IN THE INCOME TAX APPELLATE TRIBUNAL
"A'' BENCH: BANGALORE

BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT
AND
SHRI B.R. BASKARAN, ACCOUNTANT MEMBER

ITA No.58/Bang/2018
Assessment Year : 2007-08

ACIT Central Circle-2(3) Bangalore	**Vs.**	Sri Sachanand Ladhani 12, 3rd Main Road Jayamahal Extension Bengaluru 560 046 **PAN NO : AAZPL5063F**
APPELLANT		**RESPONDENT**

C.O. No.59/Bang/2018 (Arising out of ITA No.58/Bang/2018)
Assessment Year : 2007-08

Sri Sachanand Ladhani Bengaluru 560 046	**Vs.**	ACIT Central Circle-2(3) Bangalore
APPELLANT		**RESPONDENT**

Appellant by	**:**	Ms. Neera Malhotra, D.R.
Respondent by	**:**	Shri V. Srinivasan, A.R.

Date of Hearing	**:**	03.08.2021
Date of Pronouncement	**:**	25.10.2021

O R D E R

PER B.R. BASKARAN, ACCOUNTANT MEMBER:

The appeal filed by the revenue and the cross objection filed by the assessee are directed against the order dated 30-10-2017 passed by ld CIT(A)-11, Bangalore and they relate to the assessment year 2007-08.

2. The revenue has filed this appeal on the following two issues:-

(a) Deemed dividend assessed u/s 2(22)(e) of the Act – Rs.1.00 crore

(b) Unexplained investment of Rs.53,69,040/- assessed protectively.

3. In the cross objection, the assessee is challenging the validity of search proceedings and also contending that the Ld CIT(A) should have deleted the addition of deemed dividend made u/s 2(22)(e) of the Act on the ground that the provisions of sec.2(22)(e) would fail in the facts and circumstances of the case.

4. The facts relating to the case are stated in brief. The assessee is one of the Directors in M/s. Brindavan Beverages Pvt. Ltd. (BBPL) and also in M/s. Cauveri Aqua Pvt. Ltd. (CAPL). A search u/s 132 of the Act was carried out in the hands of the assessee and other group concerns on 18.12.2012. Consequently, the assessment of the assessment year under consideration was completed by the A.O. u/s 143(3) r.w.s. 153A of the Act.

5. The first issue relates to addition made u/s 2(22)(e) of the Act as deemed dividend. The A.O. noticed that the assessee held 33% of shares in CAPL and 25% of shares in BBPL. Thus, the assessee herein is a shareholder having substantial interest in both the above said companies. The A.O. noticed that M/s. BBPL has received loan of Rs.1.00 crore from M/s. CAPL in the financial year relevant to the assessment year 2007-08. Since the loan was received by a concern, in which the assessee is substantially interested, the A.O. took the view that the loan received by the BBPL from CAPL shall be assessable as “deemed dividend” in the hands of the assessee, being a shareholder having substantial interest, in terms of sec. 2(22)(e) of the Act.

6. The assessee submitted before AO that M/s. CAPL has given funds to M/s. BBPL for business purposes and hence the provisions of sec. 2(22)(e) are not attracted. It was explained that M/s. CAPL had entered into an agreement with M/s. BBPL, as per which, both

the companies have agreed to make investments jointly in property development projects of M/s. Embassy Group. It was submitted that the payments were made by CAPL to BBPL in connection with the above said business activities. The A.O. did not accept the above said explanations of the assessee. He took the view that M/s. CAPL should have given money directly to M/s. Embassy Group and not to its sister concern. He also expressed the view that the above arrangement does not have acknowledgement of Embassy group. Accordingly, the AO held that the amount received by M/s. BBPL from CAPL is deemed dividend assessable u/s 2(22)(e) of the Act. Under the provisions of sec.2(22)(e) of the Act, the loan amount is assessable to the extent of accumulated profits available with lender company as deemed dividend u/s 2(22)(e) of the Act. In the instant year, the accumulated profits available with the lender company was more than the amount of loan. Accordingly, the AO held that the loan amount of Rs.1.00 crore is assessable as deemed dividend. Since the AO had assessed the above said amount of Rs.1.00 crore as deemed dividend in the hands of another share holder named Shri Prakash Ladhani, he assessed the above said amount on protective basis in the hands of the assessee.

7. The Ld. CIT(A) noticed that he has accepted the explanations furnished by Shri Prakash Ladhani in his appeal that these transactions are business transactions and accordingly he had deleted the addition of Rs.1.00 crore made u/s 2(22)(e) of the Act in AY 2007-08. Accordingly, the Ld CIT(A) held in the appeal filed by the assessee that there is no case for assessment of deemed dividend on merits. Accordingly, the ld CIT(A) deleted the protective addition. The revenue is aggrieved.

8. We heard the parties on this issue and perused the record. We notice that this bench of Tribunal, vide its order dated 25.10.2021 passed in ITA No.69/Bang/2018 passed in the hands of Prakash Ladhani, has confirmed the order passed by Ld CIT(A) in the hands of Prakash Ladhani in deleting the addition of deemed dividend. The relevant portion of the order passed in the hands of Prakash Ladhani by this bench is extracted below:-

> *"7. The Ld D.R submitted that M/s CAPL has given loans to BBPL in various years and the aggregate amount of loans so given from AY 2007-08 to 2013-14 was Rs.13.84 crores. The assessee had placed reliance on assignment agreements dated 28-03-2015 for sale of undivided interest in land and built up space, as per which properties worth Rs.13.64 crores were assigned in favour of CAPL by BBPL. Accordingly, the Ld CIT(A) has granted relief to the assessee. The Ld D.R submitted that a close perusal of the assignment agreements would show that the facts are not as claimed by the assessee before Ld CIT(A). She submitted that the CAPL got following properties as per assignment agreements:-*
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> | | | |
> |---|---|---|
> | *Construction Agreement assigned* | - | *10,63,17,108* |
> | *Undivided interest in land assigned* | - | *3,00,86,100* |
> | | | *13,64,03,208* |
>
> *However, in the construction agreement, it is mentioned that the assignee/s have already paid a sum of Rs.8,84,36,266/- and it has agreed to pay the balance of Rs.1,78,80,842/- to the assignor on or before 20-06-2015. In addition to the above, it is stated that the assignee has agreed to reimburse a sum of Rs.34,35,100/- to the assignor towards the additional in respect of Schedule B apartment, which has been paid by the assignors to the developers. The Ld D.R contended that there was no necessity to make further payments, when the loans given by CAPL to BBPL is more than the assigned value.*
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> *8. The Ld D.R submitted that the assignment agreements do not specifically mention that the loans and advances paid by M/s Cauvery Aqua P Ltd were adjusted in assignment agreement. Accordingly, the Ld DR contended that the loans and advances were not adjusted against acquisition of property by way of assignment agreements dated 28-03-2015. Accordingly, the Ld DR contended that the loans given by CAPL to BBPL were separate transactions and hence the assessment of deemed dividend made u/s 2(22)(e) of the Act should be upheld.*
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> *9. The Ld. A.R., however, submitted that there were trading transactions between CAPL & BBPL in the past. The trading operations*

were suspended and from the year 2002 onwards BBPL owed a sum of Rs.1.97 crores to M/s. CAPL. At that point of time, an agreement dated 14.11.2005 was entered between both the companies with the objective of making investment in property development activities. As per the agreement, CAPL shall give further money to BBPL for business purposes of making investments in real estate activities. Accordingly, CAPL has given money to BBPL in connection with the above said business activities over the years. Both the companies have kept the account of other company as running account only in connection with the business activities. From assessment years 2007-08 to 2013-14, CAPL has given an aggregate sum of Rs.13.85 crores. The assignment agreements were entered on 28-03-2015 by BBPL in favour of M/s. CAPL which was also endorsed by Embassy group (the developers). As per the above said agreement, BBPL has assigned property value of Rs.13.64 crores to CAPL. Hence, M/s. CAPL has obtained properties almost equal to the amount advanced by it from assessment years 2007-08 to 2013-14. These facts prove that both the companies have joined together to carrying business activities of making investment in real estate activities. Finally, CAPL was given properties almost equal to the investments made. Accordingly, the Ld A.R submitted that the AO was not correct in considering these transactions as loan transactions. He submitted that the Ld CIT(A) has correctly appreciated these transactions as business transactions. Accordingly, he submitted that the order passed by Ld CIT(A) on this issue does not call for any interference in all the three years.

10. The Ld. A.R. further submitted that the A.O., in the grounds of appeal filed by the revenue, has taken a contention that "there is no distinction between an advance and business advance". He submitted this contention is contrary to the provisions of section 2(22)(e) of the Act and also the decisions rendered by jurisdictional Karnataka High Court.

11. We heard the parties and perused the record. There is no dispute with regard to the fact that both CAPL and BBPL had entered into an agreement dated 14th November, 2005. The object of entering into the above said agreement is mentioned as under in the agreement:-

"WHEREAS BBPL has made investment in property development mainly with The Embassy Group in Bangalore and BBPL has agreed to involve CAPL in some of these ventures to share the benefits of such investment in real estate ventures of The Embassy Group."

In the agreement, it is also specifically mentioned as under:-

"2. CAPL shall make further investments as and when required to support this real estate investment of BBPL in the Embassy Group upon the request made by BBPL from time to time and any such investment shall not carry any interest.

…..

9. The amount invested by CAPL in BBPL from time to time shall be proportionately adjusted as and when developed properties are transferred into CAPL.

The agreement dated 14.11.2005 entered between both the companies makes it clear that BBPL has made investments in various projects of The Embassy Group and CAPL is involved in these ventures. It is further mentioned that CAPL shall pay money to BBPL as and when required to support the real estate investment activities It has also been mentioned that the amount invested by CAPL shall be adjusted against the properties.

12. It is an undisputed fact that the amounts invested by CAPL has been adjusted against the properties assigned to CAPL by BBPL, vide assignment agreements dated 28.03.2015. Thus the original agreement dated 14.11.2005 stands corroborated by the assignment agreements dated 28-03-2015. These uncontroverted documents support the submissions of the assessee that the amounts given by CAPL to BBPL are not loans or advances contemplated in sec.2(22)(e) of the Act.

13. The Ld DR contended that the assignment agreements do not mention about adjustment of loan and advances given earlier by CAPL to BBPL. She also stated that the agreements mention about further payments, which was actually not necessary, when the amounts already given by CAPL to BBPL were in excess of the assigned value of properties. However, we are of the view that what is required to be seen is whether CAPL has advanced moneys as pure loan amounts or for business purposes. The agreements produced by the assessee before Ld CIT(A), which were also confronted with the AO, would prove that the transactions entered between the parties are business transactions. The Ld A.R also submitted that both the companies are maintaining accounts as running accounts only and real estate investment activity was agreed to be a continuous activity. Hence the question of making one to one reconciliation, as contended by Ld DR. would not arise in these types of transactions.

14. At this juncture, we feel it pertinent to extract the order passed by Ld. CIT(A) in this regard:-

> *"7.4 I considered the submissions made and materials on record. The contention of the appellant is that the deemed dividend cannot be assessed for the assessment years 2007-08, 2008-09, 2010-11 & 2011-12 because it was not based on any materials found at the time of search and these assessments had not abated on the date of search. The second contention of the appellant is that the advance paid by M/s. Cauvery Aqua Pvt. Ltd., to M/s. Brindavan Beverages Pvt. Ltd., is not a loan or advance since it was given in connection with property investments to be made after termination of the distribution business between the 2 companies when an amount of Rs. 1,97,11,809/-was due to M/s. Cauvery Aqua Pvt. Ltd., from M/s. Brindavan Beverages Pvt. Ltd.*

7.5 I find that the appellant has been able to substantiate its explanation that the amounts advanced by M/s. Cauvery Aqua Pvt. Ltd., to M/s. Brindavan Bevarages Pvt. Ltd., is not a loan or advance but a business transaction between these 2 companies for purchase of real estate properties. It is not in dispute that M/s. Cauvery Aqua Pvt. Ltd., was a distributor of M/s. Brindavan Beverages for products manufactured from 1999 to 2002 and there was a sum of Rs. 1,97,11,809/- outstanding at that time. There was an agreement dated 14/11/2005 between the 2 companies to invest the above amount due in real estate development projects of Embassy Group with whom M/s. Brindavan Beverages Pvt. Ltd., was already having substantial investments. This claim of the appellant is not shown to be incorrect in the assessment order with regard to any materials that shows a different picture. Rather, the A.O. has simply disbelieved the explanation of the appellant that the transactions between these companies were business transactions and has held that the explanation was not a satisfactory one by observing that M/s. Cauvery Aqua Pvt. Ltd., need not have made investments through M/s. Brindavan Beverages Pvt. Ltd., and could have directly gone to Embassy Group. The A.O. has also mentioned that there was no acknowledgment from Embassy Group showing payments from Mi.s. Cauvery Aqua Pvt. Ltd., for any project and A.O. regarded the explanation of the appellant as giving a colour of business transactions to loans that were advanced.

