

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INCOME TAX APPEAL NO.2311 OF 2013

The Commissioner of Income Tax-8, Mumbai 400 020	... Applicant
v/s	
M/s Narmina Trade Investment Pvt.Ltd., Mumbai 400 092	... Respondent

Mr Arvind Pinto i/b Mr Suresh Kumar for Applicant.
Ms Keyuri Y. Desai i/b Mr Pankaj R. Toprani for Respondent.

CORAM: M.S. SANKLECHA AND
B.P. COLABAWALLA JJ.
DATE : 16TH FEBRUARY, 2016

P.C.:-

1. This Appeal challenges the order dated 16th April 2013 passed by the Income Tax Appellate Tribunal (Tribunal) confirming the deletion of addition under section 2(22)(e) of the Income Tax Act 1961 (the Act). The Assessment Year is 2007-08.

2. Mr Pinto, learned counsel for the Revenue urges the following questions of law for our consideration :-

“(A) Whether on the facts and in the circumstances of the case and in law, the Tribunal is

justified in upholding the decision of the CIT in deleting the addition of Rs.2,24,45,000/- being loan received by the assessee Company from M/s Arco Eletro Technologies Pvt.Ltd. taxable, as deemed dividend u/s 2(22)(e) of the Income Tax Act 1961, ignoring the fact that the provisions of section 2(22)(e) are squarely applicable to the assessee's case as also clarified in CBDT's circular No.495 dated 22.09.1987 ?”

(B) Whether on the facts and in the circumstances of the case and in law, the Tribunal is correct in holding that deemed dividend is taxable only in the hands of shareholders and not in the hands of non-shareholders relying on the decision of the special Bench in the case of ACIT v/s Bhaumik Colour Pvt.Ltd. (2009) 27 SOT 270 (Mum-SB) as approved by the Delhi High Court in the case of CIT v/s Aniktech Pvt.Ltd. 340 ITR 14 (Delhi) without appreciating that the ratio of the decision in the above cited cases has not been accepted by the Revenue and has been contested before the Hon'ble Supreme Court ?”

3. The Respondent - Assessee had taken a loan of Rs.2.24 crores from M/s Arco Electro Technologies Pvt.Ltd. The Respondent - Assessee was not a shareholder of M/s Arco Electro Technologies Pvt.Ltd. However, two of its shareholders held shares in excess of 10 % in M/s Arco Electro Technologies Pvt.Ltd. The Revenue has sought to tax the amount of Rs.2.24 crores taken as a loan by the Respondent - Assessee as deemed dividend under section 2(22)(e) of the Act.

4. By the impugned order, the Tribunal dismissed the Revenue's Appeal by its impugned order under challenge. It

relied on case of the Special Bench of the Tribunal in ACIT v/s Bhaumik Colours Pvt.Ltd., reported in (2009) 27 SOT 270.

5. Mr Pinto, learned counsel for the Revenue, very fairly states that the issue raised in the present case is no longer res integra as this Court in the case of CIT v/s Impact Containers Pvt.Ltd., reported in 367 ITR 346 and in the case of CIT v/s Universal Medicare Pvt.Ltd., reported in 2010(324) ITR 263 (Bom) has held that a person liable to pay tax on deemed dividend is the person who is the shareholder of the Company advancing the loan.

6. Admittedly, the Respondent - Assessee was not a shareholder of M/s Arco Electro Technologies Pvt.Ltd. at the relevant time. In the above view, no fault can be found with the order of the Tribunal. Moreover, as the issue stands concluded by the two decisions of this Court, no substantial question of law arises for consideration.

7. Accordingly, Appeal is dismissed. No order as to costs.

(B.P.COLABAWALLA, J.)

(M.S. SANKLECHA, J.)