

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'SMC-1' NEW DELHI**

**BEFORE SHRI G. S. PANNU, VICE PRESIDENT
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

I.T.A. No.5510/DEL/2019 (A.Y 2011-12)

(THROUGH VIDEO CONFERENCING)

Balbir Singh Kohli 74, Scindia House Connaught Place, New Delhi AAKPK9975G (APPELLANT)	Vs	ITO Ward-14(4) New Delhi (RESPONDENT)
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Appellant by	Sh. A. S. Kohli, CA
Respondent by	Ms. Shivani Bansal, Sr. DR

Date of Hearing	11.03.2021
Date of Pronouncement	.04.2021

ORDER

PER SUCHITRA KAMBLE, JM

This appeal is filed by the assessee against order dated 30/04/2019 passed by CIT(A)-5, New Delhi for assessment year 2011-12.

2. The grounds of appeal are as under:-

- “1. That in view and circumstances of the case, the Ld.CIT(A) was not justified in confirming an addition of Rs.2,00,000/- which was added by the Ld. A.O by taking an action u/s 2(22)(e) of Income Tax Act, 1961.*
- 2. That the proviso of 2(22)(e) securely applies where the conditions are satisfied in this respect. It cannot be added only to assumption of Reserve & Surplus.*

3. *That an advance of Rs. 2,00,000/- is not but not to be treated as income in mischievous manner.”*

Additional grounds

1. *That the learned A.O. was not justified in taking the “Reserve & Surplus” as Rs.9,64,48,707/-, the accumulated profit is to be taken as on the first day of the financial year i.e. 01/04/2010 or the maximum accumulated as on the day of the advance/transaction held.*

2. *That the learned A.O. has erred in taking Rs.2,00,000/- as advance and further he was not justified in treating it as dividend in the hands of the appellant.*

3. As per information received from ITO Ward 5(3), New Delhi, the Assessing Officer observed that during assessment proceedings u/s 143(3) of the Income Tax Act, 1961, in case of M/s Kohli Estate Pvt. Ltd. for Assessment Year 2011-12, Shri Balbir Singh Kohli held more than 15% equity of company. The Assessing Officer further observed that M/s Kohli Estate Pvt. Ltd. had shown loss and advance to Director, Shri Balbir Singh amounting to Rs.2 lac and the assessee company accumulated profit to the extent of Rs. 9,64,48,707.67/-. No business transaction with Shri Balbir Singh Kohli was declared by the said company other than an amount of Rs.2 lac which is taxable in the hands of Shri Balbir Singh Kohli as deemed dividend u/s 2(22)(e) of Act. The Assessing Officer observed that after perusal of Shri Balbir Singh Kohli it has shown only income from other sources as interest income. The said company contested the assessment order of Assessment Year 2011-12 of the company where in it was held that the payments made to Director of the Company, Shri Balbir Singh Kohli of Rs.2 lac is deemed to be in income of the Director of the Company as per Section 2(22)(e) before CIT(A) in the case of the company. The said company has not contested the observation of the Assessing Officer regarding deemed dividend taxable in the hands of Shri Balbir Singh Kohli. Accordingly, notice u/s 148 of the Act was issued on 29/3/2018. The assessee filed reply of the said notice and submitted that the

assessee received Rs. 2 lacs on 27/1/2011 as refund of loss outstanding as on 1/4/2010 as Rs. 8,23,000/-. The balance of Rs.2 lacs is on access payment by mistake from Kohli Estates Pvt. Ltd. and the same is recovered on 31/10/2011 by recovering Rs. 5 lac from the assessee. Hence, access amount received by the assessee is by mistake and same is recovered from the assessee. The Assessing Officer after considering the reply of the assessee made addition of Rs. 2 lacs u/s 2(22)(e) and assessed the total income at Rs. 20,74,527/-.

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. The Ld. AR submitted through the written submissions as under:-

“Assessee is a regular Tax Payer since long. In this year a sum of Rs. 2,00,000/- was wrongly added by the A.O. as deemed dividend u/s 2 (22) (e) of the Income Tax Act, 1961. We give here under the background of Rs. 2,00,000/- paid to the Assessee on 27/01/2011 by KOHLI ESTATES (P) LTD.

(a) The Assessee paid a sum of Rs. 8,23,000/- to KOHLI ESTATES (P) LTD. As unsecured Loan during F.Y. 2005-2006 as interest free financial help to the company.

(b) On 27/01/2011 the KOHLI ESTATES (P) LTD. Refunded Rs. 2,00,000/- out of total loan of Rs. 8,23,000/- paid to the company by the Assessee in F.Y. 2005- 2006.

(c) On 28/03/2011 a sum of Rs. 8,23,000/- was wrongly refunded to the Assessee instead of Rs. 6,23,000/- of his own loan given to the KOHLI ESTATES (P) LTD. Hence Rs. 2,00,000/- was excess paid by mistake. There was no intention of KOHLI ESTATES (P) LTD. To make a excess payment. This mistake is neither intentioned nor willful but accidentally a excess refund of loan is the only reason of Debit balance of Rs. 2,00,000/-

From the above fact it was found that the refund of Rs. 2,00,000/- on 27/01/2011 should be treated as a refund out of Total loan outstanding of Rs. 8,23,000/-. Now the A.O. converted the refund of Loan of Rs. 2,00,000/- as deemed dividend u/s 2(22) (e) of I T. Act 1961. We are enclosing the copy of loan a/c of the assessee in the books of accounts of KOHLI ESTATES (P) LTD. After the close of the year 2010-2011 again a sum of Rs. 7,00,000/- were paid by assessee to KOHLI ESTATES PVT LTD. as a Financial help during F.Y. 2011-2012. Hence, There is no benefit to the assessee by receiving excess payment of Rs. 2,00,000/- which was refunded to KOHLI ESTATES (P) LTD. in subsequent year.”

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

7. We have heard both the parties and perused the material available on record. From the perusal of the documents it can be seen that the assessee has received Rs. 2 lacs on 27/1/2011 as refund of loan outstanding as on 1/4/2010 at Rs.8,23,000/-. Balance of Rs. 2 lacs is an excess payment by mistake from Kohli State Pvt. Ltd. as per the submissions of the assessee before the Assessing Officer as well as before the CIT(A). The contention of the Ld. AR that the said amount was recovered on 31/10/2011 by recovering Rs. 5 lacs from the assessee was never examined either by the Assessing Officer as well as by the CIT(A) from the statement of account of the assessee, and there is no clear finding on that account by both the Revenue Authorities. Therefore it will be appropriate to remand back the entire issues to the file of the Assessing Officer for proper verification and after taking cognizance of all the evidences including statement of account, the Assessing Officer may pass appropriate order according to the provisions of law. Needless to say, the assessee be given opportunity of hearing by following principles of natural justice.

8. In result, the appeal of the assessee is partly allowed for statistical purpose.

Order pronounced in the Open Court on this 08th Day of April, 2021.

**Sd/-
(G. S. PANNU)
VICE PRESIDENT**

**Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

Dated: 08/04/2021

*R. Naheed **

Copy forwarded to:

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

ASSISTANT REGISTRAR

ITAT NEW DELHI