

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES "D" : DELHI

BEFORE SHRI BHAVNESH SAINI, J.M. AND SHRI L.P. SAHU, A.M.

ITA.No.4126/Del./2014  
Assessment Year 2011-2012

Shri Jinendra Kumar Jain, Delhi. PAN AAFPJ7404C C/o. Raj Kumar Associates, C.As. 4435/7, Ansari Road, Daryaganj, New Delhi - 002.	vs.	The ACIT, Circle-36(1), New Delhi.
(Appellant)		(Respondent)

For Assessee :	Shri Raj Kumar Gupta, C.A.
For Revenue :	Smt Naina Soin Kapil, Sr.DR

Date of Hearing :	01.11.2018
Date of Pronouncement :	19.11.2018

**ORDER**

**PER BHAVNESH SAINI, J.M.**

This appeal by Assessee has been directed against the Order of the Ld. CIT(A)-XXVII, New Delhi, Dated 30.05.2014, for the A.Y. 2011-2012 on the following grounds :

1. *“That under the facts and circumstances, there is no legality and justification for making addition of Rs.41,97,267/- u/s.2(22)(e) for the following amounts:*

S. No	Giver Company	Amount (Rs.)
1.	M/s. Designarch Infrastructure (P) Ltd.,	2,80,000/- 13,634/- 12,50,000/- 15,43,634/-
2.	M/s. Designarch Consultants (P) Ltd.,	26,00,000/-
3.	M/s. Jaypee Architects (P) Ltd., M/s. Jinendra Securities (P) Ltd.,	53,633/-
	Total :	41,97,267/-

2. *That both the lower authorities did not understood and appreciate the facts correctly while making and sustaining the addition of Rs.41,97,267/-.”*

2. Briefly the facts of the case are that the assessee is an architect and the return of income was filed declaring total income of Rs.23,80,520/-. During assessment proceedings, the Assessing Officer noticed that the assessee had received substantial amounts from three companies in which he was a

Director and a substantial shareholder. Since the Assessing Officer was not satisfied with the explanation given by the assessee, the amount of Rs.15,43,634/- received from M/s. Designarch Infrastrucutre Pvt. Ltd., Rs.26,00,000/- received from M/s. Designarch Consultants Pvt. Ltd. and Rs.53,633/- from M/s. Jinendra Securities Pvt. Ltd. was added back as deemed dividend under section 2(22)(e) of the Income Tax Act, 1961. The assessee has received Rs.1,35,000/- from M/s. Jinendra Securities Pvt. Ltd., but since the accumulated profits was only Rs.53,633/-, the A.O. limited the addition to this amount only.

3. Assessee challenged the additions before the Ld. CIT(A) and it was contended that all above amounts would not attract the provisions of deemed dividend under section 2(22)(e) of the I.T. Act as all the transactions were business transactions.

4. The Ld. CIT(A) noted that assessee during the year had received a sum of Rs.15,43,634/- from M/s. Designarch

Infrastructure Pvt. Ltd.. As per the confirmations filed by the assessee, a sum of Rs.12,50,000/- was received on 26.05.2010 and another sum of Rs.2,80,000/- was received on 09.03.2011 from the above company. The receipt of the balance amount of Rs.13,634/- was explained during the appellate proceedings as outstanding amounts of salary and rent received by the assessee. A sum of Rs 12,50,000/- was received as advance rent for two years for the property C-62, 2<sup>nd</sup> & 3<sup>rd</sup> Floor, Preet Vihar, New Delhi, jointly owned by the assessee and his wife and this was a normal business transaction. As per assessee, this amount was returned on 29.03.2011. The sum of Rs.2,80,000/- received on 09.03.2011 was security deposit against rent for the very same property. The assessee filed a copy of the rent agreement which did not mention anything about advance rent or the security deposit. Therefore, plea of the assessee that it was normal business transaction, is not acceptable. As regards addition of Rs.13,634/- assessee did not file any evidence, therefore, the Ld. CIT(A) confirmed the addition of Rs.15,43,634/- on

account of deemed dividend under section 2(22)(e) of the I.T. Act.

4.1. The assessee also received Rs.26,00,000/- from M/s. Designarch Consultants Pvt. Ltd. on 28.03.2011. According to the assessee, this was advance received for the sale of property No. 31, Shankar Vihar, Delhi-92, but, the Assessing Officer in the assessment order had wrongly mentioned the property as C-62, Preet Vihar, New Delhi. The assessee submitted that it is a genuine business transaction and therefore, it could not be treated as deemed dividend. The Ld. CIT(A) noted that as per the provisions of section 2(22)(e), the advance made to a shareholder can be excluded from being considered as deemed dividend only if lending of money is a substantial part of business of the Company. Since M/s. Designarch Consultants Pvt. Ltd. is not in the business of lending money, the argument that it is a genuine business transaction, was not accepted. This addition under section 2(22)(e) of the Income Tax Act, 1961, was also confirmed.

5. The Ld. CIT(A) also noted that assessee also received a sum of Rs.1,35,000/- from M/s. Jinendra Securities PM. Ltd. as official imprest. Assessing Officer, however, added back only Rs.53,633/- being the accumulated profits as on 31.03.2011. The Ld. CIT(A) noted that the plea of the assessee is not substantiated through any documentary evidence, therefore, this addition was also confirmed on account of deemed dividend.

