

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, CHENNAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष
BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.: **1643/CHNY/2018**

निर्धारण वर्ष /Assessment Year: 2014 - 15

The Income Tax Officer,
Corporate Ward – I(4),
Chennai – 34.

M/s. Displaytronics
v. **Reader Devices Pvt. Ltd.,**
No.72, Greems Road,
Thousand Lights,
Chennai – 600 006.
PAN: AADCD 0117D
(प्रत्यर्थी/Respondent)

(अपीलार्थी/Appellant)

अपीलार्थी की ओर से/Appellant by
प्रत्यर्थी की ओर से/Respondent by

: Shri P. Sajit Kumar, JCIT
: Shri R. Viswanathan, CA

सुनवाई की तारीख/Date of Hearing : 22.02.2022

घोषणा की तारीख/Date of Pronouncement : 25.02.2022

आदेश /O R D E R

PER MAHAVIR SINGH, VP:

This appeal by the Revenue is arising out of the order of Commissioner of Income Tax (Appeals)-1, Chennai in ITA No.426/CIT(A)-1/2016-17 order dated 22.02.2018. The assessment was framed by ITO, Corporate Ward I(4), Chennai for the relevant assessment year 2014-15 u/s.143(3) of the Income Tax Act, 1961 (hereinafter the 'Act') vide order dated 23.12.2016.

2. The only issue in this appeal of Revenue is against the order of CIT(A) deleting the addition made by the AO treating the loan received by assessee as deemed dividend u/s.2(22)(e) of the Act. For this Revenue has raised various grounds which we need not to reproduce.

3. Brief facts are that the assessee company is engaged in the business of developing software and filed its return of income for the relevant assessment year 2014-15 on 30.09.2014. During the course of scrutiny assessment proceedings, the AO noticed from the balance sheet that the assessee has declared unsecured loans of Rs.5,59,51,942/- from M/s. Nine Star Information Technology Pvt. Ltd., as on 31.03.2014. The AO noted the opening balance has Rs.3,94,97,433/- and the closing balance at Rs.5,59,51,942/-. The AO noted that during the year under consideration the assessee received unsecured loans of Rs.1,64,54,508/-. According to AO, the amount received by the assessee falls under the purview of section 2(22)(e) of the Act as deemed dividend. According to AO, the shareholding pattern also describes that assessee company is a concern in which the shareholder M/s. Nine Star Information Technology Pvt. Ltd., has substantial interest. Hence, he disallowed the loan received during the year at Rs.1,64,54,508/- as deemed

dividend and added to the return of income of the assessee. Aggrieved, assessee preferred appeal before CIT(A). The CIT(A) following the Tribunal's order in assessee's own case for assessment year 2011-12 deleted the addition by observing in para 6 & 7 as under:-

"6. In the course of appeal, the appellant placed on record order of the ITAT in their own case pertaining to A.Y. 2011-12. The appellant submitted that as the facts during the relevant previous year remain the same, the addition on account of deemed dividend be deleted. The Hon'ble ITAT has considered this issue from para 3 to para 6 of the order. The same is reproduced below for ready reference

3. The Brief facts of the case that the assessee company is in the business of design development, manufacture and marketing of portable reading devices and other electronic gadgets and filed the Return of income electronically on 30.09.2011 for the assessment year 2011-12 admitting loss of Rs. 2,08,09,460/-and subsequently the case was selected for scrutiny and notice u/s. 143(2) of the act was issued. In compliance to the notice, Ld. AR appeared from time to time and the assessee company filed the details. The Assessing Officer on perusal of balance sheet found Rs. 4,17,79,535/- as unsecured loan and Rs.4,68,36,535/-is towards the inter corporate loans pertaining to sister concern M/s. Nine Star Information Technologies for the purpose of developing product e-reader. The transactions are recorded in the current financial year in respect of scientific research conducted by the Nine Star Information Technologies. The Assessing Officer observed that the assessee company has disclosed amount due to Nine Star Information Technologies Rs. 4,68,36,534/- as on 31.03.2011 as trade advance. The Ld. AO is of the opinion that the said amount cannot be a trade advance as there is no product development and comes with in purview of provisions of section 2(22)(e) of the Act. The Ld. Assessing Officer dealt on the share holdings in the sister concern M/s Nine Star Information Technology were director Shri V. Gopalakrishnan holds 50% and Shri V. Gokulakrishnan holds 48.7%, whereas, in the assessee company Shri V. Gopalakrishnan holds 40% and Shri V. Gokulakrishnan holds 40% share. Since, both the

concerns are holding substantive interest in the business the Id Ao applied the provisions of section 2(22)(e) of the Act. Further the Assessing Officer is of the opinion that the case falls within the definition of “concern” and the shareholders of the company are holding more than 10% in assessee's company and made disallowance u/s. 2(22)(e) of the Act Rs. 2,43,28,711/- and passed order u/s. 143(3) dated 31.03.2014.

4. Aggrieved, by the order of the AO, the assessee has filed an appeal with the CIT(A). In the appellate proceedings, the Ld. AR of the assessee argued the grounds and reiterated the submissions of the assessment proceedings. The Ld. CIT(A) considered the findings and provisions of section 2(22)(e) of the act and the shareholders pattern of both the assessee company and Nine Star Technologies. The Ld. AR explained that the assessee company is not a shareholder in the sister concern M/s. Nine Star Technologies. But the shareholders of Assessee Company are also shareholders of Nine Star Technologies. The Ld. AR relied on the provisions of section 2(22)(e) of the Act CBDT Circular and judicial decisions. The Ld. CIT(A) considered the decision of the jurisdictional High Court m/s Printwave Services Private Limited 373 ITR 665(Mds) and observed that The dividend income can be taxable only in the hands of substantive shareholders. The Ld. CIT(A) viewed that the Director Mr. V. Gopalakrishnan hold 40% of the shares in the assessee company, though holds 40% shares in the Nine Star Technologies. The assessee company is not beneficial shareholder of Nine Star Technologies Limited and therefore no dividend can be taxed in the hands of the assessee company and the decision of Printwave Technologies ltd (supra), squarely apply to the assessee case. And the Assessing Officer can tax deemed dividend under the provisions of section 2(22)(e) in the hands of beneficial shareholders only but not on the assessee company and allowed the ground and partly allowed the appeal.

5. Aggrieved by the CIT(A) order, Revenue filed an appeal before the tribunal. The Ld. DR argued that the deemed dividend provisions are applicable to the assessee company and treated as concern in which the shareholders of Nine Star Technologies P. Ltd., having substantive interest and the financial transactions are not in the interest of business exigencies. Further, the jurisdictional High court decision of Print wave Services P. Ltd., (Supra) is not accepted by the Revenue and

relied on the judicial decisions. On the other hand, the Ld. AR relied on the orders of the CIT(A).

6. We heard the rival submissions, perused the material on record and judicial decisions. We found on perusal of the Assessment Order, the company has disclosed Rs. 4,68,53,535/- as unsecured loans in balance sheet. Whereas, M/s. Nine Star Information Technologies has disclosed the said amount as loans and advances in their books of accounts. Since, the assessee company has disclosed the amount being in the nature of commercial transaction as unsecured loans and the assessee company is not the beneficial owner or registered owner. The Id Cit(A) relied on The jurisdictional High court decision in the case of Print wave Services P. Ltd., (Supra) held at Para 8 which read as under:

"8. From a reading of the above provision, it is clear that section 2(22)(e) defines dividend, which is a payment by way of advance or loan to a shareholder, being a person who is the beneficial owner of shares holding not less than 10% 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. In the present case, the assessee is not the beneficial or registered owner of the shareholdings in the company."

and allowed the appeal. We find the Commissioner of Income Tax (Appeals) has examined the facts on record vis-a-vis the explanations made by the Assessee. And relied on the binding jurisdictional High Court decision of CIT Vs Print waves Services P Ltd (Supra) and allowed the claim. we do not see any reason to interfere in the order of Commissioner of Income Tax (Appeals) and upheld the same and dismiss the grounds of Revenue.

7. It is observed that the Hon'ble ITAT has followed the decision of the jurisdictional High Court in the case of Printware Services Private Limited 373 ITR 665 in concluding that the addition on account of deemed dividend can be made only in the hands of the shareholder. The principle laid down in the case of Printware Services Private Limited (supra) has been subsequently upheld by the Hon'ble Supreme Court in the case of Madhur Housing & Development Co. [Civil Appeal No. 3961 of 2013, dated 5-10-2017]. Respectfully following the same, this ground of appeal is allowed."

4. The Id.Senior DR only relied on the assessment order. On the other hand, the Id.AR relied on the order of CIT(A).

5. After hearing rival contentions and going through the decision of the Tribunal in assessee's own case for assessment year 2011-12 in ITA No.1758/Mds/2016 order dated 21.02.2017, we are of the view that the issue is exactly identical and hence, taking a consistent view we confirm the order of CIT(A) and dismiss the appeal of Revenue.

6. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in the court on 25th February, 2022 at Chennai.

Sd/-

(मनोज कुमार अग्रवाल)

(MANOJ KUMAR AGGARWAL)

लेखा सदस्य /ACCOUNTANT MEMBER

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)

उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,

दिनांक/Dated, the 25th February, 2022

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|------------------------|--------------------------|------------------------------|
| 1. अपीलार्थी/Appellant | 2. प्रत्यर्थी/Respondent | 3. आयकर आयुक्त (अपील)/CIT(A) |
| 4. आयकर आयुक्त /CIT | 5. विभागीय प्रतिनिधि/DR | 6. गार्ड फाईल/GF. |