$~55,59,60,62-65

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **ITA 174/2018 & CM. APPL.5526/2018**
ITA 175/2018 & CM. APPL.5605/2018
ITA 176/2018 & CM. APPL.5606/2018
ITA 178/2018
ITA 179/2018 & CM. APPL.5607/2018
ITA 180/2018 & CM. APPL.5608/2018
ITA 181/2018 & CM. APPL.5609/2018

PRINCIPAL COMMISSIONER OF INCOME TAX (CENTRAL)-2
..... Appellant
Through Mr. Sanjay Kumar and Mr. Rahul Chaudhary, Standing Counsel.

versus

DWARKA PRASAD AGGARWAL ..... Respondent
Through None.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE A. K. CHAWLA

O R D E R

% 13.02.2018

The Revenue in these appeals questions the decision of the Income Tax Appellate Tribunal (ITAT), which affirmed the appellate order of the Commissioner. It is contended that the deletion of amounts brought to tax under Section 2(22)(e) and Section 68 of the Income Tax Act, 1961 ('the Act') by the lower appellate authority, was erroneous.

The assessee was subjected to a search under Section 132 and

later issued notice under Section 153A of the Act. He contested the notice and ultimately suffered several adverse orders by way of final assessment, which resulted in substantial additions. These additions primarily were on account of (a) alleged unexplained credit-brought to tax under Section 68, and, (b) the amounts secured as loan were treated as "deemed dividend" by the Assessing Officer (AO). Aggrieved, the assessee approached the CIT(A), who deleted the amounts brought to tax. Revenue unsuccessfully appealed the ITAT.

The Revenue urges that the additions made on account of income from undisclosed sources i.e. by way of suspect credits claimed by the assessee, were set aside without proper appreciation of the circumstances. It is urged that the AO relied upon the statements made by the Directors of the companies, whose credits were sought to be questioned and also upon the account statements of the said companies. As far as deletion in respect of deemed dividend brought to tax under Section 2(22)(e) is concerned, ld. counsel highlighted that the assessee was shareholder to the tune of 20% of its share capital. In these circumstances, the transactions squarely amounted to a deemed dividend – at aggregate Rs.1,08,20,000/-. These were substantial amounts for different years.

So far as the first question urged goes, this Court notices that both the appellate authorities held that the AO did not make proper enquiries. The assessee had provided the primary details such as the identify of the creditors, their bank accounts (financial soundness) and all material particulars. Thus, the initial onus cast upon the assessee

in terms of the judgment of the Hon'ble Supreme Court in *Commissioner of Income Tax vs. Lovely Exports*, (2008) 216 CTR 195, was discharged. However, the burden which then shifted to the ITAT of probing deeper was not discharged in the present case. The AO did not make a closer scrutiny of the bank accounts or the statements provided; nor did he probe into the income tax returns of the creditor companies. The AO should not have rested content only on the statement of the Directors, but, also analysed the other details provided. In these circumstances, the concurrent findings of facts, cannot be faulted.

As far as the additions made under Section 2(22)(e) goes, both the authorities held that the assessee had provided security by way of mortgage of his personal property so that M/s Pilot Industries could obtain bank loans. In lieu of that security, assessee was provided with loans. This kind of transaction though facially suspect, stands sufficiently explained. The Court also notices that the recent Board's circular in this regard (which is dated 12.06.2017 – circular 19/2017) is based upon judicial decisions of various High Courts and has guided the Income Tax Authorities 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. Furthermore, similar decisions have been rendered by various High Courts including this Court in *Commissioner of Income Tax vs. Raj Kumar*, (2009) 318 CTR 462, *Commissioner of Income Tax vs. F. Praveen*, (2008) 220 CTR 639 (Mad.) etc.

The lone question urged with respect to disallowance of commission, claimed by the assessee for one year, was examined and concurrent findings returned by the Appellate Commissioner and the ITAT. In the circumstances, no question of law arises on that score.

For the foregoing reasons, there is no merit in the appeals; no substantial question of law arises.

The appeals are dismissed. All the pending applications also stand disposed of.

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

FEBRUARY 13, 2018
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