आयकर अपीलीय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ' B' Bench, Hyderabad

Before Shri Manjunatha, G. Accountant Member and
Shri K. Narasimha Chary, Judicial Member

आ.अपी.सं /**ITA No.610/Hyd/2023**
(निर्धारण वर्ष/Assessment Year: 2013-14)

Dy. C.I.T Circle 1(1) Hyderabad	Vs.	Shri Krishna Murthy Ella Hyderabad PAN:AACPE6389G
(Appellant)		(Respondent)
निर्धारिती द्वारा/Assessee by:	Shri P Murali Mohan Rao, CA	
राजस्व द्वारा/Revenue by::	Smt. Sheetal Sarin, DR	
सुनवाई की तारीख/Date of hearing:	16/07/2024	
घोषणा की तारीख/Pronouncement:	16/07/2024	

आदेश/ORDER

Per Manjunatha, G. A.M

This appeal filed by the Revenue is directed against the order dated 11/10/2023 of the learned CIT (A)-NFAC Delhi, relating to A.Y.2013-14.

2. The Revenue has raised the following grounds and additional grounds respectively:

> *"1. Whether the learned CIT (A) is correct in holding that housing loan given by the company which is not into money lending to its director, who is also a beneficial shareholder,*

does not constitute deemed dividend u/s 2(22)€ of the I.T. Act, 1961.

2. Whether the learned CIT (A) is correct in holding that granting of housing loan to a beneficial shareholder confers a benefit to the company as it is a business transaction which generates interest income to the company".

ADDITIONAL GROUNDS OF APPEAL

1. The Department submits that the learned first appellate authority erred in holding that the transaction between the assessee and Bharat Biotech Limited was a business transaction without taking into consideration the fact that interest was charged only for three years (out of ten years as per the agreement) and that the interest for the balance period was not charged thereby extending the benefit to the assessee.

2. The Department submits that the learned first appellate authority erred in holding that the transaction between the assessee and Bharat Biotech Limited was a business transaction without taking note of the fact that out of total Rs.2,45,35,254 advanced to the assessee adjustment of rent as per the terms of the agreement was made only in one year for Rs.87,16,667 and never thereafter, thereby extending monetary benefit to the assessee.

3. The Department submits that the learned first appellate authority erred in not taking note of the fact that no benefit accrued to the company as claimed by the assessee but on the contrary, the consideration, if at all there is one, is inadequate on account of adjustment of advance for only one year and charge of interest for only three years.

4. The Department submits that on facts and circumstances of the case the amounts paid to the assessee by Bharat Biotech Limited has all the preconditions to qualify for taxation under section 2(22)(e) of the Income Tax Act, 1961 viz;

   a. Payment of sum is by way of an advance
   b. The payment is made to a shareholder
   c. The shareholder holds not less than ten percent of the voting power in the company; and
   d. The payment resulted in individual benefit to such shareholder

   These facts are borne out of the records and accordingly the Department submits that the said amounts paid to the assessee ought to have been held as taxable as deemed dividends under section 2(22)(e) of the Act.

5. The Department submits that the learned first appellate authority ought to have appreciated that the advance rental agreement is a sham agreement and merely an attempt to circumvent the provisions of section 2(22)(e) for the simple reason that the subsequent treatment of the agreement shows that it was never meant to be implemented and as a result of such subsequent actions of the assessee as well as the company, monies are passed on for the benefit of the assessee shareholder.

3. The brief facts of the case are that the assessee is an individual and Managing Director of M/s Bharat Biotech International Ltd, Hyderabad has filed his return of income for the A.Y 2013-14 on 31.07.2013 admitting an income of Rs.1,41,40,529/-.The return filed by the assessee was processed u/s 143(1) of the I.T. Act, 1961. Subsequently, during the course of assessement proceedings in case of M/s. Bharat Biotech International Ltd, it was found that the assessee had taken a loan of Rs.2,45,35,154/- from the company during the financial year 2012-13 relevant to A.Y 2013-14. Thereafter, the assessment has been reopened u/s 147 of the I.T. Act, 1961 for the reasons recorded as per which, income chargeable to tax has been escaped assessment on account of under assessment of deemed dividend u/s 2(22)(e) of the I.T. Act, 1961. The case was selected for scrutiny and during the course of assessement proceedings, the Assessing Officer called upon the assessee to explain as to why the provisions of section 2(22)(e) of the I.T. Act, 1961 cannot be invoked for loans taken from the company amounting to Rs.2,45,35,154/-. In response, the assessee submitted that the appellant had taken housing loan from the company and the company has charged interest on said loan. Therefore, the housing loan taken by the company with interest cannot be treated as loans and advances in the nature of gracious payment which attract provisions of section 2(22)(e) of the I.T. Act, 1961. The Assessing Officer after considering the relevant submissions of the assessee and also taken note of the provisions of section

2(22)(e) of the I.T. Act, 1961 observed that even though money is advanced on an interest basis to the MD, the said loan cannot be exempted from the applicability of provisions of section 2(22)(e) of the Act as he is a substantial shareholder of the company and lending money is not substantial part of the business of the assessee company. Therefore, invoked provisions of section 2(22)(e) of the I.T. Act, 1961 and made addition of Rs.2,45,35,154/- u/s 2(22)(e) of the I.T. Act, 1961.

4. Being aggrieved by the assessment order, the assessee preferred an appeal before the learned CIT (A). Before the learned CIT (A), the assessee submitted that the provisions of section 2(22)(e) of the Act are not applicable in a case where loan is given with interest. Since the appellant has received housing loan from the company and paid interest, the question of invoking the provisions of section 2(22)(e) of the Act does not arise. The learned CIT (A) after considering the submissions of the assessee and also by following certain judicial precedents held that when the appellant received loan from the company and also paid interest on the said loan, the question of making additions towards loan u/s 2(22)(e) of the Act is unsustainable in law. Therefore, directed the Assessing Officer to delete the additions made towards loan u/s 2(22)(e) of the I.T. Act, 1961.

5. Aggrieved by such order of the learned CIT (A), the Revenue is in appeal before the Tribunal.

6. The learned DR, Smt. Sheetal Sarin submitted that the learned CIT (A) erred in holding that the transaction between the assessee and Bharat Biotech International Ltd was a business transaction without taking into account the consideration of the fact that interest was charged only for 3 years and that the interest for the balance period was not charged thereby, extending benefit to the assessee. The learned DR further submitted that the learned CIT (A) failed to notice that out of the total loan of Rs.2,45,35,154/- advanced to the assessee, adjustment of loan as per the terms of the agreement was made only for one year for Rs.87,16,667/- and thereafter no adjustment was made for rental, thereby expanding the mandatory benefit to the assessee. The learned DR further referring to the provisions of section 2(22)(e) of the I.T. Act, 1961 submitted that loan in the present case satisfies all the conditions prescribed for applicability of section 2(22)(e) of the I.T. Act, 1961 and the learned CIT (A) without appreciating the relevant facts deleted the addition made by the Assessing Officer. Therefore, she submitted that the order of the learned CIT (A) should be set aside and the addition made by the Assessing Officer should be sustained.

7. The learned Counsel for the assessee, on the other hand, supporting the orders of the learned CIT (A) submitted that there is no dispute with regard to the fact that the appellant has received housing loan from the company and also paid interest.

This fact is not disputed by the Revenue. Therefore, once the loan is not a gracious payment, then it cannot be brought within the ambit of section 2(22)(e) of the I.T. Act, 1961. The learned CIT (A) after considering the relevant facts has rightly deleted the addition made by the Assessing Officer and the order of the learned CIT (A) should be upheld.

8. We have heard both the parties, perused the material available on record and gone through the orders of the authorities below. There is no dispute with regard to the fact that the appellant had taken loan of Rs.2,45,35,154/- and the said loan has been treated as housing loan. It is also not in dispute that the appellant had paid interest on the said loan. The Assessing Officer invoked the provisions of section 2(22)(e) of the I.T. Act, 1961 only on the ground that even though the appellant has taken housing loan from the company on interest basis, but said loan cannot be excluded from the purview of the deemed dividend u/s 2(22)(e), because the loan given by the appellant company to the assessee is not in the ordinary course of business of the appellant company. We find that the deemed dividend does not include any advance or loan made to a shareholder by a company in the ordinary course of its business where the lending money is a substantial part of the business of the company. In the present case, although the main object of the company is not money lending, but its other objects incidental and ancillary to main objects provides for money lending business. Once the appellant

is into business of money lending and further in the course of its business provides housing loan to M.D on an interest basis, then the said loan cannot be treated as deemed dividend u/s 2(22)(e) of the I.T. Act, 1961. Since the Revenue did not dispute the fact that the impugned transaction is a housing loan and further the appellant paid interest on the said loan for the impugned A.Y, in our considered view, the Assessing Officer is erred in invoking the provisions of section 2(22)(e) of the I.T. Act, 1961 on the said transaction between the assessee and the company. In so far as the case law relied upon by the learned DR in the case of M.D. Jindal vs. CIT (1986) 28 Taxmann 509 (Calcutta) by the Hon'ble Kolkata High Court, we find that the facts of the case before the Hon'ble Kolkata High Court in the case of M.D. Jindal and the facts of the present case are entirely different and the case law relied upon by the learned DR is rejected.

9. In this view of the matter and considering the facts of the present case, we are of the considered view that the transaction between the appellant and his company for availing housing loan, the provisions of section 2(22)(e) of the Act is not applicable. The learned CIT (A) after considering the relevant facts has rightly held that the impugned transaction between the appellant company and the appellant does not hit by the provisions of section 2(22)(e) of the I.T. Act, 1961. Thus, we are inclined to uphold the findings of the learned CIT (A) and dismiss the appeal filed by the Revenue.

10. In the result, appeal filed by the Revenue is dismissed.

Order pronounced in the Open Court on 16th July, 2024.

Sd/-	Sd/-
(K. NARASIMHA CHARY) **JUDICIAL MEMBER**	**(MANJUNATHA, G.)** **ACCOUNTANT MEMBER**

Hyderabad, dated 16th July, 2024
Vinodan/sps

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3	Pr. CIT - Hyderabad
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order