

आयकर अपीलीयअधिकरण, विशाखापटणम पीठ, विशाखापटणमIN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM BENCH, VISAKHAPATNAM**श्री दुव्वूरु आर एल रेड्डी, न्यायिक सदस्य एवं श्री एस बालाकृष्णन, लेखा सदस्य के समक्ष**BEFORE SHRI DUVVURU RL REDDY, HON'BLE JUDICIAL MEMBER &
SHRI S BALAKRISHNAN, HON'BLE ACCOUNTANT MEMBER

आयकर अपील सं./ I.T.A. No.191/Viz/2015

(निर्धारण वर्ष / Assessment Year :2004-05)

T. Naga Prasad,
Visakhapatnam.
PAN: ABXPT 9042 R

(अपीलार्थी/ Appellant)

अपीलार्थी की ओर से/ Appellant by

प्रत्यार्थी की ओर से / Respondent by

सुनवाई की तारीख / Date of Hearing

घोषणा की तारीख/Date of

Pronouncement

Vs. Assistant Commissioner of
Income Tax,
Circle-4(1),
Visakhapatnam.

(प्रत्यर्थी/ Respondent)

Sri GVN Hari, AR

Sri Madhukar Aves, Sr. AR

12/09/2023

17/10/2023

ORDER**PER S. BALAKRISHNAN, Accountant Member :**

This appeal filed by the assessee against the order of the Learned Commissioner of Income Tax (Appeals)-2, Visakhapatnam [Ld. CIT(A)] in appeal ITA No.0021/13-

14/363/ACIT C-4(1) Vsp/2014-15, dated 27/02/2015 arising out of the order passed U/s. 143(3) r.w.s 254 of the Income Tax Act (the Act) for the AY 2004-05. Initially, this appeal was heard exparte on 25/04/2022 and the order was passed on 14/07/2022 because on the date of hearing the Ld. Authorized Representative for assessee could not appear due to health issues. Therefore this order was recalled vide M.A. No. 06/Viz/2023, dated 26/04/2024 and accordingly the appeal was heard on 12/09/2023.

2. Brief facts of the case are that the assessee is an individual and Chairman for Vikas Educational Institutions Ltd (VEIL). The assessee filed his return of income for the AY 2004-05 on 12/09/2005 admitting total income of Rs. 2,03,500/-. The return was processed summarily and subsequently the case was reopened by issuing notice u/s. 148 of the Act on 11/1/2008. The Assessing Officer (in short AO), based on the submissions made by the assessee, it was noticed that the assessee has obtained a loan amount of Rs. 1,01,83,381/- from the company, which was assessed as deemed dividend U/s. 2(22)(e) of the Act, the assessee being a 25% share holder in VEIL, and assessee being a beneficial holder of the shares. Aggrieved by the order of the Ld. AO, the assessee filed an appeal before the Ld. CIT(A).

The Ld. CIT(A) deleted the addition made by the AO. Subsequently, the Revenue went on appeal to ITAT against the order of the Ld. CIT(A) and the Hon'ble ITAT vide its order in ITA No.281 & 282/V/2010, dated 6/9/2011 set-aside the order of the Ld. CIT(A) and directed the Assessing Officer to determine the accumulated profits in accordance with law, in order to decide the quantum of deemed dividend. The AO therefore issued necessary notices to the assessee and in response the assessee's Authorized Representative appeared and furnished the required details. The AO then considering the submissions made by the Assessee's Representative the AO passed an order U/s. 143(3) r.w.s 254 of the Act assessing the loan amount of Rs. 1,01,83,381/- as deemed dividend U/s. 2(22)(e) of the Act. Aggrieved by the order of the Ld. AO, assessee preferred an appeal before the Ld. CIT (A)-2, Visakhapatnam. During the appellate proceedings, the submissions of the assessee's Representative were considered by the Ld.CIT (A) and accordingly the Ld. CIT(A) computed the accumulated profits at Rs. 99,01,419/- and directed the AO to examine the claim made by the assessee with respect to tax challans and other submissions as detailed in para 5.7 and 5.8 of the order of the Ld. CIT(A). The

Ld. AO as directed by the Ld. CIT(A) passed a consequential revision order U/s. 143(3) r.w.s 254 of the Act assessing the total income at Rs. 51,54,210/-. Aggrieved by the consequential order of the Ld. AO dated 30/06/2016, the assessee is in appeal before us.

3. The assessee has raised the following grounds of appeal:

- "1. The CIT(A) ought to have allowed the appeal of the assessee in toto, keeping in view of the facts of the case, the assessee is entitled to the relief of Rs. 1,01,83,381/-.*
- 2. Any other grounds those may be prayed at the time of hearing."*

However, we note that a consequential order has been passed by the Ld. AO on 30/06/2016 granting relief of Rs. 52,32,671/-.

4. Additionally, the assessee filed a petition for admission of **additional grounds** as below:

- "1. The Ld. AO was not justified in reopening the case U/s. 148 and after elapse of 1380 days (almost 4 years) from the end of the financial year and that too without having cogent reasons and base or valid/sound proof as the payments were made in the AY 2005-06. Hence, assessment proceedings based on the notice U/s. 148 are not maintainable.*

2. *The payments were cleared during the AY 2005-06, if at all, the issue of deemed dividend is to be considered it was in the AY 2005-06, and not in the AY 2004-05 hence reopening of the assessment for the AY 2004-05 is not justified."*

5. **Ground No.2** of the original grounds of appeal is general in nature and need not be adjudicated.

6. With respect to Ground No.1, the Ld. AR argued that the current year profits shall not be included while computing the accumulated profits. Further, the Ld. AR also submitted that the unsecured loan has been disbursed to various multiple beneficiaries as submitted in page 40 of the paper book. The Ld. AR further referred to the sanction letter from the bank filed in page 72 of the paper book wherein the purpose was stated to repay the existing unsecured loans. The Ld. AR therefore pleaded that since the amount has been directly issued to various parties, it cannot be considered as deemed dividend in the hands of the assessee.

7. On the contrary, the Ld. DR submitted that the profit or loss of the business accrues on day-to-day and gets accumulated at the end of the year. Hence, as per section 2(22)(e) of the Act, the profit or loss accrued till the date of disbursement of advance is

to be considered for the purpose of computation of accumulated profits and accordingly current year profits are also included in such computation. The Ld. DR pleaded that the order of the Ld. CIT(A) be upheld.

8. We have heard both the sides and perused the material available on record as well as the orders of the Ld. Revenue Authorities. It is an admitted fact that the bank has sanctioned a loan amounting to Rs. 586.20 lakhs to repay the existing unsecured loans. However, we find that there is no mention about the fact that whether the unsecured loan of the assessee company has to be repaid or the unsecured loans taken by the Director has to be repaid. Further, we also find that the date of payment as claimed by Ld. AR to various creditors is on 31/3/2004. In addition, we also find from the annual account submitted before us for the year ending 31/3/2004, the undisclosed income for the block period including the income admitted during the survey operations has been added to the reserves and surplus and admitted in the balance sheet. These facts have been verified by the Ld. CIT(A) and the Ld. CIT(A) has concluded that since the income accepted during the survey operation and declared in the balance of the company it takes the

character of accumulated profits and therefore this income earned by the assessee will be included for the purpose of computing the accumulated profits.

9. In these circumstances, it is relevant to extract section 2(22)(e) of the Act for the sake of brevity:

"2(22)(e) any payment by a company, not being a company in which the public are substantially interested, of any sum (whether as representing a part of the assets of the company or otherwise) ⁵ made after the 31st day of May, 1987 , by way of advance or loan to a shareholder, being a person who is the beneficial owner of shares (not being shares entitled to a fixed rate of dividend whether with or without a right to participate in profits) holding not less than ten per cent of the voting power, or to any concern, in which such shareholder is a member or a partner and in which he has a substantial interest (hereafter in this clause referred to as the said concern)] or any payment by any such company on behalf, or for the individual benefit, of any such shareholder, to the extent to which the company in either case possesses accumulated profits;"

Explanation 2.—The expression "accumulated profits" in sub-clauses (a), (b), (d) and (e), shall include all profits of the company up to the date of distribution or payment referred to in those sub-clauses,.....

10. From the plain reading of the section, it is noted that the accumulated profits to the extent available in the books of account shall be considered for the purpose of determining the deemed dividend U/s. 2(22)(e) of the Act. We find that the assessee has included the undisclosed income in its books of account resulting an increase in the accumulated profits of the company. In the instant case the reserves and surplus disclosed in the balance sheet as at 31/3/2004, in our opinion, has to be considered for the purpose of accumulated profits for computing

/ determining the deemed dividend U/s. 2(22)(e) of the Act. Further as per Explanation 2 to section 2(22), accumulated profits shall include all profits of the company up to the date of distribution or payment and there is no merit in the argument of Ld AR that current year profits should be excluded. The reliance placed by the Ld. AR in the case of Promod Kumar Dang vs. JCIT, ITAT Delhi 'A'-Bench [2006] 6 SOT 301 (Del.) has been rightly distinguished by the Ld. CIT(A) and cannot be applied to the instant case. The Ld. CIT(A) has rightly computed the accumulated profits for the purpose of section 2(22)(e) of the Act subject to verification of certain tax challans as detailed in para 5.7 and 5.8 of the CIT(A)'s order. We also note that the Ld. AO has rightly considered the directions of the Ld. CIT(A) and passed the consequential order revising the order passed U/s. 143(3) r.w.s 254 of the Act. In view of the above discussions, we find that there is no infirmity in the order of the Ld. CIT(A) as well as the Ld. AO while passing the consequential order. This ground no.1 raised by the assessee is therefore dismissed.

11. With respect to issue raised in additional grounds of appeal regarding reopening of the case U/s. 148 of the Act, we find from the record that the Ld. AO has issued notice U/s. 148 on

11/1/2008 specifying the reasons for such reopening u/s. 148 of the Act. For the sake of brevity, we extract below the first proviso to section 147 of the Act:

“Provided that where an assessment under sub-section (3) of section 143 or this section has been made for the relevant assessment year, no action shall be taken under this section after the expiry of four years from the end of the relevant assessment year, unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure ⁶⁰ on the part of the assessee to make a return under section 139 or in response to a notice issued under sub-section (1) of section 142 or section 148 or to disclose fully and truly all material facts ⁶¹ necessary for his assessment, for that assessment year.”

From the plain reading of the above proviso to section 147, the reopening of the case by the Ld. AO is well within the period as prescribed under the Act. Therefore, this ground raised by the assessee is dismissed.

12. With respect to Ground No.2 of the Additional Grounds of appeal, these payments have been made to various parties during the FY 2003-04 and accordingly accounted in the books of accounts. Since realization of these amounts falls in the subsequent assessment year it cannot be considered as payments made during the AY 2004-05. As there is no merit in the ground raised by the assessee, we are inclined to dismiss this ground raised by the assessee.

13. In the result, appeal of the assessee is dismissed.

Pronounced in the open Court on 17th October, 2023.

Sd/- (दुव्वूरु आर.एल रेड्डी) (DUVVURU RL REDDY) न्यायिकसदस्य/JUDICIAL MEMBER	Sd/- (एस बालाकृष्णन) (S.BALAKRISHNAN) लेखा सदस्य/ACCOUNTANT MEMBER
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Dated : 17th October, 2023.

OKK - SPS

आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee – T. Naga Prasad, D.No. 7-5-107, Pandurangapuram, Visakhapatnam.
2. राजस्व/The Revenue – The Assistant Commissioner of Income Tax, Circle-4(1), Visakhapatnam.
3. The Principal Commissioner of Income Tax
4. आयकर आयुक्त (अपील)/ The Commissioner of Income Tax (Appeals)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम/ DR, ITAT, Visakhapatnam
6. .गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam