

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई।  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**'B' BENCH: CHENNAI**

श्री मनोज कुमार अग्रवाल, लेखासदस्य एवं श्री मनोमोहन दास, न्यायिक सदस्य के समक्ष  
**BEFORE SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER**  
**AND**  
**SHRI MANOMOHAN DAS, JUDICIAL MEMBER**

आयकर अपील सं./ITA No.733/Chny/2020  
निर्धारण वर्ष /Assessment Year: 2016-17

**Powermatic Packaging Pvt. Ltd.,**  
C/o.Sri T.N.Seetharaman, Advocate  
#384 (Old No.196), Lloyds Road,  
Chennai – 600 086.

**[PAN: AACCP-4735-A]**

**(अपीलार्थी/Appellant)**

**The Income Tax Officer,**  
Corporate Ward-5(2),  
Chennai.

**(प्रत्यर्थी/Respondent)**

अपीलार्थी की ओर से/ Appellant by

: Shri T.N.Seetharaman, Advocate &  
Shri R.K.V. Sundar, Advocate

प्रत्यर्थी की ओर से /Respondent by

: Shri D. Hema Bhupal, JCIT

सुनवाई की तारीख/Date of Hearing

: 01.05.2023

घोषणा की तारीख /Date of Pronouncement

: 12.07.2023

**आदेश / ORDER**

**PER MANOMOHAN DAS, J.M.:**

1. Aforesaid appeal by assessee for Assessment Year (AY) 2016-17 arises out of the order of the Learned Commissioner of Income Tax (Appeals), Chennai [CIT(A)] dated 04-03-2020 in the matter of an assessment framed by Ld. Assessing Officer [AO] u/s 143(3) of the Income Tax Act, 1961, [the Act] on 29-12-2018. The Ld. AR submitted that the assessee is not pressing ground nos. 1 to 9. In ground Nos. 10 to 12 the assessee is aggrieved by disallowance of business

: - 2 - :

expenditure. For these grounds, Ld. AR pleaded for same adjudication as done by this Tribunal in assessee's own case for AY 2014-15, ITA No.732/Chny/2020 order dated 09.06.2022. A copy of the order has been placed on record. In ground nos. 13 to 19, the assessee assails the addition made by Ld. AO on account of deemed dividend u/s 2(22)(a). In this regard, the assessee has filed additional ground of appeal also wherein Ld. AR seeks exclusion of the amount which has been added u/s 2(22)(e) in the hands of the shareholder. Having heard rival submissions and after perusal of case records, our adjudication would be as under.

2. The registry has noted a delay of 100 days, the condonation of which has been sought by Ld. AR. Considering the fact that the time available to prefer the appeal fall within the lockdown situation arising out of Covid-19 Pandemic, we condone the delay and admit the appeal for adjudication on merits.

### **3. Disallowance of Business Expenditure**

3.1 The assessee is stated to be engaged in the business of automobile and it admitted income of Rs.29.53 Lacs which was subjected to scrutiny by revenue.

3.2 The Ld. AO made an observation that the assessee did not carry out any business since there was no business receipts during this year as well as in earlier years. The factory building owned by the assessee

:- 3 -:

was leased out and this income was offered under the head Income from House Property. The assessee was functioning in a small portion thereof so as to settle the receivables and bank loans. The sole receivable were from assessee's director Shri Ravindran and his proprietary concern. Therefore, Ld. AO disallowed business expenditure of Rs.17.21 Lacs as claimed by the assessee. The same has been tabulated at para 6.8 of the order. The Ld. AO also disallowed depreciation on building for Rs.6.01 Lacs as claimed by the assessee. Upon further appeal, Ld. CIT(A) upheld the stand of Ld. AO against which the assessee is in further appeal before us.

3.3 We find that in this year, the receipts other than rent constitute only 8.22%. The Ld. AO has already allowed proportionate expenditure to the assessee which has been tabulated in para 6.8 of the order. We find that a reasonable allowance has already been granted by Ld. AO in this year. The depreciation could also not be granted since the asset ceased to be used for the business. Therefore, no fault could be found in the orders of lower authorities. The corresponding grounds stand dismissed since the allowance granted by Ld. AO is quite reasonable in this year as against the fact that only 1% of the expenditure was allowed in AY 2014-15.

#### **4. Deemed Dividend u/s 2(22)(a)**

4.1 Upon perusal of financial statements, it transpired that the assessee wrote-off certain assets with corresponding reduction in the Reserves and Surplus. The same was outstanding from M/s Associate Technologies (proprietary concern of Shri P. Ravindran) and Shri P. Ravindran respectively. Shri P. Ravindran was holding 53% of shareholding. Accordingly, Ld. AO held that the write-off come within the purview of Sec. 2(22)(a) of the Act. The write-off was nothing but distribution of the accumulated profits entailing release of assets by the company to its shareholders. In such a case, the provisions of Sec.115-O shall apply and the assessee would be liable to pay tax @15% on such write-off.

4.2 The Ld. CIT(A) considered the assessee's submissions and adjudicated the issue as under: -

*7.7.1 As per the facts of the case, during the said year, the appellant had written off loans given to M/s. Associate Technologies (proprietor concern of Mr. P. Ravindran) of Rs. 2,42,21,299/- and Mr. P. Ravindran of Rs. 51,39,158/-. Mr. P. Ravindran also holds 53% of the shares in Appellant. The write off of loan was debited to the profit & loss account and consequently taken to reserves & surplus. For the purpose of Income Tax Act, the appellant disallowed the said write off to compute its taxable income as well as the book profits.*

*7.7.2 The AO points to the fact that write off of assets represented amount payable by its majority shareholder which was earlier shown as part of the long term loans and advances under Assets in Balance Sheet. The AO held that since the loan was earlier held as assets, writing it off comes directly under the purview of Section 2(22) (a) of the Act. It further stated that writing off the loan of a majority shareholder is nothing but distribution of the accumulated profits.*

*7.7.3 The appellant vide its submission have relied on the Gujarat High Court decision in the case of Shashibala Navnitlal v. CIT (1964) 54 ITR*

:- 5 -:

478 and stated that book entries transferring the said sum to eventually to reserves & surplus does not entail release of assets of the Company and hence provisions of Section 2(22) (a) of the Act does not apply to it. The appellant has also raised a without prejudice ground that if the said payout pertain to AY 1997-98 to AY 2009-10 and hence there should not be a question of invoking Section 2(22)(a) of the Act in the current year.

7.7.4 Before coming to a conclusion it is pertinent to analyse Section 2(22)(a) of the Act. The extract of the same is provided below for ease of reference.

(22) "dividend" includes

(a) any distribution by a company of accumulated profits, whether capitalized or not, if such distribution entails the release by the company to shareholders of all or any part of the assets of the company;

7.7.5 On plain reading of the Section it is observed that any distribution of accumulated profits which entails the release of assets to the shareholders will be treated as dividend.

7.7.6 It is also pertinent to mention the principle of the case law as quoted by the appellant. The Hon'ble Gujarat High Court in the case of *Shashibala Navnitlal v. CIT (1964) 54 ITR 478* has held that a distribution of assets to fall under the purview of the said section should satisfy the following conditions:

- It must be a distribution of accumulated profits
- It must be such as entails the release of all or any assets of the Company

7.7.7 As per the facts of the case, the loans written off were receivable by the Company and accordingly shown under assets. These loans were written off in the said year in the profit & loss account, the balance of which was subsequently transferred to the accumulated profits. Hence the accumulated profits have been reduced by the amount of the loan written off. Further, the loan was also receivable from a shareholder holding 53% shares in the appellant, in his individual capacity as well as from his proprietary concern. Hence, both the conditions as mentioned above are fulfilled and the transaction falls under the purview of Section 2(22) (a) of the Act

7.7.8 The appellant also argues that the payout of loan was done during AY 1998-99 to AY 2012-13 and hence it cannot be taxed in the said assessment year. The argument of the appellant cannot be accepted. In the year when the payout was done, the said amount was still receivable in the hands of the appellant and payable in the hands of the loan receiver. There was no benefit which had accrued to the loan receiver by receiving the said amount in the earlier years. Only when the right to repay the loan was extinguished, the right to enjoy that money was established in the hands of the loan receiver. Since in this case the loan receiver who benefitted was also the shareholder in the appellant, and the right to enjoy the money was received by him only in the year the right to repay was extinguished, the amount will be taxable when the right to repay is extinguished. In the current case it is AY 2016-17 and hence has been taxed correctly. The tax is to be levied as per Section 115-O of the Income Tax Act, 1961.

:- 6 -:

7.7.9 Without prejudice to above, the appellant has at no stage of the proceedings submitted evidence that once the loan was waived off, the same was considered as taxable in the hands of the loan receiver and the tax was accordingly paid.

7.7.10 In view of the above discussion, the said ground of the Appellant is hereby treated as DISMISSED.

8. In the result, the appeal of the appellant is DISMISSED”

Aggrieved, the assessee is in further appeal before us.

4.3 The Ld. AR, inter-alia, pleaded that the provisions of Sec. 2(22)(a) would have no application. The Ld. AR sought distinction in the term ‘distribution’ and ‘payment’ and averred that distribution should be to all the shareholders. Alternatively, a part of the amount has already been taxed in the hands of the shareholder u/s 2(22)(e) and therefore, the department should not proceed against the assessee. Reliance was placed on the decision of Hon’ble Gujarat High Court in the case of **Shashibala Navnitlal v. CIT (1964) 54 ITR 478** as well as the decision of Hon’ble Calcutta High Court in the case of **CIT vs. Jamunadas Srinivas Private Ltd. (76 ITR 656)**. The Ld. Sr. DR opposed any interference in the impugned order, on this issue.

### **Our findings and Adjudication**

5. From the facts it emerges that the assessee has wrote-off certain assets with corresponding reduction in the Reserves and Surplus. The same was outstanding from M/s Associate Technologies (proprietary concern of Shri P. Ravindran) and Shri P. Ravindran respectively. As per details of Shareholding pattern as placed on record, it could be

*:- 7 -:*

seen that Shri P. Ravindran was holding more than 57% of shareholding whereas remaining shareholding is held by another 7 members. It is undisputed fact that there is reduction in the asset with corresponding reduction in reserve and surplus which amount to distribution of the accumulated profits entailing release of assets by the company to its shareholders. Accordingly, the assessee has been held liable to pay dividend distribution tax in terms of Sec.115-O of the Act.

6. Upon further appeal, Ld. CIT(A) observed that (22) "dividend" includes any distribution by a company of accumulated profits, whether capitalized or not, if such distribution entails the release by the company to shareholders of all or any part of the assets of the company. The Ld. CIT(A) also considered the cited decision of Hon'ble Gujarat High Court in the case of Shashibala Navnitlal v. CIT (1964) 54 ITR 478 which held that to attract the provisions of Sec.2(22)(a), there must be distribution of accumulated profits and it must entail the release of all or any assets of the Company. Considering the facts of the case, the accumulated profits were reduced by the amount of loans written-off. The loans were receivable from a shareholding having substantial shareholding. Therefore, the conditions of Sec. 2(22)(a) were satisfied. The argument that payment of loan was in earlier years was also rejected since the amount will be taxable only

:- 8 -:

when the right to repay was extinguished. We concur with the adjudication of Ld. CIT(A) since the conditions of Sec.2(22)(a) were duly satisfied and the provisions of Sec.115-O were attracted in assessee's case. The decision of Hon'ble Calcutta High Court in **CIT vs. Jamunadas Srinivas Private Ltd. (76 ITR 656)** renders no assistance to the case of the assessee since the decision has been rendered in different context. The argument of Ld.AR that there should be distribution to all the shareholders also do not impress us since it is not the requirement of the law that similar distribution should be given to all the shareholders. Therefore, the arguments thus raised stand rejected.

7. At the same time, upon perusal of additional grounds of appeal, it is apparent that a corresponding addition has been made by revenue u/s 2(22)(e) in earlier assessment years in the case of Shri P. Ravindran and the assessee seeks exclusion of the same from impugned addition on the ground that there would be double addition. We are of the considered opinion that the provisions of Sec. 2(22)(a) and 2(22)(e) are mutually exclusive. Therefore concurring with the same, we admit the additional grounds and restore the impugned matter back to the file of Ld. AO to exclude the amounts already taxed u/s 2(22)(e). The ground raised thus stand partly allowed.

: - 9 - :

8. The appeal stand partly allowed in terms of our above order.

*Order pronounced on 12<sup>th</sup> July, 2023.*

**Sd/-**  
**(मनोज कुमार अग्रवाल)**  
**(Manoj Kumar Aggarwal)**  
**लेखा सदस्य /Accountant Member**

**Sd/-**  
**(मनोमोहन दास)**  
**(Manomohan Das)**  
**न्यायिक सदस्य/Judicial Member**

चेन्नई/Chennai, दिनांक/Dated: 12.07.2023  
EDN/-

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF