

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "G": NEW DELHI**

**BEFORE SHRI G.S. PANNU, PRESIDENT
AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

**ITA No. 6999/DEL/2017
Assessment Year: 2014-15**

M/s Sara Investments, E-30, Basement, Anand Niketan, New Delhi-110021	Vs.	ACIT, Circle 33(1), New Delhi.
PAN- ABJFS2721C		
APPELLANT		RESPONDENT
Appellant by		Sh. Jeetan Nagpal, CA & Ms. Pallavi, CA
Respondent by		Sh. Umesh Takyar, Sr. DR
Date of hearing		13.04.2022
Date of pronouncement		30.06.2022

ORDER

PER ASTHA CHANDRA, JM:

The appeal by the assessee arises out of the order dated 18.09.2017 of the Ld. Commissioner of Income-tax (Appeals)-11, New Delhi [**"CIT(A)"**], pertaining to the assessment year 2014-15.

2. The assessee is a firm of five partners, engaged in the business of dealing in investment of shares, securities, bonds, units of mutual funds etc. It e-filed return of income for the assessment year 2014-15 declaring income of (-) Rs. 1,73,75,273/- on 27.09.2014. The case was selected for complete scrutiny.

2.1 On perusal of 3CD report, the Ld. Assessing Officer (**“AO”**) found that the assessee had received Rs. 2,47,26,000/- from M/s Sara SAE Pvt. Ltd. (**“SSPL”**) as loans. From the share valuation report of the company (SSPL), the Ld. AO observed that the assessee firm is holding 9.38% of shares in SSPL through its partner Mr. V.K. Dhawan and another 9.29% of shares in the same company through the other partner Mr. C. Kumar.

2.2 Vide note-sheet entry dated 10.12.2016, the Ld. AO required the assessee to show cause why the said loan received from SSPL be not treated as deemed dividend u/s 2(22)(e) of the Income-tax Act, 1961 (**“the Act”**). The assessee submitted reply on 19.12.2016 that the provisions of Section 2(22)(e) apply, inter alia, if – (i) the amount is given to a shareholder, who is beneficial owner of shares in the company i.e. holding 10% or more of the voting power in the company; and (ii) the amount is given to a concern (not directly to a beneficial shareholder), in which such shareholder (beneficial owner) also holds substantial interest i.e. 20% or more. It was contended that both the conditions are to be seen in isolation and not conjunctively as composite entity. Mr. C. Kumar is a shareholder in individual capacity in SSPL and M/s Sara Investments (the firm) is the shareholder in SSPL as separate legal entity. The two are not relatable. Conditions (i) and (ii) above apply differently to two different cases. The words “to a shareholder” or “to a concern” in the definition are not additive but in isolation. The assessee submitted return filed with the ROC with copy of challan in support.

2.3 It was further elaborated that provisions of Section 2(22)(e) are not attracted to the case of the assessee for the reason that- (a) the impugned amount was not loan or advance but was meant as investment as it is the business of the assessee; (b) the assessee firm held 30924 shares in SSPL which is 9.38% of total share capital (3,29,605 shares) of SSPL. As such, the firm is not a beneficial owner. Hence, the condition (i) above is not fulfilled; (c)

Mr. C. Kumar is partner in the firm (the assessee). He is also a shareholder in SSPL, holding 30617 shares which is 9.29% of the total share capital of SSPL. Hence, Mr. C. Kumar is also not a beneficial owner and does not fit into the definition of "such shareholder". Thus, condition (ii) above is also not satisfied.

3. The contentions of the assessee were not acceptable to the Ld. AO. Placing reliance on the judgment of Hon'ble Delhi High Court in CIT Vs. National Travel Services [ITA No. 223 of 2010] and applying the judgment of the Hon'ble Supreme Court in McDowell Vs. CTO, the Ld. AO held the impugned amount to be deemed dividend and added it to the income of the assessee firm.

4. Aggrieved thereby, the assessee appealed before the Ld. CIT(A) who confirmed the impugned addition by observing in para 5.3 of his order as under:

"5.3 I have gone through the facts of the case and the submission made by the AR. The AR has again contended that the appellant was holding less than 10% of the shares. It is stated that the appellant has paid for 9.38% of the shares only which are held in the name of the partner Sh. VK Dhawan and the partners are holding the shares in their personal capacity also, for which they have made their own payments. However, the AR has failed to provide any evidence to prove that the partners have made payment for purchase of shares in their individual capacity. The valuation report submitted by the appellant himself before the AO shows that the appellant is holding 9.38% of shares in SSPL through its partner Mr. VK Dhawan and another 9.29% of the shares in the same company through the other partner Mr. C. Kumar. The AO has rightly relied upon the decision of Hon'ble Delhi High Court in the case of CIT vs. National Travel Services ITA No. 223 of 2010 as per which if the beneficial owner of the shares is a partnership firm, deemed dividend needs to be assessed in the hands of the firm. In view of these facts, the addition made by the AO is confirmed and the ground of appeal is dismissed."

5. This has brought the assessee before us and all the ten grounds of appeal relate thereto.

6. The Ld. AR took us through the findings of the Ld. AO and submitted that the Ld. AO combined two shareholders to arrive at the percentage for beneficial ownership/ substantial interest, relying on share valuation report of SSPL where there is an error that shareholding of the firm is shown through its partners, one being Mr. C. Kumar. The Ld. AR pointed out that there was typographical error in the presentation of shareholding pattern in the valuation report dated 27.12.2016. In support thereof, annual reports, annual accounts of the assessee, annual accounts of the company SSPL, a certificate from SSPL, bank statement of the assessee firm were submitted before the Ld. AO/ CIT(A) which have been ignored by them.

6.1 The contention of the assessee is that the firm came into existence in the year 2007 wherein Mr. V.K. Dhawan and Mr. C. Kumar are partners. They are also promoters of SSPL which was incorporated much earlier in the year 1980. Mr. V.K. Dhawan and Mr. C. Kumar also hold shares of SSPL since inception. Shareholding pattern from 1.5.1980 to 24.8.2011 appears at page 9 of the Synopsis (broad propositions) filed before us, copy of which was given to the Ld. DR. This amply demonstrates that Mr. C. Kumar held shares of SSPL prior to even the firm came into existence.

6.2 The Ld. AR stated that the impugned addition has been made under an erroneous presumption that the firm apart from being a beneficial owner of 9.38% shares held in SSPL in the name of its partner Mr. V.K. Dhawan also holds another 9.29% shareholding in the firm via its another partner Mr. C. Kumar, thus crossing the 10% threshold of beneficial ownership specified in Section 2(22)(e) of the Act. According to Ld. AR the correct fact is that Mr. C. Kumar has invested his own funds in SSPL and is a shareholder in his individual capacity.

6.3 The Ld. AR further submitted that Mr. V.K. Dhawan is the registered shareholder, who holds 9.38% of shares in SSPL on behalf of the firm. He is the beneficial shareholder as a firm by itself cannot have a Demat account. The shares were purchased by the firm (who is the beneficial owner) in the name of Mr. V.K. Dhawan, whose price was rightly paid by the firm. A copy of the ledger account and bank statement evidencing payment for purchase of shares by the firm appears at pages 15 to 17 of the Paper Book.

6.4 The Ld. AR reiterated the legal arguments taken by him before the Ld. AO/ CIT(A) regarding non-applicability of the provisions of Section 2(22)(e) to the case of the assessee.

6.5 The Ld. DR supported the orders of the Ld. AO/ CIT(A).

7. We have heard the Ld. Representatives of the parties and carefully perused the material on record. We are of the considered view that the contention raised before the Ld. CIT(A) and reiterated by the Ld. AR before us need verification. The contentions of the assessee are that the assessee firm was holding less than 10% of shares in SSPL. It had paid for 9.38% of the shares only which are held in the name of partner Mr. V.K. Dhawan and the partners are holding the shares in their personal capacity, also for which they have made their own payments. It is also the contention of the assessee that typographical error crept in the valuation report of SSPL. If these contentions are found to be factually correct on verification, the occasion for the impugned addition will not arise. In the interest of justice and fair play, we therefore, restore the matter back to the file of the Ld. AO to consider the contentions of the assessee afresh and decide the issue in the light of the result of his verification, in accordance with law, after giving reasonable opportunity of being heard to the assessee. We order accordingly.

8. In the result, the appeal of the assessee is treated as allowed for statistical purposes.

Order pronounced in open court on 30th June, 2022.

Sd/-

sd/-

(G.S. PANNU)
PRESIDENT

(ASTHA CHANDRA)
JUDICIAL MEMBER

MP

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI

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