeweller Pvt. Ltd. which is evident from invoice placed at page 61 of the paper book. Likewise, M/s. Suman Jeweller has sold the gold ornaments worth Rs.1.06 cr. on 22.12.2015 to M/s. Rohit Jeweller Pvt. Ltd. which is evident from page 63 of the paper book and thus, we note that the goods worth Rs.7.06 cr. was sold AY 2016-17 by M/s. Suman Jeweller to M/s. Rohit Jeweller Pvt. Ltd which goes on to show that transaction between the sister concern were commercial in nature and advance was trade advance. The Ld. AR drew our attention to fact that there was subsequent sale of gold ornaments in the AY 2017-18 and they have squared up the trade advance received from M/s. Rohit Jeweller Pvt. Ltd. The Ld. AR has taken the pain to demonstrate before us that these are regular sale and purchase of goods between both the sister concerns and this amount of Rs. 10.10 cr. given by M/s Rohit Jeweller Pvt. Ltd. to M/s Suman Jeweller Pvt. Ltd. was in the nature of trade advance and cannot be termed as advance as envisaged u/s. 2(22)(e) of the Act and, therefore, relying on the ratio-decidenti decision of the Hon'ble Delhi High Court in CIT Vs. Creative Dyeing & Printing 318 ITR 476 (Del.) [the revenue appeal before the Hon'ble Supreme Court was dismissed] and the ratio of the decision of Hon'ble Punjab & Haryana High Court in CIT Vs. Amrik Singh 231 Taxman we find that on the facts discussed by the Ld. CIT(A), and noted by us, we agree that the advance given by M/s Rohit Jeweller to M/s

Suman Jeweller is trade advance in the normal course of business/ commercial activity which happened due to business expediency and so the facts of the assessee's case falls in the exemption given in the CBDT circular No. 19/2017 (supra) and the ratio of case law discussed therein. Therefore, we find no infirmity in the order passed by the Ld. CIT(A) and so, we confirm the order of the Ld. CIT(A) and dismiss the revenue appeal.

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

Order is pronounced in the open court on 5th January, 2021.

Sd/-

(J. Sudhakar Reddy)
Accountant Member

Sd/-

(A. T. Varkey)
Judicial Member

Dated: 5th January, 2021

Jd.(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant – ACIT, Circle-43, Kolkata.
2. Respondent – Shri Ramesh Chandra Kataria, Rohit Jewellers, Room No. 18-19, 3rd floor, 201B, M. G. Road, Kolkata-700 007.
3. The CIT(A)-13, Kolkata (sent through e-mail)
4. CIT , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)
/True Copy,

By order,

Assistant Registrar