

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "ए", चण्डीगढ़  
IN THE INCOME TAX APPELLATE TRIBUNAL,  
CHANDIGARH BENCH 'A', CHANDIGARH

श्री संजय गर्ग, न्यायिक सदस्य एवं श्रीमती अन्नपूर्णा गुप्ता, लेखा सदस्य  
BEFORE: SHRI SANJAY GARG, JUDICIAL MEMBER  
AND SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMBER

आयकर अपील सं./ ITA No. 1126/Chd/2017

निर्धारण वर्ष / Assessment Years : 2008-09

Sh.Kewal Krishan chhabra, 805, Ram Niwas, Bagh Khazanhia, Ludhiana.	बनाम	The A.C. .T., Circle-VII, Ludhiana
स्थायी लेखा सं./PAN NO: AATPC8001G		

निर्धारिती की ओर से/Assessee by: Shri Sudhir Sehgal, Adv.

राजस्व की ओर से/ Revenue by : Smt.Chanderkanta, Sr.DR

सुनवाई की तारीख/Date of Hearing : 29.04.2019

उदघोषणा की तारीख/Date of Pronouncement: 31.05.2019

**आदेश/ORDER**

**Per Annapurna Gupta, Accountant Member**

The present appeal has been filed by the assessee against the order of the Commissioner of Income Tax [(Appeals)-1, Ludhiana (in short 'CIT(A)'] dated 8.2.2017, confirming the levy of penalty u/s 271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as 'Act').

2. The penalty in the present case has been levied on the addition made to the income of the assessee on account of

treating loans/advances received by him as deemed dividend under the provisions of section 2(22)(e) of the Act. 3.

3. Before us, the assessee has raised the grounds of appeal challenging the order of the Ld.CIT(A) both on merits and on legal grounds. The grounds of appeal read as under:

- “1. That the Worthy Commissioner of Income Tax (Appeals) has erred in confirming the levy of penalty u/s 271(1)(c) amounting to Rs. 5,83,282/-.
2. That the Worthy CIT(A) had failed to appreciate the fact that the complete particulars of income had been furnished and neither there has been concealment of income nor furnishing of inaccurate particulars of income.
3. That the Worthy CIT (A) had ignored the judgment of *Reliance Petroproducts (P) Ltd.* and further, the levy of penalty is not justified since the addition u/s 2(22)(e) is only on account of deeming provisions and, as such, it is not a case of levy of penalty u/s 271(1)(c).
4. That even otherwise, no proper satisfaction has been recorded by the Assessing Officer for concealment of income or for furnishing of inaccurate particulars of income and, thus, since no proper satisfaction has been recorded, the levy of penalty u/s 271(1)(c) is not valid.
5. That even while issuing the show cause notice u/s 271(1)(c), no specific charge either for concealment of income or furnishing of inaccurate particulars of income have been made and also in the order u/s 271(1)(c), the penalty has been levied on account of furnishing of inaccurate particulars of income and, thus, the levy of penalty is not valid.
6. That the Appellant craves leave to add or amend the grounds of appeal before the appeal is finally heard or disposed off.”

4. Further it was contended that ground No.4 as above was a legal ground which could not be raised before the Ld.CIT(A) but since the legal issue went to the root of initiation of the proceedings and further required no fresh facts to be investigated or looked into, the same, it was pleaded, be admitted.

5. Considering the above submissions of the assessee, the additional ground raised by way of ground No.4 is hereby admitted for adjudication.

6. Before us, the Ld. counsel for assessee first took up grounds on merits of the case raised in ground Nos.1, 2 & 3 above. The Ld. counsel for assessee first drew our attention to the facts relating to the addition made u/s 2(22)(e) of the Act on which penalty was levied. Drawing our attention to the assessment order in the present case, passed u/s 143(3) of the Act, wherein the impugned addition was made, it was pointed out therefrom that the A.O. had noted that the assessee had a debit balance of Rs.18,22,923/- in the books of M/s Chhabra Wines Ltd., a company in which the assessee was a Director holding 51.98% of shares. The A.O., therefore, found that the assessee fulfilled all the conditions for treating the impugned amount as deemed dividend u/s

2(22)(e) of the Act and accordingly, made the addition in the hands of the assessee. It was thereafter pointed out that the said addition was confirmed in appeal both by the Ld.CIT(A) and the I.T.A.T. also. Thereafter the Ld. counsel for assessee contended that no penalty was leviable on the impugned addition since all material facts and particulars relating to the impugned transaction had been truly and completely disclosed by the A.O. and it was only a case of mere mistake, having not returned the advance as deemed dividend. It was contended that having truly disclosed the entire transaction, it was evident that the bonafides of the assessee was also proved and, therefore, also no penalty was leviable. Further it was contended that the Revenue had not doubted the nature of the transaction disclosed being loan/advance, which are clearly not in the nature of income, and it is only on account of deeming provision that the said amount are subjected to tax. Therefore, it was contended, it could not be said that there was a malafide intention of the assessee to evade tax and it was an inadvertent error which was genuine and bonafide. Reliance was placed on the following case laws in support of the above contentions:

1. *Jaskaran Singh Vs .Income Tax Officer*  
*ITANo.18/CHD/2017CHD-TRIB*

2. *Income Tax Officer Vs. Parkash Narain Singh*  
*ITA No.2691/DEL/2013 DEL-TRIB*
3. *Income Tax Officer Vs. Dr. Shamsheer, ITA*  
*NO.564/CHENNAI/2011 CHENNAI-TRIB*
4. *Commissioner of Income Tax Vs. Reliance*  
*Petroproducts (P) Ltd, 322 ITR 158(SC)*
5. *Brijesh Kumar Vs. The Income Tax Officer*  
*ITAN0.701/CHD/2017CHD-TRIB*
6. *Anil V. Mehta Vs. income Tax Officer, ITA*  
*No.1324/MUM/2013 MUM-TRIB*
7. *Shankar Lai Khandelwal Vs. Deputy*  
*Commissioner of Income Tax, ITA*  
*No.878/JP/2013 JAIPUR-TRIB*
8. *Vikram P. Mahurkar V/s Assistant*  
*Commissioner of Income Tax, ITA*  
*No.3195/ADH/2014 AHD-TRIB*

7. The Ld. DR, on the other hand, vehemently supported the order of the Ld.CIT(A). The Ld. DR pointed out that during assessment proceedings and even in appellate proceedings the assessee had given an explanation of the impugned transaction to escape from the rigours of the deeming provisions of section 2(22)(e) of the Act by stating that the loans/advances had been received on account of sale of property by the assessee to the company. The Ld. DR pointed out that this explanation of the assessee was found to be a mere cover-up since there were contradictory facts emanating between the explanation given by the assessee and the documents furnished by him to substantiate his

explanation Our attention was drawn to the findings o the I.T.A.T. in its order passed in quantum proceedings in ITA No.104/Chd/2013 dated 29.4.2015 at para Nos.8 & 9 as under:

*“8. On consideration of the rival submissions, we do not find any merit in this ground of appeal of the assessee. It is not in dispute the factual findings recorded by the authorities below with regard to applicability of the provisions of section 2(22)(e) of the Act in the matter. During the course of arguments, it is not disputed tha conditions of Section 2(22)(e) of the Act are satisfied in the present case. The assessee also pleaded before the authorities below that since advance against the property is in the nature of commercial transaction, therefore, provisions of Section 2(22)(e) of the Act are not satisfied. This is exception pro vided to provisions of Section 2(22)(e) of the Act because the provisions of deemed dividend would not cover any advance or loan made to the shareholder by a company in the ordinary course of its business where the lending of money is a substantial part of the business of the company. The assessee except pleading that advance against property is in the nature of commercial transaction has not pleaded before authorities below that lending of money is substantial part of the business of the company.*

*9. The ld. CIT(Appeals), on going through the Agreement to Sell in question specifically found that part of the amount is stated as advance and that assessee is 1/3<sup>rd</sup> owner of the property in question. However, in the Agreement to Sell, assessee claimed to be owner of the property in question. In the Agreement to Sell, it is stated that assessee shall receive the balance amount at the time of execution and registration of the Sale Deed. However, till date, no Sale Deed is executed by assessee in favour of the assessee. Therefore, there is no question of making further payment to the assessee as advanced against the property in question. The*

*other co-owner have never entered into any Agreement to Sell with the company. There was a difference in the property number also as noted by the ld. CIT(Appeals). Therefore, ld. CIT(Appeals) was justified in holding that assessee's contention is after-thought and the entire transaction relate to sham transaction. The factual discrepancies have not been explained during the course of arguments before us as well. The ld. CIT(Appeals) was, therefore, justified in deciding the issue against the assessee."*

8. The Ld. DR, therefore, contended that the explanation offered by the assessee being false, the CIT(A) had rightly held that the assessee had concealed the particulars of income and penalty, therefore, had been rightly confirmed by the CIT(A).

9. We have heard the rival contentions and carefully perused the orders of the authorities below. The issue before us relates to levy of penalty u/s 271(1)(c) of the Act for concealing/furnishing inaccurate particulars of income. The income which is subject matter of penalty, admittedly, is deemed dividend u/s 2(22)(e) of the Act. The fact of the matter is that the assessee had actually received loan/advance from a company, but the same was deemed to be in the nature of dividend on account of fulfillment of certain conditions specified in the section, one of them

being the assessee having substantial interest in the company.

10. In the above factual matrix, the issue of levy of penalty u/s 271(1)(c) of the Act, for concealing/furnishing inaccurate particulars of income, has to be adjudicated by us. There is no dispute about the fact that the assessee had correctly disclosed all particulars relating to the deemed income. The assessee had shown the loan/advance as received from the company and the revenue had, accepting this fact and taking into consideration other factors, treated the same as deemed income of the assessee. So far as the bonafides of the assessee claim for not treating it as income for the purposes of taxation, we see no reason to doubt it. The true nature of the amount was not income, but loan/advance. It was only deemed to be in the nature of dividend on account of fulfillment of conditions specified u/s 2(22)(e) of the Act. The assessee is an individual who, unlike corporate, is generally not guided and assisted by professionals in tax matters, which, as is evident from the issue before us, are highly complex taxing even receipts which are not in the nature of income. In such circumstances, it cannot be said that having disclosed all



particulars of the deemed income, the assessee had intentionally not returned it to tax. The bonafides of the assessee therefore cannot be doubted. The fact that the ITAT held the explanation of the transaction being commercial in nature for purchase of property, as an after thought and sham, makes no difference, since the ITAT also held that the explanation in any case was of no help to the assessee and did not save it from the rigors of section 2(22)(e) of the Act. The ITAT held that merely because an advance is received in a commercial transaction does not suffice to exempt it from being treated as deemed dividend, unless and until the advance is received in the course of money lending business of the company giving the advance. Therefore the explanation did not save it from the rigors of 2(22)(e) of the Act, and therefore if the same was found false, it could not be said that the assessee had malafidely not returned the deemed income to tax.

11. In view of the above, we set aside the order of the Ld.CIT(A) and hold that no penalty is exigible in the present case. The penalty so levied is directed to be deleted. Ground Nos.1, 2 and 3 raised by the assessee are, therefore, allowed.

Since we have deleted the penalty levied and allowed the assessee's appeal on merits, the legal grounds become academic and, therefore, are not being dealt with.

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

Order pronounced in the Open Court.

Sd/-

संजय गर्ग

(SANJAY GARG)

न्यायकि सदस्य/Judicial Member

दिनांक /Dated: 31<sup>st</sup> May, 2019

\*रती\*

आदेश की प्रतिलिपि अग्रेषित/ Cop of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

Sd/-

अन्नपूर्णा गुप्ता

(ANNAPURNA GUPTA)

लेखा सदस्य/Accountant Member

आदेशानुसार/ By order,

सहायक पंजीकार/ Assistant Registrar