

IN THE INCOME TAX APPELLATE TRIBUNAL
VISAKHAPATNAM BENCH, VISAKHAPATNAM

BEFORE: SHRI D MANMOHAN, VICE PRESIDENT
AND
SHRI BR BASKARAN, ACCOUNTANT MEMBER

ITA No.293/Vizag/2012

Assessment Year: 2007-08

P. Satya Prasad
C/o Sri C.Subrahmanyam
Visakhapatnam
(Appellant)
PAN No: AJPPS 8675K

Vs.

ITO Ward-3(2)
Visakhapatnam
(Respondent)

Appellant By: **Shri C. Subrahmanyam, CA**
Respondent By: **Shri K.V.N. Charya, CIT(DR)**
Date of Hearing: **09.11.2012**
Date of Pronouncement: **16.11.2012**

ORDER

Per Shri B. R. BASKARAN, Accountant Member:

The appeal of the assessee is directed against the order dated 29-06-2012 passed by Ld CIT(A) and it relates to the assessment year 2007-08.

2. The grounds raised by the assessee give rise to the following two issues.
 - (a) Validity of re-opening of assessment
 - (b) Validity of assessment of deemed dividend u/s 2(22)(e) of the Act.

3. During the course of hearing, the Ld Counsel for the assessee did not press the grounds relating to the validity of re-opening of assessment. Accordingly, they were dismissed as withdrawn.

4. The facts relating to the remaining issue, viz., assessment of deemed dividend u/s 2(22)(e) of the Act are stated in brief. The assessee is one of the Directors in a company named M/s P.S.V. Engineering & Contractors (P) Ltd (herein after called "the Company") and he is also a partner in a partnership firm named M/s P.S.V. Enterprises. The AO noticed that the company has advanced

money to the assessee and also to the partnership firm, cited above and hence the AO examined about the applicability of the provisions of sec.2(22)(e) relating to "Deemed Dividend" with respect to the amounts so advanced by the company. According to the AO, the Company had accumulated profit of Rs.87,48,366/- as on 31.3.2007. The details of the amounts advanced by the Company to the assessee and also to the partnership firm as available in the books of the company for the year under consideration has been extracted by Learned CIT(A) as under:-

Advance to P. Satya Prasad (assessee):

Opening balance as on 01.04.2006	77,50,000
Advance given on 01.07.2006	5,46,500

	82,96,500
	=====

Advance to P.S.V. Enterprises (Partnership firm):

Advances given on:-

09.04.2006	20,00,000
13.05.2006	16,50,000
03.05.2006	26,00,000
28.09.2006	4,25,000
31.03.2007	94,00,000

	1,60,75,000
	=====

Since the assessee was entitled to a share of 50% in the partnership firm, the AO considered only 50% of Rs.1,60,75,000/- i.e., Rs.80,37,500/- for the purposes of sec. 2(22)(e) of the Act.

5. Having convinced that the assessee is liable to be assessed for "Deemed dividend" and since it has escaped the assessment, the AO reopened the assessment relating to the year under consideration by issuing notice under section 148 of the Act. The Assessing Officer was not convinced with the various explanations given by the assessee. The aggregate amount of loan given to the assessee and the partnership firm was Rs.1,63,34,000/- and the accumulated profit, according to the Assessing Officer was Rs.87,48,366/-. As per the provisions of sec. 2(22)(e), the loan or advance given to the shareholder shall be

treated as "Deemed Dividend", only to the extent to which the company possesses accumulated profits. Accordingly, the AO assessed the amount equivalent to the accumulated profit as on 31.3.2007, i.e., Rs.87,48,366/- as deemed dividend in the hands of the assessee for the asst. year 2007-08.

6. The assessee challenged the order passed by the Assessing Officer by filing appeal before Ld CIT(A). Before him, the assessee advanced following arguments:-

(a) The provisions of sec. 2(22)(e) are not attracted in the hands of the assessee, as the company has actually declared dividend during the year relevant to the assessment year under consideration, viz., assessment year 2007-08.

(b) Even, if it is considered as attracted, the accumulated profit computed by the AO is not correct.

7. With regard to the first contention, the Ld CIT(A) noticed that the clause (iii) of sec. 2(22)(e) excludes the following amount from the definition of "Dividend":-

(iii) any dividend paid by a company which is set off by the company against the whole or any part of any sum previously paid by it and treated as a dividend within the meaning of sub clause (e), to the extent to which it is so set off.

Before Ld CIT(A), the assessee appears to have stated that the dividend paid by the company was not set off by it against the loan account. Accordingly, the Ld CIT(A) held that the provisions of clause (iii) shall not apply to the facts of the case and accordingly rejected the contentions of the assessee with the following observations:-

" 5.7 From the provisions of section it is clear that any dividend paid which is set off against any sum previously paid should not be included as deemed dividend. However when the assessee was asked as to whether the dividend paid at the end of the year is set off against the loans given to the assessee, it was stated that no such set off was made in the books of account by the assessee. It is undisputed that grant of loan/advance was earlier to the payment of dividend. Even the dividend declared later is not set off against the loan outstanding and hence no set off of the loan taken can give against the subsequent dividend declared. Reliance in this regard is placed on the decision of Hon'ble Bombay High Court in the case of Badiani (LP) 154 ITR

2004 wherein it is held by the Hon'ble Court that where the amounts are assessed in the hands of share holder as deemed dividend, section 2(22)(e) requires a set off to be made by company against actual distribution of dividends. If the company fails to give such set off there might be double taxation of the assessee, but this by itself would not be sufficient to permit a strained construction on the phraseology employed by the legislature. Thus it is held by the Hon'ble Bombay High Court that the assessee is not entitled to set off deemed dividend against dividends actually declared. Respectfully following the Bombay High Court judgment, I reject the contention of the assessee that the dividend declared should be set off against the deemed dividend."

8. With regard to the issue of computation of "accumulated profits", the assessee advanced the following arguments before Ld CIT(A):-

(a) The company had advanced a sum of Rs.77,50,000/- to the assessee herein during the year immediately preceding the year under consideration, i.e., in the year relevant to the assessment year 2006-07 and the company had accumulated profit of Rs.55,87,174/- as on 31.3.2006. Accordingly, the assessee contended that the AO should have assessed a sum of Rs.55,87,174/- as deemed dividend in the assessment year 2006-07. Hence the accumulated profit should be reduced by the amount that should have been assessed as deemed dividend in the assessment year 2006-07.

(b) During the year relevant to the asst. year 2007-08, the company made a profit of Rs.31,61,192/- and the same has been declared as dividend. Hence the accumulated profit should be taken as NIL as on 31.3.2006 and hence no amount could be assessed as deemed dividend during the year under consideration, i.e., asst. year 2007-08.

In support of the point listed as (a) above, the assessee relied upon the decision of Hon'ble Supreme Court in the case of Ms P Sarada Vs CIT (229 ITR 444), wherein it was held that the legal fiction embodied in sec. 2(22)(e) comes into play as soon as monies were paid by the company. The assessee also relied upon the decision rendered by Cochin bench of ITAT in the case of ITO Vs. Gordhandas Khimji (11 ITD 158), wherein it was held that the advances or loans given during the earlier assessment years had to be treated as deemed dividends, even though the department had failed to assess the same and the accumulated profits should be reduced by such earlier loans or advances. Reliance was also placed on the decision of Delhi bench of ITAT in the case of A.R.Chadha & Co. (India) (P) Ltd Vs. DCIT (34 DTR 375), wherein, the tribunal

followed the decision of Cochin bench in the case cited above. Accordingly it was contended that the accumulated profit should be worked out as under:-

Cumulative profit of earlier years as on 31.3.2006	Rs.55,87,174/-
Less:- Loans given upto 31.3.2006 (to be considered as Deemed dividend)	Rs.77,50,000/-

Accumulated profit as on 1.4.2006	NIL
	=====

Loan given during the year (asst. year 2007-08) – Rs.1.60 crores.

Current year's profit for the year ending 31.3.2007 - Rs.31,61,192/-

Dividend declared during the year ending 31.3.2007 - Rs.82,50,000/-

By placing reliance on the decision of Hon'ble Bombay High Court in the case of CIT Vs. P.K. Badani (76 ITR 369), it was also submitted that the repayment of the loan, which was treated as deemed dividend earlier, could not be added to the amount of "accumulated profit".

9. The Ld CIT(A) was unable to accept the proposition laid down by the Cochin bench of the Tribunal in the case of Gordhandas Khimji,((Supra)), on the reasoning that the department is going to gain anything by postponing the taxability to a subsequent year. He further held that the Cochin bench did not consider the Explanation 2 to sec. 2(22)(e), which defines the term "accumulated Profit". Accordingly, the Ld CIT(A) held that the statute as well as the decision of Hon'ble Supreme Court in the case of P.sarada ((Supra)), do not provide for reduction of the amount of deemed dividend, which was omitted to be assessed in the earlier year, from "accumulated profits". With the above observations, the Ld CIT(A) confirmed the assessment of deemed dividend in the hands of the assessee. Aggrieved, the assessee is in appeal before us.

10. We have heard the rival contentions and carefully perused the record. There is no dispute with regard to the fact that the assessee is holding 37.88% of share holding in the company and was entitled to a share of 50% in the Partnership firm. Under sec. 2(22)(e) of the Act, the loan amount or the accumulated profit whichever is less is liable to be taxed as "deemed dividend".

We notice that the assessee is accepting the fact that the deemed dividend is liable to be assessed in his hands, provided there is "accumulated profit" in the hands of the company as per the provisions of sec. 2(22)(e) of the Act and further the adjustments towards dividend declared by the company is made. Thus, the first question that requires our consideration is about the determination of the quantum of accumulated profits for the purpose of assessment of deemed dividend for asst. year 2007-08.

11. Before us, the Ld A.R contended as under:-

- (a) As per the decision of the Hon'ble Supreme Court in the case of P. Sarada ((Supra)), the apex court held that the legal fiction embodied in sec. 2(22)(e) of the Act comes into play as soon as the monies are paid by the company. This view was reiterated by the Apex Court in the case reported in 236 ITR 327.
- (b) During the year relevant to the assessment year 2006-07, i.e., in the immediately preceding year, the company had paid a sum of Rs.77,50,000/- and the assessee had accumulated profits to the tune of Rs.55,87,174/- as on 31.3.2006. Hence the AO should have assessed the deemed dividend to the extent of accumulated profits stated above in the assessment year 2006-07 itself. Even if it is not so assessed, the amount to the extent of the deemed dividend so assessable should be reduced from the accumulated profits during the year under consideration. For this proposition, the Ld A.R placed reliance on the decision of Cochin bench of ITAT in the case of Gordhandas Khimji (Supra) and the decision of Delhi bench of Tribunal in the case of A.R.Chadha & Co India (P) Ltd (Supra).
- (c) The Ld CIT(A) has refused to follow the decision of Cochin bench referred supra, since he was of the view that the Tribunal did not consider the definition of "accumulated Profits", as given in Explanation 2 to sec. 2(22)(e) of the Act. However, the Ahmedabad bench of Tribunal in the case of M.B.Stock Holding (P) Ltd Vs. ACIT (2003)(84 ITD 542) has held that the accumulated profits are to be worked out up to the date of each payment/advancement of loan and further the profits of business accrue only at the end of the previous year.
- (d) The tax authorities have failed to take into consideration the amount of dividend actually declared by the assessee during the year relevant to the assessment year 2007-08. The assessee has declared dividend more than the current year's profit.

12. The contentions of the Ld D.R can be summarized as under:-

- (a) The decision rendered by the Cochin bench in the case of Gordhandas Khimji, supra is not in accordance with the scheme of the Act.
- (b) In the case of P.K.Badani Vs. CIT (1976)(105 ITR 642), the Hon'ble Supreme Court has held that the "Accumulated Profits" means profits in the commercial sense and not assessable or taxable profits liable to tax as income under the Act.
- (c) Hence the assessee is wrong in contending that the deemed dividend, which was not assessed earlier, is required to be deducted from the accumulated profits. In the case of CIT Vs. G.Narasimhan (Decd) (1979)(118 ITR 60), it was held that the loans advanced in earlier years and deemed to be dividend u/s 2(22)(e) have to be deducted.
- (d) As per clause (iii) of sec. 2(22)(e), the dividend does not include the amount paid by the company as dividend and which was set off by the company against the amount previously paid by it and which was treated as dividend u/s 2(22)(e) of the Act. In the instant case, the assessee has accepted that there was no such set off. This issue was addressed by Ld CIT(A) in para 5.7 of his order.
- (e) As per Explanation 2 to sec. 2(22)(e), the accumulated profit shall include all profits of the company up to the date of distribution or payment. The Ahmedabad bench of Tribunal also has held so in the case of M.B. Stock Holding (P) Ltd, supra.
- (f) If, by any chance, the Tribunal feels that a part of deemed dividend was assessable in the assessment year 2006-07, suitable direction may be given in that regard.

13. We notice that the Learned D.R is heavily taking support from the Explanation 2 to sec. 2(22)(e) and the said provision defines the term "accumulated profits" as under:-

Explanation 2:- The expression "accumulated profits" in sub clauses (a),(b),(d) and (e), shall include all profits of the company up to the date of distribution or payment referred to in those clauses, and in sub clause (c) shall include all profits of the company up to the date of liquidation, but shall not, where the liquidation is consequent on the compulsory acquisition of its undertaking by the Government or a corporation owned or controlled by the Government under any law for the time being in force, include any profits of the company prior to three successive previous years immediately preceding the previous year in which such acquisition took place".

The Ahmedabad bench of Tribunal noticed that the Hon'ble Supreme Court in the case of CIT Vs. Asokbhai Chimanbhai (1965)(56 ITR 42) has held that the profits do not accrue from day to day or even from month to month and have to be ascertained by a comparison of assets at two stated points. It was further held that unless the right to profits comes into existence there is no accrual of profits and the destination of profits must be determined by the title thereto on the day on which they arise. Then the Tribunal went on to explain the purpose of Explanation 2 to sec. 2(22)(e) as under in para 24 of the order:-

"Keeping in view the above interpretation of law, it cannot be said that Expln.2 to sec. 2(22)(e) is redundant. It is bound to be for a specific purpose. The question for determination is as to what is the purpose for which this Explanation has been incorporated when the Hon'ble Supreme Court in the case of CIT Vs. Ashokbhai Chimanbhai (supra) have held that the profits of business do not accrue from day to day or even from month to month. In our considered view, the legislature has taken into account the fact that where as the profits from business for the current year may not be determinable in the middle of the year, there are certain sources of income, the income from which is capable of determination which, according to the legislative intent, should also be taken into account while determining the accumulated profits on the day of advancing the loan. The company is a person. It may carry on business and may also derive income from various other sources. For example, the company may sell an asset from which capital gains are derived. If the capital gain is derived before the date of advancement of the loan that profit shall have to be taken in account in determining the accumulated profits notwithstanding the fact that such an event has taken place in the middle of the year. It is so the determination of capital gains is not to wait for the end of the previous year. Similarly, there can be income from other sources also such as receipt of dividend income or interest which may not have to wait for determination at the end of the year. Similarly, some subsidy may be received from the Government which may be taxable on receipt basis. Such income shall also have to be taken into account in determining the accumulated profits as it has not to wait for determination of income at the close of the year".

The Hon'ble Tribunal has expressed the above said view, when it was pointed out to it by the counsel for the assessee that the Hon'ble Supreme Court in the case of CIT Vs. V.Damodaran (1980)(121 ITR 572) has held that the

accumulated profits shall not include current year's profit. Finally the Tribunal summarized the principles of sec. 2(22)(e) as under:-

- (i) That for purposes of s. 2(22)(e), the accumulated profits are to be worked out upto the date of each payment/advancement of loan.
- (ii) That there is a distinction between the "accumulated profits" of business and the current year's profits of business.
- (iii) That profits of business accrue at the end of the previous year.
- (iv) That loan or advance treated as deemed income up to the date of fresh loan is to be reduced from accumulated profits.
- (v) That the repayment of loan during the same year is not to be deducted from the accumulated profits.

Thus, it has been held that the accumulated profits do not include current year's business profit, since it accrues only at the end of the year. Further the loan or advance treated as deemed income up to the date of fresh loan is to be reduced from the accumulated profits. Consistent with the view taken by the Ahmedabad bench in the above said case, we also hold so.

14. The contention of the assessee is that the amount of deemed dividend, which should have been assessed in any of the earlier years, should also be reduced from the accumulated profit even if it was not assessed as deemed dividend in that year. For this proposition, the Ld A.R has placed reliance on the decision rendered by the Cochin bench of Tribunal in the case of Gordhandas Khimji (supra) and also the decision rendered by the Delhi bench of Tribunal in the case of A.R.Chadha & Co India (P) Ltd (Supra). The Ld CIT(A), as stated earlier, refused to follow the said decisions on the ground that the department is going to gain anything by postponing the taxability of deemed dividend. Further, the Learned CIT(A) has observed that the Cochin bench did not consider Explanation 2 to sec. 2(22)(e) of the Act. We have already noticed that the Ahmedabad bench of the Tribunal has explained about the area of operation of Explanation 2 to sec. 2(22)(e) of the Act and we have also concurred with the view that the accumulated profit does not include current years profit from business. Accordingly, in our view, the Explanation 2 to sec. 2(22)(e) shall not alter the taxability of the dividend in the right year of assessment.

15. The Hon'ble Supreme Court has held in the case of P.Sarada (Supra), that the legal fiction embodied in sec. 2(22)(e) comes into play as soon as monies were paid by a company. The very same view was expressed by the Apex Court in the case of Smt. Tarulata Shyam Vs. CIT (1977)(108 ITR 345). The Cochin bench of Tribunal in the case of Gordhandas Khimji (supra) considered the decision of Hon'ble Supreme Court in the case of Tarulata Shyam (Supra) and has expressed the view that the deemed dividend assessable in any of the earlier years has to be reduced from the accumulated profits, even if it was not assessed in that year. The relevant observations made by the Cochin bench are extracted below:-

"11. In Smt. Tarulata Shyam's case (supra), it was held by the Supreme Court that the statutory fiction created by s. 2(6A)(e) would come into operation at the time of payment of advance or loan to a shareholder and tax is attracted to the loan or advance to the extent to which the company possesses accumulated profits the moment the loan or advance is received, and even if the loan or advance ceases to be outstanding at the end of the previous year, it can still be deemed to be 'dividend' if the conditions of the section are satisfied. It was also observed that the language of the section is clear and unambiguous and that there is no scope of importing into the statute words which are not there and that once it is shown that the case of the assessee comes within the letter of the law, he must be taxed, however great the hardship may appear to the judicial mind to be. ...

13. None of the discussions referred to above are directly on the point. But the line of discussion in those decisions gives some indication with regard to the correct position. We are unable to hold that loans and advances will become deemed dividends only when the Department chooses to treat the same as such and brings the same to tax as dividend. The section is not worded as an enabling section by which the Department can treat the loans and advances as deemed dividends. The section does not say that the amount will become deemed dividend only if it has been assessed as such. On the other hand, the provision is a clause in the inclusive definition, by which advances and loans are constituted as dividends. The moment an advance or loan satisfying the conditions of the section is made, it would become a dividend and it is immaterial whether the department has assessed the same as dividend or not. The decisions referred to above indicate that the deemed dividend has to be worked out on the basis of the conditions obtaining at the time when the loans or advances are made. In the case of Smt. Tarulata Shyam (supra), the Supreme Court observed that the statutory fiction created by the section would come into operation at the time of the payment of advance or loan. Similarly, the observations in the case of P.K.Badani (supra)(76 ITR 369)(Bom) would

indicate that the accumulated profits should be reduced by the amount of loan or advance, immediately on making such loan or advance. Only if this is done, the subsequent loans or advances can be tested by verifying the accumulated profits on the dates on which they are made. As pointed out in the decision referred above, the repayments of the advances or loans will have no effect either on the advances or loan treated as dividend or on the accumulated profits as reduced by such advance or loan. As such, it does not seem to be neither practicable nor proper to postpone the whole process of ascertaining the accumulated profits till the Department chooses to treat a particular advance as deemed dividend. If the contention of the Department is accepted, then if the ITO ignores the advances in earlier years and then goes down on the assessee in an assessment year in which he has drawn substantial advances, it will amount to allowing the Department to take advantage of its omissions to assess the earlier loans and advances as deemed dividends and to allow such omissions to bloat the accumulated profits, so that the whole of the large advances taken in the last assessment year are converted into deemed dividends. As rightly pointed out by the CIT(A), the advances or loans in the earlier assessment years should be treated as dividend which the Department omitted to assess. If so, it follows that the accumulated profits should be reduced by the earlier loans or advances in spite of the fact that they were not assessed to tax as deemed dividends by the Department.”

It is a well settled proposition of law that an income pertaining to a particular assessment year can be assessed in that year only. For example, the income pertaining to the assessment year 2005-06 can be assessed only in that year, i.e., the said income cannot be assessed in any other assessment year, even if the tax authorities wish to do so. Hence, the assessee cannot be compelled to pay tax on the income which was omitted to be assessed in an earlier year, by assessing the said income in any other assessment year. Accordingly, we are inclined to follow the decision rendered by the Cochin bench in the case referred supra. Accordingly, the loan given by the company in the immediately preceding year, i.e., assessment year 2006-07, should have been assessed as deemed dividend in accordance with the provisions of sec. 2(22)(e) in that year. The deemed dividend so assessable in that year is liable to be deducted from the amount of “accumulated profits” for the purpose of computing the deemed dividend during the year under consideration.

16. Before the Learned CIT(A), the assessee has contended that the accumulated profits as on 31.3.2007 should be considered for the purposes of sec. 2(22)(e) of the Act. The said contention does not appear to be in

accordance with the law, since the liability for taxation comes into play as soon as monies were paid by a company as held by Hon'ble Supreme Court in the case of P Sarada, (Supra). Hence the amount of accumulated profits has to be determined on the date on which the loans were given by the company.

17. Now let us turn to the facts of the instant case. The assessee has furnished copies of financial statements of the company pertaining to the year ending 31.3.2007 in the paper book and in page No. 15, the details of Reserves and Surplus are given. Based on the principles discussed above, the "accumulated profits", which is required to be considered for the purpose of assessment year 2007-08 shall work out as given below:-

Reserves and surplus as on 31.3.2007 before dividends	- 87,48,366
Less:- Current year's business profits relating to F.Y 2006-07	- 31,61,192

	55,87,174
Less:- Income assessable as deemed dividend in asst. year 2006-07:-	
(Loan given or accumulated profit whichever is less)	
(a) Loan given in a.y. 2006-07 (Pg. 7 of Paper book)	80,50,000
	=====
(b) Accumulated Profit:- (Pg. 15 of Paper book)	
Reserves and Surplus as on 31.3.06	- 55,87,174
Less:- Current year's business profit (relating to F.Y 2005-06)	29,15,546
Asst. year : 2006-07	

	26,71,628
	=====
Lower of (a) or (b)	26,71,628

Accumulated profit for the purpose of ascertaining Deemed dividend in the year relevant to a.y. 2007-08	29,15,546
	=====

We have already noticed that the aggregate amounts of loans given by the company to the assessee and the partnership firm during the financial year relevant to the assessment year 2007-08 was Rs.85,84,000/- (Rs.5,46,500/- to the assessee and 50% of the amount given to M/s PSV Enterprises – Rs.80,37,500/-). Under sec. 2(22)(e) of the Act, the lower of the loan amount or

the accumulated profit is taken as deemed dividend., i.e. lower of Rs.85,84,000/- or Rs.29,15,546/- is taken as deemed dividend, i.e., Rs.29,15,546/- is to be taken as deemed dividend. Since the Learned A.R has claimed that the dividend declared and paid by the company is required to be deducted, the applicability of the provisions of clause (iii) of sec. 2(22)(e) requires verification. Similarly, the computations discussed above also require verification by the tax authorities.

18. As per clause (iii) of sec. 2(22)(e), the dividend does not include any dividend paid by a company which is set off by the company against the whole or any part of any sum previously paid by it and treated as dividend within the meaning of sec. 2(22)(e) of the Act. The Ld CIT(A) has observed that the assessee had stated that no such set off was made in the books of account. However, we notice that the assessee has furnished a copy of the Loan account of the assessee as available in the books of the company in Page 8 of the paper book. On the perusal of the said account, we notice that the dividend amount of Rs.31,25,100/- was adjusted by the company against the said loan amount. Thus, the observation made by Ld CIT(A) appears to be against the facts available on record. There cannot be any dispute that the dividend amount so set off shall have to be deducted from the deemed dividend amount computed above. However, the observations made by Ld CIT(A) show that the tax authorities have not examined this aspect properly. Hence, the factual aspect on this matter, in our view, requires verification preferably at the end of the assessing officer.

19. The foregoing discussions show that the views entertained by the tax authorities on the matter of "accumulated profits" and "deemed dividend" are not in accordance with the settled position of the law. Accordingly, we set aside the order passed by Ld CIT(A) on this issue and restore the same to the file of the Assessing Officer with the direction to carry out due verification of the computations made with regard to the accumulated profits and also determine the amount of 'deemed dividend', if any, accordingly after verifying the record with regard to the amount to be deducted as per clause (iii) of sec. 2(22)(e) of the Act, which was discussed in the preceding paragraph.

20. In the result, the appeal of the assessee is treated as partly allowed for statistical purposes.

Pronounced accordingly on 16.11.2012.

Sd/-
(D MANMOHAN)
Vice President

Sd/-
(B R BASKARAN)
Accountant Member

VG/SPS
Visakhapatnam,
Date: 16th November, 2012

Copy to

- 1 Sri P. Satya Prasad, C/o Sri C. Subrahmanyam, Chartered Accountant, 102, Lakshmi Apartments, FACOR LAYOUT, Waltair Uplands, Visakhapatnam-530 003
- 2 ITO Ward-3(2), Visakhapatnam
- 3 The CIT-1, Visakhapatnam
- 4 The CIT(A), Visakhapatnam
- 5 The DR, ITAT, Visakhapatnam.
- 6 Guard file.

By Order

Senior Private Secretary
INCOME TAX APPELLATE TRIBUNAL
VISAKHAPATNAM