

आयकर अपीलिय अधिकरण, 'ए' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH: CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं
श्री डि.एस. सुन्दर सिंह, लेखा सदस्य के समक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI D.S.SUNDER SINGH, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.2655/Mds/2016
निर्धारण वर्ष /Assessment Year: 2008-09

The Dy. Commissioner of Income
Tax, Corporate Circle-6(1),
Ayakar Bhavan, New Block, 121, 7th
Floor, M.G.Road, Chennai – 600 034

Vs.

Smt. Bhagavathy Velan,
No.204/175, Flat No.21,
Choolaimedu High Road,
Choolaimedu,
Chennai-600 094.

[PAN:AFNPB 2698 P]

(अपीलार्थी/ **Appellant**)

(प्रत्यर्थी/ **Respondent**)

अपीलार्थी की ओर से/ Appellant by

: Mr.Sumathy Venkataraman,
JCIT

प्रत्यर्थी की ओर से /Respondent by

: Mr.Saroj Kumar Parida, Adv.

सुनवाई की तारीख/Date of Hearing

: 20.12.2016

घोषणा की तारीख /Date of Pronouncement

: 29.12.2016

आदेश / ORDER

PER D.S.SUNDER SINGH, ACCOUNTANT MEMBER

This is an appeal filed by the Revenue against an Order dated 26.05.2016 of Commissioner of Income Tax (Appeals)-15, Chennai, in ITA No.313/CIT(A)-15/2013-14 for the AY 2008-09.

Delay:

Appeal is filed with 16 days delay as the Appellant has filed condonation petition explain the delay. We hard both sides and satisfied that there is a reasonable cause for delay and the same is condoned.

2. The assessee filed return of income for the AY 2008-09 and later on the AO issued notice u/s.148 and completed the assessment u/s.147 r/w Sec.143(3) on a total income of Rs.17,26,790/-. During the re-assessment proceedings, the AO found that the assessee is a Director and having more than 10% share holding in M/s.Shree Velu Builders (P) Ltd., a company in which public are not substantially interested. It was also noticed by the AO that the company was having accumulated profits of Rs.84,51,787/- as on 31.03.2007 and it has transferred the flat constructed by the company valued at Rs.38 lakhs to the assessee. After transfer of the flat of Rs.38 lakhs, the outstanding balance in the current account maintained by the assessee was at Rs.32,25,049/-(Dr.), which means that the assessee owe the company an amount of Rs. 32,25,049/- as at the end of the year. Therefore, the AO invoked the provisions of Sec.2(22)(e) of the Income Tax Act and held that the sum of Rs.12,83,387/- i.e. 50% of the accumulated profits as deemed dividend and brought to tax.

3. Aggrieved by the Order of the AO, the assessee went on appeal before the Ld.CIT(A) and the Ld.CIT(A) deleted the addition made by the AO by following the Hon'ble ITAT "B" Bench, Chennai, decision in assessee's own case for the AY 2006-07 in ITA No.1301/Mds/2012 dated 29.01.2013. Aggrieved by the order of the Ld.CIT(A), the Department in appeal before us.

4. Appearing for the Department, Ld.DR argued that the assessee is a 10% shareholder in M/s.Vishnu Builders, a company in which public are not substantially interested. As on 01.04.2007, the accumulated profits of the company was Rs.84,51,787/-. During the FY 2007-08, the assessee company has transferred the flat constructed to the assessee valued at Rs.38 lakhs which was debited to the current account of the assessee maintained with the company and resulted in outstanding balance of Rs.32,25,049/- (Dr) payable to the company. Therefore, there was an outstanding balance of Rs.32,25,049/- (payable) in the books of the company as advance outstanding in the name of the assessee which attracts provisions of Section 2 (22)(e) of Income Tax Act. On the other hand the Ld.A.R. relied on the orders of the Ld.CIT(A) and the orders of this tribunal in his own case.

5. We heard the rival submissions and perused the orders of the lower authorities. As per Sec.2(22)(e) of the Income Tax Act deemed dividend is -

"any payment by a company, not being company in which the public are substantially interested, of any sum (whether as representing a part of the assets of the company or otherwise) by way of advance or loan to a shareholder being a person who is the beneficial owner of shares holding not less than ten per cent of the voting power, or to any concern in which such shareholder is a member or a partner and in which he has a substantial interest or nay payment by any such company on behalf, or for the individual benefit, of any such shareholder, to the extent to which the company in either case possesses accumulated profits".

6. From the above definition, deemed dividend u/s.2(22)(e) is any payment by a company in the form of advance or loan in the case of shareholder holding shares about 10% is to be treated as deemed

dividend and the assessee has satisfied all the conditions to tax the advance as deemed dividend which is explained as under:

- i) *The assessee is a 20% shareholder in the company.*
- ii) *Company is not a company in which public are substantially interested.*
- iii) *The company is having accumulated profits of Rs.25,66,774/- and*
- iv) *The company has transferred flat of Rs.38.00 lakhs to the assessee and the amount debited to the current account of the assessee which resulted in debit balance of Rs.31,57,569/-.*

7. The amount of Rs.31,57,569/- is outstanding as a loan/advance being the amount excess drawn in the current account, which is nothing but a loan/advance because of the transfer of the company asset to the assessee. Though, the amount paid is not in cash, the asset of the company (money's worth) was transferred to the assessee resulting into reduction of the assets of the company and the ultimate result is outstanding as a loan from the assessee. Therefore, the transfer of assets which resulted in a advance/loan is held to be payment by the company to the assessee and falls within the four corners of the deemed dividend as per the provisions of the Sec. 2(22)(e) of the Income Tax Act. The Hon'ble Supreme Court in the case of Kanthilal Manilal Vs. CIT (41 ITR 275) held that "Dividend need not be distributed in money; it may be distributed by delivery of property or right having monetary value". We reproduced the relevant extract of the Hon'ble Supreme Court cited supra.

Dividend need not be distributed in money; it may be distributed by delivery of property or right having monetary value. The resolution, it is true, did not purport to distribute the right amongst the shareholders as dividend. It did not also take the form of a resolution for distribution of dividend; it took the form of distribution of a right which had a monetary value. But by the form of the resolution sanctioning the distribution, the true character of the resolution could not be altered. We are, therefore, of the view that the High Court was right in holding that the distribution of the right to apply for and

obtain two shares of the Bank of India (at half their market value) for each share held by the shareholders of the mills amounted to distribution of dividend.

8. The Hon'ble ITAT "B" Bench in the decision relied upon by the CIT in the assessee's own case and also Ld.CIT(A) have not considered the judgment of the Hon'ble Supreme Court cited supra. Therefore, we hold that the payment made to the assessee by the company is rightly brought to tax by the AO as deemed dividend and the addition made by the AO is confirmed.

9. In the result, the appeal of the Revenue is **allowed**.

Order pronounced in the Open Court on 29th December, 2016, at Chennai.

Sd/-

(एन.आर.एस. गणेशन)

(N.R.S. GANESAN)

न्यायिक सदस्य/**JUDICIAL MEMBER**

Sd/-

(डि.एस. सुन्दर सिंह)

(D.S.SUNDER SINGH)

लेखा सदस्य/**ACCOUNTANT MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 29th December, 2016.

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आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF