

आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ 'C' अहमदाबाद  
IN THE INCOME TAX APPELLATE TRIBUNAL  
"C" BENCH, AHMEDABAD

BEFORE SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMBER  
AND  
SHRI T.R. SENTHIL KUMAR, JUDICIAL MEMBER

ITA No.395/Ahd/2020  
Assessment Year : 2015-16

Parag Prakash Doshi 203-A, Shripal Nagar Co-Op. Hsg. Soc., Nepean Sea Road, Mumbai-400006	Vs	PCIT-2, Ahmedabad
[PAN No. : AHNPD2646P]		
<b>अपीलार्थी/ (Appellant)</b>		<b>प्रत्यर्थी/ (Respondent)</b>
Appellant by :	Shri Kamlesh Bhatt, C.A.	
Respondent by :	Shri Samir Tekriwal, CIT DR	
सुनवाई की तारीख/ <b>Date of Hearing:</b>	10.10.2022	
घोषणा की तारीख / <b>Date of Pronouncement:</b>	30.12.2022	

**आदेश/O R D E R**

**PER T.R. SENTHIL KUMAR, JUDICIAL MEMBER:**

This appeal is filed by the assessee as against the revision order dated 19.03.2020 passed by the Principal Commissioner of Income Tax-3, Ahmedabad under Section 263 of the Income Tax Act, 1961 (hereinafter referred to as the "the Act") relating to the Assessment Year 2015-16.

2. The brief facts of the case is the assessee is an individual and Director of M/s. Leela Tubes Pvt. Ltd. earning income from salary, house property, business income and other sources. For the Assessment Year 2015-16 the assessee filed his Return of Income on 30.09.2015 declaring total income of Rs. 97,58,260/-.

The case was selected for limited scrutiny assessment to examine the following issues:

- “1. Unsecured loans from persons who have not filed their Return of Income (Form 3CD)
2. Large amount not credited to Profit and Loss Account as per schedule A-OI of return
3. Large value sale of futures (derivative) in a recognized stock exchange reported in Securities Transaction Tax Return (STT Code 5).
4. Mismatch in sales turnover reported in Audit Report and ITR
5. Large value sale of futures (derivative) in a recognized stock exchange reported in Securities Transaction Tax Return (STT Code 5).”

2.1 The above issues were being examined by the Assessing Officer and no adverse inference was been drawn, thereby completed assessment under Section 143(3) vide order dated 22.12.2017 accepting the Returned Income of Rs. 97,58,260/-.

3. Perusal of above assessment order by the Ld. PCIT the assessee has received a loan of Rs. 88,25,649/- from Leela Tubes Pvt. Ltd. in which the assessee had 51.42% share and also key managerial personnel in the company having more than 20% share holding during the Financial Year. It is further seen that as on 31.03.2015, the Reserve and Surplus and Profit & Loss Account is Rs. 38,41,609/-, as per Section 2(22)(e) of the Act, why the same be treated as deemed income in the hands of the assessee. Thus, the Assessing Officer failed to consider the provisions of Section 2(22)(e) of the Act while passing the assessment order which is erroneous in so far as it is prejudicial to the interest of revenue. In view of this, Ld. PCIT issued a show-cause notice dated 09.01.2020 to the assessee.

4. In response the assessee filed a detailed reply stating that the company M/s. Leela Tubes Pvt. Ltd. set up a project at Daman in the year 2000-01 with the help of the bank finance and also enjoying working capital facilities. During the year 2004-05 due to very huge default the company was declared Non Performing Asset (in short "NPA"), later IBDI Bank insisted for the strict conditions on the loans and several conditions were also laid down. As a result, it was very difficult to get the raw materials from the market. Under the above circumstances the assessee asked his relatives namely uncle and cousin to agree to permit him to offer a security of his ancestral residence being Flat No. 203 at Shripalnagar and avail funding from Banks. In this manner, some funding was availed from YES Bank Ltd. and the assessee opened a personal account and transfer surplus funds of the company into his account and as and when the amount was falling due to payment, he used to transfer back the amount to the account of the company and make the payment which was a modus operandi for more than 7 years. In support of this contention, the assessee filed a Paper Book and also filed a Computation of Income in which the company was showing business losses. Gradually the company came out of the past losses as a result, now this transaction is found through Section 2(22)(e) and consequently is neither added back. In fact, the assessee neither took any amount for his personal use, the entire transaction is through bank and at any point of time the balance of such withdrawal from company was in excess of liability of the company under the Letter of Credit to Yes Bank Ltd. Moreover, this fund was used by the assessee to keep as margin with Yes Bank Ltd. to open the Letter of Credit. Further this account being

a Current Account and amount paid for the reason cited above is more in the nature of security and safety of the company and amount is also repaid back, the question of invoking Section 2(22)(e) of the Act does not arise.

4.1 On this very set of facts for the Assessment Year 2012-13 similar disallowance made by the Assessing Officer travelled upto the Income Tax Appellate Tribunal by the assessee and Hon'ble Tribunal decided the matter in favour of the assessee by deleting the addition made under Section 2(22)(e) of the Act vide order dated 25.09.2018 in ITA No. 382/Ahd/2017. For the above reasons the assessee pleaded to drop the revision proceedings initiated under Section 263 of the Act.

4.2 The above reply was considered by the Ld. PCIT and part of it is reproduced in the impugned order, but very conveniently reference made by the assessee on the Tribunal decision for the A.Y. 2013-14 in assessee's own case, deleting the addition made under Section 2(22)(e) is not reproduced by the PCIT. However, Ld. PCIT set-aside the assessment order stating that is erroneous and prejudicial to the interest of revenue thereby directing the Assessing Officer to pass fresh assessment order, after giving proper opportunity to the assessee and examine the issue to ascertain the applicability of Section 2(22)(e) of the Act.

5. Aggrieved against the same assessee is in appeal before us raising the sole ground of appeal as follows:

*"1. In view of the facts and circumstances of the case, the Ld. Prin. CIT ought to have accepted the decision of Hon. ITAT in assessee's own case on this issue in appeal No. ITA/382/AHD/2017 as there is no change in the facts except some figures and ought not to have passed the order to make the assessment afresh on this issue of deemed dividend U/s. 2(22)(e) of The*

*Income Tax Act and hence Your Appellant prays that the action of the Prin. CIT -2, Ahmedabad be quashed.”*

5.1 Reiterating the above Ground of Appeal the Ld. Counsel for the assessee has taken as through page No. 410 to 421 of the Paper Book filed by the assessee more particularly Clause 3 of the reply filed before PCIT which is reproduced as follows:

*“3. Sir, on this very set of facts, the issue for the A.Y. 2013-14 was tested and the matter went upto Hon’ble Income tax Appellate Tribunal at Ahmedabad and Hon’ble ITAT decided the matter in favour of the assessee and the addition made was deleted. For Your perusal, we enclose herewith the copy of the order of Hon’ble ITAT.*

**Sir, in view of the fact that set of facts in A.Y. 2013-14 and 2015-16 are identical and since this issue in A. Y. 2013-14 is already decided and settled by the decision of Hon’ble ITAT Ahmedabad in assessee’s own case, we most humbly request Your Honour to drop the proposed action as the order in question is not erroneous and prejudicial to the interest of revenue and oblige to avoid the duplication of proceedings and litigation.”**

5.2 Thus, the Ld. Counsel pleaded that on identical issue of addition made under Section 2(22)(e) was been deleted by the Coordinate Bench of this Tribunal in ITA No. 382/Ahd/2017. On identical set of facts for the present Assessment Year 2015-16 the Ld. PCIT invoked Section 263 to bring to tax, which is against the provisions of law. Therefore, pleaded to quash the revision proceedings.

6. Per contra, the Ld. D.R. appearing for the Revenue supported the order of the PCIT and requested to upheld the same and dismiss the assessee’s appeal.

7. We have given our thoughtful consideration and perused the materials available on record. It is seen from the impugned Revision order, the Ld. PCIT has extracted partial submissions of the assessee and conveniently omitted to extract Para 3 which is

reproduced in Para 5.1 above. Further perusal of the Coordinate Bench decision in assessee's own case for the Assessment Year 2013-14, it was held as follows:-

*"6. We have heard both the parties and also gone through the relevant record and impugned order. The assessee is an individual and Director in Leela Tubes Private Limited with shareholding exceeding the specified limit. The company Leela Tubes Private Limited set up a project at Daman in the year 2000-2011 with the help of bank finance and was also enjoying the working capital facilities. Initial couple of years were the period of establishing the product in market but during the year 2004-05, due to inability to retire the Letter of Credits opening by the Bank in favour of the suppliers of raw-material, there was very huge default and the company went into near bankrupt situation. The company was declared NPA. Meanwhile, the bank the United Western Bank Ltd. who were the bankers of the company also came into financial problem and that bank was acquired by IDBI Bank Ltd. As a result, the company was in a fix and it was empiric. IDBI Bank insisted for the very strict restricting of the loans and for that the several conditions were laid down. As a result, neither the bankers of the Company IDBI Bank Ltd. were giving the credit facilities and because of the defaults, the bankers were not allowing the company to pay to the creditors. As a result, it was very it was very difficult to get the raw-material from the market. Under the circumstances, the assessee asked his uncles and cousins to agree to permit him to offer as security the ancestral residence being Flat No.203 at Shripalnagar and avail the funding. In such fashion, some funding was availed from YES Bank and assessee opened a personal account and transferred the surplus funds of the company into his account and as and when the amount was falling due for payment he used to transfer back the amount to the account of company and make the payment and with working like this for a period of more than seven years, it is in the account year 2012-13, that old bank dues were cleared. In support of his contention, assessee filed a paper-book and also filed computation of income of the company at page No.50 for AY 2011-12 in which company is showing business losses. The assessee has also filed balance-sheet of the company for the year under consideration which shows trade payable. In support of its contention, assessee cited a judgment of Hon'ble Calcutta High Court titled as Pradip Kumar Malhotra vs. CIT (2011) 338 ITR 538 (Cal.), wherein it has been held as under:-*

*"The assessee had substantial shareholding in a private company. The assessee permitted his immovable property to be mortgaged to the bank for enabling the company to take the benefit of loan and in spite of request of the assessee the company was unable to release the property from mortgage. Consequently, the board of directors of the company passed a resolution authorizing the assessee to obtain from the company interest-free deposit up to Rs.50 lakhs as and when required. During the previous year relevant to assessment year 1999-2000, the assessee obtained from the company a sum of Rs.20,75,000 by way of security deposit. Out of the amount, a sum of Rs.20 lakhs was subsequently returned by the assessee to the company. In the assessment made for 1999-2000 the Assessing Officer added the sum of Rs.20,75,000 as deemed dividend."*

7. After considering the facts and circumstances of the case and going through the aforesaid judgement, we are of the considered opinion that assessee had received an amount of Rs.1,32,91,914/- from M/s.Leela Tube Pvt.Ltd. (LTPL) in order to safe-guard the interest of the company and the same was done in order to protect the interest of the company and assessee even sought help from his relatives and placed as security the ancestral House being Flat No.203 at Shripalnagar, Ahmedabad. Therefore, in our considered opinion, this was for the business expediency and same cannot be treated as deemed dividend u/s.2(22)(e) of the Act. Thus, we direct the Assessing Officer to delete the addition of Rs.10,80,994/-. As a result, Assessee's ground of appeal is allowed.

9. In the result, Assessee's appeal is allowed."

8. The Ld. D.R. appearing for the Revenue could not state whether the Revenue has filed any appeal against the above order of the Tribunal before Hon'ble High Court of Gujarat. The Ld. PCIT before passing this Revision order has not given due weightage to the Appellate order passed by the Tribunal, which is against the fundamental principle of Judicial Discipline, that is required to be followed by all the lower authorities. Not following the Judicial Discipline by the highest Officer of the Income Tax Department is highly deprecated.

9. In this connection, it is appropriate to rely upon the celebrated judgment of the Hon'ble Supreme Court in the case of Union of India & Others vs. Kamlakshi Finance Corporation (1992) 1 SCC 648 where it has been categorically held as follows:

"6. .... The High Court has, in our view, rightly criticised this conduct of the Assistant Collectors and the harassment to the assessee caused by the failure of these officers to give effect to the orders of authorities higher to them in the appellate heirarchy. It cannot be too vehemently emphasised that it is of utmost importance that, in disposing of the quasi-judicial issues before them, revenue officers are bound by the decisions of the appellate authorities; The order of the Appellate Collector is binding on the Assistant Collectors working within his jurisdiction and the order of the Tribunal is binding upon the Assistant Collectors and the Appellate Collectors who function under the jurisdiction of the Tribunal. The principles of judicial discipline require that the orders of the higher appellate authorities should be followed unreservedly by the subordinate authorities. The mere fact that the order of the appellate authority is not "acceptable" to the department - in

itself an objectionable phrase - and is the subject matter of an appeal can furnish no ground for not following it unless its operation has been suspended by a competent court. If this healthy rule is not followed, the result will only be undue harassment to assesseees and chaos in administration of tax laws.”

10. Respectfully following the above ruling of the Apex Court we have no hesitation in quashing the Revision order dated 19.03.2020 passed by the PCIT for the reason of non-consideration of the higher judicial forums decision in assessee's own case for earlier Assessment Year 2013-14 on identical issue. In the result, the ground raised by the assessee is allowed.

11. In the result, the appeal filed by the assessee is allowed.

**Order pronounced in the Court on 30.12.2022 at Ahmedabad.**

**Sd/-**  
**(ANNAPURNA GUPTA)**  
**ACCOUNTANT MEMBER**

Ahmedabad, dated 30/12/2022

Tanmay, Sr. P.S.

**TRUE COPY**

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण ,राजकोट/DR,ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

**Sd/-**  
**(T.R. SENTHIL KUMAR)**  
**JUDICIAL MEMBER**

आदेशानुसार/ BY ORDER,

सहायक पंजीकार (Asstt. Registrar)  
आयकर अपीलीय अधिकरण, ITAT, Ahmedabad