

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'H' BENCH
MUMBAI**

**BEFORE: SHRI RAJESH KUMAR, ACCOUNTANT MEMBER
&**

SHRI AMARJIT SINGH, JUDICIAL MEMBER

**ITA No.5455/Mum/2019
(Assessment Year :2012-13)**

Shri Suresh Govind Shetti 401, Premium Tower Lokhandwala Complex Andheri (W) Mumbai Maharashtra – 400 053	Vs.	Asst. Commissioner of Income Tax-25(1) Room No.711, 7 th Floor C-12, Pratyakshakar Bhavan, Bandra Kurla Complex Bandra (E) Mumbai – 400 051
PAN/GIR No. ABDPS4300F		
(Appellant)	..	(Respondent)

Assessee by	Shri Jitendra Singh
Revenue by	Ms. Usha Gaikwad
Date of Hearing	17/09/2021
Date of Pronouncement	06/10/2021

आदेश / O R D E R

PER AMARJIT SINGH (JM):

The assessee has filed the present appeal against the order dated 18/07/2019 passed by the Commissioner of Income Tax (Appeals)-37, Mumbai relevant to the A.Y.2012-13.

2. The assessee has raised the following grounds:-

“The Ld. Commissioner of Income Tax (Appeals) - 37, Mumbai [hereinafter referred to as the "Ld. CIT(A)"] erred in passing the order dated 18.07.2019 upholding the action of Ld. Assistant Commissioner of Income Tax - 25(1), Mumbai [hereinafter referred to as 'Ld. A.O.'] in making additions/disallowances without appreciating the facts and

circumstances of the case. Thus, the order dated 18.07.2019 passed by Ld. CIT (A) is bad in law and the same may be quashed.

Ad-hoc disallowances of various expenses unjustified - Rs.68,459/-

i. The Ld. CIT(A) erred in upholding the action of Ld. A.O. in making ad-hoc disallowances at the rate of 5% of conveyance, business promotion, telephone and staff welfare expenses incurred during the year under consideration by alleging the personal element involved in same without appreciating the facts and circumstances of the case. The Appellant, therefore, prays that the addition of Rs.68,459/- is unjustified and the same may be deleted.

ii. The Ld. CIT(A) failed to appreciate that the above expenses are incurred during the course of normal business activity carried on by the Appellant and the same are supported by proper documentary evidences. Hence, ad-hoc disallowance of Rs.68,459/- is unjustified and the same may be deleted.

Addition on account of deemed dividend under section 2(22)(e) of the Act unjustified - Rs.20,71,952/-

i. The Ld. CIT(A) erred in confirming the action of Ld. A.O. in making addition of Rs.20,71,952/- being the accumulated profit of M/s. Nikko Pneumatics Pvt. Ltd by treating the same as deemed dividend under section 2(22)(e) of the Act without appreciating the fact that provisions of section 2(22)(e) of the Act is not at all applicable to the facts of Appellant's case. The Appellant, therefore, prays that the addition of Rs.20,71,952/- under section 2(22)(e) of the Act is unjustified and the same may be deleted.

ii. The Ld. CIT(A) failed to appreciate that the Appellant had not taken any advance or loan from M/s. Nikko Pneumatics Pvt. Ltd during the previous year relevant to the impugned assessment year 2012-13. Thus, the provisions of section 2(22)(e) is not applicable in the facts of Appellant's case. The Appellant, therefore, prays that the addition of Rs.20,71,952/- under section 2(22)(e) of the Act is not at all justified and the same may be deleted. ,

4. The Ld. Assessing Officer erred in levying interest under section 234A, 234B and 234C without appreciating the fact that the appellant denies his liability to the same.

5. The Appellant craves leave to add, alter, amend, delete, rescind or withdraw any of the grounds of appeal mentioned hereinabove.

3. The brief facts of the case are that the assessee filed its return of income on 28/09/2012 declaring total income of Rs.58,45,520/- for the A.Y.2012-13. The return was processed u/s.143(1) of the Act. The case was selected for scrutiny. Notices u/s.143(2) and 142(1) were issued and served upon assessee. The assessee is an individual and is a proprietor of M/s. Advance Systems Controls engaged in the business of manufacturing of pneumatic hydraulic cylinder valve, power packed panels. During the year under consideration, it was noticed that assessee had taken loan from M/s. Nikko Pneumatics Pvt. Ltd., amounting to Rs.30,00,131/-. Notice was given and it was noticed that assessee was 50% shareholder in the company, therefore, advance to the tune of Rs.20,71,952/- was treated as deemed dividend in view of the provision u/s.2(22)(e) r.w.s. 56(2) of the Act and added to the income of the assessee. After certain disallowance, total income of the assessee was assessed to the tune of Rs.80,52,380/-. The assessee filed the appeal before the CIT(A) who dismissed the appeal of the assessee, therefore, the assessee has filed the present appeal before us on the grounds mentioned above.

3.1. The ground No.1 raised by the assessee challenges the addition of Ad-hoc disallowance at 5% of conveyance, business promotion, telephone and staff welfare expenses incurred during the year under consideration. This ground was not pressed at the time of hearing and accordingly, the same is dismissed being not pressed.

3.2. In ground No.2, the assessee has challenged the treatment of deemed dividend u/s.2(22e) in sum of Rs.20,71,952/-. The basic contention of the assessee is that the assessee did not take any loan from M/s. Nikko Pneumatics Pvt. Ltd., therefore, the provision u/s.2(22e) is not applicable in this case. It is argued that the amount of Rs.36,30,609/- represent brought forward balance from earlier assessment year. During this year, the assessee paid an amount of Rs.6,30,478/-. Thus, an amount of Rs. 30,00,131/- represent closing balance in the year under consideration. In support of this contention, the ld. representative

of the assessee placed reliance on the Bombay High Court decision in the case of **CIT vs. Parle Plastic Ltd.**

3.3. On the other hand, Id. representative of the department has refuted the said contentions. Before going further, we deem it necessary to advert the assessee's account in the books of AMPL as under:-

“Opening debit balance b/f.	Rs.1,76,39,425/-
Add: (i) Payments made by way of advance or loan during the year.	
(a) on 10.9.96 Rs.6,00,000	
(b) on 31.3.97 <u>Rs.5,68,135</u>	11,68,135
(ii) Provision for interest debited to the appellant's account on 31.3 97	32,13,367
Total	2,20,20,927
Less:	
Adjustment entries on credit side	1,59,974
Closing balance c/f.	Rs.2,18,60,953

3.4. It is evident that during the relevant previous year (F.Y.1996-97), AMPL had actually lent to the assessee only a sum of Rs.11,68,135/- in two installments, i.e. Rs.6,00,000/- on 10/9/1996 and Rs.5,68,135/- on 31.3.1997. The opening balance of Rs.1,76,39,425/- was not advanced by AMPL to the assessee during the relevant previous year and could, therefore, be not treated as the amount of loan or advance received by the assessee during the relevant previous year. The said amount, therefore, could not be included as the dividend (hereinafter, referred to as "the deemed dividend") under clause (e) of Section 2(27) of the Act.

3.5. The Bombay High Court in case of CIT vs. Parle Plastic Ltd., reported in 332 ITR 63(Bom) has held as under:-

“In the light of this definition, we would have to consider whether the amount of Rs.2,18,60,949/- shown to have been received by the assessee by way of loan from AMPL could be treated as "deemed dividend" in its hands under Section 2(22) of the Act. The admitted facts are that AMPL which is the lending company is a private limited company in which the public are not substantially interested. It is also not disputed that Shri Ramesh Chauhan, during the relevant period, held 53.33% of the share capital of the AMPL and also held 54% of the share capital of the assessee company. Counsel for the assessee did not dispute that all the conditions laid down under clause (e) of Section 2(22) of the Act for treating the loan advanced by AMPL to the assessee company as a dividend were satisfied. He, however, submitted that even the amount which was received as loan by the assessee from AMPL during the relevant previous year fell within the inclusive clause (e) of Section 2(22) it could not be treated as dividend, in view of the fact that the amount fell under clause (ii) of Section 2(22) of the Act and was specifically excluded from the definition of the dividend.”

3.6. Since, assessee did not take any amount on loan in the relevant assessment year, we are of the view that the amount in sum of Rs.20,71,952/- nowhere comes within the ambit of provision u/s.2(22)(e) of the Act, hence, we set aside the findings of the Id. CIT(A) on this issue and allowed the claim of assessee.

4. The ground No.4 is in connection with the payment of interest which is consequential in nature. AO is directed to give consequential effect in view of the directions given above in accordance with law.

5. The ground No.5 is general in nature and does not require any specific adjudication.

6. In the result, appeal of the assessee is allowed.

Order pronounced on 06/10/2021 by way of proper mentioning in the notice board.

Sd/-
(RAJESH KUMAR)
JUDICIAL MEMBER

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

Mumbai; Dated 06/10/2021
KARUNA, sr.ps

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai

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