IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of Decision: 2.2.2015

ITA No. 5 of 2014

Commissioner of Income Tax-I,
Ludhiana ... Appellant

Versus

Shri Amrik Singh ... Respondent

ITA No. 62 of 2014

Commissioner of Income Tax-I,
Ludhiana ... Appellant

Versus

Shri Amrik Singh ... Respondent

ITA No. 64 of 2014

Commissioner of Income Tax-I,
Ludhiana ... Appellant

Versus

Shri Amrik Singh ... Respondent

ITA No. 92 of 2013

Commissioner of Income Tax-I,
Ludhiana ... Appellant

Versus

Sh. Amrik Singh ... Respondent

ITA No. 323 of 2013

Commissioner of Income Tax-I,
Ludhiana ... Appellant

Versus

Sh. Amrik Singh ... Respondent

CORAM:- HON'BLE MR. JUSTICE RAJIVE BHALLA
HON'BLE MR. JUSTICE B.S. WALIA

Present: Mr. Rajesh Katoch, Advocate,
for the appellant.

Mr. SK Mukhi, Advocate,
for the respondent.

RAJIVE BHALLA, J.

By way of this order, we shall decide ITA Nos. 92, 323 of 2013, 5, 62 and 64 of 2014 as they relate to the same question of law. Counsel for the parties also agree that in case, the question of law framed in ITA No.5 of 2014 is answered against the revenue, ITA Nos.601 and 762 of 2010 shall be rendered infructuous. Facts relevant for adjudication are being taken from ITA No.5 of 2014.

Counsel for the appellant submits that Section 2(22)(e) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') has to be construed strictly without any exception or consideration for the nature of the transaction between the assessee and the company in which the assessee holds a substantial share holding. Counsel for the appellant further submits that as it is admitted that the assessee obtained advances from the company in which he holds a substantial share holding, his failure to prove business expediency, was rightly considered by the Assessing Officer and the CIT to warrant addition of the amount advanced as deemed dividend, under Section 2(22) (e) of the Act etc. The Income Tax Appellate Tribunal has deleted this addition without assigning any cogent reasons. Counsel for the appellant submits that the following substantial question of law arises for adjudication:-

> "Whether on the facts and circumstances of the case and in law, the Hon'ble ITAT was justified in confirming the deletion of addition of Rs.4,87,66,131/- made by the A.O. under Section 2(22)(e) of the Act."

Counsel for the assessee submits that a perusal of the material on record particularly facts referred to by the Assessing Officer proves business expediency. The amount advanced, therefore, could not have been treated as dividend under Section 2(22) (e) of the Act. The finding recorded by the Income Tax Appellate Tribunal in favour of the assessee after referring to relevant facts is neither perverse nor arbitrary and therefore, may be affirmed. Counsel for the appellant further submits that the question of law is covered against the revenue by the judgment of Delhi High Court in *Commissioner of Income Tax Vs. Creative Dyeing & Printing (P) Ltd., 318 ITR 476.*

We have heard counsel for the parties and perused the impugned order.

A perusal of the order passed by the Assessing

Officer reveals that the Assessing Officer made additions of advances made by M/s Nexo Products (India) to the assessee under Section 2(22)(e) of the Act on the premise that the assessee holds a substantial share holding in M/s Nexo Products (India). The CIT(Appeals) affirmed this addition. The Income Tax Appellate Tribunal after a detailed appraisal of Section 2(22)(e) of the Act held that Section 2(22)(e) of the Act comes into play only if the advance or loan paid by the company is for individual benefit of the assessee or the alleged business transaction was a mere smoke screen to cover a benefit obtained by an assessee from the company in which he was shareholder, without any business expediency.

After setting out the nature of Section 2(22)(e) of the Act, the Tribunal proceeded to examine the factual matrix of the case and held that as a tangible business expediency has been established between the assessee and company, Section 2(22)(e) of the Act cannot be invoked. A relevant extract from the order passed by the Income Tax Appellate Tribunal would be appropriate.

> *"Thus, we are of the considered opinion that these advances were received by the assessee in the normal course of business as a matter of fact of business expediency in which provisions of Section 2(22) (e) are not applicable. As per the ratio relied*

before us, even if the business of the lender company is not that of money lending, the amount advanced by it to its shareholders, otherwise in the course of business etc. would go out of the purview of Section 2(22)(e) of the Act. The decision of Hon'ble Delhi High Court rendered in the case of CIT V Shri Raj Kumar in ITA No.1130/2007, it has been held that the word 'advance' which appears in the company of the word 'loan' for the provisions of Section 2(22)(e), could only mean such advance which carried with it an obligation of repayment. Likewise, the Hon'ble Mumbai High court in the case of Nagindass. M. Kapadia, similar view has been taken. The Hon'ble jurisdictional Bench of ITAT Chandigarh in the case of DCIT V Lakra Brothers reported in 106 TTJ 250, it has been held that the advance given during the ordinary course of business for business expediency could not be covered under the provisions of Section 2(22)(e) of the Act.

From the above narrated facts, the business expediency is amply proved on record. It is also a fact that the agreement has not been reported or doubted by the AO but the AO has taken his view because the assessee's concern was not pursuing the business of money lending. The sister-concern has taken over the entire business of the assessee when the assessee failed to fulfill the terms of the agreement. Thus, the amount of advance received by the assessee, under this agreement is a normal business requirement and nothing else. As we have already discussed, the fixed assets of the assessee concern have increased substantially during the relevant period.”

A perusal of the facts and the above extract reveals that the revenue failed to adduce any evidence to prove that the transaction between the assessee and the company was a mere smoke screen to cover a surreptitious payment of money to a share holder. M/s Nexo Products (India) received certain export orders but was not in a position to execute the orders as its manufacturing facility was situated in a remote area and was beset with labour problems and erratic supply of electricity. The Company, therefore, entered into an agreement, dated 1.8.2007 with the assessee to install plant and machinery at his premises to enable the assessee to do job work for the company, at 10% below the prevailing market rate. The Assessing Officer did not doubt this agreement or these facts. The assessee having proved a tangible business expediency between the assessee and the company, the question of invoking Section 2(22)(e) of the Act does not arise. The Income Tax Appellate Tribunal has after considering these facts rightly held that as the assessee has proved business expediency the advance is not covered by Section 2(22) (e) of the Act. We find no reason whether in law or in fact to interfere with these findings of facts, which are neither perverse nor arbitrary. The question of law is, therefore, answered against the revenue and the appeal is dismissed.

(**RAJIVE BHALLA)**
JUDGE

5.1.2015 **(B.S. WALIA)**
monika **JUDGE**