

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

ON THE 10TH DAY OF DECEMBER, 2018

BEFORE

THE HON'BLE MR. JUSTICE RAVI MALIMATH

AND

THE HON'BLE MR. JUSTICE K. NATARAJAN

INCOME TAX APPEAL NO.77 OF 2010

BETWEEN:

1. THE COMMISSIONER OF INCOME-TAX
CENTRAL CIRCLE,
C.R. BUILDING,
QUEENS ROAD,
BENGALURU.
2. THE DEPUTY COMMISSIONER OF INCOME-TAX
CENTRAL CIRCLE-1(1),
C.R. BUILDING,
QUEENS ROAD,
BENGALURU.

... APPELLANTS

(BY SRI K.V. ARAVIND, ADVOCATE)

AND:

SHRI BASANT PODDAR
NO.487, 10TH CROSS,
RMV EXTENSION,
SADASHIVNAGAR,
BENGALURU.

... RESPONDENT

(BY SRI A. SHANKAR, SENIOR COUNSEL,
ALONG WITH SRI M. LAVA, ADVOCATE)

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THIS INCOME TAX APPEAL IS FILED UNDER SECTION 260A OF THE INCOME TAX ACT, 1961, PRAYING TO FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED THEREIN AND ALLOW THE APPEAL AND SET ASIDE THE ORDERS PASSED BY THE INCOME-TAX APPELLATE TRIBUNAL, BENGALURU, IN I.T.A. NO.528/BANG/2009 DATED 11-9-2009 AND CONFIRM THE ORDER OF THE APPELLATE COMMISSIONER CONFIRMING THE ORDER PASSED BY THE DEPUTY COMMISSIONER OF INCOME TAX, CENTRAL CIRCLE-1(1), BENGALURU.

THIS INCOME TAX APPEAL COMING ON FOR HEARING THIS DAY, RAVI MALIMATH, J., DELIVERED THE FOLLOWING:

J U D G M E N T

The assessee filed his return of income for the Assessment Year 2005-06 declaring a total income of Rs.23,50,963/-. He is the Managing Director of M/s. Mineral Enterprises Limited (hereinafter referred to as 'MEL'). He was holding 74.84% of shares along with various shares of his wife and other members of the family. The Company was being managed and administered by the assessee as a Managing Director. A search under Section 132 of the Income Tax Act, 1961, (for short, 'the Act') was initiated and during the course of search proceedings, several books of accounts and incriminating documents were found and seized. Consequent to the search, a notice under Section 153A of the Act was issued to the assessee. In response, he filed the return of income declaring the same income as originally returned at Rs.23,50,963/-. Subsequently, a notice under Section 143(2) of the Act was issued to him. A notice under Section 142(1) of

the Act along with questionnaires were issued on various dates to the assessee and he filed replies.

2. One of the documents seized indicated the payment with regard to a sum of Rs.25 crores to the wife of the assessee. Furthermore, it was found that Sri K.P. Poddar, namely the father of the assessee, had paid various amount to the assessee on different dates in all amounting to Rs.17.90 crores. The assessee furnished a copy of the agreement said to have been entered into between MEL and his father, Sri K.P. Poddar on 16-8-2004. In terms of the agreement, the mining lease rights were transferred from Sri K.P. Poddar to MEL and a sum of Rs.17.50 crores was given to Sri K.P. Poddar as a refundable deposit. A sum of Rs.25 lakh was also given by MEL to Sri K.P. Poddar. The Assessing Officer came to the view that the agreement is artificially created for the purpose of withdrawing money by the assessee from the accumulated profits of MEL. That MEL was

operating the mines even before and after the date of signing of the agreement. That the funds paid by MEL to Sri K.P. Poddar were immediately withdrawn by him and thereafter, it was transferred to Sri Basant Poddar, who is the ultimate beneficiary of the said transactions. That the mining lease license still continues in the name of M/s. Deepchand Kishanial and there is no change. Therefore, he came to the conclusion that in order to avoid tax, the assessee has created an artificial transaction between MEL and Sri K.P. Poddar and transferred the funds to his personal account. Therefore, Rs.17.90 crores paid to Sri K.P. Poddar was treated as a dividend within the meaning of Section 2(22)(e) of the Act. Aggrieved by the same, an appeal was filed before the Commissioner of Income Tax (Appeals). The Commissioner of Income Tax (Appeals) in paragraph No.15 of its order came to the conclusion that the payment made to Sri K.P. Poddar by MEL was only an expenditure incurred for business

expansion and profits of the Company. However, it confirmed the order of the Assessing Officer. Aggrieved by the same, the matter was taken up before the Tribunal. The Tribunal allowed the appeal. It came to the conclusion that the provisions of Section 2(22)(e) of the Act as applied in the case of the assessee are inapplicable to the facts in the case of assessee. That the amount of Rs.17.90 crores received by the assessee from Sri K.P. Poddar is the amount received by the assessee from his father and cannot be held as the amount received by the assessee Company so as to invoke the provisions of Section 2(22)(e) of the Act. Therefore, the Assessing Officer was directed to delete the additions at Rs.17.90 crores. Questioning the same, this appeal is filed by the Revenue.

3. By the order dated 19-10-2011, the appeal was admitted to consider the following substantial question of law:

Whether a sum of Rs.17.50 crores received from M/s. MEL by Sri K.P. Poddar and transferred to the assessee who was the shareholder constitutes dividend income of the assessee U/s.2(22)(e) of the Income Tax Act?

4. Sri K.V. Aravind, the learned counsel for the Revenue, contends that MEL was extracting mines much prior to the date of the agreement. The agreement is dated 16-8-2004 between MEL and Sri K.P. Poddar. The material on record would indicate that extracts took place from 2002-03 onwards. Therefore, the agreement was set up as a means to evade tax. The findings of the Tribunal, that Section 2(22)(e) of the Act is not applicable, is erroneous.

5. Sri A. Shankar, the learned senior counsel appearing for the counsel representing the respondent, disputes the same. He contends that MEL has since returned a gross income of Rs.40 crores for the years

2005-06, 2006-07 and 2007-08 in a sum of almost Rs.80 crores. Therefore, the question of holding that the provision of Section 2(22)(e) of the Act is applicable would be inappropriate. The material would indicate that in terms of the agreement dated 16-8-2004, the payment has been made to Sri K.P. Poddar, who was the agreement holder. Therefore, the same cannot be doubted.

6. Heard learned counsels.

7. The material on record would indicate that a family settlement was arrived between Sri K.P. Poddar and his family members. The land in question fell to the share of Sri K.P. Poddar. Thereafter, an agreement was entered into between Sri K.P. Poddar and MEL. In terms of the said agreement, the lease hold rights were transferred to MEL in order to operate the mining lease. For this, a refundable deposit amounting to Rs.17.50 crores has been given by MEL to

Sri K.P. Poddar. An additional sum of Rs.25 lakh was given to Sri K.P. Poddar. The said amount has been taxed in the hands of Sri K.P. Poddar. Therefore, the mining activities conducted by MEL even prior to the date of the agreement would really have no significance at all. The accounts of MEL would indicate the nature of transactions between it and Sri K.P. Poddar. The Appellate Authority does not dispute the said agreement. In fact, it came to the conclusion that the payment made to Sri K.P. Poddar by MEL was only an expenditure incurred for business expansion and profits of the Company. The Tribunal, on the other hand, considering the said agreement entered into between Sri K.P. Poddar and MEL, also recorded a finding that the genuineness of agreement is not disputed by the Assessing Officer, as could be evident from the assessment order of MEL and Sri K.P. Poddar. That the Company has since generated substantial revenue from exploitation of the

mines. The ledger account of the assessee with Sri K.P. Poddar clearly demonstrates that some amount is also repaid to Sri K.P. Poddar and the said amount has not gone back to MEL. The same would indicate that the initial amount received from Sri K.P. Poddar was not the amount received from MEL for the benefit of the assessee, or on behalf of the assessee. Sri K.P. Poddar, namely, the father of the assessee, who is aged 80 years, had given the money received in a commercial transaction to his son. Therefore, transfer of money from father to son is nothing unusual. Moreover, the Assessing Officer has not examined Sri K.P. Poddar. He accepted the transaction of refundable non-interest bearing security deposit for mines as a commercial transaction. Therefore, we of the view that appreciation of the material on record by the Tribunal is just and appropriate. Even otherwise, we are also of the view that the issue involved revolves around appreciation of facts.

8. Under these circumstances, we do not find that the order of the Tribunal suffers from any infirmity. Therefore, we are of the view that there is no ground for any interference. Consequently, we hold that a sum of Rs.17.50 crores received from MEL by Sri K.P. Poddar and transferred to the assessee, who was the shareholder, cannot be treated as dividend income of the assessee under Section 2(22)(e) of the Act. The substantial question of law is, accordingly, answered in favour of the assessee and against the Revenue.

The appeal is disposed off.

SD/-
JUDGE

SD/-
JUDGE

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