

आयकर अपीलीय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'B' Bench, Hyderabad

Before Shri R.K. Panda, Accountant Member
AND
Shri Laliet Kumar, Judicial Member

ITA Nos.747 &748/Hyd/2020		
Assessment Years: 2011-12 & 2014-15		
A.C.I.T Central Circle 1(2) Hyderabad (Appellant)	Vs.	Sri Vemi Reddy Prabhakar Reddy, Nellore PAN: ABQPV9228C (Respondent)
Revenue by:	Shri Jeevan Lal Lavidiya, CIT (DR)	
Assessee by:	N o n e	
Date of hearing:	09/02/2023	
Date of pronouncement:	13/02/2023	

ORDER

Per R.K. Panda, A.M

The above two appeals filed by the Revenue are directed against the separate orders dated 26.08.2020 of the learned CIT (A)-11, Hyderabad relating to A.Ys. 2011-12 & 2014-15 respectively. Since identical grounds have been raised by the Revenue in both the appeals, therefore, for the sake of convenience, these were heard together and are being disposed of by this common order.

2. None appeared on behalf of the assessee at the time of hearing. No adjournment petition was filed seeking adjournment of the case. A perusal of the order sheet entries shows that this case was first fixed for hearing on 5.8.2021 and the case was

adjourned to 5.10.2021 in absence of anybody. Since none appeared on 5.10.2021, the case was adjourned to 29.12.2021 and the notice was issued through the learned DR. However, on 29.12.2021, the Bench did not function for which the case was adjourned to 17.2.2022. However, on 17.2.2022, none appeared for which the case was adjourned to 25.5.2022 and notice was issued through the Revenue. Again on 25.5.2022, none appeared for which notice was issued to the assessee with regard to the date of hearing on 21.7.2022. Again on 21.7.2022 none appeared for which the case was adjourned to 12.9.2022. On 12.9.2022 none appeared and the case was adjourned to 11.10.2022. On 11.10.2022 one Ms. Ankita Mehta filed her power of attorney and the case was adjourned to 17.11.2022 at the request of the Counsel for the assessee. However, on 17.11.2022 none appeared for which the case was adjourned to 22.12.2022. Since the Bench did not function on 22.12.2022, the case was adjourned to 9.2.2023. However, today when the name of the assessee was called, there was no one present on behalf of the assessee. We therefore, deem it proper to dispose off these appeals on the basis of material available on record and after hearing the learned DR.

3. First we take up ITA No.747/Hyd/2020 for the A.Y 2011-12.

4. Facts of the case, in brief, are that the assessee is an individual and the Managing Director of M/s. VPR Mining and Infrastructure (P) Ltd (VPRMIPL). The assessee derives income from house property and interest income. He filed his return of income on 11.2.2012 declaring total income at Rs.1,97,82,040/-. A search & seizure action was carried out u/s 132 of the Act in the case of VPRMIPL on 6.10.2015 during which the residential

premises of the assessee was also covered. In response to notice u/s 153A, the assessee filed his return of income on 15.2.2017 declaring total income of Rs.1,97,82,040/-. The Assessing Officer completed the assessment u/s 153A r.w.s. 143(3) on 28.8.2018 determining the total income of the assessee at Rs.7,52,39,195/- wherein apart from other additions, he made addition of Rs.5,42,07,155/- as deemed dividend u/s 2(22)(e) of the I.T. Act, 1961 which is the subject matter of the present appeal.

5. So far as the addition on account of deemed dividend is concerned, the Assessing Officer noted that during the course of search, document found and seized as per annexure A/VPR/01 contained a soft copy of the books of account of the company VPRMIPL. On further verification of the working copy of the above annexure, individual ledger of the assessee in the books of account of the company VPRMIPL was found. It was noted from the ledger that there are a number of transactions between VPRMIPL and the assessee. Since there were number of entries debited to the individual account for the A.Y 2010-11 which are likely to attract provisions of deemed dividend u/s 2(22)(e) of the Act, the Assessing Officer confronted the same to the assessee and asked him to explain as to why the deemed dividend u/s 2(22)(e) should not be added to the total income of the assessee. Rejecting the various explanations given by the assessee and observing that the peak debit balance for the A.Y 2010-11 comes to Rs.5,42,07,155/- the Assessing Officer made addition of the same giving the following reasons:

“9.10. The assessee’s reply was carefully considered. The transactions referred by the A.R in the reply above, which have been considered for the purpose of working out peak debit balance for deemed dividend have been duly examined with the facts available on record. However,

after duly considering the same, the plea of the A.R for excluding the same from the working of peak debit balance for deemed dividend is not found to be acceptable, for the following reasons:

