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

\+ ITA 245/2019

ASHISH DHAM ..... Appellant

Through: Mr.S.Krishnan and Mr.Harshit Chauhan, Adv.

versus

PRINCIPAL COMMISSIONER OF INCOME TAX ..... Respondent

Through: Mr.Sanjay Kumar, Ms.Easha and Ms.Hemlata Rawat, SC for I.T.Dept.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

O R D E R

% **13.02.2024**

1. The appellant seeks to question the correctness of the view expressed by the Income Tax Appellate Tribunal ["**ITAT**"] in its order dated 30 May 2018 and places the following question of law for our consideration:-

> (a) Whether the authorities below erred in applying section 2(22)(e) of the Income Tax Act, 1961 ["**Act**"] in respect of loan of Rs.10 lakhs advanced to by M/s. Globus Infocom Ltd. to the Assessee?

2. The ITAT has while examining the loan of Rs.10 lakhs which was advanced to the appellant returned the following findings:-

> "5. We have heard the rival submissions and perused the material available on record. It is undisputed that the assessee is

having a substantial interest in M/s Globus Infocom Ltd. which has given the loan to the assessee. It is also undisputed that the assessee is the Managing Director of M/s Globus Infocom Ltd. It is also undisputed that the advancing of loan is duly supported by resolution of the Board through which the company had sanctioned the loan of Rs. 10 lakh to the assessee for 5 years subject to payment of interest @ 12% per annum. However, the assessee has failed to demonstrate that this loan was advanced to him in the ordinary course of business. The Ld. Commissioner of Income Tax(A) had discussed the factual matrix in Para 6.2 of the impugned order and it has been noted by the Ld. Commissioner of Income Tax (A) that the impugned amount of loan was advanced to the assessee on different dates between 3.5.2006 and 28.06.2006 whereas the first instalment towards purchase of house property amounting to Rs. 20 lakh was given on 12.07.2006 to M/s Rajeev Associates Pvt. Ltd. and that the assessee had mobilised a further amount in cash amounting to Rs. 9.49 lakh, Rs. 2,93,266/- by cheque and another amount of Rs. 7 lakh from Mrs. Kirandeep Dham. The Ld. Commissioner of Income Tax (A) has made an important observation that evidently the assessee was in possession of funds from other sources amounting to Rs. 19.5 lakh as aforementioned as on the date of giving the first instalment of advance of Rs. 20 lakh. The Ld. AR has not able to negate this finding of the Ld. Commissioner of Income Tax (A) by leading any cogent evidence to the contrary. We further find that the assessee's reliance on the judgment of the Hon'ble High Court of Madras in the case of Commissioner of Income Tax vs. F. Praveen (supra) is misplaced because in that case, the Tribunal had returned a finding that there was no loan to the assessee from the company and that it was only a business transaction and, therefore, the loan in question was not a deemed dividend u/s 2(22)(e) of the Act. However, in this case the facts are different and the assessee has not been able to prove that the loan was given to him in the normal course of business of the company. The order in the case of ACIT vs. Smt. G. Sreevidya (supra) rendered by ITAT Chennai Bench is also distinguishable on facts and relief was given to the assessee entirely on the facts of that particular case.

6. We further find that the case of the assessee is covered against the assessee by the judgment of the Hon'ble Apex Court in the case of Ms P. Sarda vs. CIT reported in 229 ITR 444 wherein the Hon'ble Apex Court had held that the loan or advance taken from the company may have been ultimately repaid or adjusted but that will not alter the fact that the assessee in the eyes of law had received dividend from the company during the relevant accounting year. This judgment of the Hon'ble Apex Court was

also followed by the Hon'ble Madras High Court in the case of CIT vs. P.K. Aboobaker reported in 259 ITR 507 (Madras) wherein the Hon'ble Madras High Court was adjudicating the applicability of provisions of section 2(22)(e) with respect to advance given to a shareholder for purchase of property and the Hon'ble Madras High Court went on to hold that the loan given for purchase of property was taxable u/s 2(22)(e) of the Act . In the resent case also, it is our considered opinion that although the loan might have been paid back in subsequent assessment year, this fact does not change the nature of the loan in the year in which it was disbursed so as to take it out of the mischief of section 2(22)(e) of the Act. Further, the assessee has not been able to demonstrate by leading cogent evidence that the loan was advanced in the normal course of business and was based on consideration of employer-employee relationship. Accordingly, on facts of the case, we find no reason to interfere with the findings of the lower authorities on this issue and we dismiss the grounds raised by the assessee."

3. We note that the issues would have to be answered bearing in mind the language in which Section 2(22)(e) of the Act stands couched. The provision reads as under:-

> "**2.** In this Act, unless the context otherwise requires,—
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> (*22*) "dividend" includes—
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> (*e*) <u>any payment by a company,</u> not being a company in which the public are substantially interested, of any sum (whether as representing a part of the assets of the company or otherwise) made after the 31st day of May, 1987, <u>by way of advance or loan to a shareholder, being a person who is the beneficial owner of shares (not being shares entitled to a fixed rate of dividend whether with or without a right to participate in profits) holding not less than ten per cent of the voting power, or to any concern in which such shareholder is a member or a partner and in which he has a substantial interest</u> (hereafter in this clause referred to as the said concern) or any payment by any such company on behalf, or for the individual benefit, of any such shareholder, to the extent to which the company in either case possesses accumulated profits"

4. As is manifest from a reading of the aforesaid provision, any payment by way of advance or loan made by company to a shareholder and being a person who is a beneficial owner of shares holding not less than 10% of the voting power in that entity would fall

within the ambit of the expression “dividend”.

5. It is not the case of the appellant that it does not qualify the pre-requisites spelt out in clause (e) of Section 2(22) of the Act. The case of the appellant is also not shown to fall within the exclusions which are set out in that provision.

6. Although in our considered opinion the ITAT erred in seeking to discover an employer-employee relationship between the appellant and the company, however and since the loan advanced would clearly fall within the ambit Section 2(22)(e) of the Act, we find no ground to interfere with the order impugned or the ultimate conclusions as arrived at.

7. In view of the aforesaid, we find that the appeal raises no substantial question of law. Consequently, it shall stand dismissed.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

FEBRUARY 13, 2024/MJ