

**IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, BANGALORE**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER AND
SHRI SOUNDARARAJAN K, JUDICIAL MEMBER**

ITA No.1474/Bang/2004
Assessment Years : 1995-96

Smt. Rinku Chakraborty, No.535, II D Cross, II Stage, I Block UVCE Layout, WOC Road, Bangalore.	Vs.	The Commissioner of Income Tax, Central Circle – 1(1), Bangalore.
APPELLANT		RESPONDENT

Assessee by	:	Shri Shambu Sharma, H, C.A
Revenue by	:	Shri Subramanian S, CIT (DR)

Date of hearing	:	28.05.2024
Date of Pronouncement	:	02.07.2024

ORDER

PER WASEEM AHMED, ACCOUNTANT MEMBER :

This is an appeal filed by the assessee against the order passed by the Id. CIT(A) - VI, Bangalore dated 30/01/2024 for the assessment year 1995-96.

2. The assessee before us has raised as many as 11 grounds of appeal. However, we take up the issue raised by the assessee in ground Nos. 6 to 9, wherein it was alleged that the Id. CIT(A) erred in confirming the order of the AO by sustaining the addition on account of deemed dividend u/s 2(22)(e) of the Act, whereas the transaction between the assessee and shareholder was in the nature of commercial transactions.

2.1 The necessary facts are that the assessee in the present case is an individual and declared her income under the head 'salary, house property' and 'other sources'. The assessee is a director and shareholder in the company viz., DTDC Ltd. The assessee along with other 5 Directors has received a loan and advance amounting to Rs. 39,60,000/-, which was shown by the company as an advance for the purchase of property. The share of the assessee in the account of such loans and advances stands at Rs. 6,60,000/- only. As such loan and advance was given to the directors dated 28/03/1995, whereas the agreement was entered between the directors and the company dated 21/11/2995, wherein, it was agreed that the company shall purchase ground floor and shall take on lease 1st and 2nd floor in the building to be constructed by the Directors. As per the assessee, such amount of loans and advances was given by the company for commercial purposes and, therefore, the same cannot be made subject to the addition on account of deemed dividend u/s 2(22)(e) of the Act. However, the AO disagreed with the contention of the assessee on the reasoning that there was no agreement between the assessee and the company at the time of giving such advance dated 20/3/1995. As such, the advance given by the company was simple advance without having any element of commercial transaction. Thus, the AO treated the sum of Rs. 6,60,000/- as deemed dividend u/s 2(22)(e) of the Act and added to the total income of the assessee.

3. Aggrieved, assessee preferred an appeal before the CIT(A) who upheld the order of the AO.

4. Being aggrieved by the order of the Id. CIT(A), the assessee is in appeal before us.

5. The Id. AR before us filed written submission running from pages 1 to 11 which is placed on record. It was the contention of the Id. AR that the loans were advanced for the purpose of building construction, part of which was supposed to be acquired by the company on purchase and part of the building was to be acquired on lease hold basis. As per the Id. AR, the transaction for acquiring the building has actually taken place between the assessee and the company on a later date which was not disputed by the Revenue. Therefore, considering the commercial element in the disputed transaction, the provision of deemed dividend specified under section 2(22)(e) of the Act cannot be attracted.

6. On the other hand, the Id. DR vehemently supported the order of the authorities below.

7. We have heard the rival contentions of both the parties and perused the materials available on record. In the present case, the assessee is a director in a company namely DTDC Ltd. The assessee along with other 5 directors has received money of ₹ 39,60,000 from the company dated 28th of March 1995. The company has shown such advance to the directors in its books as advance for the purchase of lands. As per the assessee, such advances were representing the commercial transaction between the assessee and the directors and therefore the same cannot be subject to the provisions of deemed dividend as provided under section 2(22)(e) of the Act. Regarding this, the contentions of the assessee are summarised as under:

- i. There was a property owned by the directors jointly having value of ₹ 60 lakhs approximately which was required to be constructed at a further cost of ₹ 55 lakhs aggregating to ₹ 125 lakhs.

- ii. After construction of the property, the ground floor was to be purchased by the company. Likewise, the 1st floor and 2nd floor was to be taken by the company on lease from its directors.
- iii. The advance given by the company was to be adjusted against the sale of ground floor and if any excess remains there, such excess was to be treated as rental deposits towards the 1st and 2nd floor which was to be taken by the company on lease. Such sale value of the ground floor was worked out at ₹ 8,87,500.00 dated 22 July 1996 and such rental deposits was worked out at ₹ 30,72,500.00 only on a later date.

7.1 The assessee in support of such commercial transactions submitted the receipts of the money given by the company to the directors, proposed agreement, minutes of the meetings of the Board of Directors. Subsequently the assessee has also entered into an agreement dated 21 November 1995.

7.2 However, the AO disagreed with the contention of the assessee on the reasoning that the advances were given by the company dated 28 March 1995 whereas the agreement was entered dated 21-11-1995. As such during the intervening period from 28-3-1995 and 20-11-1995, the amount in question was a simple advance without any business/commercial connection.

7.3 Furthermore, the transaction between the assessee along with the directors and the company was not at the arm length because it was not a normal business transaction. It is for the reason that the company has

advanced money 31.60% of the total cost of the project which is significant enough.

7.4 The AO also observed that the documents i.e. receipt of money, proposed agreement, actual agreement, minutes of the Board of Directors cannot be the factor to hold that the transaction in question was commercial in nature in the given fact and circumstances.

7.5 The controversy before us revolves whether the amount in question given by the company to the directors was representing the commercial transactions. Admittedly, the formal agreement was signed between the directors and the company on a later date i.e. much after giving the advanced to the directors. However, to our understanding, the act of advancing money by the company to the directors has been translated into action by the subsequent event that it was for some transaction and not merely to extend the benefit to the assessee. Therefore, we are of the view that no adverse inference can be drawn against the assessee merely on the reasoning that when the money was advanced there was no formal agreement between the directors and the company. Furthermore, it is also not in dispute that the company has not taken the 1st and 2nd floor on lease of the building which was constructed by the directors of the company. Thus, the excess amount received by the directors from the company roughly 30 lakhs of rupees which was shown as rental deposits again represents the commercial transaction between the assessee directors and the company.

7.6 It is also important to note that the directors including the assessee in the present case were acting in dual capacity as director and in personal capacity. As such there was no reason for the directors which prevented them to enter into the formal agreement at the time of giving the advances and therefore the money receipts, proposed agreement,

minutes of the Board of Directors cannot be ignored while deciding the issue whether there was a commercial element between the transaction discussed above. Thus, we hold that there was a commercial transaction between the directors and the company.

7.7 The Hon'ble Karnataka High Court in the case of *Smt. Jamuna Vernekar v. Dy. CIT* [IT Appeal No. 43 OF 2013, dated 10th February, 2021] held that the Tribunal was not justified in law in holding that the amount received in lieu of Security Deposit and Lease Rentals were loans or advances within the meaning of section 2(22)(e) of the Act. The Hon'ble High Court observed that:

" Loan or advance given to shareholders or to a concern would not normally qualify as dividend and only in case, where such loan or advance is given to a shareholder as a consequence of any further consideration which is beneficial to the company received from such a shareholder, in such a case, such advance or loan cannot be said to be deemed dividend within the meaning of the provision. The word 'loan' means anything lent specially money on interest whereas, deposit means a sum of money paid to secure an article at service etc"

7.8 Likewise, the Hon'ble Delhi High Court in *CIT v. Raj Kumar* [2009] 181 Taxman 155/318 ITR 462 observed that Trade advances which are in the nature of money transacted to give effect to a commercial transaction would not fall within the ambit of the provisions of section 2(22)(e) of the Act.

7.9 In view of the above, we hold that the transaction in dispute was a commercial transaction and therefore the same is outside the ambit of the provisions of deemed dividend as provided under section 2(22)(e) of the Act. Accordingly, we set aside the finding of the learned CIT-A and direct the AO to delete the addition made by him. Hence, the ground of appeal of the assessee is hereby allowed.

8. In the result, the appeal filed by the assessee is allowed.

Order pronounced in court on 2nd day of July, 2024

Sd/-

(SOUNDARARAJAN K)
Judicial Member

Sd/-

(WASEEM AHMED)
Accountant Member

Cochin

Dated, 2nd July, 2024

/ vms /

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore