

IN THE INCOME TAX APPELLATE TRIBUNAL 'A' BENCH, CHENNAI

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BEFORE SHRI MAHAVIR SINGH, HON'BLE VICE PRESIDENT AND SHRI  
MANJUNATHA. G, HON'BLE ACCOUNTANT MEMBER

/ITA No.: 35/Chny/2022  
वष / Assessment Year: 2011-12

Venkatachalam Mohan,  
120, 11<sup>th</sup> Street, Tatabad, Coimbatore – v.  
641 012.  
[PAN: AAVPM-5923-D]

The Joint Commissioner of  
Income Tax,  
Range-II,  
Coimbatore.

(/Appellant)

(यथ /Respondent)

/Appellant by

: Shri. T. Banusekar, CA &  
Shri. Suraj Nahar, CA

/Respondent by

: Shri. AR V Sreenivasan, Addl. CIT

/Date of Hearing : 17.08.2023

/Date of Pronouncement : 18.10.2023

ORDER

PER MANJUNATHA. G, ACCOUNTANT MEMBER:

This appeal filed by the assessee is directed against the order passed by the learned Commissioner of Income Tax (Appeals)-18, Chennai, dated 17.11.2021 and pertains to assessment year 2011-12.

2. The assessee has raised the following grounds of appeal:

“1. For that the order of the Commissioner of Income Tax (Appeals) is contrary to law, facts and circumstances of the case to the extent prejudicial to the interests of the appellant

and is opposed to the principles of equity, natural justice and fair play.

2. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the order of the Assessing Officer is without jurisdiction.

3. For that the Commissioner of Income Tax (Appeals) erred in confirming the addition of Rs.65,33,398/- as deemed dividend u/s.2(22)(e).

4. For that the Commissioner of Income Tax (Appeals) failed to appreciate that the provisions of section 2(22)(e) of the Act are not invocable in the facts and circumstances of the case.

5. For that the Commissioner of Income Tax (Appeals) failed to appreciate that there is no payment by the company to the shareholder to attract provisions of section 2(22)(e) of the Act.”

3. The brief facts of the case are that, the assessee filed his return of income for the assessment year 2011-12 on 22.08.2011, admitting a total income of Rs. 95,05,280/-. The case was selected for scrutiny and during the course of assessment proceedings, on examination of books of accounts of the assessee and his ledger account with M/s. Mayflower Enterprises Pvt Ltd., it was found that the assessee has a running account with the company. The details of the shareholding pattern of M/s. Mayflower Enterprises Pvt Ltd., was also called for

and found that the assessee is holding 24% share capital in the company. As per ledger account submitted by the assessee on three occasions i.e., 25.05.2010, 08.12.2010 & 05.01.2011, there was a debit balance in the books of accounts of the company. Since, the appellant is holding more than prescribed percentage of beneficial interest in shareholding of the company, the Assessing Officer treated debit balance of above three dates as deemed dividend u/s. 2(22)(e) of the Income-tax Act, 1961 (hereinafter referred to as "the Act"). The Assessing Officer, further noted that on 31.12.2010, the assessee has received a sum of Rs. 12,50,000/- from the company and this payment is not reflected in the current account of the assessee with the company. Therefore, the said payment has been treated as deemed dividend. To sum up, the Assessing Officer has treated a sum of Rs. 65,33,398/- as deemed dividend u/s. 2(22)(e) of the Act. The assessee carried the matter in appeal before the first appellate authority, but could not succeed. The ld. CIT(A), for the reasons stated in their appellate order dated 17.11.2021, and also by following certain judicial precedents sustained additions made towards deemed dividend u/s. 2(22)(e) of the Act. Aggrieved by the ld. CIT(A) order, the assessee is in appeal before us.

4. The Ld. Counsel for the assessee, submitted that the ld. CIT(A) erred in sustaining additions made by the Assessing Officer towards deemed dividend u/s. 2(22)(e) of the Act, towards debit balance in the current

account of the assessee maintained with M/s. Mayflower Enterprises Pvt Ltd., without appreciating fact that the transactions between the appellant and company is in the nature of current account, in the normal course of business of the assessee, but not a loan or deposit as per section 2(22)(e) of the Act. The Ld. Counsel for the assessee, further submitted that the Assessing Officer has considered debit entry of Rs. 9,26,257/- on 25.05.2010 and said entry has been squared off within 5 days by repayment of amount to the company. Therefore, for a short period of 5 days, the debit balance cannot be considered as deemed dividend when all along throughout the year, the appellant has given loans to company and there was always a credit balance. The Ld. Counsel for the assessee, further submitted that the Assessing Officer had considered a debit balance on 08.12.2010 amounting to Rs. 8,43,874/- and said debit arise mainly on account of a payment of Rs. 10 lakhs to Fairyland Foundations (P) Ltd. This payment was made out of his current account with the company, but immediately after noticing debit balance, the appellant has repaid amount on 14.12.2010 within the period of 6 days. In this regard, he relied upon the decision of ITAT, Chennai Benches in the case

of M/s. V. Sriram (HUF) vs ACIT (OSD) in ITA No.

863/Chny/2022.

5. The Ld. Counsel for the assessee further submitted that the Assessing Officer had also considered debit balance of Rs. 35,13,267/- on 05.01.2011. The

said amount arise because of payment of Rs. 40 lakhs received by the appellant from Mr. B.V. Sundararajan, who was the debtor of the company. The debtor has made the payment to the appellant instead of making payment to the company. The appellant transferred this amount to the company on 07.01.2011 i.e, 3 days after he received the amount. Therefore, said debit balance cannot be considered as deemed dividend u/s. 2(22)(e) of the Act. The Assessing Officer, had also considered an amount of Rs. 12,50,000/- received by the appellant from company on 31.12.2010, on the ground that the said payment is not reflected in the current account of the assessee. But fact remains that, the company has paid a sum of Rs. 12,50,000/- to Smt. Sundaravalli, mother of the appellant, and as per the directions of the payee said amount has been paid to the assessee. Therefore, same cannot be considered as deemed dividend, when ledger account of Smt. Sundaravalli, shows credit balance on that date.

6. The ld. Sr. AR, Shri. AR V Sreenivasan, Addl. CIT, supporting the order of the ld. CIT(A) submitted that, the withdrawal by the shareholder who had substantial interest amounted to loan or advance by the company to shareholder, but fact that the loan or advance was ultimately adjusted at the end of the year will not alter the position and in this regard he relied upon the decision of Hon'ble Supreme Court in the case of P. Sarada vs CIT 229 ITR 444 (SC). The Assessing Officer and ld. CIT(A), after considering relevant facts has rightly treated loans

from the company as deemed dividend u/s. 2(22)(e) of the Act and their order should be upheld.

7. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. As per provisions of section 2(22)(e) of the Act, any payment by a company, not being a company in which the public are substantially interested, of any sum by way of advance or loan to shareholder, being a person who is the beneficial owner of shares holding not less than 10% of the voting power, shall be treated as deemed dividend to the extent of which the company possess accumulated profits. In the present case, there is no dispute with regard to the fact that the appellant is a shareholder holding more than 10% voting power in the company and also the company is having accumulated profit, which attracted provisions of section 2(22)(e) of the Act. But dispute is with regard to the nature of transactions between appellant and company. According to the Ld. Counsel for the assessee, all transactions between the appellant and the company are normal current account in the ordinary course of business, which is evident from the ledger account of the assessee with the company, where various payments have been routed through the current account of the assessee.

8. We find that, it is not a solitary transaction of loan or advance to the assessee. In fact, there are number of transactions between the assessee and the

company, where various payments are routed through current account of the assessee, including remuneration and other expenses reimbursed to the appellant. Further, in most of the days, except few days, account always shows credit balance in the books of the company. Therefore, the transactions need to be examined in light of peculiar nature of transactions of the assessee with the company. The first debit balance of Rs. 9,26,257/- on 25.05.2010 was there for 5 days. The assessee has explained reasons for said debit balance and also squared off the debit by making payment to the company within 5 days from the date of debit. The second debit balance on 08.12.2010 of Rs. 8,43,874/- was for 6 days, and the assessee has explained reasons for said debit balance and also squared off the debit balance by making the payment to the company.

Similarly, the third debit balance on 05.01.2011 of Rs. 35,13,267/- was for 3 days and said debit balance was mainly on account of mistake committed by a debtor of the company, where he has made payment to the assessee account instead of company's account. The appellant transferred said amount to the company on 07.01.2011. If the claims of the assessee are true and the debit balance is only because of an inadvertent error and the same has been squared off within short period, then same cannot be treated as deemed dividend u/s. 2(22)(e) of the Act and this principle is supported by the decision of ITAT Chennai Benches in the case of M/s. V. Sriram

(HUF) vs ACIT (OSD) (Supra). Similarly, the Assessing Officer has considered the payment of Rs. 12,50,000/- on 31.12.2010 and according to the Assessing

Officer the appellant has received a sum of Rs. 12,50,000/- from the company, but said payment is not reflected in the current account of the assessee. The Ld. Counsel for the assessee explained that, the company has owed to Smt. Sundaravalli, mother of the appellant and her account shows a credit balance of Rs.

35,25,000/-. The company suppose to make payment to Smt. Sundaravalli and as per the instructions of the payee, the amount has been paid to the appellant on 31.12.2010 and debited the payment to Smt. Sundaravalli account. The appellant has furnished ledger extract of Smt. Sundaravalli to prove his arguments. If the arguments of the Ld. Counsel for the assessee is correct, then said payment cannot be considered as payment of loan to appellant within the provisions of section 2(22)(e) of the Act. But, fact remains that, these facts need to be verified by the Assessing Officer in light of our observations given herein above. Therefore, we set aside the order of the ld. CIT(A) and restore the issue back to the file of the Assessing Officer. The Assessing Officer is directed to verify the claim of the assessee in light of various evidences and also decide the issue in light of our findings given herein above and decide the issue. In case, the Assessing Officer finds that the claim of the assessee is correct, then the Assessing Officer is directed to delete additions made towards deemed dividend u/s. 2(22)(e) of the Act.

8. In the result, appeal filed by the assessee is allowed for statistical purposes.



Order pronounced in the court on 18<sup>th</sup> October, 2023 at Chennai.

Sd/-

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(MAHAVIR SINGH)

□□□ य /Vice President

Sd/-

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(MANJUNATHA. G)

□□□□□ य /Accountant Member

□□ ई /Chennai,

□□□□ /Dated, the 18<sup>th</sup> October,

2023 JPV □□□□ □□ □□□□□□

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1. □□□□□□ /Appellant
2. थ /Respondent
3. □□□□ □□□ /CIT
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5. □□□ □□□□□ /GF