

आयकर अपीलीय अधिकरण, कोलकाता पीठ, कोलकाता

IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH KOLKATA

Before Shri Rajesh Kumar, Accountant Member and Shri Sonjoy Sarma, Judicial Member

I.T.A. No.1824/Kol/2024

Assessment Year: 2009-10

Phoenix Hitech Pvt. Ltd.....Appellant
20, B. T. Road,
Kolkata-700002.
[PAN: AADCP7251J]

vs.

DCIT, Central Circle-1(3), Kolkata.....Respondent

Appearances by:

Shri Anil Kochar, Advocate, appeared on behalf of the appellant.

Shri Prakash Nath Barnwal, CIT- DR, appeared on behalf of the Respondent.

Date of concluding the hearing : October 29, 2024

Date of pronouncing the order : November 22, 2024

ORDER

Per Sonjoy Sarma, Judicial Member:

The present appeal is filed by the assessee against the order dated 16.07.2024 of the National Faceless Appeal Centre [hereinafter referred to as 'CIT(A)'] passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act').

2. The assessee filed its Income Tax Return on 24.09.2009 declaring a total income of Rs.83,95,690/-. The return was processed u/s 143(1) of the Act. Subsequently, the case was selected for scrutiny and notices were issued u/s 143(2) and 142(1) of the Act and assessment order u/s 143(3) was completed on 29.12.2011 with a total assessed income of Rs.93,95,690/-. Later on, the Assessing Officer noticed that the assessee had received a loan of Rs.2,11,39,885/- from M/s H. S. Infrastructure & Services Pvt. Ltd. during the relevant financial year. Both the assessee and M/s H. S. Infrastructure & Services Pvt. Ltd. has common shareholders namely Shri Haranjit Singh and Mr. Subash Bera holding more than 10% of the share capital in both companies. The Assessing

Officer, therefore, noted that as per section 2(22)(e) of the Act, the loans provided by a company to another entity with common significant shareholders are treated as deemed dividend. However, the Assessing Officer failed to address this issue in the original assessment order. Accordingly, the Assessing Officer has sent proposal for revision of the assessment u/s 263 of the Act and the Id. CIT exercising his revision jurisdiction deemed the assessment order as prejudicial to the interest of the revenue and directed the Assessing Officer to revise the assessment order vide order dated 07.03.2013. Subsequently, the Assessing Officer issued notice to the assessee and in response to the notice, the assessee submitted that M/s H. S. Infrastructure & Services Pvt. Ltd. is not a shareholder in assessee's company, therefore, section 2(22)(e) of the Act was not applicable. However, the Assessing Officer disagreed with the argument of the assessee stating that the loan qualified as a deemed dividend because Shri Haranjit Singh and Mr. Subash Bera each holding over 10% of the shares in both companies. Subsequently, the Assessing Officer added Rs.2,11,39,885/- to the taxable income of the assessee as deemed dividend u/s 2(22)(e) of the Act.

3. Dissatisfied with the above order, the assessee went on appeal before the Id. CIT(A) contending that the loan should not be treated as deemed dividend as M/s H. S. Infrastructure & Services Pvt. Ltd. is not a shareholder in assessee's company. However, the assessee failed to appear on multiple dates before the Id. CIT(A) and did not able to submit necessary supporting documents including audited financial, loan confirmation statement and shareholding details of both the companies, details of shareholders etc. Accordingly, the Id. CIT(A), based on the absence of evidences and assessee's repeated non-appearances, upheld the order of the Assessing Officer and dismissed the appeal of the assessee.

4. Aggrieved by the above order, the assessee filed an appeal before this Tribunal, where the ld. AR has submitted the shareholding details of both the assessee and M/s H. S. Infrastructure & Services Pvt. Ltd. in order to prove that M/s H. S. Infrastructure & Services Pvt. Ltd. is not a shareholder in assessee's company, thus section 2(22)(e) of the Act was not applicable. The ld. AR also argued that loan should not be considered as deemed dividend since M/s H. S. Infrastructure & Services Pvt. Ltd. is not a shareholder in assessee's company. The ld. AR further contended that the addition made by the Assessing Officer was unwarranted.

5. On the other hand, the ld. DR relied on the decisions of the Assessing Officer and CIT(A) stating that the assessee had failed to appear before the ld. CIT(A) and did not provide the required documents to substantiate its claim.

6. We, after hearing the rival submissions of the parties and examining the materials on record, observe that the assessee did not appear on five consecutive dates before the ld. CIT(A) and failed to submit evidences to support its contention. The assessee did not provide crucial documents such as audited financials for the relevant assessment year, loan confirmation statement from M/s H. S. Infrastructure & Services Pvt. Ltd. or any proof of shareholding patterns of all of which are essential to establish its claim. We, therefore, hold that the instant issue was not conclusively examined at the CIT(A)'s stage due to assessee's non-compliance. We deem it necessary to remand the matter back to the ld. CIT(A) with a direction for a fresh examination of the case in relation to the applicability of section 2(22)(e) of the Act concerning the loan transaction between the assessee and M/s H. S. Infrastructure & Services Pvt. Ltd. by providing a reasonable opportunity of being heard to the assessee and to submit relevant evidences including limited audited financials, shareholding patterns of the assessee

and M/s H. S. Infrastructure & Services Pvt. Ltd. and all other necessary documents to substantiate its claim. The assessee is also directed to cooperate with the CIT(A)'s proceedings and ensure timely submission of all supporting documents to avoid any further delays. Accordingly, we direct the ld. CIT(A) to evaluate the matter on merits based on the available evidences and if required may conduct an additional enquiry to arrive at a just and proper decision.

7. In terms of the above, the appeal of the assessee is allowed for statistical purposes.

Kolkata, the 22nd November, 2024.

Sd/-
[Rajesh Kumar]
Accountant Member

Sd/-
[Sonjoy Sarma]
Judicial Member

Dated: 22.11.2024.

RS

Copy of the order forwarded to:

1. Phoenix Hitech Pvt. Ltd
2. DCIT, Central Circle-1(3), Kolkata
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches