IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.01.2019

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Tax Case (Appeal) No.167 of 2011

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

-vs-

M/s.Accel Ltd.,
No.75, Nelson Manickam Road,
Chennai-600 029. ... Respondent

Tax Case Appeal filed under Section 260A of the Income-tax Act, 1961 against the order of the Income-tax Appellate Tribunal, Chennai Bench 'C', Chennai, in I.T.A.No.1825/Mds/2008, dated 11.09.2009, for the assessment year 2004-05, against the order of Commissioner of Income Tax (Appeals) I dated 28/02/2008 made in ITA 603/06-07 against the Assessment order of Assistant Commissioner of Income-Tax, Company Circle I(1) Chennai for PAN/GIR No.Ax6-061/AAACA3042P

For Appellant : Mrs.R.Hemalatha,
Senior Standing Counsel

For Respondent : Mr.R.Sivaraman

JUDGMENT

(Delivered by T.S.Sivagnanam, J.)

This appeal, by the Revenue filed under Section 260A of the Income-tax Act, 1961 (hereinafter referred to as "the Act"), is directed against the order of the Income-tax Appellate Tribunal, Chennai Bench 'C', Chennai (Tribunal), in I.T.A.No.1825/Mds/2008, dated 11.09.2009, for the assessment year 2004-05.

2.The above appeal was admitted, on 06.06.2011, on the following substantial question of law:-

> "Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in confirming the deletion of the entire addition of Rs.4,16,12,082/- made by the Assessing Officer treating the said amount as deemed dividend under Section 2(22)(e) and that too by not considering a ground of appeal raised by the Revenue in the appeal?"

3.Heard Mrs.R.Hemalatha, learned Senior Standing Counsel for the appellant/Revenue; and Mr.R.Sivaraman, learned counsel for the respondent/assessee.

4.The first aspect to be considered is whether any substantial question of law arises for consideration in this appeal. Upon going through the order passed by the Commissioner of Income-tax (Appeals)-III, Chennai (for brevity "the CIT(A)"), dated 28.05.2008, as well as the impugned order passed by the Tribunal, we find that the entire dispute is purely factual.

5.The question is whether the amount of Rs.4,16,12,082/- is to be construed as a deemed dividend under Section 2(22)(e) of the Act. We find that this issue was threadbare analysed by the CIT(A) in his order dated 28.05.2008, after calling for a remand report. This finding recorded by the CIT(A) was correct, as there is no payment made by the assessee-company to its subsidiary during the previous year, relevant to the assessment year 2004-05 within the meaning of Section 2(22)(e) of the Act.

6.Thus, we find that the first appellate authority as well as the Tribunal has considered the factual position and granted relief to the assessee. Thus, we find there is no substantial question of law arising for consideration. Consequently, the appeal fails and the same is dismissed. No costs.

Sd/-
Assistant Registrar(CS-III)



//True copy//

Sub Assistant Registrar

abr

To

1. The Income-tax Appellate Tribunal, Chennai Bench 'C', Chennai.

2. The Commissioner of Income Tax -I, Chennai

3. The Assistant Commissioner of Income -Tax
Company Circle 1(i), Chennai

+1cc to Mr.R.Hemalatha, Advocate SR.No.4819

+1cc to Mr.R.Sivaraman, Advocate SR.No.4993

T.C.(A) No.167 of 2011

PP(CO)
GMY(23/03/2019)