

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : SMC : NEW DELHI

BEFORE SHRI R.S. SYAL, VICE-PRESIDENT

ITA Nos.7 & 1069/Del/2017
Assessment Year : 2012-13

Naresh Kumar Mahajan,
Prop. M/s Puneet Metal Industries,
House No.07, Block-06, Geeta Colony,
Delhi.

Vs. ACIT,
Circle-58(1),
New Delhi.

PAN: AAJPM1919P
(Appellant)

(Respondent)

Assessee by : Shri Anil Jain, CA
Deptt. By : Ms Bedobani, DR

Date of Hearing : 01.06.2017
Date of Pronouncement: 02.06.2017

ORDER

These two appeals by the assessee arise out of the orders passed by the CIT(A) in quantum as well as penalty proceedings in relation to the assessment year 2012-13.

Quantum appeal

2. Firstly, I am taking up the quantum appeal. The first issue raised is against the enhancement of addition of Rs.7,28,379/- made by the

Assessing Officer u/s 2(22)(e) of the Income-tax Act, 1961 (hereinafter also called 'the Act') to Rs.18,10,000/-

3. Briefly stated, the facts of this issue are that the assessee is a proprietor of M/s Puneet Metal Industries engaged in trading of steel and other metals. Apart from that, the assessee is also a shareholder of M/s Puneet Metal Pvt. Ltd. (PMPL). The Assessing Officer observed that a sum of Rs.7,28,379/- was shown to have been received by the assessee as an advance from PMPL. On being called upon to explain as to why the said amount be not treated as deemed dividend u/s 2(22)(e) of the Act, the assessee submitted that there was no advance received by him from PMPL and the amounts in this account were on account of trade transactions. Not convinced, the Assessing Officer made addition of Rs.7,28,379/-, being the amount payable by the assessee to PMPL at the end of the year. The Id. CIT(A) opined that the addition ought to have been made for the amount received by the assessee during the year rather than the closing balance. After rejecting the contention of the assessee that the amount was received in the course of business dealings, the Id. CIT(A) added Rs.18,10,000/- as

deemed dividend u/s 2(22)(e) of the Act. The assessee is aggrieved against this addition.

4. I have heard the rival contentions and perused the relevant material on record. Page No.13 of the paper book is account of M/s PMPL in the books of the assessee, which runs as under:-

“PUNEET METAL INDUSTRIES
10578/46, SHANKER GALI NO.2, MOTIAKHAN, NEW DELHI
Account Ledger
(From 1-4-2011 to 31-3-2012)
Account: Puneet Metals Pvt Ltd.

Date	Type	Vch No.	Particulars	Narration	Debit (Rs.)	Credit (Rs.)	Balance (Rs.)
...4.2011			Opening Balance			6,12,852.00	6,12,852.00 Cr.
...6.2011	Rcpt		Dr Vijaya Bank 240034			17,00,000.00	2312852.00 Cr.
...6.2011	Jrnl		Dr. PRESSURE & PROCESS BOILERS			71,837.00	23,84,689.00Cr
...8.2011	Jrnl		Dr MAHINDRA STEEL CORPORATION			56,045.00	2440734.00 Cr
...9.2011			Dr Vijaya Bank 240034			50,000.00	2490734.00 Cr.
...0.2011			Dr. SBI 10614912676			60,000.00	2550734.00 Cr
...1.2011	Jrnl		Dr. JAIN STEEL CORPORATION			30,794.00	2581528.00 Cr
...2.2011	Jrnl		Cr SIALKOT SHOP		8,296.00		2573232.00 Cr
...3.2012	Sale	T/182/09-10	Cr. Sales		21,08,232.00		465000.00 Cr
...3.2012	Jrnl		Dr. ARNAV JAIN & CO			1,04,463.00	569463.00 Cr
...3.2012	Jrnl		Dr Shivajee Industries			1,58,916.00	728379.00 Cr
			Total		21,16,528.00	28,44,907.00	
			Credit balance			7,28,379.00	“
			Grand Total		28,44,907.00	28,44,907.00	

5. It can be seen from the above account that though the Assessing Officer made addition for the closing balance at 7,28,379/-, the ld. CIT(A) made enhancement to Rs.18,10,000/- by adding receipts of Rs.17 lac, Rs.50,000/- and Rs.60,000/-. The assessee claimed that this sum of

