

**IN THE INCOME TAX APPELLATE TRIBUNAL  
COCHIN BENCH, COCHIN**

Before Shri Satbeer Singh Godara, Judicial Member and  
Shri Amarjit Singh, Judicial Member

**ITA No. 244/Coch/2024**  
(Assessment Year: 2006-07)

ACIT, Circle 1(1) Aayakar Bhavan Mananchra Kozhikode 673001 [PAN: AACFN9210H]	vs.	N.K. Mohammed Ali and Bros 6/1183 Kunhipari Building Cherootty Road Calicut 673032
(Appellant)		(Respondent)

Appellant by:	Shri G. Surendranath Rao, CA
Respondent by:	Shri Sanjit Kumar Das, CIT-DR

Date of Hearing:	14.08.2024
Date of Pronouncement:	25.09.2024

**ORDER**

Per Bench

This assessee's appeal for A.Y. 2006-07 arises against the National Faceless Appeal Centre, Delhi [CIT(A)]'s DIN & Order No. ITBA/ NFAC/S/250/2023-24/1060624782(1) dated 07.02.2024 in proceedings u/s. 250 of the Income Tax Act, 1961 (the Act).

Heard both parties. Case file perused.

2. In this instant appeal the Revenue pleads the following substantive grounds of appeal: -

*"1. The Commissioner of Income Tax (Appeals) erred in holding that the addition of deemed dividend cannot be made in the hands of the assessee.*

2. The CIT (A) in the order dated 07.02.2024 erred in allowing the assessee's appeal holding that the consistent view which was taken by the Assessing Officer while finalizing the assessment for the A.Y.2007-08 is that the shares of the companies were held by the partners in their individual capacities while ignoring that the relied upon assessment order passed u/s 143(3) r.w.s 263 of the Act on 18.03.2013 for A.Y. 2007-08 was concluded by stating that it is subject to the decision of the appeal filed by revenue against the ITAT order in ITA No.653/Coch/2010 dated 10.08.2012 pending before the High Court.

3. The Commissioner of Income Tax (Appeals) has failed to note that this case has not reached the finality as mentioned in the CIT(A) order. Therefore, the decision of Hon'ble Supreme Court in the case of Excel Industries Ltd [358 ITR 295] that if certain facts were allowed to be attain finality, then contradictory opinion on those very fact in other years ought not to be taken, has no relevance in this case.

4. The Commissioner of Income Tax (Appeal) has erred in ignoring the fact that the order against which the appeal order was passed i.e, the order u/s 143(3) r.w.s 254 dated 31.03.2014, for A.Y.2006-07 was to give effect to the direction of the Hon'ble ITAT, Cochin Bench in ITA no. 653/Coch/2010 dated 10.08.2012 and that Appeal has been filed by Revenue in the Hon'ble High Court of Kerala (ITA 99/2013) against the order of Hon'ble ITAT in ITA No.653/Coch/2010 dated 10.08.2012 which is pending.

5. The Commissioner of Income Tax (Appeals) erred in not appreciating that a firm(name) is merely an expression, only a compendious mode of designating the persons who have agreed to carry on business of partnership. The concept of principle of partnership being one of agency, when a firm is a share holder in a company, legally, the individuals or persons constituting the firm are the real share holders.

6. For these and other points that may be urged at the time of hearing, it is prayed that the order of the learned Commissioner of Income Tax (Appeals) may be cancelled and that of the Assessing Officer restored.”

3. Both the parties invited our attention to the CIT(A)/NFAC's detailed discussion deleting section 2(22)(e) deemed dividend addition reading as under: -

“5. Decision: I have carefully considered the facts of the case, assessment order, grounds of appeal and written submission, details/documents furnished and case laws cited by the appellant during the appellate proceedings.

5.1 In the instant case original assessment u/s. 143(3) of the Act was completed on 30.12.2008. In the assessment proceeding, AO observed that appellant firm has received advance/loan from the companies viz. M/s Khemka Roller Flour Milis (P) Ltd., M/s. Parisons Roller Flour Mills Pvt. Ltd. and M/s. Parisons Agro Tech Pvt. Ltd. AO was of the view that the conditions laid down in section 2(22)(e) are fulfilled and hence he made addition of Rs.1,98,20,016/- u/s 2(22)(e) of the Act on account of deemed dividend. Aggrieved by the order, appellant filed appeal before CIT(A). The CIT(A)-1, Kochi vide its order dated 30.09.2010 in Appeal No. ITA No./C-171/08-09 not only confirmed the addition but also enhanced the same to the extent of Rs.6,80,66,720/-on the basis of remand report submitted by the AO.

*Aggrieved with the order of CIT(A), appellant preferred further appeal before ITAT. Cochin. The Hon'ble ITAT, Cochin vide its order dated 10.08.2012 in Appeal No. ITA No.653/Coch/2010 set aside the order of CIT(A) on the issue of deemed dividend and restored the matter to the file of AO with a direction to verify whether the shares in the above companies are held by the partners in their individual capacities or on behalf of the firm. If the shares are held in the individual capacities of the partners, the assessment of deemed dividend is liable to be deleted. AO completed set aside assessment u/s 143(3) rws 254 of the Act on 31.03.2014. In assessment order, AO observed that the advances were made through book entries for transfer of funds to sister concerns and the apparent purpose of the same was to make available the funds for the benefits of the partners of the firm who were also directors in the group companies. AO further stated that the appellant firm submitted only ledger extracts of the firm in the company's book. No other evidence was produced in support of its claim that the deemed dividend cannot be held in the hands of the firm. AO also pointed out that a firm is only a collective name of individual constituting the firm and all transaction routed to the firm are liable to be carried by the designated partners acting on behalf of firm. AO referred to section 4 and 189 of the Partnership Act which state that the business is to be carried on by all or any of them acting for all and a partner is the agent of the firm for the purpose of the business of the firm. Based on the above and in absence of any supporting evidence, AO declined to deviate from the original assessment order passed u/s 143(3) on 30.12.2008, upheld by the CIT(A) vide order dated 30.09.2010 bringing to tax the amount of Rs. 6,80,66,720/- as deemed dividend u/s 2(22)(e) in the hands of appellant firm for A.Y. 2006-07.*

*5.2 During the appellate proceeding, appellant has taken plea that the tribunal's direction was specific. As per direction of tribunal, AO should have verified the fact whether the shares of companies are held by the partners in their individual capacities or on behalf of the appellant firm. However AO travelled beyond the order of the tribunal and referred to irrelevant points like firm being a collective name for individual partners, a partner is only an agent of the firm and advance by book entries etc. AO has not considered the copies of Annual returns filed by concerned companies before the ROC, the balance sheets of those companies and other documents as proof of shareholding. Appellant has also taken plea that while completing the assessment u/s 143(3) r.w.s 263 on 18.03.2013 for A.Y. 2007-08, on same set of facts, AO followed the direction given by tribunal and did not make any addition on the issue of deemed dividend in the case of appellant firm.*

*5.3 I have carefully perused the Hon'ble ITAT, Cochin's order dated 10.08.2012 wherein AO was directed to verify whether the shares in the companies are held by the partners in their individual capacities or on behalf of the firm. If the shares are held in individual capacities of the partners, the assessment of deemed dividend is liable to be deleted in view of the decision of Mumbai special bench of Tribunal in the case of Asst. CIT Vs. Bhaumik Colour (P) Ltd reported in 313 ITR (AT) 146. Relevant portion of Tribunal's order is reproduced below: -*

*3. Before us, the Ld Counsel for the assessee challenged the decision of Ld CIT(A) on different grounds. However, we are persuaded by the decision of the Mumbai Special bench of the Tribunal in the case of Asst CIT Vs. Bhaumik Colour (P) Ltd reported in 313 JTR (AT) 146, wherein it is held that the assessment of deemed dividend cannot be made in the hands*

of the firm, if the said firm is not the share holder of the companies from which the amount was received.

4. Accordingly, a specific query was raised to the Ld Counsel as to whether the assessee firm holds any shares through any one of its partners. The Ld Counsel categorically stated that the shares in the above said companies are held by the partners in their individual capacities only. However, we notice that this aspect has not been examined by the tax authorities. In our view, the said fact requires verification at the end of the AO. Accordingly, we set aside the order of Ld CIT(A) on this issue and restore the same to the file of the assessing officer with the direction to verify whether the shares in the above said companies are held by the partners in their individual capacities or on behalf of the firm. If the shares are held in the individual capacities of the partners, the assessment of deemed dividend is liable to be deleted in view of the decision of the special bench referred supra. We order accordingly.

5.5 On perusal above, it is evident that case was remanded back to the AO by the Tribunal with a specific direction to verify a particular issue. The power of AO is confined to only those directions and he can not go beyond that. I have perused the copies of Annual Return of the concerned companies filed before the ROC. On perusal of 'Item No. V: Details of Shares/Debentures Held', it is ascertained that the name of the appellant firm does not appear in the details of shares holders. Partners of the appellant firm are holding the shares of companies in their individual capacity. Further, considering the appellant contention regarding assessment of deemed dividend on same set of facts In A.Y.2007-08, I have also perused the assessment order for A.Y. 2007-08 passed u/s 143(3) rw.s. 263 of the Act on 18.03.2013 wherein AO stated that the shares in companies were held by the partners of the appellant firm in their individual capacities. AO also observed that the shares do not appear in the balance sheet of the appellant firm.

5.6 The Hon'ble Apex Court in the case of Excel Industries Ltd [358 ITR 295] has pronounced that if certain facts were allowed to be attain finality, then contradictory opinion on those very fact in other years ought not to be taken. The discussion made by the Hon'ble Supreme Court in this aspect deserves to be taken note of which reads as under:

"28. Secondly as noted by the Tribunal a consistent view has been taken in favour of the assessee on the questions raised, starting with the assessment year 1992-93 that the benefits under the advance licenses or under the duty entitlement pass book do not represent the real income of the assessee. Consequently, there is no reason for us to take a different view unless there are very convincing reasons none of which have been pointed out by the learned counsel for the Revenue."

5.7 In view of the above decision of Hon'ble Supreme Court and following the consistent view which was taken by the Assessing Officer while finalizing the assessment for the A.Y. 2007-08 that the shares of the companies were held by the partners in their individual capacities, I find that there is no justifiable reason for the Assessing Officer to deviate from view taken in A.Y. 2007-08. The Assessing Officer has not pointed out what are the changes in the facts and circumstances from A.Y.2007-08. Moreover, details/documents furnished by the appellant revealed that shares of the companies were held by the partners in their individual capacity. Accordingly, I direct the Assessing Officer to delete the addition of

*Rs.6,80,66,720/- made on account of deemed dividend u/s 2(22)(e) of the I.T. Act. Grounds of appeal are allowed.*

6. *In the result, appeal is allowed.”*

4. Learned CIT-DR vehemently argued that the CIT(A) herein has erred in law and on facts in deleting the impugned deemed dividend addition whereby reversing the finding(s) of the Assessing Officer. We sought to know the clinching fact as to whether this assessee-firm itself as a stakeholder in the above stated company or not. There is no clarity to this clinching fact either in the assessment order or in the case file. We therefore reiterate that the tribunal’s first round remand directions dated 10.08.2012 which had restored the matter back to the Assessing Officer to verify all the relevant facts qua the foregoing issue going by ACIT v. Bhaumik Colour (P) Ltd. 313 ITR (AT) 146. Meaning thereby that the assessee could not be held as a registered and beneficiary shareholder in the company and, therefore, we have no hesitation in confirming the CIT(A)’s well reasoned finding deleting section 2(22)(e) addition. Rejected accordingly.

5. This Revenue’s appeal is dismissed.

Order pronounced in the open court on 25<sup>th</sup> September, 2024.

Sd/-  
(Amarjit Singh)  
Accountant Member

Sd/-  
(Satbeer Singh Godara)  
Judicial Member

Cochin, Dated: 25<sup>th</sup> September, 2024.

n.p.

Copy to:

1. The Appellant
2. The Respondent
3. The Pr. CIT concerned
4. The Sr. DR, ITAT, Cochin
5. Guard File