

**IN THE INCOME TAX APPELLATE TRIBUNAL,
“G” BENCH MUMBAI
BEFORE SHRIPAVANKUMARGADALE JUDICIAL MEMBER
& SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA No.75/MUM/2022
(A. Y.:2015-16)**

Saikripa Foods Services Pvt. Ltd. Raja Industrial Estate, GA Ground Floor, Near Indraprastha ,Mulund Mumbai-400 008	Vs.	Deputy Commissioner of Income Tax, Central Circle-7 6 th Floor, Room No. 653 Aayakar Bhavan, M.K. Road Mumbai-400 020
Pan No.AAJCS6517J		
Appellant		Respondent

Appellant by	Shri.Haridas Bhat.AR
Respondent by	Smt.Sonia Kumar.DR

Date of Hearing	29.09.2022
Date of Pronouncement	17.10 .2022

ORDER

PER PAVAN KUMAR GADALE, JM:

The assessee has filed the appeal against the order of Commissioner of Income Tax (CIT(A)-49) Mumbai, passed under Section 143(3) r.w.s. 263 and 250 of the Income Tax Act, 1961 (hereinafter in short “the Act”).

The assessee has raised the following grounds of appeal.

1. *The Hon'ble CIT made a gross error of law and fact in treating the share application money received from Saikripa Food Services Mumbai Pvt. Ltd. as loan thereby attracting the provisions of section 2(22)(e) of the Act and taxable as deemed dividend in the hands of shareholders.*
2. *The Hon'ble CIT erred in invoking the provisions of Section 2(22)(e) of the Act which has not received from Saikripa Food Services Mumbai Pvt. Ltd. The appellant therefore prays that the treatment of share application money received from Saikripa Food Services Mumbai Pvt. Ltd. as loan, taxable as deemed dividend is incorrect, unjustified and bad in law.*
3. *The Hon'ble CIT has made a gross error of levying a demand of Rs.4,76,550/-as tax/penalty/fine/interest whereas the aforementioned amount is to be refunded to the appellant as affirmed in the demand order*

issued u/s 156 r.w. order issued u/s 143(3) to be read with section 263 made on 30.12.2019.

4. For the above reasons or any other reasons that may be forwarded at the time of hearing.

2. The Brief facts of the case are, that the assessee company is engaged in the business of Hospitality Services. The assessee has filed the return of income for the assessment year 2015-16 on 11.09.2015 disclosing a total income of Rs. Nil and scrutiny proceedings were completed under Section 143(3) of the Act on 26.12.2017 and assessed the total income of Rs. Nil. Subsequently, the Pr.CIT has passed the revision order under Section 263 of the Act set aside the order U/sec 143(3) of the Act and issued the directions to the AO to make afresh assessment. The Assessing Officer (AO) as per the directions under Section 263 of the Act has issued notice on 13.06.2018 and the assessee filed the details on 27.07.2018 mentioning that the assessee has received the money towards share application money and not as unsecured loan and substantiated the submissions with the supporting evidences. Further the assessee has filed additional information of share

holdings, bank statements and ledger account copies of the investor.

3. The AO on verification of the records found that the assessee company has received unsecured loan from M/s Saikripa Food Services Mumbai Pvt Ltd. Finally, the AO has dealt on the facts and concluded that the transaction is between related parties and the provisions of Section 2(22)(e) of the Act are applicable. Therefore, the amount received from M/s Saikripa Food Services Mumbai Pvt Ltd has to be taxed as deemed dividend u/sec2(22)(e) of the Act in hands of the shareholders and passed the order under Section 143(3) r.w.s. 263 of the Act dated 13.12.2019.

4. Aggrieved by the order, the assessee has filed an appeal with the CIT(A). Whereas, the CIT(A) has considered the grounds of appeal, findings of the scrutiny, submissions of the assessee. Further dealt on the on the applicability of provisions of section 2(22)(e) of the Act and confirmed the action of AO and dismissed the assessee appeal. Aggrieved by the order of CIT(A), the assessee has filed an appeal with the Honble Tribunal.

5. At the time of hearing, the learned AR submitted that the CIT(A) has erred in considering the share

application money as an unsecured loan received from M/s Saikripa Food Agencies Mumbai Pvt Ltd and the provisions of Section 2(22)e of the Act are not applicable . Further, there is no provision under the Act to make addition of share application money which was received from the sister concern when the genuineness is not doubted and therefore the addition under Section 2(22)(e) of the Act is unwarranted and the shares were allotted to the investor in the subsequent year. The Ld.AR supported the submissions with voluminous paper book and prayed for allowing the appeal. Contra, the learned DR relied on the order of the CIT(A).

6. We heard the rival submissions and perused the material on record. The Ld.AR envisaged that the CIT(A) has erred in sustaining the addition of deemed dividend which is not applicable to the share application money. Further the Ld.AR emphatically submitted that the assessee has received the share application money and shares were allotted in the subsequent assessment year. The main grievance of the Ld.AR that the lower authorities has wrongly classified the share application money as unsecured loan. The Ld.AR demonstrated the certified copy of Board Resolution and the memorandum of understanding for allotment of shares at page 1 to 4

of the paper book. Further the assessee company has allotted the equity shares on 25-09-2015 as per the provisions of companies Act 2013 in Form No PAS-3 Return of Allotment placed at page 5 to 9 of the paper book. The Ld.AR demonstrated the Audited financial statements for the F.Y 2014-15 &2015-16 to support the allotment of equity shares .

7. Similarly in the case of the investor company M/S Saikripa Food Services Mumbai Pvt Ltd in particular as per Audited Balance Sheet there is increase in investments from Rs50,000/- to Rs.10,050,000/- as on 31-03-2015 &31-032016 placed at page 67 of the paper book. Further in the case of the Assessee company as per Audited balance sheet as on 31-03-2016, there is increase in share capital as per note 1 of notes forming part of Accounts placed at page 40&43 of the paper book. We find the submissions of the Ld.AR are realistic and there is no dispute on the allotment of equity shares duly supported with the supporting evidences. We find there is no whisper or findings on these material evidences before the lower authorities. Accordingly, to meet the ends of justice and for limited purpose we restore the disputed issues to the file of the AO to examine the material evidences filed in support of the

claim and decide on merits. The assessee should be provided adequate opportunity of hearing and shall cooperate in submitting the information and allow the grounds of appeal of the assessee for statistical purpose.

8. In the result, the appeal filed by the assessee is allowed for statistical purpose.

Order pronounced in the open court on day of, 17th October 2022.

Sd/-

(AMARJIT SINGH)
ACCOUNTANT MEMBER

Mumbai, Dated: 17/10/2022

M. Sonavane

Copy of the Order forwarded to:

1. The Appellant,
2. The Respondent
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

Sd/-

(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

BY ORDER,
(Dy./Asstt.Registrar)ITAT,
Mumbai