

**IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'A' BENCH,
NEW DELHI (THROUGH VIDEO CONFERENCING)**

**BEFORE SHRI AAKASH DEEP JAIN, VICE PRESIDENT
SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER.**

ITA No. 5733/DEL/2017 [A.Y 2013-14]

**The Dy. C.I.T.
Circle - 1(1)
New Delhi**

Vs.

**M/s Aalap Digital Music Pvt Ltd
E-2/16, White House, Ansari Road
Darya Ganj, New Delhi.**

PAN: AAKCA 1384 L

(Applicant)

(Respondent)

Assessee By : Shri Nirbhay Mehta, Adv

Department By : Ms. Alka Gautam, Sr. DR

Date of Hearing : 15.03.2022

Date of Pronouncement : 21.03.2022

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-

This appeal by the Revenue is preferred against the order of the CIT[A] - 32, New dated 13.06.2017 pertaining to Assessment Year 2013-14.

2. The solitary grievance of the Revenue is that the Id. CIT(A) erred in deleting the addition of Rs. 2,51,30,779/- made by the Assessing Officer u/s 2(22)(e) of the Income-tax Act, 1961 [hereinafter referred to as 'The Act'].

3. Briefly stated, the facts of the case are that the assessee electronically filed its return of income declaring total loss of Rs. 4,78,54,582/-. The return was selected for scrutiny assessment and, accordingly, notice was issued and served upon the assessee.

4. The assessee company is engaged in the business of exclusive commercial exploitation of audio and audio visual rights of the non Bollywood/regional music content. The assessee is also providing /issuing license or sub license the music rights and audio visual rights for commercial exploitation on mobile and digital platforms and for physical distribution and public performance.

5. During the course of scrutiny assessment proceedings, the Assessing Officer formed a belief that the assessee company has obtained loan and advances amounting to Rs. 2,51,30,779/- from M/s Super Cassettes Industries Ltd [SCIL]. The assessee was asked to explain the transaction.

6. The assessee, in its reply, explained that the assessee company had to pay money for acquiring rights. Therefore, the shareholders had contributed to the assessee company, a sum of Rs. 2,51,30,779/-.

7. The Assessing Officer further observed that SCIL is having 50% share holding of the assessee company. The Assessing Officer further noticed that Shri Bhushan Kumar and Shri Sudesh Kumar Dua are the shareholders of SCIL, having shareholding of 70% and 28% respectively. The Assessing Officer was of the opinion that Shri Bhushan Kumar and Sudesh Kumar Dua are having substantial interest, both in assessee company and SCIL and are also the beneficial owner of shares. The Assessing Officer, accordingly, asked the assessee to show cause as to why the loan of Rs. 2,51,30,779/- should not be assessed u/s 2(22)(e) of the Act.

8. In its reply, the assessee stated that section 2(22)(e) cannot be applied in the case of business transactions. The assessee further contended that the legal fiction created by the section for charging dividend income in the hands of the shareholders has to be restricted to the shareholder itself and cannot be applied to a concern in which the shareholders have substantial interest.

8. The contention of the assessee did not find any favour with the Assessing Officer. The Assessing Officer was of the firm belief that the loan obtained by the assessee company from SCIL is not a business related transaction. Rather, it was a loan which was required by the assessee company and proceeded by making an addition of Rs. 2,51,30,779/-.

9. Before the Id. CIT(A), the Id. counsel for the assessee reiterated what has been stated before the Assessing Officer.

10. After considering the facts and submissions and after referring to various judicial decisions, the Id. CIT(A) came to the conclusion that the amount received by the assessee from SCIL cannot be deemed as dividend u/s 2(22)(e) of the Act because the appellant company is not a share holder in SCIL. The Id. CIT(A) further found that the entire transaction was business transaction and deleted the impugned addition.

11. Before us, the Id. DR strongly supported the findings of the Assessing Officer.

12. Per contra, the Id. counsel for the assessee reiterated what has been stated before the lower authorities.

13. We have given thoughtful consideration to the orders of the authorities below. A perusal of the business module of the assessee company vis a vis its relationship with SCIL shows that the assessee company has been created for a special purpose. The assessee company has received advances from SCIL from time to time which is shown as

advance received by the assessee company from customers. The advances received by the assessee company from SCIL have been utilized for the purchase of rights by the assessee company and subsequently, SCIL has purchased right from the assessee company. There is no finding that the advances received by the assessee company have been routed back for the benefit of the share holders of SCIL in any manner.

14. The Hon'ble High Court of Delhi in the case of CIT Vs Ambassador Travels Pvt. Ltd. 318 ITR 376 has held that financial transactions in any circumstances could not be treated as loans or advances and, therefore, Section 2(22)(e) is not applicable.

15. A similar view has been taken by the Hon'ble High Court of Delhi in the case of CIT Vs Raj Kumar 318 ITR 462 wherein it was held that the trade advances given to the assessee by the company could not be treated as deemed dividend u/s 2(22)(e) of the Act. Similar view was taken by the Hon'ble High Court of Bombay in the case of CIT Vs Creative Dyeing & Printing Pvt. Ltd. 318 ITR 476 and also by the Hon'ble High Court of Calcutta in the case of Pradip kumar Malhotra Vs CIT 338 ITR 538.

16. Considering the factual matrix of the transactions, we do not find any error or infirmity in the findings of the Id. CIT(A).

17. In the result, the appeal of the Revenue in ITA No. 5733/DEL/2017 is dismissed.

The order is pronounced in the open court on 21.03.2022.

Sd/-

[AAKASH DEEP JAIN]
JUDICIAL MEMBER

Sd/-

[N.K. BILLAIYA]
ACCOUNTANT MEMBER

Dated: 21st March, 2022.

VL/

Copy forwarded to:

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

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
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Date on which the file goes to the Head Clerk	
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