

## IN THE INCOME TAX APPELLATE TRIBUNAL, BENCH 'B' KOLKATA

[Before Hon'ble Shri N.V.Vasudevan, JM &amp; Shri Waseem Ahmed, AM ]

**ITA No.799/Kol/2015**  
**Assessment Year : 2009-10**

D.C.I.T., Circle-12 (2),  
Kolkata

-versus-

Shri Navin Chand Suchanti  
Kolkata  
(PAN: AJVPS 1957 L)  
(Respondent)

(Appellant)

For the Appellant: Shri Saurabh Kumar, Addl. CIT(DR)

For the Respondent: Shri S.M.Surana, Advocate

Date of Hearing : 23.08.2017.

Date of Pronouncement : 25.08.2017.

**ORDER**

**PER N.V.VASUDEVAN, JM:**

This is an appeal by the Revenue against the order dated 27.03.2015 of CIT(A)-4, Kolkata relating to AY 2009-10.

2. Grounds of appeal raised by the revenue reads as follows :-

*"1. "That on the facts and in the circumstances of the case and as per law Ld. CIT(A) erred in deleting the addition of deemed dividend in the hand of the assessee as per provision of Section 2(22)(e)."*

*2. "That on the facts and in the circumstances of the case and as per law Ld. CIT(A) erred in holding that the advance as advance of salary relying on the judgement of Hon'ble Allahabad High Court whereas in this particular case the word 'advance' means such advance which carries with an obligation of repayment."*

3. The Assessee is an individual. He held 16.06% of paid up share capital of the company by name M/s. Pressman Advertising Limited. The assessee was also the director and an employee of the said company M/s Pressman Advertising Ltd. During the previous year, the assessee received a sum of Rs.60,39,353/- from M/s. Pressman Advertising Limited and had shown the same as advance in his books of accounts. As per the provision of section 2(22)(e) of the Income Tax Act, 1961 (Act), any loan or

advance by a company a person who holds more than 10% of the paid up share capital may be deemed to be payment of dividend to the extent the company possesses accumulated profits. The AO was of the view that the advance received by the assessee from M/s Pressman Advertising Limited was liable to be treated as a deemed dividend by virtue of the provisions of section 2(22)(e) of the Act. Before the AO the assessee submitted that the sum in question cannot be considered as loan or advance by the company to the assessee and it was only an advance salary which the assessee received from the company for the purpose of meeting medical expenses of his son-in-law who had to be taken to Singapore for treatment for chronic illness. This was rejected by the AO and a sum of Rs.60,39,353/- was treated as deemed dividend and brought to tax in the hands of the assessee by the AO.

4. Before CIT(A) the assessee reiterated the submissions as were made before the AO and further brought to the notice of CIT(A) that the policy of M/s. Pressman Advertising Limited for giving advance to the managerial staff for the purpose of meeting major illness of family members. The assessee also placed before CIT(A) minutes of the meeting of the Boards of Directors of M/s Pressman Advertising Limited dated 18.09.2008 wherein the request of the assessee to pay future salaries in advance to meet the medical expenses of his son in law was considered and approved. The assessee placed reliance on the decision of the Hon'ble Allahabad High Court in the case of Shyama Charan Gupta 337 ITR 511 (All) wherein the Hon'ble Allahabad High Court upheld the order of the Tribunal whereby the tribunal held that advance against salary cannot be treated as deemed dividend.

5. The CIT(A) on a consideration of the above submissions and of the decision referred to by the assessee was of the view that the amount paid by the company to the assessee cannot be considered as advance or loan but it was a salary which was received by the assessee for the services to be rendered later and therefore cannot be strictly called an advance. The CIT(A) was of the view that advance is something which is to be returned and salary received in advance cannot said to be in the nature

of advance in the strict sense of the term. The CIT(A) also placed reliance on the decision of the Hon'ble Allahabad High Court in the case of Shyama Charan Gupta (supra) and held that the sum in question cannot be brought to tax in the hands of the assessee.

6. Aggrieved by the order of CIT(A) the revenue has preferred the present appeal before the Tribunal.

7. The Id. DR relied on the order of AO. The Id. Counsel for the assessee relied on the order of CIT(A). He also brought to our notice that in the assessment year 2010-11 and 2011-12 the assessee has offered to tax salary of Rs.30 lakhs which was received from the company in advance and the same was also brought to tax by the revenue and therefore there cannot be any loss to the revenue. The Id. DR, on the other hand, submitted that salary received in advance ought to have been offered to tax in A.Y.2009-10.

8. We have considered the rival submissions and are of the view that order of CIT(A) does not call for any interference. The decision of the Hon'ble Allahabad High Court in the case of Shyama Charan Gupta (supra) clearly supports the conclusion arrived at by CIT(A). On the facts it cannot be disputed that the sum in question was salary received in advance by the assessee for the purpose of meeting medical expenses of his son-in-law. The fact that the salary received in advance was not offered to tax in A.Y.2009-10 cannot be the basis to hold that salary received in advance would partake the character of a deemed dividend within the meaning of section 2(22)(e) of the Act. For the above reasons we confirm the order of CIT(A) and dismiss the appeal by the revenue.

9. In the result the appeal by the revenue is dismissed.

**Order pronounced in the Court on 25.08.2017.**

Sd/-  
[Waseem Ahmed]  
Accountant Member

Sd/-  
[ N.V.Vasudevan ]  
Judicial Member

Dated : 25.08.2017.

[RG PS]

Copy of the order forwarded to:

- 1.Shri Navin Chand Suchanti, Resington Manor, 5, Ballygune Park Road, Kolkata-700019.
- 2.D.C.I.T., Circle-12(2), Kolkata.
3. C.I.T.(A)- 4, Kolkata                      4. C.I.T- 4, Kolkata
5. CIT(DR), Kolkata Benches, Kolkata.

True Copy

By order,

Senior Private Secretary  
Head of Office/D.D.O, ITAT Kolkata Benches