

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'F' BENCH,
NEW DELHI

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER

ITA No. 5154/DEL/2018 [A.Y. 2014-15]

The A.C.I.T.
Circle - 19(2)
New Delhi

Vs.

M/s PCI Limited
19, Rajendra Park
New Delhi

PAN: AAACP 1565 E

CO No. 174/DEL/2018
(A/o ITA No. 5154/DEL/2018 [A.Y. 2014-15])

M/s PCI Limited
19, Rajendra Park
New Delhi

Vs.

The A.C.I.T.
Circle - 19(2)
New Delhi

PAN: AAACP 1565 E

(Applicant)

(Respondent)

Assessee By : Shri Satish Agarwal, CA
Shri Dharender Kumar, CA
Shri Rachit Agarwal, CA

Department By : Shri Vivek Vardhan, Sr. DR

Date of Hearing : 30.01.2023
Date of Pronouncement : 01.02.2023

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-

This appeal by the Revenue and Cross Objections by the assessee are preferred against the order of the Id. CIT(A) - 7, New Delhi dated 16.05.2018 pertaining to Assessment Year 2014-15. The appeal and the cross objections were heard together and are disposed of by this common order for the sake of convenience and brevity.

2. The solitary grievance of the Revenue is that the Id. CIT(A) erred in deleting the addition of Rs. 5 crores made u/s 2(22)(e) of the Income-tax Act, 1961 [hereinafter referred to as 'The Act'] treating the same as valid business agreement.

3. The Id. counsel for the assessee did not press the cross objections. The same are dismissed as not pressed.

4. Briefly stated, the facts of the case are that during the course of scrutiny assessment proceedings, the Assessing Officer noticed that Riello Power India Pvt Ltd, a closely held company, was show caused

why the advance given to the assessee should not be treated as deemed dividend.

5. In its reply, the assessee stated that it has provided a corporate guarantee to PNB in arrangement in 2010 and Riello agreed to provide PCI [the assessee] an interest bearing loan of Rs. 5 crores as and when required. It was explained that loan arrangement was business arrangement and outside the purview of deemed dividend.

6. In support of its submissions, the assessee furnished copy of resolutions of board meeting of Riello as well as the assessee held on 09.12.2010 in which it was stated that Riello agrees to provide the assessee interest bearing loan of Rs. 5 crores as and when required.

7. The Assessing Officer found technical discrepancies in the extract of the board resolution filed and, accordingly, issued notice u/s 133(6) of the Act and examined the key officers of the company. The Assessing Officer found that the Chairman of Riello and the assessee were common with the Chairman and family members holding 91.26% stake in the assessee company. The Assessing Officer was convinced that the assessee has not offered the advance of Rs. 5 crores as

deemed dividend income u/s 2(22)(e) of the Act and accordingly, made the impugned addition of Rs. 5 crores.

8. The assessee carried the matter before the Id. CIT(A) and reiterated what has been stated in the assessment proceedings.

9. The Id. CIT(A), after considering the facts and submissions, found that the assessee had furnished a confirmation from M/s RPS SPA, Italy, the parent of present M/s Riello and a copy of board resolution passed by the assessee wherein the board had resolved to furnish corporate guarantee and mortgage of two properties as indicated in the bank loan sanction letter of Riello.

10. The Id. CIT(A) was convinced that the assessee had availed advance pursuant to business transaction, and, therefore, was outside the ambit of provisions of section 2(22)(e) of the Act. The Id. CIT(A), on proper appreciation of the facts, was convinced that the assessee company has furnished its corporate guarantee and allowed collateral security provided by it for securing its limits to be used for securing the bank loan to M/s Riello, PCI India Limited to enable M/s Riello

Power India [P] Ltd to avail banking limits which fact is undisputed and is on record.

11. The sanction letter of PNB dated 27.11.2010 clearly mentions the following facts:

“Sanction of fresh Fund Based Facilities of Rs 5.00 crores and Non-fund-based facilities of Rs. 5.00 crores. Respective limits of M/s PCI Ltd. be reduced by equivalent amount.

Company to arrange NOC from Canara Bank for creating our 1st/1st pari-passu charge all the existing collaterals available in the A/c of M/s PCI Ltd and there should be on of collateral security available to the bank.”

The credit facilities to be guaranteed by Shri Surinder Mehta, Shri Rohan Mehta and corporate guarantee of M/s PCI Ltd. The facilities are to be collaterally secured by extension of charges and EM of IPs on the following securities in the name of M/s PCI Ltd

IP No. 287-288, Udyog Vihar, Phase-II, Gurgaon,

Extention of EM of ... acre of Industrial land and building situated at Village Rampur Tehsil Nuh, District Gurgaon, Haryana

12. The first appellate authority, while deleting the addition, has drawn support from the decision of the Calcutta High Court in the case of Pradeep Kumar Malhotra 338 ITR 0538 and also in the case of Creative Dyeing and Printing [P] Ltd 229 CTR 250 of the Hon'ble Delhi

High Court. Since the first appellate authority has deleted the addition in true appreciation of the facts supported by judicial decisions, we do not find any reason to interfere with the findings of the Id. CIT(A).

13. In the result the Cross objections of the assessee in CO No. 174/DEL/2018 as well as the appeal of the Revenue in ITA No. 5154/DEL/2018 are dismissed.

The order is pronounced in the open court on 01.02.2023.

Sd/-

**[ASTHA CHANDRA]
JUDICIAL MEMBER**

Sd/-

**[N.K. BILLAIYA]
ACCOUNTANT MEMBER**

Dated: 01st February, 2023.

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,

ITAT, New Delhi

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