

आयकर अपीलिय अधिकरण, 'डी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'D' BENCH: CHENNAI

श्री जी. मंजुनाथा, माननीय लेखा सदस्य एवं
श्री अनिकेश बनर्जी, माननीय न्यायिक सदस्य के समक्ष
BEFORE SHRI G. MANJUNATHA, HON'BLE ACCOUNTANT MEMBER AND
SHRI ANIKESH BANERJEE, JUDICIAL MEMBER

आयकर अपील सं./ITA No.2095/Chny/2018
निर्धारण वर्ष /Assessment Year: 2014-15

Mr.M.G.Surendranath,
No.1/5, 4th Cross Street,
Indira Nagar, Adyar,
Chennai.
[PAN: BTLPS 1112 G]
(अपीलार्थी/Appellant)

v. The Income Tax Officer,
Non-Corporate Ward-15(5),
Chennai.

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Mr.S.Sridhar, Adv.
प्रत्यर्थी की ओर से /Respondent by : Mr.G.Johnson, Addl.CIT
सुनवाई की तारीख/Date of Hearing : 09.03.2022
घोषणा की तारीख /Date of Pronouncement : 16.03.2022

आदेश / ORDER

PER G. MANJUNATHA, ACCOUNTANT MEMBER:

This appeal filed by the assessee is directed against the order of the Commissioner of Income Tax (Appeals)-15, Chennai, dated 29.05.2018 and pertains to assessment year 2014-15.

2. The brief facts of the case are that the assessee filed return of income for the assessment year 2014-15 on 16.06.2015 admitting total income of Rs.81,15,260/-. During the course of assessment proceedings, the AO noticed that the assessee has received unsecured loan from M/s.SRP & RG Constructions Pvt. Ltd., to the tune of

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Rs.98,06,960/-. Since, the assessee is holding more than 40% of shares in the company and the company is having accumulated reserves & surplus, called upon the assessee to explain, as to why, loans received from the company, cannot be treated as deemed dividend under the provisions of Sec.2(22)(e) of the Income Tax Act, 1961 (in short "the Act"). In response, the Ld.AR of the assessee contended that the company had paid advance for purchase of properties, for which, assessee has entered into an agreement for purchase of land at the upcoming real estate area in Minjur, near Ennore Port, Chennai. The AO, however, was not convinced with the explanation furnished by the assessee and according to the AO, the assessee could not substantiate its claim of taking advance from the company for procuring lands and thus, treated loan received by the assessee from M/s.SRP & RG Constructions Pvt. Ltd., as deemed dividend and brought to tax u/s.2(22)(e) of the Act.

3. Being aggrieved by the assessment order, the assessee preferred an appeal before the Ld.CIT(A). Before the Ld.CIT(A), the assessee has reiterated his arguments made before the AO and contended that M/s.SRP & RG Constructions Pvt. Ltd., is engaged in real estate and related construction activities and also promotion of residential flats. In the process, the company had given advances to the assessee to identify and procure lands. Therefore, amount received by the assessee from

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the company, cannot be treated as deemed dividend u/s.2(22)(e) of the Act.

4. The Ld.CIT(A) after considering the relevant submissions of the assessee and has taken a note of reasons given by the AO, rejected the claim of the assessee and sustained the additions made towards deemed dividend by holding that in spite of reasonable opportunity given to the assessee, assessee could not demonstrate, how unsecured loan received from the company, was utilized for the purpose of investment related to the business of the company. The Ld.CIT(A), further noted that although, the assessee claims to enter into agreement for purchase of land for the company in the year 2012, but even till date, there is no evidence was produced to prove that sale has been taken place. Therefore, opined that there is no error in the reasons given by the AO to treat the loan received from the company as deemed dividend within the meaning of Sec.2(22)(e) of the Act. Aggrieved by the order of the Ld.CIT(A), the assessee is in appeal before us.

5. The Ld.AR submitted that the Ld.CIT(A) failed to appreciate the fact that amount received from the company is for procuring land for the purpose of business of the company, which is evident from the fact that the assessee had entered into an agreement of sale dated 25.04.2012 with M/s.SRP & RG Constructions Pvt. Ltd., for sale of vacant agricultural land. The Ld.AR further submitted that, even otherwise, the amount of

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loan considered by the AO under the provisions of Sec.2(22)(e) of the Act, is not correct, because, if you consider the loan given by the assessee to the company and set off loan against advance received, then there is no debit in the name of the assessee and thus, provisions of Sec.2(22)(e) of the Act, cannot be invoked. In this regard, relied upon the decision of the Hon'ble High Court of Madras in the case of Sunil Kapoor v. CIT reported in [2015] 235 Taxman 279 (Madras).

6. The Ld.DR, on the other hand, supporting the order of the Ld.CIT(A), submitted that the assessee has failed to prove the nexus between the loans received from the company and purchase of assets for the purpose of business of the company and thus, there is no error in the reasons given by the AO as well as the Ld.CIT(A) to treat the loans under the provisions of Sec.2(22)(e) of the Act. The Ld.DR further submitted that in respect of second argument of the Ld.AR for the assessee, if we set off loans and advances given by the assessee to the company against advance received from the company, then there would be no debit balance and consequently, provisions of Sec.2(22)(e) of the Act, cannot be applied, is not correct, because all along the assessee was taking a stand that amount received from the company is advance for purchase of land, but not loans and advances. Therefore, the arguments of the assessee cannot be accepted.

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7. We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. There is no dispute with regard to the fact that the assessee had received unsecured loan from the company, in which, he has holding more than 40% of equity shares and also company is having accumulated reserves & surplus over and above, the amount of loans given to the assessee. Therefore, applicability of provisions of Sec.2(22)(e) of the Act, in the given facts and circumstances of the case, is not in doubt. The only contention of the assessee before the lower authorities was that loans received from the company, is advance for purchase of properties for the purpose of business of the company, for which, the assessee has filed agreement of sale dated 25.04.2012 between the assessee and the company for procurement of certain lands. Admittedly, the agreement between the assessee and the company was unregistered. It is also an admitted fact that as claimed by the assessee, the lands were not procured by the assessee on behalf of the company for the business of the company. This is evident from the fact that even before the Ld.CIT(A), the assessee could not file any evidences to prove that the lands were, in fact, purchased by the company out of advance given to the assessee. In fact, the Ld.Counsel for the assessee admitted that the transactions could not be completed and advance received from the company, had been subsequently repaid. From the above, it is abundantly clear that claim of the assessee that it has received advance

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from the company for procurement of land is unsubstantiated. Hence, we are of the considered view that the arguments of the assessee fails and thus, there is no error in the reasons given by the AO to treat the advance received from the company as deemed dividend u/s.2(22)(e) of the Act.

8. Coming back to the second argument of the Ld.Counsel for the assessee. The Ld.AR referring to financial statements of the assessee submitted that as per Schedule-6, Loans & Advances, it is explained that the assessee has given loan to M/s.SRP & RG Constructions Pvt. Ltd., which is more than the amount of advance received from the company. If you consider loans given by the assessee to the company and advance received from the company, then, there would be no debit balance in the name of the assessee in the books of the company and thus, provisions of Sec.2(22)(e) of the Act, cannot be invoked. We do not find any substance in the arguments of the assessee for the simple reason, all along the claim of the assessee was that loans received from the company is nothing but advance for procurement of land. At this stage, the assessee has taken a different argument, that too without any reference to the annual financial statement of the company to prove that the assessee had given loans to company, which is over and above the amount of loans received from the company. Therefore, we are of the

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considered view that there is not merit in the arguments of the assessee and thus, the second arguments of the assessee is rejected.

9. In this view of the matter and considering the facts and circumstances of the case, we are of the considered view that there is no error in the reasons given by the AO to make additions towards loans received from the company u/s.2(22)(e) of the Act as deemed dividend. Hence, we are inclined to uphold the findings of the Ld.CIT(A) and dismissed the appeal filed by the assessee.

10. In the result, the appeal filed by the assessee is dismissed.

Order pronounced on the 16th day of March, 2022, in Chennai.

Sd/-
(अनिकेश बनर्जी)

(ANIKESH BANERJEE)

न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 16th March, 2022.

TLN

Sd/-

(जी. मंजूनाथा)

(G. MANJUNATHA)

लेखा सदस्य/**ACCOUNTANT MEMBER**

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant

2. प्रत्यर्थी/Respondent

3. आयकर आयुक्त (अपील)/CIT(A)

4. आयकर आयुक्त/CIT

5. विभागीय प्रतिनिधि/DR

6. गार्ड फाईल/GF