

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "C": NEW DELHI**

**BEFORE
SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER
AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No. 705/Del/2019
Asstt. Year: 2015-16

DCIT, Central Circle-14, New Delhi.	Vs.	Gurmeet Singh Anand 2687, Kashmere Gate, Delhi – 110 006 PAN AAJPA1199B
(Appellant)		(Respondent)

Assessee by:	Shri Ashwani Kumar, CA Shri Rahul Chourasia, CA
Department by :	Ms. Aashna Paul, CIT(DR)
Date of Hearing	06.07.2022
Date of pronouncement	29.08.2022

ORDER

PER ASTHA CHANDRA, JM

The appeal by the Revenue is directed against the order dated 15.11.2018 of the Commissioner of Income Tax (Appeals)–XXVI, New Delhi (“**CIT(A)**”) pertaining to the assessment year (“**AY**”) 2015-16.

2. The Revenue has taken the following grounds:
 - “1. *That on the facts & circumstances of the case the Ld. CIT(A) has erred in deleting the additions made u/s 2(22)(e) of the I T Act of Rs.1.5 cr. Without appreciating the fact the assessee took a loan from M/s AMP Motors Pvt. Ltd. and it was duly shown the same in the books of accounts of the company also.*

2. *That the Ld. CIT(A) has erred on facts and law by ignoring the fact the assessee is a major share holder in M/s AMP Motors Pvt. Ltd. holding 22.73% of total equity shares and also took a loan of Rs. 1.5 cr. Which was duly reflected in the books of accounts of the assessee company and transactions was duly covered u/s 2(22)(e) of the IT Act."*

3. Briefly stated, during the course of assessment proceeding the Ld. Assessing Officer ("**AO**") required the assessee to show cause why an amount of Rs. 1,51,76,217/- be not disallowed on account of deemed dividend under section 2(22)(e) of the Income Tax Act, 1961 ("**Act**"). In reply the assessee submitted copy of ledger account of the assessee in the books of M/s. AMP Motors Pvt. Ltd. ("**M/s. AMP**") which revealed that there is debit balance of Rs. 1,49,09,217/- and not Rs. 1,51,76,217/- during the year. It was further submitted that the assessee has taken a sum of Rs. 1.50 crore (Rs.50 lacs on 07.10.2014 and Rs. 1.00 crore on 28.10.2014) as advance towards sale of property No. 2094 Block E, Essencia, Sector 67, Gurgaon to M/s. AMP, vide Memorandum of Understanding ("**MOU**") dated 05.10.2014 executed between the assessee and M/s. AMP, which should have been debited to separate accounting head but inadvertently debited to regular 'G.S. Anand Loan Account'. And if we exclude Rs. 1.50 crore from this account, there would be no debit balance at all. It was also stated that the said deal could not be matured and hence the entire advances was received back by the assessee during the year itself as is clear from the ledger account.

3.1 The assessee further submitted that M/s. AMP is engaged in the business of construction and dealing in properties. As per records of M/s. AMP the purpose of advancing money to the assessee is 'for purchase of property'. Therefore, it falls under the business/commercial transactions between M/s. AMP and the assessee. It was also submitted that the assessee had taken the advance from M/s. AMP in the regular course of business and therefore the transaction does not constitute deemed dividend within the meaning of section 2(22)(e) of the Act. In support, the assessee relied on decision of Hon'ble Delhi High Court in CIT vs. M/s. Creative

Dyeing & Printing Pvt. Ltd. 2009 (9) TMI 43 (Del) and decision of Hon'ble P&H High Court; Alld. High Court and CBDT Circular No. 19/2017 dated 12.06.2017.

4. The explanation of the assessee was not acceptable to the Ld. AO. He held that the receipt of advance of Rs. 1.50 crore by the assessee from M/s. AMP is deemed dividend under section 2(22)(e) of the Act and added the same to the income of the assessee by observing, inter alia that the contention of the assessee that the purpose of advancing money to the assessee as per records of M/s. AMP is for purchase of property is not tenable; that M/s. AMP had given the advance during the normal course of its business does not deserve merit; that advance given by M/s. AMP to the assessee is an attempt to divert the profits of the company in the garb of providing loans/advances to the assessee in the normal course of its business.

5. Aggrieved, the assessee filed appeal before the Ld. CIT(A) and made very lengthy submissions before him emphasizing that M/s. AMP had given a sum of Rs. 1.50 crore to the assessee towards sale of immovable property under Agreement to Sale which is not in dispute. The same Ld. AO has accepted the transaction of Agreement to Sale in case of M/s. AMP. The amount was not received as 'borrowing' in the nature of loan or advance. This amount was not borrowed by the assessee. The amount was received as part payment by the proposed buyer of the property to the seller of the property and as per the obligation in the Agreement to Sale, placed on record. The proposed buyer M/s. AMP was under legal obligation to pay an advance towards purchase of property to the assessee seller. Therefore, the transaction cannot be treated as 'loan or advance' within the meaning of section 2(22)(e) read with legal judicial decision of jurisdictional appellate courts and CBDT circular.

6. The submissions made by the assessee before the Ld. AO as also before him were found to be acceptable by the Ld. CIT(A). He extracted the relevant accounting ledger indicating the transactions and held that it is not

a fit case for invoking the provisions of deemed dividend by observing as under:

“iii. It is seen that the appellant had entered into an agreement to sell a property to the company as per cancellation agreement as per judicial stamps purchased in the name of the appellant on 20/02/2015. The stamp paper for agreement to sell was purchased on 19/03/2014 and agreement executed on 05/10/2014 and the advances received on 7/10/2014 and 28/10/2014 totalling to Rs 1.50 crores. The amount was returned on 30/03/2015 by a payment of Rs 35666965/- and the appellant had then made excess payment to the company thereby resulting in a credit balance as on 31/03/2015 amounting to Rs 29618362/-. Therefore, in this case, there is no carry forward of the amounts as such and as the transaction has been cancelled, the addition is not sustainable. Accordingly, it is not a case fit for invoking the provisions of deemed dividend as per the facts of the case in light of the CBDT circular and extant jurisprudence in the matter.”

7. Dissatisfied, the Revenue is in appeal before the Tribunal.

8. The Ld. CIT-DR submitted that as per the assessment order the pre-requisites of section 2(22)(e) have been met in the case of the assessee. It is pointed out from page 4 of the order of the Ld. AO that the ledger account of the assessee in the books of M/s. AMP is incomplete whereas complete ledger account for the period from 1.4.2014 to 31.03.2015 has been submitted before the Ld. CIT(A) which appears at page 19 of the appellate order. The Ld. CIT-DR further submitted that there is no evidence on record to prove that provisions of deemed dividend are not attracted in the case. All the documents brought on record by the assessee are self serving and internal documents. Therefore cannot be relied upon. The Ld. CIT-DR further submitted that no bifurcation of the amount paid back was brought before Ld. AO/CIT(A). Reference was made to the decision of the Delhi Tribunal in Ashwani Kapoor vs. ITO in ITA No. 808/Del/2013 dated 9.11.17. The Ld. CIT-DR also submitted that as per CBDT circular commercial transactions will not come within the purview of deemed dividend but in assessee's case it is not a commercial transaction as the assessee is not in the business of sale and purchase of property. Reliance was also placed on the decision of Hon'ble Delhi High Court in CIT vs. Sunil Chopra 242 CTR 498 (Del).

9. The Ld. AR refuted the above submissions of the Ld. CIT-DR and reiterated his submission made before the Ld. AO/CIT(A) that M/s. AMP is dealer in properties and the purpose for advancing the impugned sums to the assessee was for purchase of property. Since the sums were advanced to the assessee by M/s AMP for purchase of property, the transaction is in the nature of commercial transaction between the parties. The Ld. AO has not brought on record any evidence to prove the contrary. The Ld. AR also submitted that in ledger account, remark column was added with a view to explain the entries therein. He also submitted that the genuineness of Agreement to Sale and Cancellation Agreement have never been doubted by the Ld. AO. Dealing in property is also one of the business of the assessee. Therefore, the transaction was commercial in nature and the circular of the CBDT squarely applied to the case of the assessee.

10. We have given our careful thought to the rival submissions of the parties and perused the material available in the records. It is not in dispute that the very basis of the impugned transaction involving advance given by the company M/s. AMP to the assessee is MOU executed on 05.10.2014 between the assessee and M/s. AMP on stamp paper purchased by the assessee on 19.03.2014. Copy is in the records. The Ld. AO has not doubted the authenticity or veracity of this MOU. The opening recital therein says that the assessee is owner of a property which he agreed to sell to M/s. AMP for a total consideration of Rs. 2 crore. Thereafter the MOU specifies the manner of payment of sale consideration, namely Rs. 50 lakhs paid to the assessee seller vide cheque No. 001912 dated 7.10.2014 drawn on HDFC Bank and Rs. 1 crore vide cheque No. 001920 dated 28.10.2014 drawn on HDFC Bank. The physical possession of the property was to be handed over on registration of sale deed or receipt of full consideration. It is also an admitted position that the aforesaid money transaction is duly reflected in the Ledger Account of the assessee appearing in the books of M/s. AMP which has been incorporated by the Ld. AO in his order (for the period from 1.4.2014 to 25.11.2014) and by the Ld. CIT(A) in his appellate order for the entire financial year 2014-15. In our considered opinion, neither the MOU

nor the ledger entries in the books of the company M/s. AMP can be said to be self serving instrument/documents when the Ld. AO himself accepted the transaction as per MOU and the nature of transaction in the case of M/s. AMP for AY 2015-16 assessed by the same Ld. AO.

10.1 The assessee brought on record evidence to prove that the deal of purchase and sale of the property between the parties did not materialize. The Cancellation Agreement executed on 02.03.2015 on stamp paper purchased on 20.02.2015 clearly states that the parties have mutually agreed to cancel the MOU and the assessee seller who had received a sum of Rs. 1.5 crore from the purchaser M/s. AMP undertook to refund the said entire amount on or before 31.03.2015. The Ld. CIT(A) has recorded a finding of fact that the advances received by the assessee on 07.10.2014 and 28.10.2014 totalling to Rs. 1.50 crore were returned on 30.03.2015 by payment of Rs. 3,56,66,965/- and that the assessee had made excess payment to the company M/s. AMP thereby resulting in a credit balance as on 31.03.2015 amounting to Rs. 2,96,18,362/-. This is corroborated by the Ledger Account of the assessee for the entire period from 01.04.2014 to 31.03.2015 appearing in the books of the company M/s. AMP which forms part of the appellate order. Merely because there is no bifurcation of the sum of Rs. 3,56,66,965/- which according to the assessee is inclusive of the refund amount of Rs. 1.50 crore explained to the Ld. CIT(A) the Ledger Account itself cannot be brushed aside. In the case of Ashwani Kapoor (supra) the assessee had not furnished Ledger Account of the assessee in the books of the company and therefore, the transactions did not admit verification which is not so in the case of the assessee before us. The decision of Hon'ble Delhi High Court in Sunil Chopra's case (supra) relied upon by the Ld. CIT-DR is also distinguishable on facts. In that case the Revenue had disbelieved the agreement between the parties whereas the Ld. AO/CIT(A) have not disputed the agreement between the parties in the case under consideration before us.

10.2 The contention of the assessee before the Ld. AO/CIT(A) was that the company M/s. AMP is engaged in the business of construction and dealing

in properties and the purpose of advancing the sums to the assessee as per the record of the company is for purchase of property. Therefore, it is a case of trade advance which is in the nature of commercial transaction. It is stated that the company M/s. AMP gave advance to the assessee against purchase of a property owned by the assessee which the assessee agreed to sell to the company M/s. AMP. Advance payment is made for commercial expediency as the payee also needed to have some assurance of commitment and also money which he required in execution of contract. We are of the view that an advance against agreement to sale of the property is trade advance which is in the nature of commercial transaction. Trade or commerce connotes the idea of buying and selling and there are judicial precedents which hold that even a single transaction may constitute business/trade.

10.3 It is not in dispute that the company M/s. AMP gave the advance of Rs.1.50 crore to the assessee towards sale of property under Agreement to Sale and the said amount was received as part payment by the buyer M/s. AMP to the seller of the property, namely the assessee as per the obligation in the Agreement to Sale which is clearly borne out from the recitals in the MOU. The Hon'ble Delhi High Court has hold in CIT vs. Raj Kumar (2009) 318 ITR 462 (Del) that trade advances cannot be treated as deemed dividend.

10.4 In such a fact scenario as set out above, we are of the view that even though the assessee is substantial shareholder in the company M/s. AMP which had made the impugned advance to the assessee, it is not a fit case to invoke the provisions of section 2(22)(e) of the Act. The words "loans or advances" occurring in the provision can be applied to loans or advances simplicitor and not to those transactions carried out in the course of trade/business. By giving advance, if the business purpose of the company is served, such advance cannot be brought within the provision of deemed dividend under section 2(22)(e) of the Act. Trade advance given as a consideration for purchase of a capital asset (i.e. property) as in the case before us which indirectly would benefit the company giving advance, such

advance would not fall within the ambit of provisions of section 2(22)(e) of the Act. The CBDT circular No. 19/2017 dated 12.06.2017 squarely applies to the case of the assessee. We do not find any substance in the appeal of the Revenue and uphold the order of the Ld. CIT(A).

11. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open court on 29th August, 2022.

sd/-

**(N.K. BILLAIYA)
ACCOUNTANT MEMBER**

sd/-

**(ASTHA CHANDRA)
JUDICIAL MEMBER**

Dated: 29/08/2022

Veena

Copy forwarded to -

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT 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	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	