

**IN THE INCOME TAX APPELLATE TRIBUNAL, RANCHI
BENCH, RANCHI**

BEFORE SHRI N.S.SAINI, ACCOUNTANT MEMBER
&
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No.46/Ran/2017
A.Y. : 2012-2013

Sri Ajay Kumar Khatore, North Market Road, Upper Bazaar, Ranchi-834001	vs	DCIT, Circle-1, Ranchi
		PAN No. : AAACB 7488 C
(Appellant)	.	Respondent

Assessee by : Shri S.K.Poddar & Devesh Poddar, Adv
Revenue by : Shri P.K.Mondal, JCIT

Date of Hearing : 28.05.2018
Date of Pronouncement : 30.05.2018

ORDER

Per Pavan Kumar Gadale, JM:

This is an appeal filed by the assessee against the order of CIT(A), Ranchi, dated 01.11.2016, for the assessment year 2012-2013, wherein the assessee has raised the following grounds of appeal :-

1. *For that Ld. CIT(A) was not justified in confirming an addition of Rs.28,68,000/- as deemed dividend u/s.2(22)(e) of the Income Tax Act on the ground that the appellant had taken loan from his closely held company M/s Khatore Earthmovers Pvt. Ltd.*
2. *For that M/s Khatore Earthmovers Pvt. Ltd. had opening balance of Rs.83,71,112/- as on 01.04.2011 with the appellant and the total reserve of the company was less than the amount of advance given. The fresh loan of Rs.25,000/- and Rs.3,68,000/- by account payee cheque was for the purposes of business. M/s Khatore Earthmovers Pvt. Ltd. had earned profit of Rs.15,376/- for financial year 2011-12, as such, advance of Rs.28,68,000/- cannot be considered as*

deemed dividend. Ld. CIT(A) was not justified in confirming the addition made u/s.2(22)(e).

3. *For that the total advance received from M/s Khatore Earthmovers Pvt. Ltd. was more than the reserve of the company. Advance was received in usual course of business. It is relevant to mention that another closely company of the appellant M/s Trinity Vimcom Pvt. Ltd. had advance a loan of Rs.1.39 Crores during financial year 2011-12. As such, the transaction between the closely held companies and the appellant were in usual course of business.*
4. *For that interest charged u/s.234A and 234B on the assessed income was not justified. Interest should be charged on the returned income following the decision of Hon'ble Jharkhand High Court.*

2. Brief facts of the case are that the assessee is engaged in the business of wholesale trading of Kerosene, Tyre, Tube and also provide excavator for the purpose of hiring and filed the return of income electronically for the assessment year 2012-2013 on 27.09.2012 with total income of Rs.10,11,580/-. Accordingly the return of income was duly processed u/s.143(1) of the Act and the case was selected for scrutiny under CASS. Subsequently, notice u/s.143(2) & 142(1) of the Act were issued to the assessee. In compliance, the AR of the assessee appeared and case was discussed. The AO on examination of books of accounts and other documents produced before the AO, held that the loan of Rs.28,68,000/- from Khatore Earthmovers Pvt. Ltd., where the assessee was a director having 50% share holding, to be deemed dividend within the meaning of section 2(22)(e) of the Act. The AO disallowed 1% of the expenditure on repairs & maintenance under the head operating expenses

thereby making an addition of Rs.10,464/- and assessed total income at Rs.38,90,040/- and passed order u/s.143(3) of the Act, dated 12.03.2015.

3. Aggrieved by the assessment order, the assessee has filed an appeal with the CIT(A). In the appellate proceedings the assessee argued the grounds and reiterated the submissions made before the AO. The CIT(A) after considering the submissions of assessee and the findings of AO, partly allowed the appeal of the assessee.

4. Aggrieved by the order of CIT(A), the assessee has filed an appeal before the Tribunal.

5. Ld. AR submitted that the CIT(A) has erred in confirming the addition u/s.2(22)(e) of the Act, whereas the assessee has obtained the loan from sister concern Khatore Earthmovers Pvt. Ltd. of Rs.83,71,112/- and the contention of the assessee that the loan has been provided in the normal course of business transactions and also supported with CBDT Circular No.19/2017, dated 12th June, 2017.

6. On the other hand, Id. DR supported the orders of lower authorities.

7. We heard the rival submissions and perused the material on record. Prima facie, the sole matrix of the disputed issue is with respect to confirming the addition deemed dividend u/s.2(22)(e) of the Act. The contention of the AR of the assessee is that M/s Khatore Earthmovers Pvt. Ltd. had opening balance of Rs.83,71,112/- as on 01.04.2011 with the assessee and the total reserve of the company was less than the amount of advance given. The fresh loan of Rs.25,000/- and Rs.3,68,000/- by

account payee cheque was for the purposes of business. M/s Khatore Earthmovers Pvt. Ltd. had earned profit of Rs.15,376/- for financial year 2011-12, as such, advance of Rs.28,68,000/- cannot be considered as deemed dividend. We have also perused the CBDT Circular No.19/2017, dated 12th June, 2017, placed by the Id. AR of the assessee before us, which reads as under :-

“Sub: Settled View on section 2(22We) of the Income Tax Act trade advances -req.

Section 2(22) clause (e) of the Income Tax Act, 1961 (the Act) provides that “dividend” includes 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 a shareholder, being a person who is the beneficial owner of shares (not being shares entitled to a fixed rate of dividend whether with or without a right to participate in profits holding not less than ten per cent of the voting power, or to any concern in which such shareholder is a member or a partner and in which he has a substantial interest (hereafter in this clause referred to as the said concern) or any payment by any such company on behalf, or for the individual benefit, of any such shareholder, to the extent to which the company in either case possesses accumulated profits.*

2, The Board has observed that some Courts in the recent past have held that trade advances in the nature of commercial transactions would not fall within the ambit of the provisions of section 2(22) (e) of the Act. Such views have attained finality.

2.1 Some illustrations/examples of trade advances/commercial transactions held to be not covered under section 2(22) (e) of the Act are as follows:

i. Advances were made by a company to a sister concern and adjusted against the dues for job work done by the sister concern. It was held that amounts advanced for business transactions do not fall within the definition of deemed dividend under section 2(22) (e) of the Act. (C1T vs. Creative Dyeing & Printing Pvt. Ltd.¹, Delhi High Court).

ii. Advance was made by a company to its shareholder to install plant and machinery at the shareholder’s premises to enable him to do job work for the company so that the company

could fulfil an export order. It was held that as the assessee proved business expediency, the advance was not covered by section 2(22)(e) of the Act. (CIT vs Amrik Singh, P&H High Court)

iii. A floating security deposit was given by a company to its sister concern against the use of electricity generators belonging to the sister concern. The company utilised gas available to it from GAIL to generate electricity and supplied it to the sister concern at concessional rates. It was held that the security deposit made by the company to its sister concern was a business transaction arising in the normal course of business between two concerns and the transaction did not attract section 2(22) (e) of the Act. (CIT, Agra vs Atul Engineering Udyog, Allahabad High Court)

3. *In view of the above it is, a settled position that trade advances, which are in the nature of commercial transactions would not fall within the ambit of the word 'advance' in section 2(22)(e) of the Act. Accordingly, henceforth, appeals may not be filed on this ground by Officers of the Department and those already filed, in Courts/Tribunals may be withdrawn/not pressed upon.*

4. *The above may be brought to the notice of all concerned."*

8. On perusal of the above CBDT Circular and considering the facts and circumstances of the case, we find that the matter needs further verification at the end of AO and accordingly, we remit the entire issue to the file of AO, who shall verify and examine the issue afresh after considering the above CBDT Circular placed by the Id. AR of the assessee before us and pass order after providing adequate opportunity of hearing to the assessee. This ground of appeal of the assessee is allowed for statistical purposes.

9. With regard to charging of interest u/s.234A & 234B of the Act, which is consequential, the AO is directed to calculate the interest as per the judgment of the Hon'ble jurisdictional High Court in the case of Ajay

Prakash Verma in ITA No.38 of 2010 reported in 2013(1) TMI 140. We order accordingly.

10. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 30/05 /2018

Sd/-

(N.S.SAINI)

ACCOUNTANT MEMBER

Ranchi, Dated 30/05/2018

Prakash Kumar Mishra , Sr. Ps

Copy of the Order forwarded to :

1. The Appellant –
Sri Ajay Kumar Khatore,
North Market Road, Upper Bazaar, Ranchi-
834001
2. The Respondent –
DCIT, Circle-1, Ranchi
3. The CIT(A) concerned
4. CIT , concerned
5. DR, ITAT, Ranchi
6. Guard file.

Sd/-

(PAVAN KUMAR GADALE)

JUDICIAL MEMBER

BY ORDER,

//True Copy//

SR.PS, ITAT, RANCHI