

आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणे में ।  
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, PUNE

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER  
AND  
SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.1674/PUN/2017  
निर्धारण वर्ष / Assessment Year : 2013-14

ACIT, Circle - 2,  
Pune

.....अपीलार्थी / Appellant

बनाम / V/s.

Shri Anilkumar Phoolchand Sanghvi,  
101, National Society, Baner Road,  
Aundh, Pune - 411007

PAN : ABSPS7328A

.....प्रत्यर्थी / Respondent

Assessee by : Shri Jayant G. Pendse and  
Dr. Shantanu J. Pendse  
Revenue by : Shri S.P. Walimbe

सुनवाई की तारीख / Date of Hearing : 01-06-2022  
घोषणा की तारीख / Date of Pronouncement : 01-08-2022

**आदेश / ORDER**

**PER S.S. VISWANETHRA RAVI, JM :**

This appeal by the Revenue against the order dated 20-03-2017 passed by the Commissioner of Income Tax (Appeals)-3, Pune [‘CIT(A)’] for assessment year 2013-14.

2. Ground Nos. 1 and 2 raised by the Revenue challenging the action of CIT(A) in deleting the addition made u/s. 2(22)(e) of the Act for a sum of Rs.3,30,00,000/- in the facts and circumstances of the case.

3. The brief facts relating to the issue on hand are that the assessee is an individual and derives income from salary, business & profession, long term and short term capital gains and income from other sources. The assessee is a Director in M/s. Maharashtra Erectors Pvt. Ltd. (in short "MEPL"). The assessee filed return of income declaring a total income of Rs.26,31,706/- and under scrutiny the AO determined the same at Rs.3,68,87,160/- inter alia making addition on account of deemed dividend u/s. 2(22)(e) of the Act vide its order dated 29-02-2016 passed u/s. 143(3) of the Act. The assessee challenged the said assessment order before the CIT(A). The CIT(A) held the AO is not justified in adding the amount of Rs.3,30,00,000/- as deemed dividend u/s. 2(22)(e) of the Act and directed the AO to delete the same. Having aggrieved by the order of CIT(A), the Revenue is before us.

4. The ld. DR, Shri S.P. Walimbe submit that the assessee being a shareholder in M/s. Sanghvi Erectors Pvt. Ltd. withdrawn funds and kept the same as fixed deposit in his own name in the Kotal Mahindra Bank on 01-02-2013. The assessee transferred the said amount to his personal account and had disowned by stating that the said deposit actually belongs to MEPL. In the assessment proceedings, the assessee claimed that the said deposit was made to protect the interest of the said MEPL. The ld. DR drew our attention to note on computation of income for the year under consideration at Page No. 2 of the assessment order and argued that the said MEPL accumulated profit of more than Rs.58 Crores in the year under consideration and the provisions of section 2(22)(e) of the Act is attracted for the amount which is transferred to personal account of assessee. The ld. DR argued that the provisions of section 2(22)(e) of the Act are deemed provisions and once, the assessee admitted to have withdrawn funds from

the company, the mischief of that section is hit in the terms of the conditions involving the facts of the present case. He argued that the terms deemed dividend is fictionally regarded by law as income and drew our attention to case laws. The CIT(A) deleted the said addition without considering the fact that this amount was shown as loan to the assessee in the books of account of MEPL. Further, he argued that the said amount was repaid by the assessee to MEPL along with interest is justified to the stand taken by the AO that it was a loan. He prayed to set aside the order of CIT(A) and restore the order of AO.

5. The ld. AR, Shri Jayant G. Pendse placed on record the chronology of events and submits that the assessee to withdraw the said amount from MEPL only to protect the interest of company due to various litigation proceeding and deposited the same in Kotak Mahindra Bank. The ld. AR drew our attention to submissions as made before the CIT(A) and reiterated the same. The ld. AR also placed reliance on the decision of Hon'ble Supreme Court in the case of CIT Vs. Bazpur Co-operative Sugar Factory Ltd. reported in 177 ITR 469 (SC).

