

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'G' NEW DELHI**

**BEFORE MS SUCHITRA KAMBLE, JUDICIAL MEMBER
AND
DR. B. R. R. KUMAR, ACCOUNTANT MEMBER**

I.T.A. No. 1237/DEL/2017 (A.Y 2007-08)

(THROUGH VIDEO CONFERENCING)

Suneel Galgotia 4405/6, Prakash Apartments-II 5, Ansari Road, Daryaganj, New Delhi AEQPG5100F (APPELLANT)	Vs	ACIT Central Circle New Delhi (RESPONDENT)
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I.T.A. No. 1240/DEL/2017 (A.Y 2012-13)

Suneel Galgotia 4405/6, Prakash Apartments-II 5, Ansari Road, Daryaganj, New Delhi AEQPG5100F (APPELLANT)	Vs	DCIT Central Circle Noida (RESPONDENT)
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Appellant by	None
Respondent by	Sh. Prakesh Dubey, Sr. DR

Date of Hearing	18.02.2021
Date of Pronouncement	05.03.2021

ORDER

PER SUCHITRA KAMBLE, JM

These two appeals are filed by the assessee against order dated 25/01/2017 & 28/12/2016 passed by CIT(A)-III, Kanpur for assessment year 2007-08 & 2012-13 respectively.

2. The grounds of appeal are as under:- **I.T.A. No. 1237/DEL/2017**

1. *“That the order of learned Commissioner of Income Tax (Appeals) is bad in law as well as on the facts and in the circumstances of the case.*
2. *That the Ld. CIT (A) has erred in rejecting the ground taken by the appellant before him against the issuance of notice under section 153A by relying on the provisions of section 124(3) of the Act which are not applicable on the facts of the case of the appellant.*
3. *That on the facts and in the circumstances of the case the Ld. CIT(A) has erred in upholding the addition of Rs. 1, 19, 99, 4507- in proceedings u/s 153A without there being any incriminating material found/seized during the course of search in the case of the appellant and thus in not applying the judgment of the Hon'ble Delhi High Court in the case of CIT vs. Kabul Chawla (2016) 380 ITR 573 (Delhi) particularly when original assessment had been framed under section 143(3) prior to the search in the case of the appellant.*
4. *That the learned Commissioner of Income Tax (Appeals) has erred in law as well as on the facts and in the circumstances of the case in sustaining the invocation of provisions of section 2(22) (e) of the Income Tax Act, 1961 and consequently sustaining addition of Rs.1,19,99,450/- made by the Assessing Officer in respect of purchase of flat by Galgotia Publication Pvt. Ltd. in the name of the appellant.*
5. *The above grounds of appeal are without prejudice to each other.*

I.T.A. No. 1240/DEL/2017

1. *That the order of learned Commissioner of Income Tax (Appeals) is bad in law as well as on the facts and in the circumstances of the case.*
2. *That the learned Commissioner of Income Tax (Appeals) has erred in law as well as on the facts and in the circumstances of the case in sustaining the invocation of provisions of section 2(22) (e) of the Income Tax Act, 1961 and consequently sustaining addition of Rs.19,67,201/- made by the Assessing Officer.*
3. *The above grounds of appeal are without prejudice to each other.*

3. The assessee is an individual deriving income from salary from company and partnership firm as well as rental income and interest income etc. The return of income for Assessment Year 2007-08 was filed on 31/03/2007 at total income of Rs. 5,19,559/-. The case was selected for scrutiny and assessment was completed u/s 143(3) at the return income. The search and seizure operation was conducted on 17/09/2010. In response to notice u/s 153A , return of income was filed "Under Protest" declaring total income of Rs. 5,19,559/- which was declared in the original return and assessed u/s 143(3). The assessment was completed at total income of Rs. 1,25,19,409/-, after making addition of Rs. 1,19,99,450/- on account of purchase of flat u/s 2(22) (e) of the Income Tax Act.

4. Being aggrieved by the assessment order, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

5. At the time of hearing none appeared on behalf of the assessee despite giving notices. Therefore, we are taking submissions before the CIT(A) as the contentions before us.

6. The Ld. DR relied upon the assessment order and the order of the CIT(A).

7. We have heard Ld. DR and perused all the relevant material available on record. From the perusal of the CIT(A)'s order it can be seen that the challenge which was mentioned in the balance-sheet of Galgotia Publications Pvt. Ltd. against which loan of Rs. 82.50 lakhs was raised from City Financial Consumer Finance India Ltd. and the said loan was not raised as contemplated u/s 2(22)(e) which should be treated as deemed dividend. In Assessment Year 2008-09 as well the same premises was given on rent to Metaflex Doors Pvt. Ltd. for 5 months for which rent was accounted for by the company only. Thus, it is not a case of deemed dividend income. Further, from the perusal of the assessment order, it can be seen that no incriminating material has been found during the search and seizure operation and the Assessing Officer has not made any additions in respect of search and seizure operation. This assessment is non-abated assessment. There is no loan or advance as envisaged u/s 2(22)(e) which should be treated as deemed dividend in present assessee's case. The issue is, therefore,

squarely covered by the decision of the Hon'ble Delhi High Court in case of CIT(A) vs. Kabul Chawla (2016) 380 ITR 573 (Delhi) particularly when original assessment had been framed u/s 143(3) prior to the search in the case of the assessee. Hence, appeal of the assessee for Assessment Year 2007-08 is allowed.

8. As relates to Assessment Year 2012-13, the return of income was filed on 5/1/2013 at total income of Rs.7,39,923/-. The case was selected for scrutiny and notice u/s 143(2) was issued. The assessment was completed at total income of Rs. 27,07,120/- after making disallowance of interest of Rs.19,67,201/-.

9. Being aggrieved by the assessment order, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

10. As the assessee or the representative for the assessee has not appeared before us, it will be appropriate to take the submissions before the CIT(A) on behalf of the assessee as submissions before us.

11. The Ld. DR relied upon the assessment order and the order of the CIT(A).

12. We have heard Ld. DR and perused all the relevant material available on record. In the present Assessment Year, the assessee had outstanding advance from Galgotia Publications Pvt. Ltd.

amounting Pvt. Ltd. amounting to Rs. 9,21,582/- which is running current account with the company in which salary and rent were shown and the details were filed before the Assessing Officer as well as before the CIT(A). The closing balance as on 31/3/2012 was Rs. 9,21,582/- as against opening balance of Rs. 32,70,774/- which categorically states that during the year, the assessee has repaid the advance taken in earlier years. From perusal of the assessment order, the Assessing Officer has overlooked these aspects and also taken into account the earlier Assessment Year amounting without giving any detailed reasoning while the same is added to the income of the assessee. From the perusal of the submissions before the CIT(A) we can see that the amount raised by the assessee is credited to the account with the company and its repayment is regularly debited to the said account. Thus, provisions of Section 2(22)(e) relating to loan or advance can be deemed as dividend only to the extent of accumulated profit or so far as the loan is not reflected in the accounts, but in instance case the addition was made on the basis of the prior year amounts which was not at all discussed by the Assessing Officer as well as CIT(A) as to how the said amount was taken in respect of the current year account for making addition. Hence, the appeal of the assessee for Assessment Year 2012-13 is allowed.

13. In result, both the appeals of the assessee are allowed.

Order pronounced in the Open Court on this 05th Day of March, 2021

Sd/-

**(B. R. R. KUMAR)
ACCOUNTANT MEMBER**

Sd/-

**(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

Dated: 05/03/2021

*R. Naheed **

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR

ITAT NEW DELHI