Rs.18,10,000/- was received as advance against the sales made during the year amounting to Rs.21,08,232/-. The ld. CIT(A) refused to accept the genuineness of the sale on the ground that no evidence of actual transportation of goods from the assessee's premises to that of PMPL was produced. Here, it is relevant to note the address of the assessee, which is 10578/46, Shankar Gali No.2, Motiakhan, Pahar Ganj, New Delhi. It is evidenced from Page 35 of the paper book, being, a copy of invoice raised in the name of PMPL for a sum of Rs.21,08,232. Address of M/s PMPL given on the same invoice is 10578/6, Shankar Gali No.2, Motiakhan, Pahar Ganj, New Delhi. The ld. AR contended that PMPL is located in the same street and, hence, there was no need of any transportation of goods through lorry. In my considered opinion this contention merits acceptance and has been wrongly rejected by the ld. CIT(A). When the assessee's premises and premises of PMPL are located in the same street, there is no requirement to hire lorry for carrying the goods. The ld. AR has invited my attention towards stock register of PMPL, a copy at page 42 of the paper book, which shows the corresponding receipt of goods from the assessee. It can be seen from the account of M/s PMPL in the assessee's books for preceding and succeeding years, copies placed at pages 12 to 15 of the

paper book, that similar type of trade transactions were carried out between the two entities in these years as well. Since the receipt of Rs.18,10,000/- was on account of advance from the company, for which supply was made during the year itself, such receipts of advance cannot be construed as a dividend u/s 2(22)(e) of the Act. I, therefore, order for the deletion of this addition.

6. The second issue raised in this appeal is against an addition of Rs.26,12,832/- made by the CIT (A) by way of enhancement u/s 2(22)(e) of the Act. The ld. CIT(A) noticed that apart from the account of the assessee maintained with PMPL as reproduced above, the assessee was also having other transactions with PMPL, whose balance was squared up at the end of the year. The assessee was called upon to furnish a consolidated account of all the transactions. The assessee submitted such an account, whose copy is available at page 44 onwards of the paper book, with a covering letter dated 21.11.2016. The ld. CIT(A) selected following entries from the consolidated account for making addition u/s 2(22)(e) of the Act :-

08.04.2011	-	Rs.47,208/-
08.04.2011	-	Rs.36,000/-

01.05.2011	-	Rs.5,78,208/-
28.12.2011	-	Rs.35,208/-
02.01.2012	-	Rs.3,65,208/-
10.01.2012	-	Rs.63,000/-
19.01.2012	-	Rs.2,25,000/-
20.01.2012	-	Rs.3,00,000/-
21.01.2012	-	Rs.4,00,000/-
31.01.2012	-	Rs.5,00,000/-
03.02.2012	-	Rs.63,000/-
Total	-	Rs.26,12,832/-

7. The ld. AR submitted that the ld. first appellate authority did not raise any query about the nature of receipts which were, in fact, not in the nature of dividend. It was submitted that none of the above transactions attracted the provisions of deemed dividend u/s 2(22)(e) of the Act.

8. Having heard both the sides and perused the relevant material on record, it is observed that the combined account was filed by the assessee with the ld. CIT(A) on 21.11.2016, which happens to be the last date of hearing as recorded on the titles of the impugned order. This shows that the ld. CIT(A) got the details and closed the hearing without making any further enquiries from the assessee about the nature of transactions. It was obligatory on his part to confront the assessee about his point of view and

seek explanation before making any addition, which course of action has not been followed in the instant case. In my considered opinion, the ends of justice would meet adequately if the impugned order on this score is set aside and the matter is restored to the file of Id. CIT(A) for deciding this aspect of the matter afresh, after allowing an opportunity of hearing to the assessee.

9. In the result, the appeal is partly allowed.

Penalty Appeal

10. The Id. CIT(A) imposed penalty of Rs.13,66,655 under section 271(1)(c) of the Act pursuant to his order in quantum proceedings by treating income of Rs.44,32,832/-, being sum total of Rs.18,10,000/- and Rs.26,12,832/- treated by him as deemed dividend u/s 2(22)(e) of the Act, as concealed income. In so far as the addition of Rs.18,10,000/- is concerned, the same has been deleted by me in an earlier para. The other addition has been restored to the Id. CIT(A) for fresh adjudication. In view of my decision in quantum proceedings, I set aside the impugned order and remit the matter to the file of the Id. CIT(A) for deciding the question of penalty only after adjudication on the addition of Rs.26,12,832/-. My view in restoring the appeal is supported by the judgment of the Hon'ble

Supreme Court in *Mohd. Mohatram Farooqui vs. CIT (SC) 2010-TIOL-23-SC-IT*.

11. In the result, the appeal is allowed for statistical purposes.

The decision was pronounced in the open court on 02nd June, 2017.

Sd/-

(R.S. SYAL)
VICE-PRESIDENT

Dated: 02nd June, 2017.

dk

Copy forwarded to

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Dy. Registrar, ITAT, New Delhi