7.6 I find the above basis stated by the A.O. to disbelieve the explanation of the appellant in the assessment order is not correct. The fact that M/s. Brindavan Beverages had already made substantial investments with Embassy Group and that M/s. Cauvery Aqua Pvt. Ltd., had expressed its desire to join is very clear from the agreement dated 14.11.2005, the veracity of which has not been impeached in the assessment proceedings. Merely because the A.O. is of the view that the investments could have been made directly and not through M/s. Brindavan Beverages Pvt. Ltd., cannot be a reason to discard the business arrangement between the parties. Hence, I do not find the reasons mentioned by the A.O. in the assessment order that the appellant has tried to give a colour of business transaction to a loan advanced very convincing.

7.7 The appellant has produced before me two assignment agreements dated28.03.2015 by which M/s. Brindavan Beverages Pvt. Ltd., has assigned its rights in the purchase agreement with Embassy Group in respect of undivided interest in land as well as

construction of the apartment no. 5211 in the project of Embassy Group called "Embassy Lake Terraces". This assignment agreement is also endorsed by M/s. Embassy Group who has signed as consenting witness. This document was produced to substantiate the claim that there was an agreement between the companies to acquire real estate properties as per the agreement dated 14.11.2005 entered earlier. Since the said document has been executed on 28.03.2015 and very close to the assessment order dated 30.03.2015, the prayer of the appellant for admission of the same under Rule 46A of the I.T. Rules is considered. No specific objection has also been raised by the A.O. for admission of this additional evidence.

7.8 Taking into consideration the materials on record, I hold that the appellant has been able to establish that the amounts advanced by M/s. Cauvery Aqua Pvt. Ltd., to M/s. Brindavan Beverages Pvt. Ltd., are not mere loans or advances but the said advances constitute a bonafide business transaction between the 2 companies for acquisition and investments to be made in real estate development projects with Embassy Group. The A.O. observation that there was no acknowledgement of this arrangement from Embassy Group is also addressed since in the assignment agreement dated 28.3.2015, Embassy Group has signed as a consenting witness. Hence, the grounds on which the A.O. has disbelieved the stand of the appellant in the assessment proceedings are rejected.

7.9. I also find that the stand of the A.O. in the remand report is also not that the advances are not business advances. ***The A.O. has submitted in the remand report that there is no difference between an advance and business advance and once the parameters mentioned in sec. 2(22)(e) are fulfilled, the liability to tax as deemed dividend arises.*** *However, this stand of the A.O. is contrary to the ruling of the Hon'ble jurisdictional High Court in the case of Bagmane Constructions Pvt. Ltd., in 119 DTR 49 (Kar.) where it has been held as under:-*

> *"27. In this background when we look at the aforesaid provision, it is clear that any payment made by a company by way of advance or loan has to be understood in the context of the object with which the said provision is introduced Though the legislature has introduced `advance' as well as 'loan' which are two different works, the meaning of each of those works have to be understood in the context in which they are used Each work takes its*

colour from the other. The meaning of the word 'advance ' is to be understood by the meaning of the word loan which is used immediately thereafter. Associated words taken their meaning from one another under the doctrine of noscitur a socits, the philosophy of which is that the meaning of a doubtful word may be ascertained by reference to the meaning of words associated with it. This rule, according to Maxwell means that, when two or more words which are susceptible of analogous meaning are coupled together they are understood to be used in their cognate sense. They take as it were their colour from each other, that is, the more general is restricted to a sense analogous to a less general. In the case of a loan, money is advanced generally on payment of interest. In other words the loan advanced generally on payment of interest. In other words the loan advance has to be repaid with interest. In the case of an advance also, the element of repayment is there but such a repayment may be with interest or without interest. Therefore, when the said two words are used in the aforesaid provision with the purpose of levying tax, if the intention of such advance or loan is to avoid payment of dividend distribution tax under s. 115-0 of the Act, such a payment by a company certainly constitutes a deemed dividend But if such a payment is made firstly not out of accumulated profits and secondly even if it is out of accumulated profits but as trade advance as a consideration for the goods received or for purchase of a capital asset which indirectly would benefit the company advancing the loan, such advance cannot be brought within the word 'advance" used in the aforesaid provisions. The trade advance which is in the nature of money transacted to give effect to commercial transactions would not fall within the ambit of the provisions of s.2(22)(e) of the Act".

7.10 Respectfully following the judgment of the Hon'ble Jurisdictional High Court [supra] I hold that a trade advance for purchase of capital assets or purchase of goods cannot be considered as a loan or advance within the scope of sec. 2(22)(e) of the Act. I have already held that the appellant has been able to substantiate its explanation that the amounts advanced by M/s. Cauvery Aqua Pvt. Ltd., to M/s. Brindavan Beverages Pvt. Ltd., was for purposes of making investments in real estate development projects of Embassy Group and that there is no material to disbelieve the said claim of the appellant. Hence, the additions made by the A.O. of Rs.1,00,00,000/-,Rs.59,68,494/- ,Rs.59,72,492/-,Rs.81,76,829/- Rs.1,30,44,602/- and

Rs.50,31,297/- for the assessment years 2007-08, 2008-09, 2010-11, 2011-12, 2012-13 and 2013-14 are deleted."

15. In view of the foregoing discussions, in our considered view, the findings arrived at by Ld CIT(A) do not call for any interference. Accordingly, we confirm the order of Ld CIT(A) in deleting the additions made u/s 2(22)(e) of the Act in this year."

9. It can be noticed that the decision rendered by Ld CIT(A) in deleting the assessment of deemed dividend in the hands of Prakash Ladhani has been upheld by the Tribunal on the reasoning that the transactions of advancing money by CAPL to BBPL are business transactions. Accordingly, we confirm the decision of ld CIT(A) in holding that there is no case for assessment of deemed dividend on merits and hence the protective addition made in the hands of the assessee herein is liable to be deleted.

10. The next issue urged by the revenue relates to the addition of Rs.53,69,040/- relating to unexplained investment made on protective basis in the hands of the assessee. The substantial addition was made in the hands of Shri Prakash Ladhani and this addition was confirmed in his hands by Ld CIT(A). Accordingly, in the instant case, the Ld CIT(A) deleted the protective addition. The revenue is aggrieved.

11. The Ld A.R submitted that the assessee Shri Prakash Ladhani had challenged the decision rendered by Ld CIT(A) in respect of the above said addition by filing appeal before ITAT and the same was numbered as ITA 2856/Bang/2017. Thereafter, Shri Prakash Ladhani has opted to settle the issue under Direct Taxes Vivad Se Vishwas Act and accordingly filed relevant forms. Accordingly, he submitted that the impugned issue has since been settled by Shri Prakash Ladhani accepting the additions made in its hands on substantive basis. Accordingly, he contended that the protective

addition made in the hands of the assessee has rightly been deleted by Ld CIT(A).

12. Since the addition made on substantive basis in the hands of Shri Prakash Ladhani has been upheld by Ld CIT(A), the protective addition made in the hands of the assessee of the very same amount was deleted by Ld CIT(A). It was further submitted that Shri Prakash had filed appeal before ITAT challenging the decision rendered by Ld CIT(A) and further he has opted to settle the issue under DTVSV Scheme. The assessee has furnished a copy of Form No.1filed under the above said scheme. Under the above said scheme, the above said company is required to pay tax shown in Form no.3 and final certificate in Form no.5 is required to be issued in proof of settlement of dispute. Since these matters are pending, we restore this issue to the file of AO with the direction to delete this protective addition upon furnishing of Form no.5 issued to Shri Prakash Ladhani in settlement of this dispute.

13. The Ld A.R did not press the cross objection and hence the same is dismissed as not pressed.

14. In the result, the appeal of revenue is treated as dismissed and the cross objection of the assessee is dismissed.

Order pronounced in the open court on 25th Oct, 2021.

Sd/-	**Sd/-**
(N.V. Vasudevan)	**(B.R. Baskaran)**
Vice President	**Accountant Member**

Bangalore,
Dated 25th Oct, 2021.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore