

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "B" : HYDERABAD**

**BEFORE Ms. SUSHMA CHOWLA, VICE PRESIDENT
AND
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER**

**S.A.Nos. 75 & 76/Hyd/2017
(Arising out of ITA Nos. 364 & 365/Hyd/17)
Assessment Year: 2010-11**

Naresh Kumar Sekher,
Hyderabad
PAN: ABAPT0359G

And

Smt. Kiran Dwarakanath Sekhar,
Hyderabad
PAN: AFVPS5346D

..... Applicants

Vs.

Income Tax Officer,
Ward-2(1),
Hyderabad

..... Respondent

Applicant by : Smt. S.Sandhya, AR
Revenue by : Shri Murali Mohan, DR

Date of Hearing : 18-02-2020
Date of Pronouncement : 19-02-2020

ORDER

PER Ms.SUSHMA CHOWLA, Vice-President :

Both these Stay Applications are moved by the applicants for granting stay against recovery of outstanding demands.

2. The applicant in S.A.No.75/Hyd/2017 (in ITA No.364/Hyd/2017) and S.A.No.76/Hyd/2017 (in ITA No.365/Hyd/2017) are related parties and demand has arisen in case of both the parties on account additions made u/s.2(22)(e) of the Income Tax Act, 1961 [Act]. The total demand in S.A.No.75/Hyd/2017 is Rs.19,27,800/-, against which the assessee has already deposited an amount of Rs.6,62,848/- and balance demand outstanding is Rs.12,64,952/-. In S.A.No.76/Hyd/2017, the total demand initially was Rs.14,18,000/- (Approx) against which, the assessee deposited Rs.7 Lakhs. However, after the order of CIT(Appeals), the Assessing Officer (AO) gave the appeal effect and balance demand outstanding is as under:

		Amount
1.	Tax	Rs.4,74,063
2.	Interest	Rs.6,78,183
3.	Total	Rs.11,52,246

3. The Ld.AR for the applicants pointed out that there is no merit in the addition made u/s.2(22)(e) of the Act. The first aspect of the issue was that the profits which were owned by the company M/s.Kiran Infertility Centre Pvt. Ltd., who had advanced the aforesaid loans, had already utilised the profits for acquisition of fixed assets and the same were not available. It was further pointed out that the advance was given by the company for leasing of property owned by both the applicants. He stressed that it was a business transaction between the

Directors of the company and the provisions of Section 2(22)(e) of the Act had no application.

4. The Ld.DR for the Revenue pointed out that the applicants have no *prima facie* case in their favour and for a long time the stay applications were pending. He stressed that the applicants be made to pay demands.

5. On the perusal of both the stay applications and after hearing both the Authorised Representatives, the issue which is being raised in the captioned appeals is on account of addition made u/s.2(22)(e) of the Act. The case of the applicants before us is that the said transaction was a business transaction between the parties and was not loan *per se* and hence the provisions of Section 2(22)(e) of the Act were not attracted. The stay applications have been moved by the applicants for granting stay against the recovery of outstanding demands. In both the stay applications, the applicants have partly made payments against the outstanding demands and the balance demand of Rs.12,64,952/- is outstanding in S.A.No.75/Hyd/2017 and Rs.11,52,246/- is outstanding in S.A.No.76/Hyd/2017. In the entirety of the facts and circumstances, we are of the view that the applicants have a *prima facie* case in their favour and stay is granted against the recovery of balance outstanding demands against both the applicants, where the applicants have already deposited part of the outstanding demand, for a period of 180 days or till the disposal of the appeals, whichever is earlier. The appeals are fixed for hearing on out of turn basis on

17-03-2020, for which no notices are to be issued as the date of hearing was announced in the open court. No frivolous adjournment shall be taken by either of the parties.

6. In the result, both the stay applications are allowed.

Order pronounced in the open court on 19th February, 2020

Sd/-
(A. MOHAN ALANKAMONY)
ACCOUNTANT MEMBER

Sd/-
(SUSHMA CHOWLA)
VICE PRESIDENT

Hyderabad, Dated 19-02-2020

TNMM

Copy to :

- 1. Naresh Kumar Sekher, H.No.6-2-966/4, Street No.10, Besides Nirmala High School, Khairatabad, Hyderabad.*
- 2. Smt.Kiran Dwarakanath Sekhar, H.No.6-2-966/4, Street No.10, Besides Nirmala High School, Khairatabad, Hyderabad.*
- 3. The Income Tax Officer, Ward-2(1), Hyderabad.*
- 4. CIT(Appeals)-10, Hyderabad.*
- 5. Pr.CIT-2, Hyderabad.*
- 6. D.R. ITAT, Hyderabad.*
- 7. Guard File.*

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