

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", PUNE

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
AND
SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.1583/PUN/2017
निर्धारण वर्ष / Assessment Year: 2007-08

DCIT, Circle-7, Pune.	Vs.	Shri Lalitkumar K. Jain, 10 th Floor, Kumar Business Center, Opp. Pune Central, Bund Garden Road, Pune-411001. PAN : AAYPJ2211J
Appellant		Respondent

Revenue by : Shri Hitendra B. Ninawe
Assessee by : Shri Kishor B. Phadke

Date of hearing : 23.08.2022
Date of pronouncement : 24.08.2022

आदेश / ORDER

PER INTURI RAMA RAO, AM:

This is an appeal filed by the Revenue directed against the order of Id. Commissioner of Income Tax (Appeals)-5, Pune [‘the CIT(A)’] dated 31.03.2017 for the assessment year 2007-08.

2. The Revenue raised the following grounds of appeal :-

“1) Whether on the facts and circumstances of the case and in law the learned CIT (A) justified in deleting addition made u/s 2(22)(e) holding that the assessee was not holding shares in SCDPL (Shatrunjay Construction and Developers Private Limited) at the time of loan/advance given by Kumar Urban Developers (KUDL)?

2) Whether on the facts and circumstances of the case and in law the learned CIT (A) justified in relying solely on the letter of company

secretary stating that the share holding pattern was changed during middle of year?

3) Whether on the facts and circumstances of the case and in law the learned CIT (A) justified in allowing the claim of the assessee without verification of change of share holding pattern without filing of the same with ROC (Registrar of Company)?

4) On the facts and circumstances of the case and in law, the Ld. CIT(A) has not appreciated the fact correctly because the change of share holding pattern is nothing but after thought of the assessee so as to show that the assessee was not holding the share of the SCDPL (Shatrunjay Construction and Developers Private Limited).

5) The order of the Ld. AO be upheld and the Ld. CIT(A) is to be deleted.

6) The appellant craves leave to add or amend the grounds of appeal on or before the appeal is heard and disposed off.”

3. Briefly, the facts of the case are as under :

The respondent-assessee is an individual deriving income under the head “Income from salary” and “business”. The return of income for the assessment year 2007-08 was filed on 31.10.2007 declaring total income of Rs.1,35,34,159/-. Against the said return of income, the assessment was completed vide order dated 16.12.2009 u/s 143(3) of the Income Tax Act, 1961 (‘the Act’) accepting the returned income.

Subsequently, the Assessing Officer issued a notice u/s 148 after recording the reasons for reopening the assessment. The notice of reopening was issued seeking to reassess the income of assessee. The factual background of the case is as under :

During the course of assessment proceedings, the Assessing Officer found that M/s. Kumar Urban Developers Ltd. had given a

loan of Rs.56,81,680/- to M/s. Shatrunjay Construction and Developers Pvt. Ltd. during the year under consideration. According to the Assessing Officer, the respondent-assessee holds 50% of shares of M/s. Shatrunjay Construction and Developers Pvt. Ltd. and also was holding 45% of shares in M/s. Kumar Urban Developers Ltd.. The Assessing Officer was of the opinion that since the respondent-assessee was common shareholder in both the companies holding more than 10% of shares, the loan given by M/s. Kumar Urban Developers Ltd. to M/s. Shatrunjay Construction and Developers Pvt. Ltd. constitutes a deemed dividend within the ambit of provisions of section 2(22)(e) in the hands of the respondent-assessee. During the course of re-assessment proceedings, the respondent-assessee contended that the advance given by M/s. Kumar Urban Developers Ltd. to M/s. Shatrunjay Construction and Developers Pvt. Ltd. is in the nature of business transaction, hence, the provisions of section 2(22)(e) have no application. The Assessing Officer rejecting the above contention by holding that there was no evidence in support of the contention that loan was given during ordinary course of business transaction, had brought to tax a sum of Rs.56,81,680/- as deemed dividend in the hands of the

respondent-assessee vide order dated 15.03.2013 passed u/s 143(3) r.w.s. 147 of the Act.

4. Being aggrieved by the above addition, an appeal was preferred before the Id. CIT(A). During the course of proceedings before the Id. CIT(A), the respondent-assessee disputed the fact that he is a shareholder in M/s. Shatrunjay Construction and Developers Pvt. Ltd. at relevant point of time. The respondent-assessee also filed the shareholding pattern of M/s. Shatrunjay Construction and Developers Pvt. Ltd. before the Id. CIT(A) as well as the copies of returns filed before the Registrar of Company in support of this contention. The Id. CIT(A) after calling for remand report from the Assessing Officer had concluded that on the relevant date i.e. date of advancing loan by M/s. Kumar Urban Developers Ltd. to M/s. Shatrunjay Construction and Developers Pvt. Ltd., the respondent-assessee was not a registered shareholder of said Shatrunjay Construction and Developers Pvt. Ltd., applying the ratio of the decision of the Hon'ble Delhi High Court in the case of CIT vs. C.R. Dass, 204 Taxman 227 (Delhi) held that the provisions of section 2(22)(e) have no application to the facts of case.

5. Being aggrieved by the order of the Id. CIT(A), the Revenue is in appeal before us.

6. The ld. CIT-DR submits that the ld. CIT(A) ought not to have come to the conclusion that as on the relevant date i.e. date of advance made by M/s. Kumar Urban Developers Ltd. to M/s. Shatrunjay Construction and Developers Pvt. Ltd. that the appellant is not shareholder in M/s. Shatrunjay Construction and Developers Pvt. Ltd. merely based on the letter issued by Company Secretary of the said company. He further submits that it is merely an afterthought that the respondent-assessee took the plea that the he is not shareholder in the said company.

7. On the other hand, ld. AR submits that when an assessee is not a shareholder in the company, which is beneficiary of the loan, the provisions of section 2(22)(e) have no application and the order of the ld. CIT(A) is based on proper appreciation of facts and law and no interference is called for.

8. We heard the rival submissions and perused the material on record. The issue in the present appeal relates to the applicability of section 2(22)(e) of the Act. The Assessing Officer brought to tax a sum of Rs.56,81,680/- being the amount of loan advanced by M/s. Kumar Urban Developers Ltd. to M/s. Shatrunjay Construction and Developers Pvt. Ltd.. The Assessing Officer was of the opinion that the provisions of section 2(22)(e) have application as the

respondent-assessee is a common shareholders in both the companies holding more than 10% of the shares. Although, during the course of assessment proceedings, the respondent-assessee had not disputed that he is common shareholder in both the companies, however, contended that the provisions of section 2(22)(e) have no application, inasmuch as, the loan was advanced by M/s. Kumar Urban Developers Ltd. to M/s. Shatrunjay Construction and Developers Pvt. Ltd. in the ordinary course of its business. However, during the course of proceedings before the ld. CIT(A), the respondent-assessee took a plea that he was not a shareholder in M/s. Shatrunjay Construction and Developers Pvt. Ltd. at the time of granting of loan by M/s. Kumar Urban Developers Ltd. to M/s. Shatrunjay Construction and Developers Pvt. Ltd. and this contention was proved by filing the shareholding pattern of the said company. Even on remand to the Assessing Officer by ld. CIT(A), the Assessing Officer also concurred with the submission of the respondent-assessee that he is not a shareholder in M/s. Shatrunjay Construction and Developers Pvt. Ltd. at the relevant point of time. The ld. CIT(A) accordingly concluded that the provisions of section 2(22)(e) have no application to the facts of the present case. This fact has not been controverted by the ld. Sr. DR. Since the order of

the ld. CIT(A) is based on proper appreciation of facts and law, we do not find any infirmity in the order of the ld. CIT(A). Accordingly, the grounds of appeal raised by the Revenue stand dismissed.

9. In the result, the appeal filed by the Revenue stands dismissed.

Order pronounced on this 24th day of August, 2022.

Sd/-
(PARTHA SARATHI CHAUDHURY)
JUDICIAL MEMBER

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 24th August, 2022.

Sujeet

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

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

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.