

आयकर अपीलीय अधीकरण, न्यायपीठ – “B” कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH “B” KOLKATA

Before **Shri N.V.Vasudevan, Judicial Member** and
Shri Waseem Ahmed, Accountant Member

ITA No.1008/Kol/2016
Assessment Year :2012-13

M/s Sree Krishna Gyanodya Flour Mills Pvt. Ltd., 15B, Everest House, 46C, Chowringhee Road, Kolkata-71 [PAN No.AAHCS 8774 P]	V/s.	Pr. Commissioner of Income Tax, Central, Kolkata-2
अपीलार्थी /Appellant	..	प्रत्यर्थी/Respondent

अपीलार्थी की ओर से/By Appellant	Shri Ravi Tulsiyan, FCA
प्रत्यर्थी की ओर से/By Respondent	Shri G. Hangshing, CIT-DR
सुनवाई की तारीख/Date of Hearing	23-01-2018
घोषणा की तारीख/Date of Pronouncement	14-02-2018

आदेश /O R D E R

PER Waseem Ahmed, Accountant Member:-

The assessee has filed this appeal disputing the order of Pr. Commissioner of Income Tax, Central, Kolkata-2 passed u/s 263 of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’) dated 16.03.2016 by the Ld. Pr.cit set aside the assessment order dated 27.03.2014 passed u/s. 143(3) of the Act for Assessment Year 2012-13 with a direction to re-do the assessment in respect of issue mentioned therein.

Shri Ravi Tulsiyan, Ld Authorized Representative appeared on behalf of assessee and Shri G. Hangshing, Ld. Departmental Representative appeared on behalf of Revenue.

2. Though assessee has raised as many as 7 grounds of appeal, however as per our considered view the sole and substantial ground of appeal is that Ld. Pr. CIT erred in holding the order of Assessing Officer erroneous in so far as prejudicial to the interest of Revenue.

3. Briefly stated facts are that assessee in the present case is a private limited company and engaged in the business of basmati rice production and wind power generation. The assessee for the year under consideration has filed its return of income declaring total income of ₹8,96,310/- only. Subsequently, the case was selected for scrutiny and accordingly assessment was framed u/s. 143(3) of the Act vide order dated 27.03.2014 after making several disallowances / additions to the total income of assessee at Rs. 9,64,630.00 Only.

Subsequently Ld. Pr. CIT observed that there is a defect/error in the order passed by Assessing Officer as no addition was made by him on account of deemed dividend income u/s 2(22)(e) of the Act. As such, assessee has taken a loan of ₹14.26 crores from M/s Subhchintak Vancom Pvt. Ltd., (SVPL for short). The assessee was holding shares in such company to the tune of ₹18.63%. As per Ld. Pr. CIT the loan taken by assessee attracts the provision of Sec. 2(22)(e) of the Act. Accordingly, Ld. Pr. CIT issued show cause notice dated 03.11.2015 to the assessee for seeking clarification for the above stated issue. In compliance thereto, assessee submitted that it has not taken any loan from SVPL during the year. In fact, there is a regular account being maintained with SVPL and accordingly on many occasions, the assessee has taken loan / advance from SVPL and similarly on many occasions it has given advance to SVPL. Therefore, there is no question of treating the impugned loan as deemed dividend income under the provision of Section 2(22)(e) of the Act. As such, the impugned advance shown by the assessee represents the current account transactions.

However, Ld. Pr. CIT disregarded the contention of assessee and held the order passed by AO erroneous in so far as prejudicial to the interest of Revenue by observing as under:-

"... I have considered these arguments above arguments. I do not agree with the A/R's argument that if there are frequent transactions resulting in shifting balances, the money received by the assessee would not be a loan. Section 2(22)(e) does not make any such distinction. I am of the opinion that the provision of deemed dividend as per section 2(22)(e) were applicable in the case.

In light of the above facts, I am of the considered opinion that the assessment has been rendered erroneous and is prejudicial to Revenue. I therefore, set aside the assessment and direct the AO to pass the assessment afresh as per law after carrying out necessary enquiry and verification about the deemed dividend issue in respect of amounts received Subhchintak Vancom Pvt. Ltd. The order should be passed after giving the assessee opportunity of being heard and giving its explanation in the matter."

Aggrieved by the above finding of Ld. Pr. CIT, the assessee is in appeal before the Tribunal.

4. Ld. AR for the assessee before us filed paper book and written submissions which is running pages 1 to 67 and 1 to 6 (copy filed) and stated that as per ledger account of SVPL in the books of assessee (page-29 of the paper book), it would be seen that initially there was opening carried forward credit balance of Rs.2,82,25,000/- in the name of the assessee. Thereafter on several dates during the relevant financial year, there were repayments as well as taking further amounts. At the end of the year, credit balance stood at Rs.1,08,82,25,000/- and debit balance at Rs.57,04,00,000/- and the resultant closing credit balance stood at Rs.51,78,25,0000/-. However, the Ld. PR. CIT has taken the figure at Rs.48,96,00,000/- without considering the opening credit balance of Rs.2,82,25,000/-. Thus the above amount was representing the current account and accordingly the same cannot be treated as dividend income under section 2(22)(e) of the Act.

On the other hand, Ld. DR vehemently relied on the order of Ld. Pr. CIT.

5. We have heard the rival contentions and perused the material available on record. In the instant case, Ld. Pr. CIT u/s 263 of the Act held that the order of AO is erroneous in so far as prejudicial to the interest of revenue on the ground that AO has not treated the amount of loan received by the assessee from SVPL as deemed dividend income in pursuance to Sec. 2(22)(e) of the Act.

As per the assessee, the loan taken by assessee is representing the current account transaction, therefore the provision of Section 2(22)(e) of the Act cannot be attracted to such loan. We find important to refer the ledger of transactions between assessee and the SVPL in the books of assessee which is reproduced below:-

Ledger account
1-Apr-2011 to 31-Mar-2012

Date	Particulars	Vch Type	Vch No.	Debit	Credit
01-4-11	By opening balance				2,82,25,000
25-4-11	Indusind Bank Ch. No. Being the amount received from subhchintk Vancom Pvt. Lt. Through letter.	Receipt	11		50,00,00,000
30-6-11	To Aspective Vaniajaya Pvt. Ltd. being amount paid to Subhchintak by aspective vanijya P ltd.	Journal	100	9,00,00,000	
15-7-11	To Octal Suppliers PVt.td. being amt paid to Subhchintak Vancom by octal suppliers on behalf of SKG	Journal	107	19,00,00,000	
27-7-11	To Indusind Bank Ch. No. being the amount paid to Subhchintak Vancom Pvt. Ltd. Through letter.	Payment	45	1,04,0,000	
29-9-11	To Aspective Vanijya Pvt. Ltd. Being amount paid to Subhchintak by apective vanijya p ltd.	Journal	115	7,00,00,000	
25.10.11	To Octal Suppliers Pvt. Ltd. Being amt. paid to Subhchintak Vancom by Octal Suppliers on behalf of SKG	Journal	119	21,00,00,000	
23-2-12	By Aspective Vanijya Pvt. Ltd. Being Aamt. Paid to Aspective Vannijya by Subchintak Vancom	Journal	197		56,00,00,000
	To closing balance			57,04,00,000 51,78,25,000	1,08,82,25,000
				1,08,82,25,000	1,08,82,25,000

On perusal of the above ledger, it is revealed that there are several transactions between assessee and SVPL and on some occasions, assessee has taken loan from SVPL and similarly on some occasions, assessee has given loan / advance to SVPL.

The purpose of Section 2(22)(e) of the Act is to tax the benefit extended by private limited company to its shareholders holding shares not less than 10% as beneficial owner of shares (not being shares entitled to a fixed rate of dividend income). There is no dispute with regard to shareholding of the assessee. Now coming to the amount of advance taken by assessee, we note that assessee has not only taken loan / advance from SVPL, but also it has sometime given advance to SVPL. Thus, there was change in the balance shown by assessee. Thus, it cannot be termed as advance taken by assessee as it was fluctuating during the year. In holding so, we find support and guidance from the order of co-ordinate Bench of this Tribunal in the case of *Bombay Oil Industries Ltd. vs. DCIT* reported in [2009] 28 SOT 383 (Bom), wherein it was held as under:-

*"From the above it is clear there is distinction between deposits viz-a-vis loans/advances. Section 2(22)(e) enacts a deeming fiction whereby the scope and ambit of the word dividend has been enlarged to bring within its sweep certain payments made by a company as per the situations enumerated in the section. **Such a deeming fiction would not be given a wider meaning than hat it purports to do.** The provisions would necessarily be accorded strict interpretation and the ambit of the fiction would not be pressed beyond its true limits. The requisite condition for invoking Section 2(22)(e) of the Act is that payment must be by way of loan or advances. Since there is a clear distinction between the inter-corporate deposits viz-a-vz loans/advances, according to us the authorities below were not right in treating the same as deemed dividend u/. 2(22)(e) of the Act" [emphasis supplied]*

Similarly, we also support and guidance from the judgment of Hon'ble jurisdictional High Court in the case of *Pradip Kumar Malhotra v. CIT* 338 ITR 538 (Cal) wherein the Hon'ble High Court held as under:-

*"The phrase **"by way of advance or loan"** appearing in sub-clause (e) of section 2(22) of the Income-tax Act, 1961, must be construed to mean those advances or loans which a shareholder enjoys simply on account of being a person who is the beneficial owner of share (not being share entitled to a fixed rate of dividend whether with or without a right to participate in profits) holding not less than ten per cent of the voting power; but if such loan or advance is given to such shareholder as a consequence of any further consideration which is beneficial to the company received from such a share-holder, in such case, such*

advance or loan cannot be said to be deemed dividend within the meaning of the Act. thus, gratuitous loan or advance given by a company to those clauses of shareholders would come within the purview of section 2(22) but not cases where the loan or advance is given in return to an advantage conferred upon the company by such shareholder.” [emphasis supplied]

From the foregoing discussion, there remains no doubt that the transactions between assessee and SVPL is representing current account transactions. Therefore, the provision of Section 2(22)(e) of the Act cannot be attracted to such transactions. Keeping in view the above discussions, and also bearing in mind the entire facts of the case, we deem it fit and proper to uphold the grievance of the assessee and quash the impugned revision order as devoid of jurisdiction. The assessee gets the relief, accordingly.

6. In the result, assessee’s appeal stands allowed.

Order pronounced in the open court 14/02/2018

Sd/-
(न्यायिक सदस्य)
(N.V.Vasudevan)
(Judicial Member)
Kolkata,

Sd/-
(लेखा सदस्य)
(Waseem Ahmed)
(Accountant Member)

*Dkp, Sr.P.S

दिनांक:- 14/02/2018 कोलकाता ।

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. अपीलार्थी/Appellant-M/s Sree Krishna Gyanodaya Flour Mills, Pvt. Ltd., 15B, Everest House, 46C, Chowringhee Road, Kolkata-71
2. प्रत्यर्थी/Respondent-Pr.CIT, C.C, Aayakar Bhavan, Poorva, 110, Shantipally, Kol-107
3. संबंधित आयकर आयुक्त / Concerned CIT Kolkata
4. आयकर आयुक्त- अपील / CIT (A) Kolkata
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

/True Copy/

By order/आदेश से,

Sr. Private Secretary, Head of
Office/DDO
आयकर अपीलीय अधिकरण,
कोलकाता ।