6. The Learned Counsel for the Assessee reiterated the submissions made before the authorities below. He has not pressed the addition of Rs.13,634/- on account of amount received from M/s Designarch Infrastructure Pvt. Ltd.. The same is dismissed as not pressed.

7. Learned Counsel for the Assessee referred to the rent agreement at PB-22 and confirmation at PB-20. He has also referred to Agreement to Sell at PB 31 to 33 and PB 36 is confirmation on account of imprest amount. He has, therefore, submitted that since these were the normal business

transactions and genuineness of the transaction have not been doubted, therefore, it would not attract the provisions of Section 2(22)(e) of the I.T. Act, 1961, on account of deemed dividend.

8. On the other hand, Ld. D.R. relied upon the Orders of the authorities below and submitted that conditions of Section 2(22)(e) of the I.T. Act are satisfied in this case, therefore, additions have been correctly made.

9. We have considered the rival submissions. The facts noted above are not in dispute. The Hon'ble Supreme Court in the case of CIT vs. Mukundray K. Shah (2007) 290 ITR 433 (SC) held that *"the true test is whether the payment by Company was for the benefit of the assessee who was Managing Director."* The Hon'ble Delhi High Court in the case of CIT vs. Creative Dyeing and Printing P. Ltd., (2009) 318 ITR 476 (Del.) held that *"business transactions did not attract provisions of Section 2(22)(e) of the I.T. Act"*. The Hon'ble Calcutta High Court in the case of Pradip Kumar Malhotra vs.

CIT (2011) 338 ITR 538 (Cal.) held that “*shareholder permitted to mortgage its property for Company and received loan, therefore, provisions of Section 2(22)(e) of the I.T. Act would not be attracted*”. PB-22 is rent agreement between assessee, his wife and M/s. Designarch Infrastrucutre Pvt. Ltd., for letting-out property. PB-20 is confirmation whereby it is confirmed that advance rent of Rs.12,50,000/- through cheque was given to the assessee for rent of 25 months. Similarly, rent security deposit of Rs.2,80,000/- equivalent to four months rent was given to assessee (Shri Jinendra Kumar Jain). It is, therefore, clear from the evidence on record that assessee in fact, has let-out the joint property to the tenant company and has received advance as well as security deposit of the aforesaid amounts. The authorities below rejected the claim of assessee because the amount of advance rent and security deposit is not mentioned in the rent agreement. Learned Counsel for the Assessee also referred to the return filed by assessee to show that rent have been offered for taxation and all transactions are through banking channel. Therefore, merely advance rent

and security deposit is not mentioned in the rent agreement would not prove that assessee has not received the advance rent and security deposit from the tenant and let-out the property in question. Since the amount is paid as regards the tenanted premises, therefore, it is in normal ordinary transaction of letting out of property. Therefore, it could not be treated as loan or advance so as to attract the provisions of Section 2(22)(e) of the I.T. Act. Similarly assessee received advance of Rs.26 lakhs on account of Agreement to Sell through banking channel. Copy of the Agreement to Sell is filed on record, which is not disputed by the authorities below. It appears that while referring to the tenanted property, A.O. has taken the same property in the assessment order and under misconception of facts made the addition on account of deemed dividend. In fact, it is an Agreement to Sell of property bearing 31, Shankar Vihar, Delhi-92, which Ld. CIT(A) has corrected. The Ld. CIT(A) noted that assessee is not in business of lending money. Therefore, the contention of assessee that it was a genuine business transaction is not

acceptable. However, it is not the case of the assessee because assessee claimed that the Company agreed to purchase the property from the assessee on certain terms and conditions. The said purchase under the agreement by the Company would benefit the Company. Thus, finding of the Ld. CIT(A) is not justified. It is not in dispute that it was the property of the assessee and if assessee received advance against the sale of the property, it could not be treated as deemed dividend. The genuineness of the Agreement to Sell is not in dispute. Therefore, provisions of Section 2(22)(e) of the I.T. Act is not attracted in the case of the assessee. Similarly, assessee received an amount of Rs.1,35,000/- on account of imprest. Confirmation is filed at page-36 of the paper book, in which, it is clearly confirmed that Company has given official imprest amount of Rs.1,35,000/- to the assessee for incurring certain expenses in connection with seeking professional work for the Company. Therefore, explanation of assessee is substantiated that it was an ordinary business transaction and that small imprest amount was given to the assessee to incur

expenditure on behalf of the Company. Therefore, provisions of Section 2(22)(e) would not be attracted in this case. Considering the totality of the facts and circumstances of the case noted above, it is clear that all the amounts in question have not been given to the assessee for his personal benefit but these amounts have been given for the benefit of the Company. These were ordinary business transactions and as such, would not attract the provisions of Section 2(22)(e) of the I.T. Act, 1961. We, accordingly, set aside the Orders of the authorities below and delete the above additions. Appeal of Assessee is partly allowed.

10. In the result, appeal of Assessee is partly allowed.

Order pronounced in the open Court.

Sd/-  
(LP SAHU)  
ACCOUNTANT MEMBER

Sd/-  
(BHAVNESH SAINI)  
JUDICIAL MEMBER

Delhi, Dated 19<sup>th</sup> November, 2018

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'D' Bench, Delhi
6.	Guard File.

// BY Order //

Assistant Registrar : ITAT Delhi Benches :  
Delhi.

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