

आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, PUNE

(Through Virtual Court)

BEFORE SHRI R.S.SYAL, VP AND
SHRI PARTHA SARATHI CHAUDHURY, JM

आयकर अपील सं. / ITA No. 1625/PUN/2015

निर्धारण वर्ष / Assessment Year : 2011-12

Shri Kamlakar Sahebrao Patil,
Plot No.12, Mayur Colony,
Deopur, Dhule-424 002.
PAN : AAMPP8735H

. . .अपीलार्थी / Appellant

बनाम / V/s.

The Deputy Commissioner of Income Tax,
Circle-3(1), Dhule.

.....प्रत्यर्थी / Respondent

Assessee by : Shri Sunil Ganoo

Revenue by : Shri S.P Walimbe

सुनवाई की तारीख / Date of Hearing : 08.12.2020

घोषणा की तारीख / Date of Pronouncement : 08.12.2020

आदेश / ORDER

PER PARTHA SARATHI CHAUDHURY, JM:

This appeal preferred by the assessee emanates from the order of the
Ld. CIT(Appeal)-1, Nashik dated 08.10.2015 for the assessment year 2011-12
as per the grounds of appeal on record.

2. In this case, the Assessing Officer found that the assessee had shown Rs.1,38,52,854/- as a liability to paid to SDIPL. The assessee was asked to furnish ledger account with SDIPL with percentage of share holding pattern for entire FY 2010-11 with balance confirmation. In response thereto, the Ld. AR furnished the share holding pattern as on 31.03.2011 of the assessee and also filed the confirmed ledger account with SDIPL. On perusal of the share holding pattern statement duly signed by Director of SDIPL, it was noticed by the Assessing Officer that the assessee is a Director and having 33.34% of share holding as on 31.03.2011. Further, the assessee was holding share at Rs.10,00,067/- out of total number of shares 30,00,000/- The assessee was asked to explain why addition should not be made in view of section 2(22)(e) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') in the capacity of Director and keeping in view the share holding of the assessee M/s. Souvenir Developers (I) Pvt. Ltd. of 33.34%.

3. In response thereto it was submitted by the assessee that in terms of Section 2(22)(e) of the Act, advances received from M/s. Souvenir Developers (I) Pvt. Ltd. cannot be construed as advance received from M/s. Souvenir Developers (I) Pvt. Ltd. That the said M/s. Souvenir Developers (I) Pvt. Ltd. requires a huge amount of capital to run the business. To support the said business activities, the company applied for loan to banker. While obtaining credit limit, from State Bank of India and its enhancement, properties of Mr. Kamlakar Sahebrao Patil, the assessee and his family members were pledged. Detailed lists of properties owned or have interest which were provided for security for obtaining loan for M/s. Souvenir Developers (I) Pvt. Ltd. is a part of sanction letter issued by the Bank. This sanction letter was also filed before the Department. That despite of putting, restrictions on the properties

owned or having interest in properties, he also paid interest on borrowed funds @13% p.a.

4. The assessee also filed ledger account and books of account which clearly demonstrate that the amount withdrawn from Souvenir Developers (I) Pvt. Ltd. were for immediate financial necessities of the assessee. Withdrawals from Souvenir Developers (I) Pvt. Ltd. were taken only in case of immediate necessities which can be met by disposing of the owned properties which were given as security to bankers for the purpose of loan to Souvenir Developers (I) Pvt. Ltd. In these type of transactions, the assessee is a shareholder but not the beneficial shareholder and therefore, since the assessee is not beneficial shareholder, the provisions of Section 2(22)(e) of the Act will not apply.

4.1 The assessee placed reliance on the decision of the Hon'ble Calcutta High Court in the case Pradip Kumar Malhotra Vs. Commissioner of Income Tax, IT Appeal No.219 of 2003 cited at (2012) 246 CTR (Cal) 493 wherein it was held that *"but if such loan or advance is given to such shareholder as a shareholder, in such case, such advance or loan cannot be said to be deemed dividend within the meaning of the Act."* The Hon'ble High Court further observed that *"in the present case the assessee permitted his property to be mortgaged to the bank for enabling the company to take the benefit of loan and in spite of the assessee, the company is unable to release the property of loan and in spite of request of the assessee, the company is unable to release the property from the mortgage. In such situation, for retaining the benefit of loan, give gratuitous advance to its shareholder to protect the business interest of the company."*

4.2 The Assessing Officer, however, did not find favour with the arguments forwarded by the assessee and vide Para 6 of his order made addition as deemed dividend u/s.2(22)(e) of the Act.

5. The Ld. CIT(Appeal) upheld the findings of the Assessing Officer primarily on the basis that according to observation of the Ld. CIT(Appeal), the assessee was unable to justify the commercial expediency in the entire transaction. The Ld. CIT(Appeal) vide Para 4.24 categorically observed that the assessee has not been able to demonstrate through any cogent or credible evidence that this transaction that he had with the company was commercial in nature.

6. At the time of hearing, the Ld. AR of the assessee through video conference submitted that on identical facts and circumstances, the Pune Bench of the Tribunal has decided the same issue in ITA No.1926/PUN/2016 for assessment year 2012-13 in the case of Shri Sanjay Chandan Patel Vs. DCIT order dated 07. 0.2020. The Ld. AR placing reliance on this order of the Tribunal submitted that the matter may be restored to the file of the Assessing Officer.

7. The Ld. DR conceded to the prayer made by the Ld. AR of the assessee and placed reliance on the decision of the Pune Bench of the Tribunal (supra.).

8. We have heard the rival contentions and perused relevant documents on records. We have also analyzed the facts and circumstances in this case and considered the judicial pronouncements placed on record. We find in our

earlier decision in ITA No.1926/PUN/2016 dated 07.10.2020 (supra.) on identical facts and circumstances, it was observed as follows:

“4. Briefly stated, the facts of the case are that the assessee has been a Director of a company, namely, Souvenir Developers (India) Pvt. Ltd., holding more than 20% of shares. The assessee raised certain advances from the company. The Assessing Officer (AO) opined that the amount of loans advanced by the company to the assessee to the tune of Rs.2.72 crore was liable to be considered as deemed dividend u/s.2(22)(e) of the Act subject to the availability of accumulated funds in the hands of the company. When confronted, the assessee submitted that he, along with a partnership firm, namely, Souvenir Developers, offered his personal properties as collateral security to the bank for availing credit facilities by Souvenir Developers (India) Pvt. Ltd. with the understanding that if in future, the assessee needs funds, the company will advance loans to the assessee at the interest rate of 13%, which was close to the interest rate on which the bank had financed the company. The assessee also relied on the judgment of the Honble Calcutta High Court in Pradip Kumar Malhotra Vs. CIT (2012) 246 CTR (Cal) 493 in support of his contention that the amount of advances received by the assessee was not liable to be considered as deemed dividend. Not convinced, the AO computed the amount of accumulated profits in the hands of company at Rs.65,36,678/- and made the addition by treating loan advanced to the assessee as deemed dividend u/s 2(22)(e) of the Act. The ld. CIT(A) did not change the fortune of the assessee, which led to the filing of the instant appeal.

5. We have heard the rival submissions through Virtual Court and gone through the relevant material on record. From the computation of accumulated profits, made by the AO on pages 17-19 of the assessment order, of Souvenir Developers (India) Pvt. Ltd., it is seen that the AO reduced a sum of Rs.60,87,413/-, being, the amount taxed as deemed dividend in the hands of the assessee for the A.Y. 2009-10 in addition to another sum taxed in the hands of Kamlakar Sahebrao Patil as deemed dividend for the A.Y. 2011-12. The matter pertaining to the assessee for the A Y. 2009-10 came up for consideration before the Tribunal. Vide order dated 30-05-2017 in ITA No.1894/PUN/2014, the Tribunal, after considering the entire evidence, remitted the matter to the file of AO for a fresh consideration in terms of directions given in para 5 of the order. Since the facts and circumstances of the issue in the extant appeal are mutatis mutandis similar to those for the A.Y. 2009-10 in assessee's own case, respectfully following the precedent, we set aside the impugned order and send the matter back to the file of the AO for taking a fresh decision in the light of observations made by the Tribunal in assessee's own case for the A.Y. 2009-10.”

In the aforesaid decision also, judgment of the Hon'ble Calcutta High Court in the case of Pradip Kumar Malhotra Vs. Commissioner of Income Tax (supra.) was considered and therein it was also observed that in another case of the assessee concerned for the assessment year 2009-10 vide order dated

30.05.2017 in ITA No.1894/PUN/2014, the Tribunal had remitted the matter to the file of Assessing Officer for fresh adjudication and since the facts were mutatis mutandis similar to that year in assessee's own case, therefore, the Tribunal had remitted this year's matter also back to the file of the Assessing Officer.

9. Respectfully following the precedents, we set aside the impugned order of the Ld. CIT(A) and send the matter back to the file of the Assessing Officer for re-adjudication while complying with the principles of natural justice.

10. In the result, **appeal of the assessee is allowed for statistical purposes.**

Order pronounced on 08th day of December, 2020.

Sd/-
R.S.SYAL
VICE PRESIDENT

Sd/-
PARTHA SARATHI CHAUDHURY
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 08th December, 2020.

SB

आदेश की प्रतिलिपि अग्रहित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeal)-1, Nashik.
4. The Pr. CIT-1, Nashik.
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, "ए" बेंच,
पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

निजी सचिव / Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.

		Date	
1	Draft dictated on	08.12.2020	Sr.PS/PS
2	Draft placed before author	08.12.2020	Sr.PS/PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on		Sr.PS/PS
7	Date of uploading of order		Sr.PS/PS
8	File sent to Bench Clerk		Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		

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11	Date of dispatch of order		
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