

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, चण्डीगढ़  
IN THE INCOME TAX APPELLATE TRIBUNAL  
CHANDIGARH BENCH, 'B', CHANDIGARH

**BEFORE SHRI A.D. JAIN, VICE PRESIDENT &  
SHRI KRINWANT SAHAY, ACCOUNTANT MEMBER**

आयकर अपील सं./ ITA Nos. 153 to 155/CHD/2019  
निर्धारण वर्ष/ Assessment Years : 2009-10, 2010-11 & 2011-12

Smt. Priya Arora, 1136, Ist Floor, Sector 8-C, Chandigarh	Vs. बनाम	The ACIT, Central Circle-II, Chandigarh
स्थायी लेखा सं./PAN No: ACKPA6762B		
अपीलार्थी/ APPELLANT		प्रत्यर्थी/ RESPONDENT

( PHYSICAL HERING )

निर्धारिती की ओर से/Assessee by : Shri Tej Mohan Singh, Advocate  
राजस्व की ओर से/ Revenue by : Smt. Kusum Bansal, CIT, DR

सुनवाई की तारीख/Date of Hearing : 25.09.2024  
उद्घोषणा की तारीख/Date of Pronouncement : 09.10.2024

**आदेश/Order**

**Per Bench:**

Captioned appeals have been filed by the Assessee against the separate orders, each dated 30.11.2018 of the Id. Commissioner of Income Tax (Appeals)-3, Gurgaon [ herein referred to as ' CIT(A) '].

2. Since the issues involved in all the appeals filed by the Assessee for different assessment years are identical, therefore, the appeals

were heard together and are being disposed off by this common and consolidated order.

3. First, we shall take appeal for assessment year 2008-09 (**ITA No. 153/Chd/2019**), which will also serve as a lead case wherein, the grounds raised are as under:-

**ITA No. 153/Chd/2019( A.Y. 2009-10)**

1. *That the order of the Ld. Commissioner of Income Tax (Appeals) - 3 is not a speaking order, is erroneous, arbitrary, opposed to law and facts of the case.*
  2. *That the Ld. Commissioner of Income Tax (Appeals) - 3 has erred in adding an amount of Rs. 2,55,700/- on account of deemed dividend under section 2(22)(e) without correctly appreciating the facts of the case.*
  3. *That the appellant craves leave to add, to alter, to amend or vary from the aforesaid grounds of appeal at or before the time of hearing of the said appeal.*
4. Ground No.1 is general in nature.
5. Ground No. 2 of appeal is against the addition of Rs. 2,55,700/- on account of deemed dividend u/s 2(22)(e) of the Income Tax Act, 1961 (in short 'the Act').
6. The Assessing Officer in the assessment order has given his findings on this issue as under:-

*“The reply of the Counsel of the Assessee has been considered and is not .....in the personal bank account No.5971540000834 of the assessee maintained with HDFC. Rs. 1950000/- received from the company has been paid to Akansha s for purchase of flat. Therefore, the receipts are in the nature of Loan. Merely, naming the account as "Imprest account" will not change the nature of transaction. In view of the facts of the case they are liable to be treated as deemed dividend within the meaning of section 2(22)(e) of the I.T. Act 1961 Therefore, Rs 2,55,700/-, which is the maximum amount outstanding on 21.04.2008 and 29.08.2008 is treated as its deemed dividend within the meaning u/s 2(22)(e) of the I.T. Act 1961 and is added to its taxable income.”*

7. The ld. CIT(A) in his order has given his findings as under:-

*“The reply of the counsel of the assessee has been considered and is not bank account no. 5971540000834 of the assessee maintained with HDFC. Further, Rs. 1950000 received from the company has been paid to Akansha builders for purchase of flat Therefore, the receipts are in the nature of loan. Merely, naming the account as “Imprest account” will not change the nature of the transaction. In view of the facts of the case they are liable to be treated as deemed dividend within the meaning of section 2(22)(e) of the IT Act, 1961. Therefore Rs. 2,55,700/- which is the maximum amount outstanding on 21.04.2008 and 29.08.2008 is treated as its deemed dividend within the meaning u/s 2(22)(e) of the IT Act, 1961 and is added to its taxable income.”*

8. During the proceedings before us, the Id. Counsel for the Assessee argued that this amount may be treated as imprest account and it should not be treated as loan but the Id. Counsel could not rebut the findings by both the Assessing Officer and the Id. CIT(A) that the amount was credited in the personal bank account of the Assessee and it has been used for personal payment. The Counsel of the Assessee could not bring anything on record to rebut the findings given by the authorities below.

9. The Id. DR relied on the order of the CIT(A).

10. We have considered the findings given by both the Assessing Officer and the CIT(A). We have also considered the arguments and submissions made by the learned representatives of the parties. We find that both the Assessing Officer and the CIT(A) have given categorical findings that amount was credited in the personal account of the Assessee and it was used for personal usage. This amount was not spent for any other purpose but for the personal use of the Assessee, therefore, the Id. Counsel's submissions that it should be treated as imprest cannot be accepted. Accordingly, Assessee's appeal on this ground is dismissed.

11. Ground No.3 is general in nature.

12. In the result, Assessee's appeal is dismissed.

**ITA No. 154/Chd/2019 (A.Y. 2010-11)**

1. *That the order of the Ld. Commissioner of Income Tax (Appeals) - 3 is not a speaking order, is erroneous, arbitrary, opposed to law and facts of the case.*
2. *That the Ld. Commissioner of Income Tax (Appeals) - 3 has erred in adding an amount of Rs. 1,30,000/- on account of deemed dividend under section 2(22)(e) without correctly appreciating the facts of the case.*
3. *That the Ld. Commissioner of Income Tax (Appeals) - 3 has erred in adding an amount of Rs. 13,994/- on account of disallowing deduction claimed under section 80C.*
4. *That the appellant craves leave to add, to alter, to amend or vary from the aforesaid grounds of appeal at or before the time of hearing of the said appeal.*

13. Ground No.1 is general in nature.

14. Ground No. 2 of appeal is against the addition of Rs. 1,30,000/- on account of deemed dividend u/s 2(22)(e) of the Income Tax Act, 1961 (in short 'the Act').

15. The Assessing Officer in the assessment order has given his findings on this issue as under:-

*"The reply of the counsel of the assessee has been considered and is not acceptable. It is noticed that Rs 1,30,000/- has been credited in the personal bank account No.01071000191884*

*of the assessee maintained with HDFC and have been used for personal payment on 07.10.2009. Therefore, the receipts are in the nature of Loan. Merely, naming the account as "Imprest account" will not change the nature of the transaction. In view of the facts of the case they are liable to be treated as deemed dividend within the meaning of section 2(22)(e) of the I.T. Act 1961. Therefore, Rs 1,30,000/-, which is the maximum amount outstanding on 21.08.2009 and 05.09.2009 is treated as its deemed dividend within the meaning u/s 2(22)(e) of the I.T. Act 1961 and is added to its taxable income."*

16. The ld. CIT(A) in his order has given his findings as under: -

*"The reply of the counsel of the assessee has been considered and is not acceptable. It is noticed that Rs. 1,30,000/- has been credited in the personal bank account no. 01071000191884 of the assessee maintained with HDFC and have been used for personal payment on 07.10.2009. Therefore, the receipts are in the nature of loan. Merely, naming the account as "Imprest account" will not change the nature of the transaction. In view of the facts of the case they are liable to be treated as deemed dividend within the meaning of section 2(22)(e) of the IT Act, 1961. Therefore Rs. 1,30,000/- which is the maximum amount outstanding on 21.08.2009 and 05.09.2009 is treated as its deemed dividend within the meaning u/s 2(22)(e) of the IT Act, 1961 and is added to its taxable income."*

17. During the proceedings before us, the ld. Counsel for the Assessee argued that this amount may be treated as imprest account and it should not be treated as loan but the ld. Counsel could not

rebut the findings by both the Assessing Officer and the Id. CIT(A) that the amount was credited in the personal bank account of the Assessee and it has been used for personal payment. The Counsel of the Assessee could not bring anything on record to rebut the findings given by the authorities below.

18 The Id. DR relied on the order of the CIT(A).

19. We have considered the findings given by both the Assessing Officer and the CIT(A). We have also considered the arguments and submissions made by the learned representatives of the parties. We find that both the Assessing Officer and the CIT(A) have given categorical findings that amount was credited in the personal account of the Assessee and it was used for personal usage. This amount was not spent for any other purpose but for the personal use of the Assessee, therefore, the Id. Counsel's submissions that it should be treated as imprest cannot be accepted. Accordingly, Assessee's appeal on this Ground is dismissed.

20. Appeal on Ground No. 3 is against the addition of Rs. 13,994/- by the Id. CIT(A) on account of disallowance of deduction claimed u/s 80C.

21. The Assessing Officer in the assessment order has given his findings on this issue as under:-

*“The assessee has claimed deduction of Rs. 13,994/- under the Chapter VI A the I. T. Act, 1961. However, the assessee could not submit evidence of Rs. 13,994/- in support of his claim of deduction u/s 80C. Since no evidence been submitted by the assessee in support of claim of deduction of 13,994/- under Chapter VI-A the same is disallowed and added to the income of the assessee.”*

22. The CIT(A) has discussed this issue in his order as under:-

*“8.2 ..... The appellant had claimed deduction under Chapter VI A of the Act amounting Rs. 13,994/- in the Return filed u/s 153A of the Act. The AO disallowed this deduction on the ground that the appellant had not filed its return of income u/s 139(1)/139(4) and hence was not entitled to claim the deduction under chapter VI A of the Act. It was further stated that issue of provision of Section 153A not being for the benefit of the assessee.*

*The AO further relied on the case of CIT vs Sun Eng. Works (P) Ltd. 198 ITR 297C.*

*In IT(SS)A No.107 & 108/Ind/2015 Hon'ble ITAT Indore Bench, Indore in the case of Saurabh Singla vs DCIT Central, it has been held that "While filing the Return of Income u/s 153A/153C of the Act, some of the assessee have claimed deduction u/s 80C and 80D of the Act. No such claim was made while filing the Return of income u/s 139(1)/139(4) of the Act.*

*The provisions of section 153A/153C are not made for the benefit of the assessee. Return filed in response to notice u/s 153A/153C is not substitute of*

*revised return for the assessee to claim such benefit. Hon'ble Apex Court in case of Goetze (India) Ltd. vs CIT (284ITR 323) ruled that a fresh claim before the assessing officer can be made only by filing of Revised Return and not otherwise. Therefore, whatever claim the assessee has not made while filing the return u/s 139(1)/139(4) of the Act, he cannot make fresh claim by filing the return u/s 153A/153C of the Act and reduce the taxable income originally declared.*

*Such view has been upheld by Hon'ble Rajasthan High Court in the case of Jai Steels (India) Vs. ACIT" Ever on merits, the appellant has just filed copy of the bank account showing payment to Reliance General Insurance Co. However, no details of insurance including receipt has been filed, so as to prove the eligibility of appellant to claim deduction u/s 80 of the Act.*

*In view of the above discussion, the disallowance of deduction by the AO is upheld."*

23. During the proceedings before us, the Counsel of the Assessee has filed copies of receipts of life insurance etc. on which deductions u/s 80C has been claimed. The Counsel of the Assessee disputed the findings given by the Assessing Officer and confirmed by the CIT(A) in the nature of return of income filed u/s 153A/B/C of the Act as the return of income filed in response to, is the same u/s 147 of the Act. The ld. counsel has brought on record different case laws which clearly show that the Assessee can make fresh claim in its return of income filed in response to notices u/s 153.

24. The Department relied on the orders of the Hon'ble Supreme Court in the case of 'CIT vs. Sun Engineering Works' ,198 ITR 297 (SC.) The Id. Counsel argued that this order of the Hon'ble Supreme Court in the case of Sun Engineering Works (supra) is applicable for section 147 / 148 of the Act. It is not to be applied on the return filed in response to section 153A/B/C of the Act.

25. On the contrary, he has relied on different case laws some of which hare as under:-

*115 taxmann.com 165 (Bombay) / [2020] 270 Taxman 201 (Bombay)/ [2020] 422 ITR 71 (Bombay)[05-02-2020]*

*INCOME TAX : Where assessee filed original return under section 139 and while assessment was pending, assessee again in response to notice under section 153A filed another return making a new claim for treating gain on pre-payment of deferred VAT/sales tax on Net Present Value (NPV) basis as capital receipt, since assessment got abated, it was open for assessee to lodge a new claim in a proceeding under section 153A(1) which was not claimed in his regular return of income, thus, impugned order of AO rejecting such claim of assessee was unjustified*

*CIT v Continental Warehousing Corpn. (Nhava Sheva) Ltd., [2015] 58 taxmann.com 78/232 Taxman 270/374 ITR 645 (Bom.)*

*CIT v Continental Warehousing Corpn. (Nhava Sheva) Ltd., [2015] 58 taxmann.com 78/232 Taxman 270/374 ITR 645 (Bom.) (para 6.5) and Dy. CIT v Eversmile Construction Co.(P.) Ltd [2012] 65 DTR 39 (Mum.-Trib) (Para 6.5)*

26 The ld. DR relied on the order of the CIT(A) on this issue.

27 We have considered the findings given by the Assessing Officer and the ld. CIT(A) as well as the submissions filed by the Department on this issue. We have also considered the submission the Counsel of the Assessee as well as the case laws brought on record by the ld. DR.

28. On the basis of material available on record as well as on the basis of decisions pronounced by different judicial authorities on this issue, we are of this considered view that the issue decided by the Hon'ble Supreme Court in the case of 'CIT vs. Sun Engineering Works', (supra) is not applicable on claim made in returns filed in response to notice u/s 153 A/B/C. Accordingly, the findings given by the CIT(A) on this issue cannot be sustained and, thus, the appeal filed by the Assessee on this issue is allowed.

29. Appeal on Ground No.4 is general in nature.

30. In the result, the appeal of the Assessee is partly allowed.

**ITA No. 155/Chd/2019 (2011-12)**

1. *That the order of the Ld. Commissioner of Income Tax (Appeals) - 3 is not a speaking order, is erroneous, arbitrary, opposed to law and facts of the case.*
2. *That the Ld. Commissioner of Income Tax (Appeals) - 3 has erred in adding an amount of Rs. 15,550/- on*

*account of disallowing deduction claimed under section 80C.*

3. *That the appellant craves leave to add, to alter, to amend or vary from the aforesaid grounds of appeal at or before the time of hearing of the said appeal.*

31. Ground No.1 is general in nature.

32. Appeal on Ground No. 2 is against the addition of Rs. 15,550/- by the ld. CIT(A) on account of disallowance of deduction claimed u/s 80C.

33. Both the ld. representatives of the parties have submitted that the issued involved is exactly similar to that has been raised by the Assessee vide Ground No. 3 in the appeal for assessment year 2010-11 vide in ITA No.154/Chd/2019 and our submissions too are identical.

34. We find that the issue raised with regard to the disallowance of deduction u/s 80C of the Act is similar to that we have decided vide Ground No.3 in ITA No. 154/Chd/2019 wherein, after considering the submissions of the representatives and material available on record, the ground raised was decided in favour of the Assessee. On similar lines, this issue is decided in favour of the Assessee.

35. Appeal on Ground No.3 is general in nature.

36. Accordingly, the appeal is allowed.

37. In the result, the appeals of the Assessee are disposed off as

under:-

1. ITA No. 153/Chd/2019 -Dismissed.
2. ITA No. 154/Chd/2019 - Partly allowed.
3. ITA No. 155/Chd/2019 - Allowed.

Order pronounced on 09.10.2024.

**Sd/-**  
**( A. D. JAIN )**  
**Vice President**

**Sd/-**  
**( KRINWANT SAHAY )**  
**Accountant Member**

“आर.के.”

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT,  
CHANDIGARH
5. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,  
सहायक पंजीकार/ Assistant Registrar