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

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
&
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER

ITA No.4318/Del/2019
(Assessment Year : 2012-13)

Deevik Garg E-1/75, Sec-07, Rohini, New Delhi – 110 085 **PAN No. ADRPG 2815 M**	Vs.	**ACIT** Circle – 38(1) New Delhi
(APPELLANT)		**(RESPONDENT)**

Assessee by	Shri Ashok Kumar Jain, C.A.
Revenue by	Shri Vivek Kumar Upadhyay, Sr. D.R.

Date of hearing:	10.01.2024
Date of Pronouncement:	19.01.2024

ORDER

PER PRADIP KUMAR KEDIA, AM :

The captioned appeal has been filed by the assessee against the first appellate order of the Ld. Commissioner of Income Tax (Appeals) – 13, New Delhi dated 19.03.2019 arising from the assessment order dated 25.03.2015 passed by the Assessing Officer (AO) under Section 143(3) of the Income Tax Act, 1961 (the Act) concerning Assessment Year 2012-13.

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

"1. On the facts and in the circumstances of the case, the order of Ld. Commissioner of Income Tax (Appeals) was bad in law, contrary to facts and provisions of law as such deserves to be quashed.

2. *That Ld. Commissioner of Income Tax (Appeals) is not justified in holding that provisions under section 2(22)(e) of the Income Tax Act, 1961 are attracted to the transaction between appellant and M/s Hanuman Agro Industries Pvt. Ltd. which is based on surmises and conjectures, contrary to facts borne on record and provisions of law. As such action of Ld CIT(A) needs to be undone and addition confirmed by him needs to be deleted.*

3. *That Ld. Commissioner of Income Tax (Appeals) is not justified in holding that the transactions of advancing of money by the company M/s Hanuman Agro Industries Pvt. Ltd. to appellant and earning interest on it is not amounted to business transactions and provisions of Sec 2(22)(e) is applicable to said transaction which is based on surmises and conjectures, contrary to facts borne on record and provisions of law. As such action of Ld. CIT(A) needs to be undone and addition confirmed by him needs to be deleted.*

4. *That Ld Commissioner of Income Tax (Appeals) is not justified in holding that revisions under section 2(22)(e) of the Income Tax Act, 1961 are attracted to the transaction between appellant and M/s Hanuman Agro Industries Pvt. Ltd. even if the same are in the nature of current account transaction which is based on surmises and conjectures, contrary to facts borne on record and provisions of law. As such action of Ld. CIT(A) needs to be undone and addition confirmed by him needs to be deleted.*

5. *That Ld Commissioner of Income Tax (Appeals) is not justified in treating the appellant as beneficial owner of 40.58% shares of M/s Hanuman Agro Industries Pvt. Ltd registered in the name of appellant in the capacity of nominee of beneficial owner Smt. Vandana Devi (mother of appellant) by ignoring the principle of consistency which is based on surmises and conjectures, contrary to facts borne on record and provisions of law. As such action of Ld. CIT(A) needs to be undone and appellant should not be treated as beneficial owner of 40.58% shares.*

6. *That Ld Commissioner of Income Tax (Appeals) is not justified in confirming addition of Rs.1,11,02,416/- as deemed dividend U/s 2(22)(e) of the Income Tax Act, 1961 made by Ld. AO which is based on surmises and conjectures, contrary to facts borne on record and provisions of law. As such addition of Rs.1,11,02,416/- made by Ld. AO liable to be deleted.*

7. *That Ld. Commissioner of Income Tax (Appeals) is not justified in stating that the appellant is required to inform the Registrar of Companies regarding the fact of holding the shares in the capacity of nominee of beneficial owner Smt. Vandana Devi which is based on surmises and conjectures, contrary to facts*

borne on record and provisions of law. As such action no adverse view should be taken on the basis of such remark of Ld CIT(A).

8. That appellant craves right to amend, add, delete or withdraw any of the ground of appeal either before or at the time of hearing of this appeal."

3. Briefly stated, the assessee filed return of income at Rs.16,72,170/- for the A.Y. 2012-13 in question. The return filed by the assessee was subjected to assessment under section 143(3) of the Act. In the course of assessment, the Assessing Officer *inter alia* observed that the assessee has received certain loans and advances from M/s. Hanuman Agro Industries Pvt. Ltd. (lender) where the assessee is a beneficial owner of shares in excess of 10% voting power. The AO thus invoked the provision of section 2(22)(e) of the Act and made an addition of Rs.1,11,02,416/- in the hands of assessee under section 2(22)(e) of the Act.

4. Aggrieved, the assessee preferred appeal before the CIT(A). The CIT(A) however did not find any error in the assessment order. Further aggrieved, the assessee preferred appeal before the Tribunal.

5. The learned Counsel for the assessee, in the course of hearing, at the outset, submitted that the lower authorities have misdirected themselves in law in applying the provision of section 2(22)(e) of the Act to reckon the money received by the assessee from lender to the deemed income of the assessee being shareholder of the lender company. The learned Counsel submitted that the provision of section 2(22)(e) of the Act are not applicable for multiple reasons; (i) the amount received from the lender company are offshoot of business/commercial transaction in the ordinary course of trade and such transactions are not covered within the ambit of section 2(22)(e) of the Act. (ii) the assessee has paid interest on such loans/advances and therefore, the transactions are characterized by commercial spirits and (iii) the case of the assessee was reopened for A.Y. 2011-12 on the same facts in issue. However,

while framing the reassessment order, the Assessing Officer found that the impugned transactions giving rise to loans and advances receipts by way of in the hands of assessee fall outside the ambit of section 2(22)(e) of the Act. The reassessment order was accordingly passed without making any adjustment on same very point for which the case was reopened. Hence, the principle of consistency should apply to the present proceedings as well and the AO is not entitled to take diametrically opposite view in two different assessment years.

6. The Learned DR for the Revenue on the other hand relied upon the assessment order and first appellate order.

7. We have heard the rival submissions and perused the material available on record and gone through the order of authorities below.

7.1 As pointed on behalf of the assessee, the case was reopened under section 147 r.w.s 148 of the Act for the A.Y. 2011-12 on identical point namely; breach of section 2(22)(e) of the Act involving identical set of facts. The assessee contends that despite the case having been reopened on the same point, the assessment framed thereafter in pursuance of such reopening was without any additions of this score. Impliedly the Assessing Officer was satisfied with the explanation offered by the assessee that the receipt of money by the assessee from Hanuman Agro Industries Pvt. Ltd. do not fall within the sweep of section 2(22)(e) of the Act. A different view is thus not warranted in the identical facts.

7.2 It is further observed that assessee has all along pointed out that interest has been paid on such outstanding attributable to lender Hanuman Agro Industries Pvt. Ltd. The factum of interest and deduction of TDS thereon is also reflected in the ledger account and the confirmation thereof by the corresponding party. Hence, the

advances made by the lender company to the assessee is not a loan/advance simplicitor but is beset with the character of *quid pro quo* owing the charge of interest for the benefit of lender company. In the circumstances, the Hon'ble Calcutta High Court in the case of *Pradip Kumar Malhotra (2011) 338 ITR 538 (Calcutta)* has observed that advances given by lender firm was not for the individual benefit of the share holder but for business purposes and therefore, such transaction could not fall within the sweep of deeming fiction created under section 2(22)(e) of the Act. This reason, on a standalone basis, is sufficient to exclude the applicability of section 2(22)(e) of the Act on the money received by the assessee. Similar view has been expressed in *PCIT vs. Mohan Bhagwatprasad Agrawal (2020) 115 taxmann.com 69 (Guj.)*. Same view has been followed by the Co-ordinate Bench of Tribunal in *Jesons Industries and others vs. ITO ITA No.4446/Del/2016 order dated 29.07.2022*.

7.3 In this backdrop, we see considerable force in the plea of the assessee for exclusion of loan and advances in question from the ambit of deeming fiction provided in section 2(22)(e) of the Act.

7.4 The order of the CIT(A) is thus set aside and the additions made by the AO under section 2(22)(e) of the Act is quashed .

8. In the result, appeal of the assessee is allowed.

Order was pronounced in the open court on 19.01.2024

Sd/-	Sd/-
(KUL BHARAT) **JUDICIAL MEMBER**	**(PRADIP KUMAR KEDIA)** **ACCOUNTANT MEMBER**

Date:- 19.01.2024

*Priti Yadav, Sr. PS**

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI