

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH, 'B': NEW DELHI**

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

**ITA No.6880/Del/2019
[Assessment Year: 2006-07]**

Catlon India Pvt. Ltd. 44, Goenka House, Zamrudpur, Kailash Colony Extension, New Delhi-110048	Vs	Dy. Commissioner of Income Tax, Circle-6(2), C.R. Building, New Delhi-110002
PAN-AAACC0052F		
Assessee		Revenue

Assessee by	Sh. A.K. Srivastava, CA
Revenue by	Sh. Vivek Kumar Upadhyay, Sr. DR

Date of Hearing	21.09.2023
Date of Pronouncement	05.10.2023

ORDER

PER SHAMIM YAHYA, AM,

This appeal by the assessee is directed against the order of the Ld. CIT(A)-2, New Delhi, dated 29.05.2019 pertaining to Assessment Year 2006-07.

2. The grounds of appeal raised by the assessee reads as under:-

“1. That on the facts and circumstances of the case and in law, the Learned Commissioner of Income Tax (Appeals) erred in disposing off the appeal without serving notice for fixation of the case. and the order is bad in law and void ab-inito.

2. That on the facts and circumstances of the case and in law, the Learned Commissioner of Income Tax (Appeals) erred in passing the order without giving sufficient opportunity to the appellant to represent the case.

3. That the Laearned Commissioner of Income Tax (Appeals) ought to have called for the assessment record and verify the facts as stated / narrated in the Statement of Facts.

4. That the order passed by the Learned Commissioner of Income Tax (Appeals) is bad in law and void-abinito.

5. Without prejudice to the above grounds, the Learned Commissioner of Income Tax (Appeals) erred in confirming the addition of Rs. 10,60,153/- on account of deemed dividend, being factually incorrect.

6. Without prejudice to the above grounds, the Learned Commissioner of Income Tax (Appeals) erred in confirming the disallowance of Rs.21,47,561/- being payment made to non - resident, on the ground that it is compulsory to make an application to the AO u/s 195(2) of the Act.”

3. At the outset, the Id. Counsel for the assessee submitted that he will not pressing grounds no.1 to 4 and these are dismissed as not pressed.

4. This is the second round of appeal before the Tribunal. In the earlier round, there were two issues for adjudication before the Tribunal. One issue was deemed dividend in respect of loans from Catlon Estate Pvt. Ltd. and Hintensile Steels Pvt. Ltd.. The Tribunal, in the first round, had held that in view of the decision in Bhaumik Colours Pvt. Ltd. (2009) 18 DTR (Mumbai)(SB)(Trib.) 451, provisions u/s 2(22)(e) cannot be in the hands of a non shareholder. Hence, noting that the additional evidence provided in this regard was not before the AO, the Tribunal remanded the matter. In the second round, the Assessing Officer has again made the addition on the ground that the assessee has not provided any material in the second round. The Ld. CIT(A) had confirmed the same.

5. Against this order, the assessee is in appeal before us. We have heard both the parties and perused the records.

6. The Ld. Counsel for the assessee has submitted that the shareholding of Catlon Estate Pvt. Ltd. was available in paper book at page 34 and shareholding of Hintensile Steels Pvt. Ltd. was available in paper book at page 35. As per these details, there is no shareholding of the assessee in Catlon Estate Pvt. Ltd. Hence, addition of deemed dividend in the hands of the assessee cannot be done. As regards Hintensile Steels Pvt. Ltd., it is noted that the assessee is shareholder in this company but this company has no reserve & surplus and it is a loss making company as per paper book pages-64. The balance sheet as on 31.03.2006 shows Profit & Loss Account, debited balance of Rs.10,26,450/-. Since, this company has got negative reserve and surplus, addition of deemed dividend cannot arise in such circumstances. Hence, this issue decided in favour of the assessee.

7. Another issue is related to addition of Rs.21,47,561/- u/s 40(a)(ia) of the Act in respect of payment to a non resident company i.e. M/s N.S.K. Textile, Dubai. The Tribunal had remitted the issue to the file of the Assessing Officer to decide the deductibility of tax at source on the payment of Rs.21,47,561/- to M/s N.S.K. Textiles, Dubai in the light of Indo UAE DTAA. However, in the proceedings subsequent to the remand, the Assessing Officer noted that the assessee filed DTAA between India and UAE but the Assessing Officer stood at his original stand that as per section 195(2), it was compulsory to make an application to the Assessing Officer in this respect. The Ld. CIT(A) has upheld the same.

8. Against the above order, the assessee is in appeal before us. The Ld. Counsel for the assessee submitted that the Tribunal has clearly directed

the Assessing Officer to examine the issue with reference to DTAA between India and UAE, the same has not been done. Hence, the order of the Assessing Officer is not as per direction of the Tribunal. Therefore, the ld. Counsel for the assessee prayed that this addition may be deleted due to this reason.

9. Upon hearing both the parties and perusing the records, we are in agreement with the proposition that the Assessing Officer has not followed the direction of the ITAT. The Tribunal has given direction to the Assessing Officer to examine the issue with reference to DTAA between India and UAE and the Assessing Officer has failed to do so. Hence, this addition is also liable to be deleted. We direct accordingly.

10. In the result, this appeal of the assessee stands allowed.

Order pronounced in the open court on 05th October, 2023.

Sd/-
[ANUBHAV SHARMA]
JUDICIAL MEMBER

Delhi; Dated: 05.10.2023.

Shekhar

Copy forwarded to:

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

Sd/-
[SHAMIM YAHYA]
ACCOUNTANT MEMBER

Asst. Registrar,
ITAT, New Delhi