

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "A", NEW DELHI  
BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER  
AND  
SHRI C.M. GARG, JUDICIAL MEMBER  
I.T.A. No. 4269/Del/2011

A.Y. : 2008-09

Income Tax Officer,  
Ward 13(2),  
CR Building,  
New Delhi

vs. Adarsh Kapoor,  
273, Kailash Hills,  
East of Kailash,  
New Delhi-65

(Appellant )

(PAN/GIR NO. : ABMPV5490J)  
(Respondent )

Assessee by  
Department by

: Sh. Suresh Gupta  
: Sh. Bhim Singh, Sr. D.R.

**ORDER**

**PER SHAMIM YAHYA: AM**

This appeal by the Revenue is directed against the order of the Ld. Commissioner of Income Tax (Appeals)-XVI, New Delhi dated 30.5.2011 pertaining to assessment year 2008-09.

2. The grounds raised read as under:-

"1. That on the facts and circumstances of the case and in law the Ld. Commissioner of Income Tax (A) erred in deleting the addition made on account of section 2(22)(e) of the I.T. Act. The Ld. Commissioner of Income Tax (A) erred in ignoring the fact that the investment reflected in the books of the company will not change the character of investments made in the name of the Director. Sh. Adarsh Kapoor has invested that amount in his own

name thereby satisfying all the provisions of section 2(22)(e).

2. That on the facts and circumstances of the case and in law the Ld. Commissioner of Income Tax (A) has erred in ignoring the fact that section 2(22)(e) is a deeming provision and creates a fiction bringing in amounts paid otherwise than as dividends, into the net of dividends. Section 2(22)(e) must, therefore, be given a strict interpretation.

3. The appellant craves to be allowed to add, any fresh grounds of appeal and / or deleted or amend any other grounds of appeal.

3. In this case Assessing Officer noted that the Assessee is a Director in M/s Nevco Engineers Pvt. Ltd. and was holding 99% share of the total paid up capital. Assessing Officer further noted that it has been claimed that the assessee has made investment to the tune of Rs. 12,00,000/- in Reliance Equity Funds on behalf of M/s Nevco Engineers Pvt. Ltd. On perusal of the accounts in the books of the Company Assessing Officer noted that there was a debit balance of Rs. 85,000/- on 18.12.2010 and further an amount of Rs. 12,00,000/- was again debited to the assessee on 31.3.2010. Assessing Officer asked the assessee as to why the amount of Rs. 12,85,000/- not be added back to the income of the assessee as deemed income by invoking the provisions of section 2(22)(e). Assessee responded as under:-

*“The transaction of Rs. 12,00,000/- represents the amount invested by Nevco Engineers (P) Ltd. in Reliance Equity*

*Advantage Fund. This represent the investment done by the Company and is reflected in the company books.*

*The transaction of Rs. 11,95,618.16 does not represent any funds out flow. It is only a switchover transaction and this transaction of Rs. 11,95,618.16 represents the purchase value of the above stated investment only. This is result of switch over of the above stated investment from Reliance Equity Advantage Fund to Reliance Growth / Vision Fund of Rs. 12,00,000/-.*

- *Though the above stated investments were made in the name of Mr. Adarsh Kapur but the real and beneficial owner of these investments was the Company only.*
- *These investments were done through a resolution passed by the Company (Copy of the resolution attached.)*
- *These investments are reflected in the books of the Company (Copy of Ledger Accounts attached.)*
- *The beneficial owner of these investments was the company only.*
- *Only Company has the exclusive rights on the investments. Only company can sell or otherwise deal with the investments.*

*The above stated transactions are not for the benefit of the concerned shareholder/ director and as stated above the money has been invested by the company in mutual fund by making the said shareholder nominee on behalf of the Company which is the real investor in the transaction. The*

*concerned shareholder / director holds the investments in fiduciary capacity and has no rights on the said investments.*

*Thus, these transactions are not of the nature of Advances or Loans and since the deeming provisions of Section 2(22)(e) of Income Tax specifically cover the loans and advances only, not the above transactions, it is therefore, emphasized that such transactions do not attract the provisions of Section 2(22)(e) of the Income Tax Act, 1961."*

4. Assessing Officer was not satisfied with the above reply. He referred to the provisions of section 2(22)(e) of the I.T. Act. He observed that assessee has substantial interest in the above named company withholding of 99% of shares. As on 31.3.2008, there is a reserve and surplus of Rs. 53,79,934/- in the balance sheet of M/s Nevco Engineers Pvt. Ltd. He further noted that M/s Nevco Engineers Pvt. Ltd. has forwarded the amount of Rs. 12,85,000/- to the assessee during the year under consideration. As regards investment of Rs. 12,00,000/- by the assessee on behalf of M/s Nevco Engineers Pvt. Ltd. it was submitted before the Assessing Officer that there were certain formalities which were required to be fulfilled by the company and the Company failed to comply with the formalities and hence, investment was made in the name of the Director. The Copy of the Board Resolution passed in this regard was also submitted.

4.1 Assessing Officer was not satisfied with the assessee's reply. He observed that the Minutes Book of the Directors' Meeting were not produced before him. He further did not agree with the contention of the assessee that there were certain conditions laid down for investing in the said scheme which the company failed to fulfill. In Assessing Officer's view the Company could have invested

in its own name after completing these formalities. Assessing Officer invoked the provisions of section 2(22)(e) of the I.T. Act and added the same of Rs. 12,85,000/- to the income of the assessee.

5. Upon assessee's appeal Ld. Commissioner of Income Tax (A) noted that assessee was not pressing for adjudication the matter regarding treatment of Rs. 85,000/- as deemed dividend by the Assessing Officer. However, Ld. Commissioner of Income Tax (A) noted that both at the assessment and at the appellate stage, the stand of the assessee has been that a sum of Rs. 12,00,000/- was given to the assessee company, consequent upon the Resolution passed by the Board of Directors of the said Company authorizing the assessee to invest on behalf of the company in units of M/s Reliance Equity Advantage Funds. This was due to the reasons that at that point of time the company did not meet the requirements of the Know Your Customer (KYC) Scheme (for Money Laundering Measures) and also did not have a PAN Card which was mandatory for the purpose of applying of units of Mutual Funds. Ld. Commissioner of Income Tax (A) further observed that in his view the assessee deserves to succeed in his appeal for the following reasons:-

*"1. The balance sheet of the company M/s Nevco Engineers Pvt. Ltd. as on 31.3.2008 which was filed before the ROC reflects investment by the company in mutual fund. The loss on account of switch over of investment from one mutual fund to another mutual fund as on 31.3.2008 is also reflected in the P&L account of the company. Therefore, the explanation of the appellant that he invested on behalf of the company, cannot be dismissed as an afterthought.*

- ii) The copies of the resolutions of the company (whether dated or undated), duly signed by the appellant in his capacity as director of the Company, clearly state that the appellant was being authorized to make investment on behalf of the company. The resolution filed initially, is stated to be undated on account of an error.*
- iii) As per the powers vested in the Commissioner (Appeals) u/s. 250(4) of the Act, the appellant was required to produce the copy of the minutes book of the company and the resolution at (ii) above finds place in the minutes book. Thus the genuineness of the said resolution stands established.*
- iv) The resolution of the Board of Directors of the company, authorizing the appellant to make investment in units of the mutual fund on its behalf, clearly stipulates that this investment is on behalf of the Company. The investment in mutual funds is reflected in the balance sheet of the company and not the balance sheet or statement of affairs of the appellant. Thus, there has been no benefit to the appellant by investing on behalf of the company.*
- v) The investment in the mutual funds was made by the company M/s Nevco Engineers Pvt. Ltd. using the appellant as a tool or facilitator because the company at that point of time was not complaint of the KYC norms, mandatory for making such investment. Thus the sum of Rs. 12,00,000/- was*

*given by the company to the appellant for the purpose of its own business and not for the personal benefit of the appellant. Since the money was given for business purposes of the company, the provisions of section 2(22)(e) cannot be said to be attracted in the case of the advance of this sum of money.”*

6. Considering the above, Ld. Commissioner of Income Tax (A) held that the amount of Rs. 12,00,000/- given by M/s Nevco Engineers Pvt. Ltd. to the assessee does not fall within the ambit of section 2(22)(e). Hence, Ld. Commissioner of Income Tax (A) deleted the addition of Rs. 12,00,000/-.

7. Against the above order the Revenue is in appeal before us.

8. We have heard the rival contentions and perused the records. We find that in this case the assessee is a Director of M/s Nevco Engineers Pvt. Ltd. holding 99% share of the total paid up capital. Assessee has made investment to the tune of Rs. 12,00,000/- in Reliance Equity Fund on behalf of Nevco Engineers Pvt. Ltd. The proposal for the assessee to make investment on behalf of Nevco Engineers Pvt. Ltd. was duly approved by the Board of Directors of the said company. The reasons for the Company not being able to make the investment in its name was that at that point of time, the Company did not meet the requirement of Know Your Customer (KYC) Scheme (for Money Laundering measures) and also did not have a PAN card which were mandatory for the purpose of applying of units of mutual funds. The Assessing Officer's has given the reasoning for not accepting these submissions on the ground that Company could have waited to complete the formalities before the making the investment. We find that this view of the Assessing

Officer is not sustainable. It was on account of commercial expediency as to avail the business opportunity, the Company invested in the Reliance Equity Funds through the assessee. The amount investment was duly reflected in the books of accounts of the Company as an investment. Assessee did not derive any benefit for the said investment in his personal name. It has further been submitted that the said investment was redeemed on 10.12.2010 at a profit of Rs. 1,35,838.21. On 10.12.2010 on the same date there was a transfer of redemption money of Rs. 13,35,838.21 from the assessee's bank account to the Company's bank account. Thus, we find that it was for proper and cogent reasons due to which the investment was made in the name of assessee on behalf of the Company. The assessee did not derive any benefit out of the same. The profit derived on the investment was immediately transferred to the assessee company on redemption. Under the circumstances, we do not find any infirmity in the order of the Ld. Commissioner of Income Tax (A). Hence, accordingly, we uphold the same.

9. In the result, the appeal filed by the Revenue stands dismissed.

Order pronounced in the open court on 20/5/2013.

Sd/-

Sd/-

**[C.M. GARG]**  
**JUDICIAL MEMBER**

*Date 20/5/2013*

"SRBHATNAGAR"

*Copy forwarded to: -*

1. Appellant 2. Respondent  
5. DR, ITAT

**[SHAMIM YAHYA]**  
**ACCOUNTANT MEMBER**

3. CIT 4. CIT (A)

TRUE COPY

By Order,



Assistant Registrar, ITAT, Delhi Benches