

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

**BEFORE SH. SHAMIM YAHYA, ACCOUNTANT MEMBER**

ITA No.7367 /Del/2019  
(Assessment Year : 2007-08)

Smt. Kanta Gupta 2249, Sec-7, Karnal Haryana - 132 001  <b>PAN No. AEFPG 9971 D</b> <b>(APPELLANT)</b>	Vs.	DCIT Circle - 7(1), New Delhi  <b>(RESPONDENT)</b>
---	-----	--

**And**

ITA No.7368 /Del/2019  
(Assessment Year : 2007-08)

Shri Surender Gupta 2249, Sec-7, Karnal Haryana - 132 001  <b>PAN No. ADEPK 5887 E</b> <b>(APPELLANT)</b>	Vs.	DCIT Circle - 7(1), New Delhi  <b>(RESPONDENT)</b>
--	-----	--

Assessee by	Shri Salil Kapoor, Adv. and Ms. Utkarsa Gupta, Adv.
Revenue by	Shri Om Prakash, Sr. D.R.

Date of hearing:	17.10.2023
Date of Pronouncement:	19.10.2023

**PER SHAMIM YAHYA, AM :**

These appeals filed by the two assesseees against the respective orders of Learned Commissioner of Income Tax (Appeals)-34, New Delhi dated 20.06.2019 pertaining to Assessment Year 2007-08.

2. Since issues are common and connected and the appeals were heard together, these are being consolidated and disposed off together for the sake of convenience by this common order.

3. The grounds are also common. Various grounds have been raised but at the outset, Learned Counsel for the assessee has pressed Ground No.8. The same reads as under:

*“8. That in the facts and circumstances of the case and in law, the AO/CIT(A) has erred in placing reliance on the order of the CIT(A) passed in case of M/S. Madhav Arcade Pvt. Ltd. without appreciating that the Assessee herein neither had any opportunity nor any occasion to present its version before the said CIT(A) and therefore, such unilateral findings recorded by the said CIT(A) cannot be used against the Assessee and the notice issued u/s 148 on the said basis is illegal and bad in law.”*

4. Briefly stated facts of the case are that there was an assessment in the case of Madhav Arcade under section 143(3) of the Act for the A.Y. 2007-08 on 23.12.2009, wherein addition was made of Rs.60,00,000/- under section 2(22)(e) of the Act. Learned CIT(A) held that deemed dividend can not be taxed in the hands Madhav Arcade. But he directed that it can be taxed in the hands of shareholders i.e. Shri Surender Gupta and Smt. Kanta Gupta. Hence in these cases, assessment was reopened and the addition was made as per provision of section 2(22)(e) of the Act. At the outset, in this case, Learned Counsel for the assessee referred to Explanation - 3 of Section 153, which reads as under:

*“whereby an order referred to in clause (ii) of sub-section (3) – any income is excluded from the total income of one person and held to be the income of another person, then, an assessment of such income on such other person shall, for the purposes of section 150 and this section, be deemed to be one made in consequence of or to give effect to any finding or direction contained in the said order, if such other person was given an opportunity of being heard before the said order was passed.”*

5. Referring to the above Explanation Learned Counsel for the assessee submitted that in the order of Madhav Arcade, the findings of CIT(A) have been against the assessee without giving any opportunity of being heard to the assessee. He submitted that assessment made by the Assessing Officer in the assessment order in the hands of the assessee is invalid. He further referred to the order of Hon'ble Bombay High Court in the case of Dinar Tarcar vs. ACIT reported in [2022] 137 taxmann.com 171 (Bombay). In the said case law, the Hon'ble High Court has observed as under:

*"It is apparent that the Assessing Officer has invoked the provisions of section 150 for issuing the impugned notices. This invocation was in turn based on an order made by the Commissioner (Appeals). This order contains no direction as contemplated by section 150. Even assuming that this order contains a finding affecting the petitioners, it is apparent that such a finding came to be recorded without granting the petitioners any opportunity of being heard. Such finding, therefore, was not only in breach of principles of natural justice and fair play, but also contrary to Explanation 3 to section 153 and could not have formed the basis for invoking the provisions of section 150."*

6. Per contra, Learned DR relied upon the order of the authorities below. He insisted that the order of CIT(A) has been upheld by ITAT and Hon'ble High Court, hence, action in the case of assessee is based upon their approval.

7. Upon careful consideration, I find that the higher appellate forums have upheld the findings of the CIT(A) that addition under section 2(22)(e) of the Act can be made only in the hands of the registered shareholders. If the addition has to be done in the hands of other persons, as per the directions of CIT(A), the prescription of law has to be followed. In the present case, admittedly, the directions have been issued without giving any opportunity

to the assessee as contemplated by Explanation of Section 3 of Section 153 and as observed by Hon'ble Bombay High Court as above. Hence, I am in agreement with the averment of Learned Counsel for the assessee. Hence, assessee's appeals stand allowed.

8. In the result, both the appeals filed by the assesseees are allowed.

**Order pronounced in the open court on 19.10.2023**

**Sd/-**

**(SHAMIM YAHYA)  
ACCOUNTANT MEMBER**

Date:- 19.10.2023

*Priti Yadav, Sr. PS\**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT NEW DELHI