IN THE HIGH COURT OF JUDICATURE AT BOMBAY, NAGPUR BENCH, NAGPUR

INCOME TAX APPEAL NO.52 OF 2010
The Commissioner of Income Tax-IV, MECL Building, Nagpur
..vs..
Shri Kailashchandra Nuwal

WITH
INCOME TAX APPEAL NO.108 OF 2010
The Commissioner of Income Tax-IV, MECL Building, Nagpur
..vs..
Shri Kailashchandra Nuwal

....

Office Notes, Office Memoranda of Coram, appearances, Court orders or directions and Registrar's orders	Court's or Judge's Order

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Shri S.N. Bhattad, counsel with Shri Bhushan Mohta, counsel for the appellant.
Shri Pardiwale, senior counsel with Shri N.R. Saboo, counsel for the respondent.

CORAM : B.P. DHARMADHIKARI &
V.M. DESHPANDE, JJ.
DATED : JANUARY 25, 2016.

Heard.

Following two questions are sought to be raised in Income Tax Appeal No.52 of 2010, thus:

(1) Whether on the facts and in the circumstances of the case the ITAT was justified in law in holding that the payment of Rs.17,00,000/- received by the assessee's proprietary concern from

M/s. Economic Explosives Ltd. Was on account of discount and a regular basis transaction and consequently provisions of section 2(22)(e) of the IT Act were not applicable?

(2) Whether on the facts and in the circumstances of the case the ITAT was justified in law in holding that the opening balance should be exluded in computing the deemed dividend u/s.2(22)(e) of the IT Act in respect of the payments received by assessee's proprietorship concern from M/s. Solar Explosives Ltd.?

Following two substantial questions of law are sought to be raised in Income Tax Appeal No.108 of 2010, thus :

(1) Whether on the facts and in the circumstances of the case the ITAT was justified in law in holding that the payment of Rs.25,65,000/- received by the assessee's proprietary concern from

M/s. Economic Explosives Ltd. was on account of discount and a regular basis transaction and consequently provisions of section 2(22)(e) of the IT Act were not applicable?

(2) Whether on the facts and in the circumstances of the case the ITAT was justified in law in confirming the CIT(A)'s order deleting the disallowance of proportionate interest of Rs.17,554/-

Insofar as Question No.1 in both appeals is concerned, it is not in dispute that it is discount which has been extended to assessee after achieving particular target. We find that this aspect has been looked into in paragraph No.3.8 in the order of CIT appeal. Its nature as incentive is not in dispute. It is not an exception shown only to assessee.

Insofar as later question is concerned, the reasons given by CIT in paragraph No.3.8 for Assessment Year 2004-05 and in paragraph No.2.34 for Assessment Year 2005-06.

About accepting opening balance as valid figure for working out the quantum of advance during these assessment years, we find that in Assessment Year 2004-05 as there was a transaction in respect of sum of Rs.2,10,000/-, it has been treated as deemed dividend under Section 2(22)(e). The assessee has not questioned this finding further.

In Assessment Year 2005-06, there was no transaction at all. Recurring effect, if such opening balance is permitted to be counted is apparent and has been rightly looked into by CIT. It has been maintained even by ITAT.

We, therefore, do not find any substantial question of law arising in both these appeals. The Income Tax Appeals are rejected.

JUDGE **JUDGE**

!! BRW !!