

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'D' BENCH,  
NEW DELHI (THROUGH VIDEO CONFERENCING]

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER, AND  
SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER

ITA No. 3801/DEL/2015 [A.Y 2004-05]

ITA No. 3802/DEL/2015 [A.Y 2005-06 I

ITA No. 3803/DEL/2015 [A.Y 2006-07

The I.T.O  
Ward - 20(4)  
New Delhi

Vs.

Shri Chetan Seth  
Plot No. 14, LCS, Sector B-1  
Vasant Kunj, New Delhi

PAN: AOLPS 2992A

(Applicant)

(Respondent)

Assessee By : Shri Arun Kishore, CA

Department By : Shri Sanjay Kumar, Sr. DR

Date of Hearing : 27.01.2022

Date of Pronouncement : 27.01.2022

**ORDER**

**PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-**

The above captioned three appeals by the Revenue are preferred against three separate orders of the Id. CIT(A) - 7, New Delhi dated 31.03.2015 pertaining to Assessment Years 2004-05, 2005-06 and 2006-07.

2. Since the issues are common in all these three appeals, they were heard together and are disposed of by this common order for the sake of convenience and brevity.

3. The common ground in all the appeals relates to the deletion of penalty levied u/s 271(1)(c) of the Income-tax Act, 1961 [hereinafter referred to as 'The Act'].

4. The representatives of both the sides were heard at length, the case records carefully perused.

5. Briefly stated, the facts of the case are that the assessee was a share holder in M/s Raas Intratech [P] Ltd and M/s Optic Electronics [I] [P] Ltd. It is seen from the record that M/s Raas Intratech [P] Ltd and M/s Optic Electronics [I] [P] Ltd entered into a negotiation whereby it was agreed that M/s Optic Electronics [I] [P] Ltd would purchase property after the same had been acquired from M/s Raas Intratech [P] Ltd from its then owner, developed into office premises and thereafter transferring to M/s Optic Electronics [I] [P] Ltd for a consideration of Rs. 13.5 crores. Accordingly, advance was made by M/s Optic

Electronics [I] [P] Ltd to M/s Raas Intratech [P] Ltd. The said transaction was duly reflected in the books of account.

6. During the course of assessment proceedings for Assessment Year 2006-07, in the case of M/s Raas Intratech [P] Ltd, amount received by M/s Raas Intratech [P] Ltd was added as deemed dividend u/s 2(22)(e) of the Income-tax Act, 1961 [hereinafter referred to as 'The Act'].

7. Appeal was preferred against the assessment order by M/s Raas Intratech [P] Ltd.

8. After considering the facts, the Id. CIT(A) directed that addition on account of deemed dividend u/s 2(22)(e) of the Act should be made in the hands of Shri Chetan Seth [the assessee] in the present appeal. On treating the deemed dividend in the hands of the assessee, penalty proceedings were separately initiated and penalty was levied u/s 271(1)(c) of the Act. The relevant findings of the Assessing Officer read as under:

"5. It is a matter of fact that the assessee is the major shareholder of both the companies i.e M/S Raas Intratech (P) Ltd. and M/S Optic Electronics Pvt. Ltd. The assessee was very well

aware of the financial position and surplus funds available in the concerns controlled by him. The assessee had transferred the funds by way of loans to avoid payment of tax on dividend which he ought to have paid had the funds enjoyed by him were received as dividend. Therefore, the assessee is the person who has enjoyed the 'funds which have been transferred from one company to another company. The assessee has used this conduit to evade payment of dividend tax. Therefore, the amount which had otherwise been taxed in the hands of M/S Raas Intratech (P) Ltd. is liable to be taxed in the hands of the assessee under the circumstances of the case. This view has been affirmed by the Ld. CIT(A)-XVIII after relying upon the Hon'ble Delhi High Court judgement in the case of *CIT v/s Raj Kumar (2009) 181 Taxman 155*. Non-compliance during the course of assessment proceedings as well as present penalty proceedings makes it absolutely clear that when the assessee became aware of this legally settled position, the assessee opted not to furnish any explanation. Therefore it is apparent that the assessee's act of not including the above amount of deemed dividend in his income was with the intention to reduce his taxable income for the year and thereby evade tax. I am satisfied that the assessee had furnished inaccurate particulars of its income and that there was an intentional attempt to evade taxes."

9. We have given thoughtful consideration to the penalty order. In our considered opinion, the loan transaction was duly reflected in the books of account of the two companies and in fact, the loan transaction was treated as deemed dividend in the hands of M/s Raas Intratech [P] Ltd but subsequently, on the directions of the Id. CIT(A), the same was added in the hands of the assessee.

10. In our considered view, at the inception itself, the issue being highly debatable, as to in whose hands the addition has to be made, therefore, the first appellate authority was convinced that the addition has been made in the deeming provision and is debatable.

11. We are of the considered view that such a highly debatable issue at the relevant point of time [Assessment Years under consideration] cannot be the subject matter of filing inaccurate particulars of income or concealment of income when the facts were very much available with the Assessing Officer. Considering the facts of the case in totality, we do not find any reason to interfere with the findings of the Id. CIT(A).

12. In the result, appeals of the Revenue in ITA Nos. 3801, 3802 and 3803/DEL/2015 are dismissed.

The order is pronounced in the open court on 27.01.2022 in the presence of both the representatives.

**Sd/-**  
**[SAKTIJIT DEY]**  
**JUDICIAL MEMBER**

**Sd/-**  
**[N.K. BILLAIYA]**  
**ACCOUNTANT MEMBER**

Dated: 27<sup>th</sup> January 2022.

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,  
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	28.1.2022
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
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