

**IN THE INCOME TAX APPELLATE TRIBUNAL, MUMBAI BENCH 'D', MUMBAI**

**BEFORE SHRI SAKTIJIT DEY, HON'BLE VICE PRESIDENT  
AND SHRI AMARJIT SINGH, HON'BLE ACCOUNTANT MEMBER**

**ITA No.986/Mum/2024  
Assessment Year: 2012-13**

Raj Hemant Shroff 11, Vallabh Apartments, Bhulabhai Desai Road Breach Candy, Mumbai-400036. PAN: AACPS 5875 P (Appellant)	vs	ACIT-6(1)(1), Mumbai (Respondent)
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**Present for:**

Assessee by : Shri Nitesh Joshi  
Revenue by : Shri R.R. Makwana, Sr. DR

Date of Hearing : 18.11.2024  
Date of Pronouncement : 27.11.2024

**ORDER**

**PER AMARJIT SINGH, AM:**

This appeal of the assessee for the assessment year 2012-13 is directed against the order dated 11.01.2024 passed by the Id. Commissioner of Income-tax (Appeal), NFAC Delhi. The assessee has raised the following grounds of appeal:

*“GROUND NO. 1: ORDER PASSED VIOLATING THE PRINCIPLES OF NATURAL JUSTICE:*

*1.1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in passing an order under section 250 of the Act without giving a fair and reasonable opportunity of hearing to the Appellant and thereby violating the principles of natural justice.*

*1.2. The Appellant prays that the order passed in the matter be held bad in law.*

*WITHOUT PREJUDICE TO GROUND I ABOVE*

2. GROUND NO. II: RE-ASSESSMENT U/S. 147 OF THE ACT IS BAD-IN-LAW:

2.1 On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in upholding the action of the Assistant Commissioner of Income Tax, -6(2)(1), Mumbai ("the Ld. AO") of re-opening and re-assessing the income of the Appellant u/s 147 of the Act.

2.2 The Appellant prays that the action of re-opening and re-assessing the income of the Appellant u/s 147 of the Act be held as *ab inito* or otherwise bad in law.

WITHOUT PREJUDICE TO GROUND I & II ABOVE

3. GROUND NO. III: ADDITION UNDER SECTION 2(22)(e) AMOUNTING TO RS. 4,11,06,941/-

3.1 On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in upholding the action of the ld. AO in making an addition amounting to Rs. 4,11,06,941/- under section 2(22)(e) of the Act as deemed dividend without appreciating that the funds received by the appellant were neither 'loan' nor 'advance'.

3.2 The appellant prays that the said addition u/s 2(22)(e) of the Act be deleted."

2. Fact in brief is that return of income declaring total income at Rs. 18,20,045/- was filed on 31.07.2012. The return was processed u/s 143(1) of the Act. Subsequently, the case was reopened on the basis of information received from Deputy Director of Income Tax (Inv.), Unit-2(3), Mumbai regarding high value non-cash transactions of Rs. 41,85,00,000/- carried out through the bank account of assessee, Shri Raj Hemant Shroff. The extract of the reasons recorded for reopening the case is reproduced as under:

*"..... information was received from the DDIT(Inv.), Unit-2(3), Mumbai regarding high value non-cash transactions of Rs. 41,85,00,000/- carried out through the bank account of Shri Raj Hemant Shroff, which*

is unusual & are not commensurate with the income profile of the assessee. During the course of investigation proceedings, it was noticed that Mr. Raj Hemant Shroff maintains a current account ie 24110014512 with Standard Chartered Bank. On perusal of said bank statement, it is noticed that following three high value transactions were done by the assessee:

Date	Deposits (Rs)	Withdrawal (Rs)	Balance (Rs)
13/06/2021	7,43,38,200	-	7,44,64,700
13/06/2021	34,40,90,025	-	41,85,54,725
13/06/2021	-	41,85,00,000	54,725

On 13/06/2011, first RTGS of Rs. 7,43,38,200/- was received from M/s Hephaestus Reality and Leasing Pvt Ltd and the second RTGS of Rs. 34,40,90,025/- was received from M/s T and D Trading Pvt Ltd. On 15/06/2011, the account of Shri Raj Hemant Shroff was debited of Rs. 41,85,00,000/- towards his own account held in HDFC Bank. The genuineness of these transactions does not seem natural as compared to profiling of the income of the assessee, which is as under:

A.Y.	Salary Income (Rs)	Capital gain as per ITR	Business income as per ITR	House Property income as per ITR	Income from other sources as per ITR	Gross total income as per ITR
2012-13	17,08,596	12,46,139	0	2,82,492	2,65,977	19,35,045
2013-14	20,05,148	2,43,050	0	16,82,492	1,44,421	36,32,655

Mr. Raj Hemant Shroff himself is one of the Director of M/s Hephaestus Reality and Leasing Pvt Ltd and M/s T and D Trading Put Ltd from which accounts, the aforesaid transitions were received in the account of Mr. Raj Hemant Shroff. On further verification, it is seen that credibility of these companies do not sustain and also not commensurate with their income offered in various A. Ys.

In view of the above, it is clear that nature of these transactions remained unexplained considering the income profile of the assessee as well as the companies from which these funds were transferred.

Since, the transactions made in the account of Mr. Raj Hemant Shroff have remained to be unexplained, I have reason to believe that an

*amount of Rs. 41,85,00,000/- has escaped assessment. Thus, the corresponding income has escaped assessment on account of failure on the part of the assessee to disclose fully and truly all materials on facts. Hence, I am satisfied that minimum amount of Rs. 1,00,000/- has escaped assessment in this case. In view of the above, I have "reason to believe" that income chargeable to tax to the tune of Rs. 1,00,000/- or more has escaped assessment for A.Y. 2012-13 within the meaning of Section 147 of the I.T. Act, 1961 on account of failure on the part of the assessee.....”*

3. In response to the notice issued u/s 148 of the Act, the assessee filed his return of income on 23.04.2019 declaring total income at Rs. 18,20,050/-. After considering the various details filed by the assessee, the assessing officer found that assessee, Shri Raj Hemant Shroff was having more than 50% shareholding in the companies from which he received funds as under:

<i>Name of company</i>	<i>Amount received from company mentioned in column no 1 in the Standard Chartered Bank of Shri Raj Shroff</i>	<i>Date of receipt</i>
<i>1</i>	<i>4</i>	<i>5</i>
<i>M/s. T &amp; D Trading</i>	<i>34,40,90,025</i>	<i>13/05/2011</i>
<i>M/s. Hephaestus Reality &amp; Leasing Pvt. Ltd.</i>	<i>7,43,38,200</i>	<i>13/06/2011</i>

4. The assessing officer observed that assessee had received substantial amounts from the companies in which he was having substantial interest. Therefore, the assessing officer treated the receipt of Rs. 4,11,06,941/- as deemed dividend u/s 2(22)(e) of the Act and added to the total income of the assessee.

5. The assessee filed appeal before the ld. CIT(A). The ld. CIT(A) has dismissed the appeal filed by the assessee.

6. During the course of appellate proceedings before us, the ld. Counsel submitted that the assessing officer has reopened the case on the basis of information received from the DDIT(Inv.) without independently applying his mind. The ld. Counsel further referred the reasons recorded by the assessing officer for reopening the case of the assessee and submitted that as per the reasons recorded the assessing officer wanted to invoke section 68 of the Act. However, the assessing officer has not made any addition u/s 68 of the Act on the issue of unexplained transactions and treated the amount received as deemed dividend u/s 2(22)(e) of the Act.

7. The ld. Counsel further submitted that even the assessing officer has not provided the copy of information received from the DDIT(Inv.) and copy of approval u/s 151 obtained from the higher authority for reopening the case of the assessee. The ld. Counsel has also placed reliance on various judicial pronouncements on the validity of reopening of the assessment in the case of the assessee.

8. On the other hand, ld. DR submitted that assessing officer has reopened the case of the assessee on the basis of tangible materials received from the DDIT(Inv.) and supported the order of the lower authorities.

9. On merit of the case, the ld. Counsel submitted that to avoid pre-payment charges of 2%, the assessee has temporarily transfer the funds from the bank account of the companies to the bank account of the director and such transactions had commercially benefited the company. In this regard, the ld. Counsel has referred the various pages of paper book filed showing copies of bank statement of Standard Chartered Bank, HDFC Bank and also placed reliance on the

judicial pronouncement in support of his contention that assessee has carried out the referred transaction with the companies for want of business exigencies.

10. On the other hand, ld. DR supported the order of lower authorities.

11. Heard both the sides and perused the material on record. In respect of ground no. 2 of appeal regarding validity of re-opening of assessment, the assessing officer had received information from the DDIT(Inv.) regarding high value cash transactions of Rs. 41,85,00,000/- carried out through the bank account of assessee Shri Raj Hemant Shroff which was unusual and were not commensurate with the income profile of the assessee. We have perused the reasons recorded as elaborated in this order wherein the assessing officer has referred the report received from the DDIT(Inv.) that assessee maintained a current account with Standard Chartered Bank showing three high value transactions of depositing and withdrawing amount of Rs. 41,85,00,000/-. On 13.06.2011 an amount of Rs. 7,43,38,200/- was received from M/s. Hephaestus Reality And Leasing Pvt. Ltd. and the other amount of Rs. 34,40,90,025/- was received from M/s. T & D Trading Pvt. Ltd. through RTGS. Further on 15/06/2011 the account of the assessee was debited by Rs. 41,85,00,000/- towards his own account held in HDFC Bank. It is also mentioned in the information received that genuineness of the transaction did not appear to be natural as compared to profiling of income of the assessee with the ITR filed by the assessee. It is also mentioned that assessee was one of the director in above referred companies. assessing officer after comparing the nature of transaction with the income profile available in the

assessment record maintained with the assessing officer observed these transactions were remained unexplained. After considering the aforesaid facts and circumstances, the assessing officer has come to the conclusion of reasons to believe that an amount of Rs. 41,85,00,000/- has escaped assessment. It is further observed that assessing officer has nowhere in the reason recorded specified that income has escaped assessment u/s 68 of the Act.

12. Looking to the above facts and circumstances, it is evident from the reasons recorded that AO had compared the report received from the Investigation Wing with the income tax record available with the assessing officer and arrived to the conclusion that the huge amount of transaction does not match with the income profile of the assessee. Further on the query of the ld. Counsel that assessing officer has not shared the information received from the Investigation Wing with the assessee before reopening the case, we find that assessing officer has re-produced the whole contents of the investigation report in the reasons recorded itself which were brought to the notice of the assessee before reopening the case of the assessee. On the issue of validity of reopening of assessment, the case laws reflected by the ld. Counsel are not applicable to the facts and circumstances of the present case as the pari material contained in these cases are different from the pari material contained in the present case. Accordingly, the ground no. 2 of appeal of the assessee is dismissed.

13. **On merit in respect of ground no. 3 of the assessee for making addition u/s 2(22)(e) amounting to Rs. 4,11,06,941/- as deemed dividend.** The assessee was the substantial shareholder and director of the two companies namely M/s. Hephaestus Reality and

Leasing Pvt. Ltd. and M/s. T and D Trading Pvt. Ltd. During the F.Y. 2008-09 M/s. Hephaestus Reality and Leasing Pvt. Ltd. and during the F.Y. 2009-10 & 2010-11 the other company M/s. T & D Trading Pvt. Ltd. have availed loan against the property from HDFC limited for purchase of commercial properties. In order to reduce the cost of borrowings (interest) on the aforesaid loans, the assessee approached several banks. The Ratnakar Bank Ltd. (RBL) offered the assessee to refinance the loans at 11.60% p.a. interest compared to the HDFC Bank Ltd. as of June @ 13.50% p.a. in respect of Hephaestus Reality and Leasing Pvt. Ltd. and @ 12.25% in respect of T & D Pvt. Ltd. Because of the aforesaid arrangement there was a total saving of approximately 37 lakh p.a. interest to be paid by the assessee. In case, the loan repayment of Rs. 41.85 crores would have been taken over directly by Ratnakar Bank Ltd. then HDFC Bank would have charged a pre- payment penalty of 2% of the loan amount which would have become total approximately Rs. 83.70 lakh. Therefore, in order to avoid 2% pre-payment penalty charges, the loan amount disbursed by Ratnakar Bank Ltd. amounting to Rs. 41.85 crore was transferred from the respective companies account with Ratnakar Bank Ltd. to Mr. Raj Hemant Shroff, assessee on 13.06.2011 with Standard Chartered Bank. Subsequently, from the assessee's account immediately on 15.06.2011, the said amount was transferred to the respective companies' bank account with HDFC Bank from Standard Chartered Bank by the assessee and on 30.06.2011 both the companies have repaid the loan to HDFC Ltd. All this information were filed before the lower authorities as placed in the paper book filed by the assessee substantiated with the copies of bank statement as discussed in this order.

14. We have also perused the various decisions relied upon by the assessee i.e. 1 to 7 in the case of Sunil Sethi vs DCIT (2008) 26 SOT 95 (Delhi ITAT), DCIT vs Atul Engineering Udyog (2011) 10 taxmann.com 162 (Agra ITAT), CIT vs Atul Engineering Udyog (2011) 10 taxmann.com 162 (2014) 51 taxmann.com 569 (Allhabad HC), CIT vs Creative Dyeing & Printing (P) Ltd. (2009) 318 ITR 476 (Delhi HC), VIT vs M/s. Critive dyeing & Printing P. Ltd. (CC 8558/2010)(SC), PCIT vs Dwarka Prasad Aggarwal (2022) 140 taxmann.com 33 (SC), CIT vs Raj Kumar (2009) 318 ITR 462 (Delhi HC), Smt. Jamuna Vemekar vs DCIT (2021) 432 ITR 146 (Karnataka), Circular No. 19/2017 by CBDT on the proposition that when the amount was given for business purpose of the company, the same would not fall within the definition of deemed dividend u/s 2(22)(e) of the Act. In the case of the assessee as discussed supra, we find that transactions were routed through the bank account of the assessee only to avoid paying pre-payment penalty of 2% of the loan amount as discussed and immediately the amount deposited in the current account of the assessee was reversed to the account of the two companies without any utilization of the loan by the assessee. Further, the same amount was reflected as a loan amount standing in the name of the two companies in which the assessee was shareholder in the portfolio of the other bank and this arrangement was carried out to avoid penalty payment which demonstrate that the nature of transaction was carried out because of business exigency. Therefore, we find that treating the same as deemed dividend u/s 2(22)(e) of the Act in the hands of the assessee is not justified. Accordingly, ground no. 3 of appeal filed by the assessee is allowed.

15. Ground no. 1 of appeal filed by the assessee was not pressed, therefore, the same stand dismissed.

16. In the result, the appeal of the assessee is partly allowed.

**Order pronounced in the open court on 27.11.2024**

**Sd/-**

**Sd/-**

**(SAKTIJIT DEY)  
VICE PRESIDENT**

**(AMARJIT SINGH)  
ACCOUNTANT MEMBER**

Mumbai: 27.11.2024  
Biswajit, Sr. P.S.

Copy to:

1. The Appellant:
2. The Respondent:
3. The CIT,
4. The DR .

//True Copy//

By Order

Assistant Registrar  
ITAT, Mumbai Benches, Mumbai