

आयकर अपीलीय अधिकरण “बी” न्यायपीठ चेन्नईमें।
IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH, CHENNAI

माननीय श्री वी.दुर्गा राव, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON'BLE SHRI V. DURGA RAO, JM AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ ITA No.875/Chny/2017
(निर्धारण वर्ष / Assessment Year: 2008-09)

DCIT Corporate Circle-2(1), Chennai-34.	बनम / Vs.	M/s.Gemini Traze RFID Private Limited No.1, Dr.Ranga Road, Alwarpet, Chennai-600 018.
स्थायी लेखा सं./जी आइ आर सं./PAN/GIR No. AAACG-5226-B		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से/ Appellant by	:	Shri D.Hema Bhupal (JCIT)-Ld. DR
प्रत्यर्थी की ओर से/ Respondent by	:	Shri V.Veeraraghavan (Advocate)- Ld.AR

सुनवाई की तारीख/ Date of Hearing	:	11-12-2023
घोषणा की तारीख / Date of Pronouncement	:	16-01-2024

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by Revenue for Assessment Year (AY) 2008-09 arises out of the order of learned Commissioner of Income Tax (Appeals)-9, Chennai [CIT(A)] dated 27-01-2017 in the matter of an assessment framed by Ld. Assessing Officer [AO] u/s. 143(3) of the Act on 30-12-2010. The grounds taken by the Revenue are as under:

1. The Order of the learned Commissioner of Income Tax (Appeals) is contrary to the Law and facts of the case.
- 2.1. The CIT(A) erred in deleting the addition made u/s 2(22)(e) of the Act on the ground that the assessee was not a registered or beneficial shareholder of the company.
- 2.2. The CIT(A) ought to have appreciated that in the instant case payment has been made by M/s. Point Red Telecom Pvt. Ltd. to the assessee company and these two companies

are interrelated in so far as M/s. Gemini Communications Ltd. is a common shareholder and hold more than 20% share.

2.3. The CIT(A) ought to have appreciated that the main reason for enacting Sec.2(22)(e) is 'when the funds were available with the company in the form of profits, the controlling group refused to distribute accumulated profits as dividends to the shareholders so as to avoid payment of tax on accumulated profits'.

2.4. The CIT(A) failed to appreciate the intention of the legislature is to curb the tendency on the part of the assessee by avoiding payment of dividend distribution tax and instead distributing such accumulated profits by advancing the same to the shareholders having beneficial interest in the company/ concern.

2.5. The CIT(A) failed to consider the fact that once the holding company received advance from its subsidiary out of accumulated profits, provisions of Sec.2(22)(e) are attracted and further transfer to its sister concern is only application of funds and which in no way restricts the power of the AO to invoke provisions of Sec.2(22)(e) of the Act in the hands of the holding company.

2.6. The CIT(A) erred in not considering that as per **Section 2(31) "Person" includes an individual, a HUF, a company, a firm, an AOP or BOI whether incorporated or not, a local authority and every artificial juridical person not falling within any of the above and Section 2(22)(e) contemplates any payment made by a company by way of advance or loan to a shareholder, being a person who is the beneficial owner of shares 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 substantial interest 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.**

2.7. Similar decision of the jurisdictional High Court in the case of M/s. Farida Holdings P. Ltd has not been accepted by the Department and SLP is pending in Civil Appeal No.771 of 2014 and that of the Hon'ble ITAT in the case of M/s. FairmacsShipstore P. Ltd., further appeal is pending before the Hon'ble High Court in TCASR 49895 of 2015.

3. For these and other grounds that may be adduced at the time of hearing, it is prayed that the Order of the learned Commissioner of Income Tax (Appeals) be set aside and that of the Assessing Officer be restored.

As is evident, the sole issue that arises for our consideration is addition made by Ld. AO u/s 2(22)(e) of the Act. Having heard rival submissions, the appeal is disposed-off as under.

2. It transpired that an entity M/s.Gemini Communications Limited (GCL) held 100% shareholding of the assessee as well as another entity by the name M/s.Point Red Telecom Pvt. Limited (PRTPL).It was observed by Ld. AO that the assessee received loan of Rs.201.74 Lacs from PRTPL and PRTPL had accumulated profits of Rs.85.78 Lacs at

year-end. On these facts, Ld. AO held that the provisions of Sec.2(22)(e) would apply and the advance so received to the extent of accumulated profits of PRTPL would be deemed dividend in the hands of the assessee. It was on the reasoning that there were common shareholders holding more than 20% of shares in both the entities. Accordingly, the amount of Rs.85.78 Lacs was held to be deemed dividend in the hands of the assessee company.

3. The Ld. CIT(A) noted that the assessee was not shareholder of PRTPL. The issue was covered by the decision of Hon'ble High Court of Madras in the case of **Printware Services (P) Ltd. (53 Taxmann.com 392)** wherein it was held that since the assessee was not beneficial or registered owner of shares of the payer entity, no dividend could have been received by the assessee company. Therefore, the provisions of Sec.2(22)(e) would not apply. Similar was the decision of Chennai Tribunal in **Fairmacs Shipstores Pvt. Ltd. (ITA No.761/Mds/2014 dated 11.02.2015)**. Aggrieved, the revenue is in further appeal before us.

4. It is undisputed position that the assessee and its sister concern do not hold any shareholding inter-se. It is third entity i.e., GCL which hold 100% shareholding of the assessee as well as PRTPL. The loan has been advanced by PRTPL to the assessee. The assessee is neither registered nor beneficial shareholder of PRTPL. We find that the provisions of Sec. 2(22)(e) of the Act covers within its sweep three categories of payments. The first category of payment include payment by way of loan or advance to a shareholder which is not the case here. The second category of payment include any payment made on behalf of

or for the individual benefit of any shareholder. The same is also not the case here. The last category include payment to any concern in which such shareholder is a member or a partner which is the case of Ld. AO. However, quite clearly, the assessee-recipient is not a shareholder in the payer company. Therefore, even if the said advance amount to deemed dividend under this category, nevertheless, the same could not be added in the hands of the assessee recipient since the assessee was not registered or beneficial shareholder of the payer company. It could only be assessed in the hands of such registered shareholder only and not in the hands of the assessee-company. This proposition is duly supported by the binding decision of Hon'ble High Court of Madras in the referred decision of **Printware Services (P) Ltd. (supra)**. The decision of Tribunal as referred in the impugned order is also on similar lines. Therefore, the adjudication of Ld. CIT(A) does not warrant any interference on our part.

5. The appeal stands dismissed.

Order pronounced on 16th January, 2024

Sd/-

(V. DURGA RAO)

न्यायिक सदस्य/JUDICIAL MEMBER

Sd/-

(MANOJ KUMAR AGGARWAL)

लेखासदस्य / ACCOUNTANT MEMBER

चेन्नईChennai; दिनांकDated :16-01-2024

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आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF