

आयकर अपीलीय अधिकरण, कोलकाता पीठ 'बी', कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH KOLKATA

श्री संजय गर्ग, न्यायिक सदस्य एवं श्री गिरीश अग्रवाल, लेखा सदस्य के समक्ष
Before Shri Sanjay Garg, Judicial Member and Shri Girish Agrawal, Accountant Member

I.T.A. No.2191/Kol/2017
Assessment Year: 2011-12

Saj Industries Pvt. Ltd. (Now Saj Food Products P Ltd)..... Appellant
5/1, AJC Bose Road,
Kolkata-700020.
[PAN: AAFCS4575E]

vs.

DCIT, Circle-12, Kolkata..... Respondent

Appearances by:

Shri Siddharth Agarwal, Adv., appeared on behalf of the appellant.

Shri P P Barman, Addl. CIT-DR, appeared on behalf of the Respondent.

Date of concluding the hearing : April 18, 2023

Date of pronouncing the order : June 06, 2023

आदेश / ORDER

संजय गर्ग, न्यायिक सदस्य द्वारा / Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the assessee against the order dated 12.09.2017 of the Commissioner of Income Tax (Appeals)-16, Kolkata [hereinafter referred to as 'CIT(A)'] passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act').

2. The assessee in this appeal has taken the following grounds of appeal:

"1. For that on the facts and in the circumstances of the case, the Ld. CIT(A) erred in confirming the addition of Rs. 1,54,27,000/- made by the A.O. by wrongly treating the interest free unsecured loan/ advance received by the assessee company from M/s A.M. Marketing Ltd. as deemed dividend u/s 2(22)(e) of the Income tax Act, 1961.

2. For that, without prejudice to ground no. 1, the Ld. CIT(A) ought to have considered the fact that the A.O. had wrongly taken the

accumulated profit of Rs. 1,54,27,000/- of M/s A.M. Marketing Ltd. in place of Rs. 1,26,40,000/-.

3. That the appellant craves leave to add, alter or delete all or any of the grounds of appeal.”

3. A perusal of the above grounds of appeal would reveal that the sole issue involved in this appeal is relating to the addition made by the Assessing Officer on account of deemed dividend u/s 2(22)(e) of the Act.

4. The brief facts of the case are that during the assessment proceedings, the Assessing Officer noted that the assessee company had received interest free unsecured loans of Rs.56,000,000/- from its sister concern M/s A.M. Marketing Ltd. with maximum of Rs.56,000,000/- at any time during the year. Further on examining the shareholding pattern of assessee company and its sister concern, the Assessing Officer noted that Shri Krishna Das Paul and Shri Arpan Paul were common directors and registered beneficial shareholders of both the companies having substantial business interest. He therefore applied the provisions of section 2(22)(e) of the Act and made the impugned addition in the hand of the assessee. The ld. CIT(A) confirmed the addition so made by the Assessing Officer.

5. Before us, the ld counsel for the assessee has submitted that as per the settled law, the additions on account of deemed dividend can be made in the hands of the beneficial shareholder and not person or entity to which the money has actually been paid. That the assessee company was not shareholder of its sister concern M/s A.M. Marketing Ltd. and that the additions on account of deemed dividend could have been made in the hands of the shareholder only. He in this respect has relied upon the various decisions of the Coordinate Benches of the Tribunal and also upon the decision of the Jurisdictional Calcutta High Court in the case of PCIT v. Rungta Properties (P) Ltd. reported in

[2017] 83 taxmann.com 106 (Calcutta). The relevant part of the order of the Hon'ble Calcutta High Court is reproduced as under:

"9. Mr. Khaitan, has taken us through the provisions Section 2(22)(e) of the Act to contend that deemed dividend, if at all, is to be charged to income tax at the hands of the common shareholder but not at the hands of the recipient of money unless the recipient is also the shareholder of the company from whom the amount has been received. It is not in dispute that S.N. Rungta is a common shareholder in both the companies and his holding exceeds 20% equity share capital in the assessee and more than 10% equity capital in the engineering company. To that extent, applicability of Section 2(22)(e) is not altogether precluded but the question here is whether this amount can be taxed at the hands of the assessee as deemed dividend.

Mr. Khaitan has referred to a decision of a Coordinate Bench of this Court in ITAT No. 74 of 2013 CIT v. Baljit Securities (P.) Ltd. dated 24th June, 2013. In this judgment, it has been held by the Coordinate Bench that the definition of dividend has been enlarged by a legal fiction but in a situation of this nature, it would be the common shareholder who is to be taxed and not the recipient company. There are two other authorities, of the Bombay High Court in the case of CIT v. Universal Medicare (P.) Ltd. [2010] 324 ITR 263/190 Taxman 144 and of the Delhi High Court in the case of CIT v. Ankitech (P.) Ltd. [2012] 340 ITR 14/[2011] 199 Taxman 341/11 taxmann.com 100 laying down this proposition or principle of Law.

10. Mr. Khaitan submits that three situations are conceived in Section 2(22)(e) of the Act to expand the meaning of the term "Dividend" beyond what is normally understood. These are :—

- (i) Any payment by a company by way of advance or loan to a shareholder (holding not less than 10% shares); or*
- (ii) to any concern in which such shareholder is a member, or*
- (iii) any payment on behalf of or for the individual benefit of any such shareholder.*

He has also cited before us the analysis of this provision made in the case of Universal Medicare (P.) Ltd. (supra) and has contended, referring to his own break-up analysis made in respect of the above referred provision that both in the second and third situations payment is deemed to have been made to the shareholder, though in the second situation payment is made to a concern of which such shareholder is a member and in the third case, the payment is made either on behalf of or for the individual benefit of a shareholder. From this analysis, Mr. Khaitan wants us to hold that the payment in this case is to be treated as

payment to the shareholder, if at all. When payment has been made to anyone which comes within the second and third categories such payment shall be deemed to have been made to the shareholder and the payment shall take the character of "deemed dividend". The person liable in such situations would be the shareholder and not the person or entity to whom the money may have actually been paid in the second and the third situations.

On this point also we do not find any error committed by the Commissioner or the Tribunal to warrant our interference.

6. Since, the issue is squarely covered by the decision of the Hon'ble Calcutta High Court, therefore, the impugned additions made by the lower authorities are not sustainable and the same are ordered to be deleted.

7. In the result, the appeal of the assessee stands allowed.

Kolkata, the 6th June, 2023.

Sd/-
[गिरीश अग्रवाल /Girish Agrawal]
लेखा सदस्य/Accountant Member

Sd/-
[संजय गर्ग /Sanjay Garg]
न्यायिक सदस्य/Judicial Member

Dated: 06.06.2023.

RS

Copy of the order forwarded to:

1. Saj Industries Pvt. Ltd. (Now Saj Food Products P Ltd)
2. DCIT, Circle-12, Kolkata
3. CIT
(A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches