



**IN THE INCOME TAX APPELLATE TRIBUNAL,
CUTTACK BENCH, CUTTACK**

**BEFORE S/SHRI GEORGE MATHAN, JUDICIAL MEMBER
AND ARUN KHODPIA, ACCOUNTANT MEMBER**

ITA No.380 /CTK/2014: Assessment year: 2010-11
C.O.No.12/CTK/2017 (in ITA No.388/CTK/2017)
Assessment Year: 2011-2012

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| Md Intekhab Alam, At/PO: Jhumpura, Champua, Keonjhar | Vs. | DCIT, Circle-1(2), Bhubaneswar. |
| PAN/GIR No.AECPA 7931 E | | |
| (Appellant) | .. | (Respondent) |

ITA No.388/CTK/2017
Assessment year: 2011-2012

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| DCIT, Circle-1(2), Bhubaneswar | Vs. | Md. Intekhab Alam, At/PO: Jhumpura, Champua, Keonjhar |
| PAN/GIR No | | |
| (Appellant) | .. | (Respondent) |

Assessee by : Shri Sunil Mishra, AR
Revenue by : Shri M.K.Gautam, CIT DR

Date of Hearing : 29/12/2022
Date of Pronouncement : 29/12/2022

ORDER

Per Bench

ITA No.380/CTK/2014 is an appeal filed by the assessee against the order dated 30.7.2014 of the Id CIT(A)-1,

Bhubaneswar in Appeal No.0108/13-14 for the assessment year 2010-2011.

2. Shri Sunil Mishra, Id AR appeared for the assessee and Shri M.K.Gautam, Id CIT DR appeared for the revenue.

3. It was submitted by Id AR that only issue in assessee's appeal was against the action of the Id CIT(A) in confirming the deemed dividend added by the Assessing Officer on account of the advances received by the assessee from M/s. Aliza International Pvt Ltd., in which the assessee was holding 99% of the shares and from M/s. Fahmida International Pvt Ltd., in which the assessee was holding 99% of the shares. It was the submission that the assessee had received advance of Rs.2,15,34,950/- from M/s. Aliza International Pvt Ltd., and Rs.92,45,000/- from M/s. Fahmida International Pvt Ltd.,. The Assessing Officer had treated the amount as deemed dividend u/s.2(22)(e) of the Act. It was the submission that the Id CIT(A) had considered the accumulated profits of both M/s. Aliza International Pvt Ltd., and M/s. Fahmida International Pvt Ltd., and found that in the case of M/s. Aliza International Pvt Ltd., the accumulated profit as on 31.3.2009 was Rs.3.03 crores and consequently, he had confirmed the deemed dividend addition to an extent of Rs.2,15,34,950/-. It was the

submission that in respect of M/s. Fahmida International Pvt Ltd.,, it was found that the accumulated profit was only Rs. 77,27,789/- and consequently, the Id CIT(A) restricted the addition under deemed dividend to an extent of accumulated profits in the case of M/s. Fahmida International Pvt Ltd. It was the submission that the accumulated profit is to be considered as on the date of giving of the advance and not as of the beginning of the year. It was the prayer that the issue may be restored to the file of the Assessing Officer for re-adjudication after examining the accumulated profits as on the date of giving of the loans.

4. In reply, Id CIT DR submitted that deemed dividend is applicable to companies, once the assessee is having 99% of the shareholding having accumulated profits. Just because they are incurring loss, it cannot be said that the accumulated profit is wiped out. It was his prayer that the order of the Id CIT(A) be upheld.

5. We have considered the rival submissions. A perusal of the provisions of section 2(22)(e) of the Act shows that the deemed dividend is to be considered by considering the accumulated profits as on the date of giving loans or advances, most specifically, the Explanation (2). This being so, as it is

noticed that the Assessing Officer and Id CIT(A) has not considered this issue, the issue of deemed dividend is restored to the file of the AO for re-adjudication after verification of the accumulated profits as on the date of granting of the advances. If there are no accumulated profits as on the date of granting of advance, no addition under deemed dividend can be made.

6. In the result, appeal of the assessee is allowed for statistical purposes.

7. **ITA No.388/CTK/2017** is an appeal filed by the revenue against the order dated of the Id CIT(A), Cuttack in Appeal No.0175/15-16 for the assessment year 2011-12.

8. The assessee has also filed cross objection in the appeal filed by the revenue.

9. It was submitted by the Id CIT DR that the assessee is an individual. In the course of assessment, it was noticed that the assessee had deposited Rs.1,00,00,000/- on 16.10.2010 and Rs.45,85,000/- on 7.2.2011. It was the submission that as the assessee was unable to explain the deposits satisfactorily, the Assessing Officer had added the same as unexplained investment of the assessee. Similarly, an amount of Rs.1,40,00,000/- was found credited in the bank account of the

assessee on 10.2.2011, for which the assessee satisfactory explanation had been given. It was the further submission that it was noticed that the assessee had taken Rs.2,81,76,860/- from M/s. Aliza International Pvt Ltd., and Rs.2,24,15,200/- from Fahmida International Pvt Ltd., during the relevant assessment year and the assessee had held 99% shares in both the companies. It was the submission that as M/s. Aliza International Pvt Ltd., had been assessed to an income of Rs.99.88 lakhs and Fahmida International Pvt Ltd., had been assessed to an income of Rs.18.94 lakhs, the same was treated as accumulated profits of the said two companies and deemed dividend had been added in the hands of the assessee. It was the submission that on appeal, the Id CIT(A) had called for a remand report and on the basis of the remand report, had deleted the addition in respect of the deposits in the bank account on the ground that said deposits were reversal entries. It was the submission that in respect of addition of Rs.45,85,000/-, though it was claimed that it was amount received from JRC Resources, the address of the JRC Resources had not been provided. It was the further submission that the Id CIT(A) had deleted the addition representing the deemed dividend by holding that there was no accumulated profits when

the advances were given by M/s. Aliza International Pvt Ltd., and Fahmida International Pvt Ltd., to the assessee. It was the submission that the assessment in respect of two companies had been completed at an income and consequently, there were accumulated profits during the year and, therefore, the addition was liable to be sustained. It was the prayer that the order of the Id CIT(A) be reversed.

10. In reply, Id AR placed before us balance sheet and profit and loss account in the case of M/s. Aliza International Pvt Ltd., and M/s. Fahmida International Pvt Ltd., and supported the order of the Id CIT(A).

11. We have considered the rival submissions. A perusal of the order of the Id CIT(A) clearly shows that the Id CIT(A) has considered the remand report of the Assessing Officer, wherein, he has accepted the source and explanation in regard to advance of Rs.1.45 crores and Rs.1.4 crores. When he has deleted the addition after considering the remand report in favour of the assessee, it not now open to the Assessing officer to raise grounds challenging the remand report. This being so, the addition as deleted by the Id CIT(A) stands confirmed.

12. Now coming to the issue of deemed dividend, a perusal of the balance sheet of M/s. Fahmida International Pvt Ltd., shows

that there is no accumulated profits as on 31.3.2011 and the income during the relevant assessment year is a loss. A perusal of the balance sheet clearly shows that reserve and surplus as on 31.3.2010 is Rs.1.74 lakhs and for the year ended as on 31.3.2011, the loss of Rs.2.17 crores. Clearly, there could be no accumulated profits during the relevant assessment year when the advance was given to the assessee by the said concern. Similarly, in the case M/s. Aliza International Pvt Ltd., Rs.4.23 crores, the loss was shown as on 31.3.2010 and as on 31.3.2011 the loss was shown at Rs.5.16 crores. Thus, clearly, the said two concerns could not have been accumulated profits when the loans were given to the assessee. It is noticed that the Id CIT(A) has deleted the addition on this ground. We find no reason to dislodge the findings of the Id CIT(A). Consequently, the order of the Id CIT(A) is confirmed and the appeal of the revenue stands dismissed.

13. Ld A.R. did not press the cross objection filed before the Tribunal and has also endorsed to this effect in the appeal. Hence, the cross objection of the assessee stands dismissed.

14. In the result, both the appeal of the revenue and cross objection of the assessee stand dismissed.

Order dictated and pronounced in the open court on 29/12/2022.

Sd/-
(Arun Khodpia)
ACCOUNTANT MEMBER
Cuttack; Dated 29/12/2022
B.K.Parida, SPS (OS)

sd/-
(George Mathan)
JUDICIAL MEMBER

Copy of the Order forwarded to :

1. The Assessee : Md Intekhab Alam, At/PO:
Jhumpura, Champua, Keonjhar
2. The revenue: DCIT, Circle-1(2),
Bhubaneswar
3. The CIT(A)-1, Bhubaneswar /
The CIT(A), Cuttack
4. Pr.CIT-1, Bhubaneswar
5. DR, ITAT, Cuttack
6. Guard file.
//True Copy//

By order

Sr.Pvt.secretary
ITAT, Cuttack