

आयकरअपीलीयअधिकरण, अहमदाबादन्यायपीठ।
IN THE INCOME TAX APPELLATE TRIBUNAL,
“C” BENCH, AHMEDABAD

BEFORE DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER
AND
MS. MADHUMITA ROY, JUDICIAL MEMBER

ITA No.729/AHD/2019
Assessment Year:2014-15

M/s. Ry Midas Aluminums Pvt. Ltd., No.117, Tribhuwan Industrial Estate, Kathwada, Singarwa Road, Kathwada- 382430, Ahmedabad. PAN :AAECM 8066 F	Vs	Dy.Commissioner of Income-tax, Circle-3(1)(2), B-408, 4 th Floor, Pratyaksh Kar Bhavan, Panjarapole, Ambawadi, Ahmedabad.
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(Appllant)	(Responent)
Assessee by :	Shri Vinit Moondra, CA
Revenue by :	Shri V. K. Singh, Sr. DR

सुनवाईकीतारीख/**Date of Hearing** : **20/04/2022**

घोषणाकीतारीख/**Date of Pronouncement**: **29/06/2022**

आदेश/O R D E R

PER Bench:

Captioned appeal filed by the Assessee, pertaining to the Assessment Year (AY) 2014-15, is directed against the order passed by the Learned Commissioner of Income Tax (Appeals)-9, Ahmedabad [in short “the Id.CIT(A)”]in Appeal No. CIT(A)-9/10319/DCIT, Cir-3(1)(2)/17-18dated 25.03.2019, which in turn arises out of an assessment order passed by Assessing Officer under section 143(3)r.w.s. 92CAof the Income Tax Act, 1961 [hereinafter referred to as the “Act”] dated 25.11.2017.

2. The grounds of appeal filed by the assessee are as follows:

“1. In his order, the Ld. AO has made an addition of Rs.96,47,549/- u/s 2(22)(e) as deemed dividend for trade advance received from associate company without identifying the facts of the case and real nature of transaction involved. The Ld. CIT(A) has erred in law by confirming the same.

2. In his order, the Ld. AO has made an addition of Rs.1,56,954/- u/s 36(1)(va) r.w.s 2(24)x for delay in deposit of employees contribution to PF and ESI without considering the facts and case laws on record. The Ld. CIT(A) has erred in law by confirming the same.

3. In his order, the Ld. AO has made an addition of Rs.3,32,000/- out of ROC expense for increase in authorised share capital without considering the facts of the case and real nature of transaction involved. The Ld. CIT(A) has erred in law by confirming the same.

4. Any other grounds shall be submitted at the time of hearing.”

3. Ground No.1 raised by the assessee relates to addition of Rs.96,47,549/- u/s 2(22)(e) of the Act, as deemed dividend for trade advance received from associate company.

4. Brief facts of the issue in dispute are stated as under. During the course of assessment proceedings on verification of the details furnished by the assessee, it was noticed by the Assessing officer that assessee company had received financial advances of Rs.4,23,25,000/- from M/s PMC Import Pvt. Ltd (PMCIPL). On verification of records and details, it was observed by the Assessing Officer that assessee company, M/s RY Midas Aluminum Pvt. Ltd. (RYMPL) is holding 39.79% shares in M/s PMC Import Pvt. Ltd. (PMCIPL) (more than substantial share) and has received financial advances of Rs.4,23,25,000/- from it. The Company, M/s PMC Import Pvt. Ltd has Profit Reserve (Accumulated Profits) of Rs.96,47,569/- as on 31.03.2014. It was further observed by AO that advance of Rs.4.23 crore is purely financial advance. The assessee company (RYMPC) is also having one more account in the books of PMCIPL showing credit balance of Rs.2,12,64,649/- which is on account of advance received from customers. The assessing officer thus noted that even if this credit balance of Rs.2,12,64,649/- is set off from the advance of Rs.4,23,25,000/-, then also the resultant net advance of Rs.2,10,60,351/- (Rs.4,23,25,000 - Rs.2,12,64,649) given by PMCIP to RYMAPL is more than the accumulated profits of Rs.96,47,569/-. Therefore, Assessing Officer noted the amount received by the assessee company apparently gets covered

by the definition of deemed dividend as defined in section 2(22)(e) of the Act to the extent of the accumulated profits of Rs.96,47,569/- in the hand of the assessee company. Therefore, assessing officer issued a show cause notice to explain the transaction. In response, the assessee submitted that these transactions are on account of trading activities, as current account, therefore does not fall in the definition of deemed dividend. However, assessing officer rejected the contention of the assessee and made an addition to the tune of Rs.96,47,569/- to the returned income of the assessee by invoking the provisions of section 2(22)(e) of the Act.

5. Aggrieved by the order of the Assessing Officer, the assessee carried the matter in appeal before the learned CIT(A), who has confirmed the action of the Assessing Officer.

6. Aggrieved by the order of Id. CIT(A), the assessee is in appeal before us.

7. The Learned Counsel for the assessee submitted that transactions were in the nature of current account and the advances shown and received from M/s PMC Pvt. Ltd. were trade advances and not the loans or advances. The Ld. Counsel also contended that there were maximum transactions on current account to the tune of Rs.4,23,25,000/- and amount to the tune of Rs.2,12,64,639/- relates to advances received from customers. The Ld. Counsel to support of his contention, filed simple copies of sale bills, purchase bills, different challans in the last two or three years to prove that assessee-company had transactions of general trading. These evidences, were filed before the assessing officer and Id CIT(A). Therefore, Ld. Counsel prayed the Bench that current account transactions should not come in the ambit of provisions of section 2(22)(e) of the Act. The Ld. Counsel, to bolster his arguments, also relied on the judgement of Hon'ble jurisdictional High Court of Gujarat in the case of Shripad Concrete Pvt. Ltd. (Tax Appeal No. 208 of 2013, dated 03.04.2013).

8. On the other hand, the Ld. DR for the Revenue has primarily reiterated the stand taken by the Assessing Officer, which we have already noted in our earlier para and is not being repeated for the sake of brevity.

9. We have heard both the parties and carefully gone through the submissions put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the facts of the case including the findings of the Id. CIT(A) and other material brought on record. We note that transactions under consideration are not in the nature of loans and advances. The assessing officer himself mentioned in the assessment order that credit balance of Rs.2,12,64,649/- belongs to advance received from customers. Hence these transactions are in the nature of current account transactions, which are being done by the assessee during the course of doing business. Therefore, we find merit in the submissions of the Ld. Counsel that transactions under consideration are in the nature of current account transactions, which are squarely covered by the judgment of the Hon'ble jurisdictional High Court of Gujarat in the case of Shripad Concrete Pvt. Ltd. (supra), in Tax Appeal No. 208 of 2013, order dated 03.04.2013 wherein it was held as follows:

“Revenue is in appeal against the judgment of the Income Tax Appellate Tribunal ('the Tribunal' for short) dated 24.08.2012, raising following question for our consideration:

"Whether on the facts and in the circumstances of the case, and in law, the ITAT was justified in holding that the amount of Rs.35,50,000/- received from Shripad Conchem Pvt. Ltd. and Shripad Construction, and Rs.1,02,830/- accumulated profit from Eco System Management Service (P.) Ltd., are not taxable in the hands of assessee company as deemed dividend u/s.2(22)(e)?

2. For the assessment year 2006-07, the Assessing Officer taxed a sum of Rs.35.50 lacs as deemed dividend within the meaning of section 2(22)(e) of the Income Tax Act, 1961 ('the Act' for short). The Assessing Officer noted that the assessee had shown two separate amounts of Rs.12.15 lacs (rounded off) by way of advance to Shripad Conchem Pvt. Ltd. and Rs.35.75 lacs (rounded off) by way of advance to Shripad Construction. Both being sister concerns of the assessee company the assessee was put to notice why such amount should not be treated as deemed dividend. The assessee contended that it had maintained two separate accounts. The above noted amounts were not in the nature of loan and advance, but were merely in the nature of production advance. The Assessing Officer, however,

rejected such a theory and taxed the said amount as noted above. The assessee thereupon approached the appellate Commissioner. The CIT(Appeals), noted that the assessee was maintaining two separate accounts. One was for the purpose of financial transactions and other account was for business transactions. During the year under consideration the assessee had sold goods of Rs.12.15 lacs to Shripad Conchem Pvt. Ltd and Rs.35.75 lacs to Shripad Construction. Separate accounts for the sale were maintained. As and when the assessee company needed the funds, it obtained amount on various dates. The assessee company was manufacturing concrete mix and major part of the goods were sold to the, said companies. CIT (Appeals) therefore, allowed the assessee's appeal and reversed the decision of the Assessing Officer. The Revenue, thereupon, approached the Tribunal. The Tribunal confirmed the view of the CIT(Appeals), making following observations:

"6. We have perused the orders of the authorities below and gone through the cases relied upon by the appellant. The Ld. A.O. attracted the provisions of section 2(22)(e) of the IT Act on loan of Rs.35,50,000/- but the appellant has established that these are business transactions. The appellant sold has established that these are business transactions. The appellant sold goods of Rs.12,15,513/- to M/s. Shripat Conchem (P.) Ltd. and Rs.35,75,975 to M/s. Shripat Construction division of M/s. Shripat Conchem (P.) Ltd. There were two accounts maintained by the appellant, one for financial transactions another for business transaction. The loan amount was partly re-paid during the year. If both the accounts are taken together, there is liability on the assessee but it was business necessity of the appellant. It is not a loan as envisaged in section 2(22)(e) of the IT Act. We respectfully follow the findings given by the Co-ordinate Bench as discussed above as are squarely applicable on the assessee's case. There is no merit in the department's appeal. Accordingly, the same is dismissed."

Having heard the learned counsel Shri Manav Mehta for the Revenue and having perused the documents on record, we find that the Tribunal has committed no error. As a matter of fact, it was found by CIT(Appeals) which was upheld by the Tribunal that the appellant had sold goods and had established that the amounts involved business transactions. Such amounts, therefore, cannot be categorized as loan as envisaged under section 2(22)(3) of the Act. Section 2(22)(e) of the Act, as is well known, treats certain loan or advance made by the company to a person who is the beneficial owner of the shares holding not less than ten per cent of the voting power under certain circumstances to be the deemed dividend. In the present case, when the authorities found that the amount in question cannot be categorized as loan or advance, question of application of section 2(22)(e) would not arise.

Before closing, we may clarify that the Tribunal in the impugned judgment has made a reference to a decision of the Ahmedabad Bench in the case of Sai Jyoti & Printing Ltd. The Tribunal has also reproduced a portion of that judgment. We are of the opinion that the said decision has no bearing in the present appeal. This order, therefore, would have no effect on the Revenue's appeal against such order, which we are informed has been admitted.

In the result, Tax Appeal is dismissed."

10. We note that assessee has established that these are business transactions, which do not come in the ambit of the provisions of section 2(22)(e) of the Act. Therefore, respectfully following the judgment of the Hon'ble jurisdictional High Court of Gujarat in the case of Shripad Concrete Pvt. Ltd. (supra), we delete the addition to the tune of Rs.96,47,541/-. Thus, ground no.1 raised by the assessee is allowed.

11. Ground No.2 raised by the assessee relates to addition of Rs.1,56,954/- under section 36(1)(va) r.w.s 2(24)(x) of the Act, for delay in depositing of employees' contribution of PF and ESI.

12. We have heard both the parties on this ground and note that issue under consideration is no longer *res integra*. The issue relating to delay in depositing of employees' contribution of PF and ESI, is squarely covered against the assessee by the judgment of Jurisdictional Hon'ble Gujarat High Court in the case of Gujarat State Road Transport Corporation (GSRTC)41 taxmann.com 100 (Guj). The relevant findings of the Hon`ble court are reproduced below:

“8. In view of the above and for the reasons stated above, and considering section 36(1)(va) of the Income Tax Act, 1961 read with sub-clause (x) of clause 24 of section 2, it is held that with respect to the sum received by the assessee from any of his employees to which provisions of sub-clause (x) of clause (24) of section (2) applies, the assessee shall be entitled to deduction in computing the income referred to in section 28 with respect to such sum credited by the assessee to the employees' account in the relevant fund or funds on or before the "due date" mentioned in explanation to section 36(1)(va). Consequently, it is held that the learned tribunal has erred in deleting respective disallowances being employees' contribution to PF Account / ESI Account made by the AO as, as such, such sums were not credited by the respective assessee to the employees' accounts in the relevant fund or funds (in the present case Provident Fund and/or ESI Fund on or before the due date as per the explanation to section 36(1)(va) of the Act i.e. date by which the concerned assessee was required as an employer to credit employees' contribution to the employees' account in the Provident Fund under the Provident Fund Act and/or in the ESI Fund under the ESI Act.

9. Consequently, all these appeals are allowed and the impugned judgement and orders passed by the tribunal in deleting the disallowances made by the AO are hereby quashed and set aside and the disallowances of the respective sums with respect to the Provident Fund / ESI Fund made by the AO is hereby restored. The questions raised in present appeal are answered in favour of the revenue. With this, all these appeals are allowed.”

13. However, Co-ordinate Bench of ITAT in the case of M/s Zinitex and other, in ITA Nos.147 & 234/SRT/2021, order dated 31.03.2022, has remitted the issue back to the file of Id CIT(A). We note that against the order of the Hon'ble Gujarat High Court, in the case of Gujarat State Road Transport Corporation (supra), the SLP has been filed by the assessee, which has not been adjudicated yet therefore we are of the view that the issue may be remitted back to the file of the Ld. CIT(A) to decide the matter after taking into account the judgment of the Hon'ble Supreme Court as and when will be passed by the Hon'ble Supreme Court. Therefore, this ground no. 2 of the assessee, at this stage is dismissed. However, if the Supreme Court reverses the judgment in the case of the Hon`ble Gujarat High Court in the case of CIT vs. GSRTC [Supra], it would be open for the assessee to revive this appeal by filing an application for such purpose within three months from the date of the judgment.

14. Ground No. 3 raised by the assessee relates to addition of Rs.3,32,000/-, made by assessing officer, on account of ROC (Registrar of company) expenses for increasing in authorized share capital.

15. Succinct facts qua the ground No.3 are that during the assessment proceedings, the assessing officer noted that assessee has incurred the expenses of Rs.3,20,000/- being fees paid to ROC for the purpose of increase in the authorized share capital. The assessee had debited these expenses in the profit and loss account claiming the same to be in the nature of revenue. However, assessing officer rejected the contention of the assessee and made disallowance of Rs.3,32,000/- holding that ROC expenses are in the nature of capital.

16. On appeal, Id CIT(A) confirmed the action of the assessing officer. Aggrieved, the assessee is in further appeal before us. The Id Counsel submitted that these are revenue expenses, however, Id DR relied on the findings of Id CIT(A). We have

heard both the parties and noted that Id CIT(A) has passed the speaking order on the issue under consideration, observing as follows:

“.....6.6 Considering the law of the land as settled on this issue by the Hon'Supreme Court of India in the case of Punjab State Industrial Development Corporation (Supra) and later decision of General Insurance Corporation Ltd. which has been rendered after considering number of decisions rendered by various High Courts on the issue, the finding of the Assessing Officer to disallow the expenses of Rs.3,32,000/- towards increase in authorized share capital and treating the same as capital expenditure is confirmed and the disallowance so made is sustained. Accordingly,the ground no.3 of the appeal is dismissed.”

17.We have gone through the findings of the Id. CIT(A) and noted that there is noany infirmity in the order of the Ld. CIT(A). That being so, we decline to interfere in the order of Id CIT(A), and hence we confirm and approve the findings of Id CIT(A), therefore, ground no. 3 raised by the assessee, is dismissed.

18. In the result, assessee's appeal is partly allowed.

Order pronounced in the Court on 29th June, 2022 at Ahmedabad.

Sd/-
(MADHUMITA ROY)
JUDICIAL MEMBER

Sd/-
(Dr. A. L. SAINI)
ACCOUNTNAT MEMBER

Ahmedabad, dated 29 /06/2022
SAMANTA/TANMAY

TRUE COPY

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent.
3. संबंधितआयकरआयुक्त/ Concerned CIT
4. आयकरआयुक्त(अपील) / The CIT(A)
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण/ DR, ITAT,
6. गार्डफाईल / Guard file.

आदेशानुसार/BY ORDER,

उप/सहायकपंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, अहमदाबाद / ITAT, Ahmedabad