

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

माननीय श्री महावीर सिंह, उपाध्यक्ष एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON'BLE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकरअपीलसं./ ITA No.1586/Chny/2018
(निर्धारणवर्ष / Assessment Year: 2013-14)

M/s. Shree Saibalaji Securities Pvt. Ltd. No. 241-F, 1 st Floor, 4 th Cross Brindavan Road, Fairlands, Salem – 636 016.	बनाम / Vs.	Pr. CIT Salem.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. AAKCS-2804-F		
(अपीलार्थी/Appellant)	:	(प्रत्यर्थी / Respondent)

&

आयकरअपीलसं./ ITA No.3172/Chny/2019
(निर्धारणवर्ष / Assessment Year: 2013-14)

M/s. Shree Saibalaji Securities Pvt. Ltd. No. 241-F, 1 st Floor, 4 th Cross Brindavan Road, Fairlands, Salem – 636 016.	बनाम / Vs.	ACIT Circle -2, Salem.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. AAKCS-2804-F		
(अपीलार्थी/Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Shri. T. Vasudevan (Advocate) –Ld. AR
प्रत्यर्थीकीओरसे/Respondent by	:	Shri. M. Rajan (CIT) & Shri. P. Sajit Kumar (JCIT) – Ld. DRs

सुनवाईकीतारीख/ Date of Hearing	:	06-04-2022
घोषणाकीतारीख / Date of Pronouncement	:	06-04-2022

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeals by assessee for Assessment Year (AY) 2013-14 arises out of separate orders. In ITA No.1586/Chny/2018, the assessee

challenges the validity of revisional jurisdiction u/s 263 as exercised by Ld. Principal Commissioner of Income Tax, Salem (Pr. CIT) vide order dated 01.03.2018. The other appeal arises out of the order of Learned Commissioner of Income Tax (Appeals), Salem [CIT(A)] dated 27.08.2019 in the matter of consequential assessment framed by Ld. Assessing Officer [AO] u/s. 143(3) r.w.s. 263 of the Act on 19.12.2018.

2. The Ld. AR, assailing the revisional jurisdiction, submitted that bonus shares were allotted to equity shareholders and therefore, the provisions of Sec. 2(22)(b) r.w.s. 115-O could not be attracted as wrongly held by Ld. Pr. CIT. To support the same, our attention has been drawn to various documents as placed in the paper book. The Ld. AR also submitted that there was no release of assets in favor of equity shareholders within the meaning of Sec. 2(22)(a). The Ld. CIT-DR submitted that no enquiries, whatsoever, were made by Ld. AO during regular assessment proceedings on this issue and therefore, revisional jurisdiction u/s 263 was rightly invoked by Ld. Pr. CIT. The Ld. Sr. DR submitted that the plea taken by Ld. AR was not raised before any of the lower authorities. Having heard rival submissions and after perusal of relevant material on record, our adjudication would be as under.

3. The assessee being resident corporate assessee is stated to be engaged as franchisee of Motilal Oswal Securities Ltd. A regular assessment was framed against the assessee u/s 143(3) on 26.11.2015 wherein the returned income of Rs.1.03 Lacs was accepted by Ld. AO. However, upon perusal of case record, Ld. Pr. CIT held an opinion that the order was erroneous and prejudicial to the interest of the revenue within the meaning of Sec. 263. The same was borne out of the fact that

the assessee had accumulated profits of Rs.50.96 Lacs and the assessee issued bonus shares of Rs.45 Lacs during the year. Therefore, the assessee was liable to pay dividend distribution tax (DDT) on such issuance u/s 115-O as profits were distributed indirectly by issue of bonus shares as covered by the provisions of Sec. 2(22)(b) of the Act. The assessee submitted that issue of bonus shares would not entail release of the assets since upon issue of bonus shares, the accumulated profits simply get converted into share capital of the company. However, rejecting the same, Ld. Pr. CIT held that since the assessment order was passed by Ld. AO without verification, the same would require revision u/s 263. Accordingly, Ld. AO was directed to re-assess afresh in the light of observations made in the revisional order.

4. Pursuant to these directions, an assessment has been reframed by Ld. AO on 19.12.2018. During the course of assessment proceedings, the assessee reiterated that bonus do not entail release of assets and placed reliance on the decision of Hon'ble High Court of Gujarat in the case of **Shashibala Navnital V/s CIT (54 ITR 478)**. However, rejecting the same, Ld. AO computed Dividend Distribution Tax u/s 115-O on amount of Rs.45 Lacs and raised a demand against the assessee. The stand of Ld. AO, upon confirmation by Ld. CIT(A), is in further appeal before us.

Our findings and Adjudication

5. Upon careful consideration of material facts, it could be gathered that the assessee has accumulated profit of Rs.50.96 Lacs which has been capitalized during the year by way of issue of bonus shares. It is undisputed fact that there is no actual outflow of funds from assessee's

coffers. The accumulated reserves have merely been converted into equity share capital without altering the capital structure of the assessee. Upon perusal of assessee's financial statements (page-15 of paper book), it could be seen that the assessee's issued, subscribed and paid up capital consist of 5000 Equity Shares and the assessee has not issued any preference shares. Undisputedly, the bonus shares have been issued to the equity shareholders only. Further, it is well settled position that Issue of bonus shares does not entail release of company's assets rather the bonus is nothing but capitalization of accumulated profits.

6. The revenue has taken a view that the issue of bonus shares would amount to distribution of dividend which would attract dividend distribution tax u/s 115-O. The provisions of Sec.115-O provide that notwithstanding anything contained in any other provision of this Act and subject to the provisions of this section, in addition to the income-tax chargeable in respect of the total income of a domestic company for any assessment year, any amount declared, distributed or paid by such company by way of dividends (whether interim or otherwise) during specified period, whether out of current or accumulated profits shall be charged to additional income-tax. The dividend, in simple words, refers to the amount paid to shareholders in proportion to the shareholding in the company. As per the provisions of Sec.2(22) dividend includes— (a) any distribution by a company of accumulated profits, whether capitalized or not, if such distribution entails the release of assets by the company to its shareholders of all or any part of the assets of the company, or (b) any distribution to its shareholders by a company of

debentures, debenture-stock, or deposit certificates in any form, whether with or without interest, and any distribution to its preference shareholders of shares by way of bonus, to the extent to which the company possesses accumulated profits, whether capitalized or not. The remaining clauses (c) to (e) are not relevant in the present case.

7. It could be gathered that the assessee's case do not fall u/s 2(22)(a) since the bonus shares are nothing but mere conversion of accumulated profits into equity share capital. There is no actual outflow or release of assets of the assessee.

The clause (b) of Sec. 2(22) applies in two situation i.e., (i) any distribution to its shareholders by a company of debentures, debenture-stock, or deposit certificates in any form, whether with or without interest; (ii) any distribution to its preference shareholders of shares by way of bonus. The amounts paid under situation (i) and (ii) shall amount to dividend to the extent to which the company possesses accumulated profits, whether capitalized or not.

In preceding para (5), we have already noted that the assessee has issued only equity shares and there are no preference shares. The bonus has been issued to equity shareholders only. Thus, the assessee's case do not fall either in Clause (a) or Clause (b) of Sec.2(22). This being so, the amount of bonus could not be held to be dividend and accordingly, Sec.115-O would have no application in such a case. Therefore, we direct Ld. AO to delete the impugned demand as raised against the assessee. The assessee succeeds on merits which render the issue of validity of revisional jurisdiction merely academic in nature.

8. ITA No,3172/Chny/2019 stands allowed whereas ITA No.1586/Chny/2018 stand dismissed as infructuous.

Order pronounced on 06th April, 2022.

Sd/-
(MAHAVIR SINGH)
उपाध्यक्ष /VICE PRESIDENT

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखा सदस्य /ACCOUNTANT MEMBER

चेन्नई/ Chennai; दिनांक/ Dated : 06-04-2022

JPV

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त (अपील)/CIT(A)
4. आयकरआयुक्त/CIT
5. विभागीयप्रतिनिधि/DR
6. गार्डफाईल/GF