

IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE
(Conducted Through Virtual Court)

**Before: Shri T.R. Senthil Kumar, Judicial Member
And Shri B.M. Biyani, Accountant Member**

**ITA Nos. 553 & 554/Ind/2018
Assessment Years: 2014-15 & 2015-16**

The Assistant Commissioner of Income-tax, Ratlam (Appellant)	Vs	M/s. Shirani Motors Pvt. Ltd., 29, Shirani Pura, Ratlam (M.P.) PAN: AAJCS2531G (Respondent)
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**ITA No. 569/Ind/2018
Assessment Year: 2014-15**

The Assistant Commissioner of Income-tax, Ratlam (Appellant)	Vs	M/s. Sagar Automobiles Pvt. Ltd. Mitra Niwas Road, Ratlam(M.P.) PAN: AAHCS6984R (Respondent)
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**Assessee Represented :
Revenue Represented :**

**None
Shri Ashish Porwal, Sr. D.R.**

Date of hearing : 20-01-2023
Date of pronouncement : 27-02-2023

आदेश/ORDER

PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-

ITA Nos. 553 & 554/IND/2018 (Shirani Motors Pvt. Ltd.)

These two appeals are filed by the Revenue as against the separate Appellate orders dated 07.03.2018 passed by the Commissioner of Income Tax (Appeals), Ujjain, arising out of the assessment orders passed under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Years (A.Ys) 2014-15 & 2015-16. Since common issues are involved in both the cases, the same is disposed of by this common order.

2. The brief facts of the case is that the assessee is a Company engaged in the business of distributions and trading of two-wheelers. For the Assessment Year 2014-15, the assessee filed its Return of Income declaring income of Rs. 12,82,090/-. During the course of assessment proceedings, the Assessing Officer made the following disallowances:

- (i) addition of deemed dividend u/s. 2(22)(e) of Rs. 1,43,59,734/-
- (ii) disallowance of conveyance expenses of Rs. 69,240/-
- (iii) disallowance of depreciation of Rs. 67,587/-
- (iv) disallowance of interest free loan u/s. 36(1)(iii) of Rs. 42,24,096/-

3. Aggrieved against the assessment order, the assessee filed an appeal before Ld. CIT(A) and submitted that the Assessee and other

group companies namely M/s. Sagar Automobiles Pvt. Ltd. and M/s Shirani Automotive Pvt. Ltd. are having common shareholders and engaged in same line of activities namely Automobiles dealerships. The nature of transactions entered among these companies had never been in the nature of loans or advances. Whenever funds are found idle in one company and the same are needed by another group company, such funds are transferred from one company to another through its current accounts. Therefore these are inter-corporate deposits which do not extend any individual benefit to any of the shareholders of the Assessee Company. The Assessee is not a shareholder in or beneficial owner of the other companies. These two companies are having common shareholders namely Gulam Gaus Khan Shirani and Yahya Khan Shirani having more than 20% stake each in these two companies. Deemed dividend u/s. 2(22)(e) is assessable only in hands of the shareholders. Bombay High Court in case of CIT vs. Jignesh P. Shah (2013) has held that the provision of section 2(22)(e) cannot be invoked unless the assessee itself is the shareholder of the company, who was lending money to it.

3.1. The assessee further submitted that though the director are shareholders holding more than 20% shares in the above stated two closely held companies, but the said two closely held companies had no cross holding of shares in other companies. But the two companies had regular business transaction with each other being in the nature of same Automobile trade. Thus the assessee pleaded with various decisions of Jurisdictional Tribunal orders as follows:

(a) Makhija Construction Company vs. Asst. CIT (2011) 18 ITJ 783 (Trib.- Indore): (2012) 49 SOT 27

Assessee firm's partner was holding 69% shares in a closely held company-Loan advanced by closely held company to assessee-firm-AO treated the loan as deemed dividend in hands of assessee-firm-HELD-Dividend is taxable in hands of shareholder being registered and beneficial shareholder-Dividend is not taxable in hands of assessee as assessee-firm is no shareholders.

(b) Manish Karwa v. Asst. CIT (2014) 24 ITJ 454 (Trib-Indore): (2014) 65 SOT 105 (URO)

Assessee had 9.68% shares in the closely held company- AO added the shares held by HUF of assessee and minor child to contend the holding of the assessee was more than 10%- AO treated the dividend-HELD-The assessee should be the registered and beneficial owner of the shares- A minor child can be member of the company, if the shares are fully paid up- In the present case, assessee is not the registered or a beneficial owner of the shares held by the HUF and the minor child- No addition is called for.

(c) Dy. CIT v. Apex Multitrade Pvt. Ltd. (2013) 21 ITJ 105 (Trib-Nagpur)

Assessee-company engaged in money lending business-AO held that loan given to another company, which had common shareholding in terms of section 2(22)(e)-AO therefore treated the amount as dividend-HELD-Assessee was not shareholder in that company therefore in view of ACIT v. Bhaumik Colour Pvt. Ltd. (2009) (2009) 120 ITJ 865 (Mum), dividend cannot be added in hands of assessee- Also assessee was engaged in business of money lending, loan was given in ordinary course of business of money lending-Dividend cannot be added.

(d) Asst. CIT v. Venkatesh Beverages Ltd. (2011) 18 ITJ 851 (Trib-Indore)

Assessee-Company received loan from other company-AO noted that shareholder of assessee-company and that of lender company

was same holding more than requisite shares u/s 2(22)(e). AO therefore held that it was deemed dividend-HELD- Dividend is taxable in bod of shareholder, who shall be both a registered and a beneficial shareholder. Dividend is not taxable in hands of assessee borrower, who does not hold shares in lender-company.

(e) Asst. CIT v Pragya Equipments Pvt. Ltd. (2011) 18 ITJ 579 (Trib.-Indore)

Assessee-company took a loan from company where the director held substantial interest-AO treated the loan as deemed dividend-Assessee contended that loan was in ordinary course of business - AO-treated the same was in ordinary course of business-HELD-Loan was not given in ordinary course of business of money lending-Also, same is payment for sale of goods as the loan was given at beginning of the year whereas goods were sold at year-end-However, since assessee is not a registered or beneficial owner of shares; Dividend cannot be added in hands of assessee in view of ACIT v. Bhaumik Colour (P) Ltd. (2009) 120 TTJ 865 (AT) SB(Mumbai)-Matter is remanded back to CITA to decide afresh.

(f) Agni Engineers v. Asst. CIT (2011) 17 ITJ 38 (Trib-Indore).

Partners of assessee-firm has substantial interest in a closely held Company-Assessee-firm obtained loan from closely held company-held the same to be dividend in the hands of assessee-firm-HELD-Deemed dividend u/s 2(22)(e) can be taxed only in hands of shareholder-The assessee must be both registered as well as beneficial shareholder-Assessee-firm is neither registered nor beneficial shareholder-Dividend cannot be taxed in bands of assessee-firm.

(g) Asst. CIT v. Gulmohar Traders (2016) 28 ITJ 302 (Trib.-Indore).

AO made additions of Rs. 22.60 lacs on account of deemed dividend. CIT(A) deleted the additions- HELD- In Makson Nutrition Food India Pvt. Ltd. in ITA No.572/Ind/2010 the assessee company taken unsecured loans from various companies-AO treated it as deemed dividend-In that case it was held that for bringing an

assess within the purview of section 2(22)(e), both the conditions regarding assessee being registered as well as beneficial shareholder of the lender company are required to be established- In the present case, the assessee is neither a registered nor a beneficial shareholder of the lender company-Therefore, there is no infirmity in order of CIT(A)-ITAT confirmed the order of CIT(A).

3.2. Respectfully following the above decisions of Hon'ble ITAT, Indore and other judicial authorities, the addition made by the AO u/s. 2(22)(e) of the Act amounting to Rs. 1,43,59,734/- was deleted by the Ld.CIT(A).

3.3. Regarding ground no. 2, the addition of Rs.69,240/- on account of Conveyance expenses. The Ld. CIT(A) held that the personal use of motor car cannot be ruled out. However the AO disallowed the expenses @ 20%, which is slightly on the higher side. It would be proper to restrict the disallowance @10% namely Rs.34,620/- is Confirmed.

3.4. Regarding ground no. 3, the addition of Rs.67,587/- on account of depreciation expenses on vehicles. The Ld. CIT(A) held that the personal use of motor cars cannot be ruled out. However the AO disallowed the expenses @ 20%, which is slightly on the higher side. It would be proper to restrict the disallowance @ 10% namely Rs. 33,793/- is confirmed.

3.5. Regarding ground no. 4, the addition of Rs. 42,24,096/- u/s. 36(1)(iii). The assessee has given the loan and advance to the persons from own fund and interest free fund. It is accepted principle that if there is interest free fund available to the assessee,

which is sufficient to meet its investment and at the same time the assessee raised the loan, it can be presumed that the investment is from the interest free fund available. It is not the case that the assessee has diverted interest bearing borrowed funds for investment not earning income. Therefore, the Ld. CIT(A) deleted the addition made by the A.O.

4. Aggrieved against the appellate order, the Revenue is in appeal before us in ITA No. 553/Ind/2018 raising the following Grounds of Appeal:

(i) Whether on the facts and in the circumstances of the case, Ld. CIT(A) was justified in deleting the addition of Rs. 1,43,59,734/- made on account of deemed dividend u/s 2(22)(e) of the Income Tax Act, 1961.

(ii) Whether on the facts and in the circumstances of the case, Ld. CIT(A) was justified in restricting the disallowance to Rs. 34,620/- as against disallowance made on account of conveyance expenses at Rs. 69,240/-.

(iii) Whether on the facts and in the circumstances of the case, Ld. CIT(A) was justified in restricting the disallowance to Rs. 33,793/- as against disallowance made on account of depreciation expenses at Rs. 67,587/-.

(iv) Whether on the facts and in the circumstances of the case, Ld. CIT(A) was justified in deleting the disallowance of proportionate interest expenses of Rs. 42,24,096/- u/s. 36(l)(iii) of the I.T. Act, 1961.

4.1. The Ld. Sr. D.R. Mr. Ashish Porwal appearing for the Revenue strongly supported the order passed by the Assessing Officer and pleaded to uphold the same and thereby allow the Revenue's appeal.

5. Per contra, none appeared on behalf of the assessee but a written submission dated 09.06.2019 is filed by the assessee. In the written submissions, the assessee has reiterated similar

arguments and relied upon various decisions of the Indore Bench of this Tribunal.

5.1. That apart the assessee relied Bombay High Court Judgment in the case of Pr.CIT Vs. Sunjewels International Ltd. [2019] 411 ITR 613 wherein it has been held as follows:

In the facts of the present case, admittedly the assessee company is not a beneficial owner of any shares in the creditor companies which have advanced the loans. The common shareholder having a substantial interest in the assessee company as well as in the creditor companies is on "Sunjewels India Pvt. Ltd." It is also an admitted fact that the loans given by the creditor companies was not to "Sunjewels India Pvt. Ltd." but was to the assessee company. This being the factual position, we find that the CIT(A) as well as ITAT were fully justified in holding that this case did not fall within the provisions of section 2(22)(e) of the I. T. Act, 1961.

For the second limb of section 2(22)(e) of the I. T. Act, 1961 to come to play, the condition that has to be fulfilled is that the creditor companies ought to have given monies by way of an advance or loan to a concern in which the assessee company is a member or partner and in which it has a substantial interest. In other words, what the second limb of section 2(22)(e) contemplates is that, the creditor companies give a loan not directly to its shareholder but to any concern in which such shareholder has a substantial interest. It is then that the same would attract the second limb of section 2(22)(e) of the I. T. Act, 1961. That is certainly not the factual situation before us. In these circumstances we do not find any fault with the findings given by the CIT(A) as well as the ITAT.

In view of the foregoing discussion, the substantial question of law framed by us earlier are answered in favour of the assessee company and against the revenue. The appeal is disposed of in the aforesaid terms.

The facts in the present case is squarely covered by the aforesaid decision of the Hon'ble Bombay High Court.

6. We have given our thoughtful consideration and perused the materials available on record. As stated by the assessee, this issue has been settled by the Special Bench decision of this Tribunal in

ACIT vs. Bhaumik Color Pvt. Ltd. (122 TTJ 865 Mum SB) wherein it has been held as follows:

“.....Deemed dividend can be assessed only in the hands of a person who is a shareholder of a lender company and not in the hands of the borrowing concern in which such a shareholder is a member or partner having substantial interest. In the instant case the loan was given by a company not to its shareholder holding more than 10% of its equity shares, but to a concern in which such shareholder is member. Therefore respectfully following the decision of the Special Bench, we hold that the loan received by the assessee company in which the assessee does not hold any shares, cannot be assessed as deemed dividend u/s 2(22)(e).”

6.1. The Hon'ble Supreme Court of India has settled down the law on applicability of section 2(22)(e) of the Act, in the case of CIT Vs. Madhur Housing & Development Co. [2018] 93 taxmann.com 502 held as follows:

“Section 2(22) of the Income-tax Act, 1961 - Deemed dividend - (Applicability of) - High Court relied upon judgment passed by Judgment of Delhi High Court in Commissioner of Income-tax v. Ankitech (P.) Ltd. [2011] 11 taxmann.com 100 (Delhi) in which it was held that

(i) legal fiction created under section 2(22)(e) enlarges definition of dividend only and it cannot be extended further for broadening concept of shareholders,

(ii) a concern in which shareholder of payer company has at least 20 per cent of voting power and loan or advance under this category is given admittedly not to a shareholder/member of payer company, under no circumstances, said concern can be treated as shareholder/member receiving dividend,

(iii) in a case where conditions stipulated in section 2(22)(e) treating loan and advance as deemed dividend are established, revenue can treat dividend income at hands of shareholders and tax them accordingly, and

(iv) where loans and advances are given in normal course of business and transaction in question benefits both payer and payee companies, provisions of section 2(22) (e) cannot be invoked - Whether judgment of High Court was to be agreed with.”

6.2. It is seen from record, though the director and shareholder holding more than 20% shares in the above stated two closely held companies but the said two closely held companies had no cross holding of shares in other companies. These companies had regular business transaction with each other. The transactions were in the nature of inter-corporate deposits made for business exigency and not in any way to give individual benefit to any of the shareholders of the Company. Therefore there is no question of invoking section 2(22)(e) in the above transaction. Thus the finding arrived by the Ld. CIT(A) does not require any interference. Thus the ground no. 1 raised by the Revenue is devoid of merits and the same is hereby rejected.

7. Regarding ground no. 2, 10% confirmation of disallowance of Conveyance expenses and ground no. 3, 10% disallowance on account of depreciation expenses, the Ld. D.R. has no serious objection on the restrictions made by the Ld. CIT(A). Therefore ground no. 2 & 3 are hereby rejected.

8. Regarding ground no. 4 disallowance of interest expenses u/s. 36(1)(iii) of the Act, The Ld. D.R. could not controvert the findings of the Ld. CIT(A) that the assessee has diverted interest bearing borrowed funds for investment not earning income. Therefore the ground raised by the Revenue has no merits. Therefore the deletion made by the Ld. CIT(A) is hereby confirmed.

9. In the result, the appeal filed by the Revenue in ITA No. 553/Ind/2018 is hereby dismissed.

ITA No. 554/IND/2018 (Shirani Motors Pvt. Ltd. for A.Y. 2015-16)

10. The Grounds of Appeal raised by the Revenue are as follows:

(i) Whether on the facts and in the circumstances of the case, Ld. CIT(A) was justified in deleting the addition of Rs. 1,39,48,679/- made on account of deemed dividend us 2(22)(e) of the Income Tax Act, 1961.

(ii) Whether on the facts and in the circumstances of the case, Ld. CIT(A) was justified in restricting the disallowance to Rs. 26,446/- as against disallowance made on account of conveyance expenses at Rs. 52,892/-.

11. Regarding ground no. 1, for the detailed reasons stated in Paragraphs 6 to 6.2 in ITA No. 553/IND/2018, this grounds raised by the Revenue is hereby dismissed.

12. Regarding ground no. 2 on conveyance expenses, there is no change in facts therefore following the order passed in Paragraph 7 of ITA No. 553/Ind/2018, this ground of appeal by the Revenue is also dismissed.

13. In the result, the appeal filed by the Revenue in ITA No. 554/IND/2018 is hereby dismissed.

ITA No. 569/IND/2018 (Sagar Automobiles Pvt. Ltd. for A.Y. 2014-15)

14. This appeal is filed by the Revenue as against the Appellate orders dated 07.03.2018 passed by the Commissioner of Income

Tax (Appeals), Ujjain, arising out of the assessment orders passed under section 143(3) of the Act relating to the Assessment Year (A.Y.) 2014-15. This assessee is one of the group concern of M/s. Shirani Motors Pvt. Ltd.

15. The Grounds of appeal raised by the Revenue are as follows:

Grounds of Appeal

(i) Whether on the facts and in the circumstances of the case, Ld. CIT(A) was justified in deleting the addition of Rs.1,39,48,679/- made on account of deemed dividend u/s 2(22)(e) of the Income Tax Act, 1961.

(ii) Whether on the facts and in the circumstances of the case, Ld. CIT(A) was justified in restricting the addition to Rs.89,334/- as against addition made on a/c of undisclosed interest income Rs.2,29,334/- by the AO.

(iii) Whether on the facts and in the circumstances of the case, Ld. CIT(A) was justified in deleting the disallowance of interest expenses of Rs. 22.04.015/- u/s 36(1)(iii) of the I.T. Act, 1961.

16. Regarding ground no. 1, for the detailed reasons stated in Paragraphs 6 to 6.2 in ITA No. 553/IND/2018, this grounds raised by the Revenue is hereby dismissed.

17. Regarding ground no. 2, addition made on account of undisclosed interest income of Rs. 2,29,334/- by the Ld. CIT(A). The Ld. CIT(A) after verification of records held that as per 26AS statement, the assessee is in the receipt of the interest amounting to Rs. 3,76,493/- whereas, the assessee offered only Rs. 1,47,159/- in the Profit and Loss account. The assessee during the course of assessment proceedings as well as appellate proceedings able to

reconcile the difference in the interest amounting to Rs. 1,40,000/- from Mahindra & Mahindra Ltd. Therefore the addition made by the A.O. is restricted to the extent of Rs. 89,334/- by the Ld. CIT(A). This relief does not require any interference in the absence of contra evidences. Therefore this ground raised by the Revenue is hereby dismissed.

18. Regarding ground no. 3 interest expenses of Rs. 22,04,015/- u/s. 36(1)(iii) of the Act. For the detailed reasons therein in Paragraph 8 of ITA No. 553/IND/2018 this ground of appeal raised by the Revenue is hereby rejected.

19. In the result, the appeal filed by the Revenue in ITA No. 569/Ind/2018 is also dismissed.

Order pronounced as per Rule 34 of I.T.A.T. Rules 1963 on 27 -02-2023

Sd/-
(B.M. BIYANI)
ACCOUNTANT MEMBER
Indore: Dated 27/02/2023

Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order

Assistant Registrar
Income Tax Appellate Tribunal,
Indore Bench, Indore

Strengthened preparation & delivery of orders in the ITAT	
1) Date of dictation	03/02/2023
2) Date on which the typed draft is placed before the Dictating Member & Other Member	/02/2023
3) Date on which the approved draft comes to the Sr. P.S./P.S.	/02/2023
4) Date on which the fair order is placed before the Dictating Member for pronouncement	/02/2023
5) Date on which the fair order comes back to the Sr. P.S./P.S.	/02/2023
6) Date on which the file goes to the Bench Clerk	/02/2023
7) Date on which the file goes the Head Clerk	
8) Date on which the file goes to the Assistant Registrar for signature on the order	
9) Date of Dispatch of the order	