

IN THE INCOME TAX APPELLATE TRIBUNAL, BENCH 'D' KOLKATA

[Before Hon'ble Shri J.Sudhakar Reddy, AM & Shri A.T.Varkey, JM]

ITA No.1303/Kol/2015
Assessment Year : **2010-11**I.T.O., Ward-36(3)
Kolkata

-versus-

Sri Siddhartha Paul
Kolkata
(PAN: AEXPP 9333 C)
(Respondent)

(Appellant)

For the Appellant: Shri Arindam Bhattacharjee, Addl. CIT

For the Respondent: Shri Manish Tiwari, FCA

Date of Hearing : 26.09.2017.

Date of Pronouncement : 15.11.2017.

ORDER**PER J.SUDHAKAR REDDY, AM:**

This is an appeal by the Revenue directed against the order of the Commissioner of Income Tax-(A)-10, Kolkata relating to A.Y. 2010-11.

2. The Assessee is an individual and derives income from salary and other sources. He filed return of income for A.Y.2010-11 on 26.09.2010 disclosing the total income of Rs.14,63,490/-. A revised return was filed on 07.05.2011 declaring the total income at Rs.7,53,930/-. The AO received information that the assessee is one of the directors of the company M/s. Palsons Drugs Pvt. Ltd. He was having substantial interest in this company. M/s. Palsons Drugs Pvt. Ltd was not a company in which the public are substantially interested. It was noticed that the assessee received an advance of Rs.49,85,000/- from this company. Assessments were reopened by issue of notice u/s 148 of the Income Tax Act, 1961 (Act). The assessee requested that the return filed on 04.04.2014 be treated as in response to the notice u/s 148 of the Act. The AO proposed an addition u/s 2(22)(e) of the Act. The assessee explained that the company was to purchase two flats at Rajarhat, which was to be used as the company guest house for keeping outstation customers. The assessee claims to have booked flats in his own name as the project was for residential purpose and the company would not

be allowed to purchase the same. The assessee submitted that he was to transfer the flats subsequently to the company. Necessary correspondences was filed as evidence of this understanding. This explanation was rejected by the AO. The addition was made u/s 2(22)(e) of the Act.

3. Aggrieved, the assessee carried the matter before the ld. CIT(A). Before the ld. CIT(A) the assessee claimed that he stood as a guarantor for some of the loan facilities taken by the company and had also pledged his personal property to the bank to borrow money for the company. He relied on the judgment of the Jurisdictional High Court in the case of Pradip Kumar Malhotra vs CIT, West Bengal 338 ITR 538(Cal) and submitted that under a similar circumstances the Hon'ble High Court had held that the provision of section 2(22)(e) of the Act would not be attracted. The ld. CIT(A) granted relief by applying the proposition of law laid down in such cases by the Hon'ble Jurisdictional High Court.

4. Aggrieved, the revenue is in appeal before us on the following grounds :-

"1. That, on the facts and in the circumstances of the case, the ld. CIT(A) erred in deleting the addition of Rs.49.85 lakhs as deemed dividend u/s 2(22)(e) made by the AO relying on assessee's submission during the state in contravention of Rule 46A.

2. That, the appellant craves the leave to make any addition, alteration, modification of grounds at the appellate stage."

5. The ld. DR Mr. Arindam Bhattacharjee, Addl. CIT submitted that the assessee has changed his version before ld. CIT(A) and that the ld. CIT(A) accepted the same, which is not in accordance with law. He argued that the issue of the assessee standing as a guarantor and mortgaging his personal assets to enable M/s. Palsons Drugs Pvt. Ltd to obtain loan and other credit facilities, was not brought to the notice of the AO. Thus he submits that this line of argument should not have been accepted by the ld. CIT(A). On a query from the bench, he could not controvert this factual finding of the ld. CIT(A).

6. The Id. Counsel for the assessee Shri Manish Tiwari, FCA, on the other hand, submitted that the fact that the assessee has stood as a guarantor to the company and that he pledged his personal assets to enable M/s. Palsons Drugs Pvt. Ltd to obtain loans and other credit facilities, is not in dispute. He submitted that when these facts are not disputed the proposition of law laid down by the Jurisdictional High Court is applicable and the order of the Id. CIT(A) is correct. He relied on the order of Id. CIT(A).

7. After hearing the rival contentions and considering the papers on record of the authorities below and the case law cited we held as follows :-

The Id. CIT(A) has summarised the factual and legal position at page 9 of his order which is extracted below :

“a. The assessee along with three other family members carried a partnership business styled "Palsons Drugs & Chemical Industries" sharing profit & loss in equal proportion. Such partnership business which existed till 31.03.2008 was converted to a private limited company styled "Palsons Drugs Pvt. Ltd." by taking over all the existing assets and liabilities of the partnership firm from 01.04.2008. The partnership firm prior to conversion as corporate bodies availed term loan from Canara Bank, Canning Street Branch by hypothecation of Plant & Machinery, electrical goods and guarantee by the partners as well as directors of M/s. Purnasons Pvt. Ltd.

b. The said partnership firm prior to conversion into limited company also availed cash credit facility from Canara Bank, Canning street Branch by hypothecation of stock of raw materials, work-in-progress, finished goods and book debts by way of first charge and collateral security of some fixed assets, properties owned by family members and guaranteed by the partners and corporate guarantee of M/s. Purnasons Holdings Ltd. The newly company i.e. "Palsons Drugs Pvt. Ltd." having been incorporated to take over the business of partnership firm with all assets and liabilities also continued to enjoy same facilities of "Term Loan" and "Cash credit" as availed by erstwhile firm.

c. Moreover, M/s. Palsons Drugs Pvt. Ltd. ran its operation at the factory premises which were owned by M/s. Aparna Chemicals Pvt. Ltd.. The appellant along with other family members held the entire share capital of said Aparna Chemicals Pvt. Ltd. The said property was offered as security for available term loan from Canara Bank by Palsons Drugs Pvt. Ltd. d. The appellant who had substantial shareholding in M/s. Palsons Drugs Pvt. Ltd. had mortgaged his

valuable immovable properties by way of personal guarantee with the bank as a security for the loan facility enjoyed by M/s. Palsons Drigs Pvt. Ltd.

e. The appellant required funds during the year in question to meet his personal needs. He requested M/s. Palsons Drugs Pvt. Ltd. for releasing the immovable properties placed as personal guarantee so that he could sale the same and meet his requirements.

f. The company was unable to relieve the appellant from personal guarantee against mortgage. However, the company resolved to give interest free deposit to the appellant to meet his personal needs. Accordingly an advance in the name of the appellant appears in the company's accounts as on 31.03.2010 at Rs. 51,50,660/- which includes opening figure of Rs. 1,65,660/-.

g. The A/R has drawn attention to the judgment of jurisdictional High Court in the case of Pradip Kumar Malhotra - Vs - CIT reported at 338 ITR 538 [2012] & 246 CTR 493 wherein Hon'ble Kolkata High Court interpreted the phrase "by way of advance or loan" appearing at sub-clause (e) of section 2(22) of Income Tax Act, 1961.

h. The A.R has also furnished a copy of ITAT "B" Bench, Kolkata's order in the case of ACIT, CC-II - Vs - Zenon (India) Pvt. Ltd. in ITA No. 1124/Ko1/2012 wherein similar view was expressed by referring the decision of Kolkata High Court in Pradip Kumar Malhotra, Supra.

8. It is true that this line of argument was not taken before the AO. Nevertheless the fact that the company M/s. Palsons Drugs Pvt. Ltd has obtained credit facilities from the bank including term loan and the fact that the assessee gave his personal properties as collateral security to the bank for the loan and other credit facilities granted to the company M/s. Palsons Drugs Pvt. Ltd is not in dispute. The earlier explanation of the assessee that the advances were taken to purchase flats on behalf of the company does not contradict the fact of guarantee being given etc. Even if the earlier explanation is rejected the latter uncontroverted fact comes to the rescue of the assessee. The fact that the assessee had given his personal property as collateral security for enabling M/s. Palsons Drugs Pvt. Ltd to obtain loan and other credit facilities is not in dispute. Under the circumstances the proposition of law as laid down by the Jurisdictional High Court in the case of 'Pradip Kumar Malhotra vs CIT' (supra) squarely applies to the facts of the case. In view of the above discussion we uphold the order of Id. CIT(A) and dismiss this appeal of the revenue.

9. In the result the appeal by the revenue is dismissed.

Order pronounced in the Court on 15.11.2017.

Sd/-
[A.T.Varkey]
Judicial Member

Sd/-
[J.Sudhakar Reddy]
Accountant Member

Dated : 15.11.2017.

[RG Sr.PS]

Copy of the order forwarded to:

- 1.Sri Siddhartha Paul, 10, Pollock Street, Kolkata-700001.
2. I.T.O., Ward-36(3), Kolkata.
3. C.I.T.(A)- 10, Kolkata 4. C.I.T-12, Kolkata
5. CIT(DR), Kolkata Benches, Kolkata.

True Copy

By order,

Senior Private Secretary
Head of Office/D.D.O, ITAT Kolkata Benches