6. Heard both the parties and perused the material available on record. On perusal of the event chart as filed by the ld. AR shows that there was long standing litigation between the assessee and his brother. On 24-04-2006 the assessee and his family members entered into a family settlement which was according to ld. AR was never acted upon. There were various proceedings pending including Arbitration application before the Hon'ble High Court of Bombay. The assessee invoking fiduciary responsibility transferred Rs.3.30 Crores from MEPL to his personal account and made fixed deposit on 01-02-2013. The ld. AR placed on record a certificate

dated 11-05-2022 issued by Kotak Mahindra Bank stating that the assessee booked a term deposit of Rs.3,30,00,000/- and never availed any facility against the said term deposit. Further, it is noted that the said fixed deposit was never kept as security against any kind of loan, mortgage, etc. nor any lien in respect of its tenure. Further, it is also stated that the assessee transferred Rs.4,02,49,270/- from his savings account to MEPL on 22-08-2015 which clearly shows as argued by the Id. AR that assessee's family members might appropriate the funds for themselves under various legal proceedings. On perusal of certificate issued by the Kotak Mahindra Bank, we note that the assessee made term deposit on 01-02-2013 for a period upto 31-07-2013 @ 8.50% interest. Further, the same has been renewed from time to time up to 22-08-2015. The assessee transferred the total realized amount of Rs.4,02,49,270/- to the account of MEPL. Therefore, which clearly shows the conduct of assessee in refunding the entire amount with interest to MEPL on its maturity with realized total value supports the arguments of Id. AR that the amount was withdrawn and kept in fixed deposit only to protect the interest of the MEPL. If that is the situation, we find the AO terming the same as loan out of accrued profits of MEPL attracting the provisions u/s. 2(22)(e) of the Act is not justified. The CIT(A) recorded is finding at Para No. 5.3.3 of the impugned order and we find no infirmity in the order of CIT(A). Therefore, the ground Nos. 1 and 2 raised by the Revenue are dismissed.

7. Ground No. 3 raised by the Revenue challenging the action of CIT(A) in deleting the addition made by the AO u/s. 14A r.w. Rule 8D of the Rules.

8. We note that the CIT(A) by following the earlier order of A.Y. 2010-11 deleted the said addition vide Page No. 17 of the impugned order. We note that the assessee earned dividend income from his personal investments but not from business assets. The ld. DR did not bring on record any contrary evidence to this effect. Therefore, we find no infirmity in the order of CIT(A). Thus, ground No. 3 raised by the Revenue is dismissed.

9. Ground No. 4 raised by the Revenue challenging the action of CIT(A) in deleting the addition made on account of interest on fixed deposit.

10. The CIT(A) discussed the said issue at Page No. 18 of the impugned order by holding the addition of interest made on account of fixed deposit does not stand, since, the addition of Rs.3.30 Crores is deleted. We have taken a view in confirming the order of CIT(A) in deleting the said addition of Rs.3.30 Crores u/s. 2(22)(e) of the Act while adjudicating ground Nos. 1 and 2 in above mentioned paragraphs. Therefore, we find no infirmity in the order of CIT(A) and it is justified. Thus, ground No. 4 raised by the Revenue is dismissed.

11. In the result, the appeal of Revenue is dismissed.

Order pronounced in the open court on 01<sup>st</sup> August, 2022.

Sd/-  
(Inturi Rama Rao)  
ACCOUNTANT MEMBER

Sd/-  
(S.S. Viswanethra Ravi)  
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 01<sup>st</sup> August, 2022.  
रवि

**आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-3, Pune
4. The Pr. CIT-2, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच,  
पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति// True Copy//

आदेशानुसार / BY ORDER,

वरिष्ठ निजी सचिव / Sr. Private Secretary  
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune