

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES : SMC-I : NEW DELHI

BEFORE SHRI R.S. SYAL, ACCOUNTANT MEMBER

ITA No.4227/Del/2015

Assessment Year : 2006-07

Hemkunt Chemicals Pvt. Ltd., Vs. ITO,
Second Floor, Ward 12(3),
87, Zamrudpur, New Delhi.
Greater Kailash-I,
New Delhi.

(Appellant)

(Respondent)

Assessee By : Shri R.B. Mathur, CA
Department By : Shri Rajesh Kumar, Sr. DR

Date of Hearing : 27.09.2016
Date of Pronouncement : .09.2016

ORDER

This appeal filed by the assessee is directed against the order passed by the CIT(A) on 20.5.2015 in relation to the assessment year 2006-07.

2. The only issue raised in this appeal is against making of addition of Rs.10 lac by the ld. CIT(A) on account of deemed dividend u/s 2(22)(e) of the Act in respect of loans received by the assessee from M/s PSB Industries (India) Pvt. Ltd.

3. Briefly stated, the facts of the case are that the assessee showed to have received an unsecured loan of Rs.10 lac from M/s PSB Industries (India) Pvt. Ltd., in which the assessee is a shareholder. The Id. CIT(A) observed that this company was having significant reserves and surplus amounting to Rs.39,06,577/-. He called upon the assessee to explain as to why the amount of loan received be not treated as deemed dividend u/s 2(22)(e) of the Act. Despite repeated opportunities, the assessee did not either appear before the Id. CIT(A) or furnish any explanation. This led to the making of addition of Rs.10 lac u/s 2(22)(e) of the Act. The assessee is aggrieved against this addition.

4. I have heard the rival submissions and perused the relevant material on record. There is no dispute on the fact that the assessee is a shareholder in M/s PSB Industries (India) Pvt. Ltd. It is further undisputed that the assessee received a sum of Rs.10 lac as loan from this company during the previous year relevant to the assessment year under consideration. The question arises is as to whether the addition u/s 2(22)(e) is called for in the given circumstances?

5. The Id. AR submitted that M/s PSB Industries (India) Pvt. Ltd. was engaged in money lending business and, hence, the amount advanced to the assessee could not be treated as deemed dividend. On a pertinent query, my attention was drawn towards the annual accounts of this company. A copy of balance sheet has been placed on page 20 of the paper book, which divulges the figure of current liabilities at Rs.67.07 crore and loans and advances under the head 'Current assets' at Rs.55.61 crore. On a further query, it was stated that liability of Rs.67.07 crore represented the amount of security deposit received from bank at the time of letting out its premises. Out of such security deposit, the assessee advanced loans and advances amounting to Rs.55.61 crore to its sister concerns. On a perusal of the Profit & Loss Account of this company, it transpires that it did neither earn any interest income nor paid any interest expenditure. In my considered opinion, advancing of interest free loans to sister concerns does not amount to carrying on money lending business. In this view of the matter, the contention of the Id. AR that M/s PSB Industries (India) Pvt. Ltd. was engaged in the money lending business

and, hence, the loan of Rs.10 lac given to the assessee be treated as an act of advancing money in ordinary course of business, is jettisoned.

6. The next argument was made by the Id. AR that even though M/s PSB Industries (India) Pvt. Ltd. had Reserves and surplus amounting to Rs.35.47 lac as at the end of the year, but, there were no profits available with it to advance any loans to the assessee company. It was therefore, claimed that there did not exist any actual reserve and surplus to attract the provisions of this section.

7. This contention again does not merit acceptance. The requirement u/s 2(22)(e) is that there should be 'accumulated profits' available with the company giving loans and advances. The expression 'accumulated profits' has been defined in Explanation 2 below section 2(22)(e) as under:-

“The expression "accumulated profits" in sub-clauses (a), (b), (d) and (e), shall include all profits of the company up to the date of distribution or payment referred to in those sub-clauses, and in sub-clause (c) shall include all profits of the company up to the date of liquidation, but shall not, where the liquidation is consequent on the compulsory acquisition of its undertaking by the Government or a corporation owned or controlled by the Government under any law for the time being in force, include any profits of the company prior to three successive previous years

immediately preceding the previous year in which such acquisition took place.’

8. This Explanation clearly refers to the ‘accumulated profits’ as all profits of the company up to the date of distribution of dividend. When there is a balance in the reserve and surplus accounts of M/s PSB Industries (India) Pvt. Ltd., which is more than the amount of Rs.10 lac advanced to the assessee company, I fail to appreciate the contention of the ld. AR that the actual availability of profits be considered for this purpose. The same being *de hors* merits, is hereby rejected.

9. Lastly, the ld. AR contended that the assessee was regularly receiving and repaying loans to M/s PSB Industries (India) Pvt. Ltd. It was argued that the addition, if any, should have been made in the first year of the receipt of loan. On a perusal of the copy of account of M/s PSB Industries (India) Pvt. Ltd. in the assessee’s books of account, it is apparent that a sum of Rs.10 lac was received by the assessee during the financial year relevant to the assessment year under consideration. The contention that the loans received in earlier years were repaid, in my considered opinion, does not stand in view of the direct judgment of the Hon’ble Supreme

Court in the case of *Miss P. Sarada vs. CIT (1998) 229 ITR 444 (SC)* in which it has been held that the withdrawals made by the major shareholder is dividend u/s 2(22)(e) even if it is adjusted later on.

10. In view of the foregoing discussion, I am of the considered opinion that the ld. CIT(A) was fully justified in treating the sum of Rs.10 lac as deemed dividend u/s 2(22)(e) of the Act. The impugned order is countenanced to this extent.

11. In the result, the appeal is dismissed.

The order pronounced in the open court on 28.09.2016.

Sd/-

[R.S. SYAL]
ACCOUNTANT MEMBER

Dated, 28th September, 2016.

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Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT (A)
5. DR, ITAT

AR, ITAT, NEW DELHI.