1. The opening balance is not considered for the working of the deemed dividend as the credit balance at the end of the F.Y 2009-10 was offset against the debit balance of Rs. 5,23,25, 152/- towards a partnership firm (M/s. Lakshmi Earth Movers) in which .the assessee Sri V Prabhakar Reddy is a major partner. Accordingly, the difference was brought to tax in the A.Y 2010-11 under deemed dividend. This aspect has already been covered in the assessment order for A.Y 2009-10 passed in December, 2017 and the assessee has accepted the same and not gone on any further appeal on the same. So the credit balance in the individual account available at the end of the F.Y 2009-10 cannot be given again while working the deemed dividend for the F.Y 2010-11.

2. Some of the advances given that were accounted in the individual ledger of the assessee in the seized books are explained by A.R. as being given to third parties like M/s Hamsa Minerals and M/s B V Reddy Enterprises. The plea of the A.R. in this regard has been considered but found to be unacceptable.

a) The entry of having given the advances in the names of these two parties i.e. M/s Hamsa Minerals and M/s B V Reddy Enterprises appeared in the individual ledger of the assessee in the seized books of account (at annexure A/VPR/01), though taken out to separate ledger accounts in the audited books of accounts.

Section 292C of Income-tax Act, 1961 dealing with Presumption as to assets, Books of account etc, states as under:

“(1) Where any books of account, other documents, money, bullion, a (1) bullion, jewellery or other valuable article or thing are or is found in the possession or control of any person in the course of a search under section 132 (or Survey under section 133A), it may, in any proceeding under this Act, be presumed

(i) that such books of account, other documents, money, bullion, jewellery or other valuable article or thing belongs to such person;

(ii) that the contents of such books of account and other documents are true; and

(iii) that the signature and every other part of such books of account and other documents which purport to be in the handwriting of any particular person or which may reasonably be assumed to have been signed by, or to be In the handwriting of, any particular person, are in that person's handwriting, and in the case of a document stamped, executed or attested, that it was duly stamped and executed or attested by the person by whom it purports to have been so executed or attested....”

Thus, it can be presumed that the content of the above books of account are true and for the individual benefit of the assessee and any subsequent act of shifting the entries to other ledger accounts in names of third parties is an afterthought, unless the assessee brings cogent evidence to prove otherwise.

b) The assessee has not brought any supporting evidence to prove the nature of transaction, independence of these parties and why the same were routed through the assessee's ledger account, if the same were really independent parties and the same was a business transaction with the company etc. The assessee has not discharged the onus of substantiating the transaction and bringing forth any cogent evidence to support the same. It can be safely presumed that these amounts have been advanced by the companies in the names of these parties but are for the individual benefit of the assessee". Since, section 2(22)(e) includes in its gambit "any payment by any such company on behalf, or for the individual benefit, of any such shareholder, any such payment to the above parties has to be considered as a camouflaged transaction which has to brought within the gambit of the deeming provision of section 2(22)(e). Accordingly, the plea of the assessee is not found to be acceptable.

3. As regards the advances for the purchase of lands at kanaparthypadu village, the plea of the A.R. at point 4 above has been examined. It is noted that the A.R. has stated that the advances were given for purchase of land in the name of company. But subsequently the company decided to drop the deal and the assessee came forth to register the land in his name and therefore, the same should be considered as business transaction of the company and not considered for the purpose of deemed dividend. The plea of the A.R. is not found to be acceptable, for the reasons given below:

a) As stated in preceding paragraph, that the presumption u/s 292C of Income-tax Act, 1961 is against the assessee as the said transaction is emanating from the ledger account from the seized books of account and the same has to be presumed to be true unless proved otherwise by cogent evidence;

b) The assessee has not submitted any agreements between the company and the landlords as per which the advances were given by the company to them (for alleged business transaction of the company);

c) It is a fact on record that subsequently, the land has been registered in the name of the assessee (and not the company) on which the convention center has been constructed, from which the assessee is deriving rental income. Thus, it is clear that the advances were given to the landlords for the benefit of the assessee.

Since, the advances were given for the individual benefit of the assessee, the

same should fall under the category of "payment made by the company for the individual benefit of the share holder" of the section 2(22)(e)".

Thus, none of the pleas raised by the A.R. are found to be acceptable.

9.11 In view of the above discussion, the provisions of Section 2(22)(e) are squarely applicable to the assessee's case. Hence, the peak debit balance of Rs.5,42,07,155/- as seen from the individual ledger of the assessee in the books of accounts of the company M/s VPR Mining Infrastructure Pvt Ltd is held as deemed dividend u/s 2(22)(e) of Income-tax Act, 1961 and accordingly an addition of Rs.5,42,07,155/ is made under income from other sources in the hands of Sri Vemireddy Prabhakar Reddy, being a shareholder”.

6. In appeal, the learned CIT (A) deleted the addition by observing as under:

“4.2 I have considered the assessment order, submissions of the appellant and the material on record. The ledger account of the applicant as appearing in the books of account of M/s. VPR Mining Infrastructure P Ltd(VPRMIPL) found in the Pen Drive is different from the ledger Account of the Company as reported and based on which the Return of Income was filed by M/s. VPRMIPL. The explanation of the appellant that the money brought into company by him/on his behalf was entered in his name whereas most of the transactions are with independent entities through banking channels and these entries are correctly reflected in final Audited Accounts, appears to be correct. The AO also has made certain adjustments in the ledger account found in Pen Drive to draw and arrive at the peak debit for making addition u/s.2(22)(e) as 'deemed dividend'. The AQO himself has not treated the accounts contained in Pen Drive as final and conclusive. The action of AO in excluding certain entries (both credits and debits) shows that the entries contained in Pen Drive are only tentative and roughly made calculation. The question arises as to the correctness of the items which are included by the AO. Various issues raised by the appellant which have bearing on calculation of final amount taxable as deemed dividend are as under: a The AO has taken opening balance as NIL and proceeded to complete The closing balance as on 31.03.2010 is the peak debit'. Rs.3,94,91,836/- which becomes opening balance as on 01.04.2010. For A.Y-2010-11, deemed dividend was arrived at after setting off the above amount against payment of Rs.5,23,25,152/- made to M/s. Lakshmi Earth Movers(LEM) and addition of Rs.1,28,33,318/- was made. The above was brought to tax on deeming basis which would not change the balance in the ledger account of the appellant with the company. The setting off of the balance against the payment made to M/s.LEM is for the limited purpose and it would not change the appellant's account copy in company's books of account. The transaction with M/s. LEM is a separate transaction which should be settled independently. There is no material to show that there are any other transactions includable also nor AO has taken cognizance of any other transactions for a.y-2010-11. In view of the above, the opening balance is to be taken at Rs.3,94,91,836/- in the computation of peak debit made by the AO.

b) The appellant has made a special reference to the transactions with It is M/s.B.V.Reddy Enterprises and M/s.Hansa Minerals. contended

by the appellant that, the above concerns are independent Concerns and appellant has no interest whatsoever in those concerns. Further, the transactions are also entered into by the company which are duly reflected in the books of account of both the concerns. The AO has not discussed anything about the above concerns and their relation to the appellant. In view of the factual position as above, the transaction with above Concerns are to be excluded in the computation of peak credit done for arriving at deemed dividend u/s.2(22)(e). The amounts in question are Rs.2,05,00,000/- in respect of M/s. B. V Enterprises and Rs. 1,00,00,000/- in respect of M/s. Hansa Minerals. The above amounts are to be excluded in the computation. It is directed accordingly.

- c) *In respect of transactions for purchase of 8.5 acres land at transferred to Kanupatipad,. it is seen that the. amount was appellant's account who in turn paid the amounts to various persons. The contention of appellant that the company intended to purchase land but ultimately decided not to buy is self-serving The fact that statement without any basis or supporting evidence. The fact that payment to various persons was made by the appellant and the land was brought by the appellant shows that the payment/advance by the company to the appellant for above purpose is appellant's includable in the transaction with the company and rightly includable in the computation of peak. The AO's action in respect of above transaction is correct and the contention of the appellant is rejected. The other entries are not specifically contended and the same are retained.*

4.2.1 In view of the findings above, the opening balance of 4.2.1 In Rs.3,94,91,836/- is to be allowed and the transactions to the extent of Rs.2,05,00,000/- in respect of M/s. B. V Reddy Enterprises and Rs.1,00,00,000/- in respect of M/s. Hansa Minerals are to be excluded. The total of above comes to Rs.6,99,91,836/- which is more than the addition of Rs. 5,42,07, 155/- made by the AO. Further, once the opening balance is taken into account and transaction with above concerns are excluded there would not be overdrawal at any point of time during the year. Accordingly, the addition made by AO as 'deemed dividend' is not warranted and the same is deleted. The Assessing Officer has computed the closing balance at debit Rs.1,57,04,830/- which would become credit of Rs.5,42,87,006/- and be available as carry forward to the assessee".

7. Aggrieved with such order of the learned CIT (A) the Revenue is in appeal before the Tribunal by raising the following grounds:

"1. The learned CIT (A) erred in law and on facts of the case.

2. The learned CIT (A) erred in holding that the opening credit balance for A.Y 2011-12 is to be allowed for working of deemed dividend u/s 2(22)(e) without appreciating the fact that in A.Y 2010-11 the entire credit balance was set off and

resultant working of deemed dividend u/s 2(22)(e) was accepted by the assessee.

3. The appellant craves leave to amend or alter any ground or add any other grounds which may be necessary”.

8. Referring to the order of the learned CIT (A), the learned DR submitted that the order of the learned CIT (A) is contrary to the facts on record. He submitted that the order of the learned CIT (A) holding that the opening balance for the A.Y 2011-12 is to be allowed for working deemed dividend u/s 2(22)(e) is incorrect since in A.Y 2010-11, the entire credit balance was set off and resultant working of deemed dividend u/s 2(22)(e) was accepted by the assessee. He accordingly submitted that the order of the learned CIT (A) be reversed and the grounds raised by the Revenue should be allowed.

9. We heard the learned DR and perused the record. We find the AO in the instant case made addition of Rs.5,42,07,155/- by invoking the provisions of section 2(22)(e) the reasons of which have already been reproduced in the preceding paragraph. We find the learned CIT (A) deleted the addition made by the Assessing Officer u/s 2(22)(e), the reasons of which have also been reproduced in the preceding para. It is the submission of the learned D.R. that in A.Y 2010-11 the entire credit balance was set off and resultant working of deemed dividend u/s 2(22)(e) was accepted by the assessee. However, the learned CIT (A) has held that the opening credit balance for A.Y 2011-12 is to be allowed for working of the deemed dividend u/s 2(22)(e). We find some force in the above argument of the learned DR. A perusal of the order of the learned CIT (A) shows that he has not at all referred to the assessment order for the A.Y 2010-11 wherein the entire credit balance was set off and the resultant working of deemed

dividend u/s 2(22)(e) was accepted by the assessee. Under these circumstances, we deem it proper to restore the issue to the file of the learned CIT (A) with a direction to adjudicate the issue afresh and in accordance with law by giving due opportunity of hearing to the assessee. He shall give a categorical finding as to whether in A.Y 2010-11 the entire credit balance was set off and the resultant working of deemed dividend u/s 2(22)(e) was accepted by the assessee or not. We hold and direct accordingly. The grounds raised by the Revenue are accordingly allowed for statistical purposes.

ITA 748/Hyd/2020 – A.Y 2014-15

10. The grounds raised by the Revenue read as under:

“1. The Ld CIT(A) erred both in law and on facts of the case, while deleting the addition made towards deemed dividend u/s. 2(22)(e) of IT Act.

2. The Ld CIT(A) erred in holding that the opening credit balance for AAY 2011-12 is to be allowed for working of deemed dividend u/s. 2(22)(e) and correspondingly worked out the opening balance for AY 2014-15 at Rs.9,00,92,142/- without appreciating the fact that in AY 2010-11 the entire credit balance was nullified and resultant working of deemed dividend u/s. 2(22)(e) was accepted by the assessee.

3. The Ld CIT(A) failed to appreciate the fact that there is no opening balance available to the assessee to set-off for AY 2011-12 and accordingly for the relevant year AY 2014-15.

4. The appellant craves leave to amend or alter any ground or add any other grounds which may be necessary.”

11. After hearing the learned DR and on perusal of the record, we find the grounds raised in ITA 748/Hyd/2020 are identical to the grounds raised in ITA 747/Hyd/2020. We have already decided the issue and the matter has been restored to the file of the learned CIT (A) for fresh adjudication with certain directions. Following similar reasoning we deem it proper to restore the issue to the file of the learned CIT (A) for adjudication

of the issue afresh in the light of the direction given therein. The grounds raised by the Revenue are accordingly allowed for statistical purposes.

12. In the result, both the appeals filed by the Revenue are allowed for statistical purposes.

Order pronounced in the Open Court on 13th February, 2023.

Sd/- (LALIET KUMAR) JUDICIAL MEMBER	Sd/- (R.K. PANDA) ACCOUNTANT MEMBER
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Hyderabad, dated 13th February, 2023.

Vinodan/sps

Copy to:

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4	Pr. CIT- Central, Hyderabad
5	DR, ITAT Hyderabad Benches
6	Guard File

By Order