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

\+ ITA 507/2019

THE PR. COMMISSIONER OF INCOME TAX - CENTRAL-3 ..... Appellant

Through: Mr.Ruchir Bhatia, Sr.SC with Mr.Pratyaksh Gupta, Jr.SC and Mr.Sanjay Mangal, Advs.

versus

SHRI GAURAV ARORA ..... Respondent

Through: Mr.Ved Jain, Mr.Nischay Kantoor and Ms.Soniya Dodeja, Advs.

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

O R D E R

% **15.04.2024**

1. The Principal Commissioner of Income Tax impugns the order of the Income Tax Appellate Tribunal [**"ITAT"**] dated 17 December 2018 and has proposed the following questions of law for our consideration:-

> "2.1 Whether on the facts and circumstances of the case, the ld. ITAT is legally justified in arriving at the conclusion that the transactions in the client ledger account are related to business activities?
> 2.2 Whether on the facts and in the circumstances of the case, the ld. ITAT is legally justified in holding that recasting of ledger account of assessee in the books of JSCL & FNSL by the Assessing officer is not correct?
> 2.3 Whether on the facts and circumstances of the case, ld. ITAT is legally justified in deleting the addition of both the Assessment years made on account of deemed dividend under section 2(22)(e) of the Income tax Act, 1961?"

2. As we go through the record we find that the solitary question which may merit consideration is the one pertaining to Section 2(22)(e) of the Act. The CIT(A) upon a due assessment and consideration of the evidence which formed part of the record has ultimately come to record the following conclusions:-

> "(a) The transactions of cheques received and paid from/to the 2 broker companies JCPL and FNSL, are related to the business transactions of sale/ purchase of share/ currency/ derivatives/ commodities carried out during the year under consideration, which cannot be segregated. If the transactions of cheque received and paid are taken out of the alleged client accounts, then there is no meaning of trading transactions. In the type of business transaction entered by the appellant with these 2 broker companies, the transfer of funds/money on both the sides, is part and parcel of the business done, otherwise it will not be possible to settle the accounts.
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> It is not possible to settle the trading transactions without transfer of the funds/money. Therefore, the method adopted by the special auditor in the audit report, which has not been considered and also the method adopted by the A.O. in assessment order, is not correct. The positive and the negative balances, emerging out of the said accounts, is the result of business activities, which cannot be considered as loans/advances, as to cover the same within the provisions of section 2(22)(e).
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> (b) The 2 companies JCPL and FNSL are the registered stock, derivative, currency and commodities brokers. The JCPL deals in stock, currency and derivatives on NSE, BSE, USE and MCX Sx and the FNSL, deals in commodities on NCDEX and MCX. The transactions entered by the said companies with appellant and group concerns are related to their business only. The appellant and the group concerns, maintain client account with these 2 companies, where in large number of share/currency/derivatives/commodities trading transactions, has taken place in the year under consideration. These transactions are nowhere prohibited under any existing law and not covered u/s 2(22)(e) of the act.
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> (c) <u>The transactions entered into are in the regular course of business and it is not a case where it has been alleged by the A.O. that transactions of sale/purchase of share/ currency/ derivatives/ commodities, are not genuine. In fact, these purchase and sale transactions, have not even doubted by the special auditor in the audit report as well as by the A.O. in assessment order</u>. The special auditor and A.O. has re-casted the ledger account by not considering the business transaction of sale/purchase of share/currency/derivatives/commodities, which is not correct, since deemed dividend cannot be computed by way of pick and choose of

few transactions, rather an account has to be considered in its entirety.

The above view, is also supported by the ratio laid down in the decision by Jurisdictional High Court of Delhi in the case of CIT Vs. Creative Dyeing & Printing (P.) Ltd., [2009] 184 TAXMAN 483 (DELHI), as under:

"11. The counsel for the appellant has very strenuously urged that neither the Tribunal nor the judgment of this Court in Raj Kumar's case (supra) deals with that part of the definition of deemed dividend under section 2(22)(e) which states that deemed dividend does not include an advance or loan made to a shareholder by a company in the ordinary course of its business where the lending of money is a substantial part of the business of the company [section 2(22)(e)(ii)] i.e., there is no deemed dividend only if the lending of moneys is by a company which is engaged in the business of money lending. Dilating further the counsel for the appellant contended that since M/s. Pee Empro Exports (P.) Ltd. is not into the business of lending of money, the payments made by it to the assessee-company would therefore be covered by section 2(22)(e)(Ii) and consequently payments even for business transactions would be a deemed dividend. We do not agree. The Tribunal has dealt with this aspect as reproduced in para (9) above. The provision of section 2(22)(e)(Ii) is basically in the nature of an explanation. That cannot however, have bearing on interpretation of the main provision of section 2(22)(e) and once it is held that the business transactions does not fall within section 2(22)(e), we need not to go further to section 2(22)(e)(Ii). The provision of section 2(22)(e)(Ii) gives an example only of one of the situations where the loan/advance will not be treated as a deemed dividend, but that's all. The same cannot be expanded further to take away the basic meaning, intent and purport of the main part of section 2(22)(e). We feel that this interpretation of ours is in accordance with the legislative intention of introducing section 2(22)(e) and which has been extensively dealt with by this Court in the judgment in Raj Kumar's case (supra). This Court in Raj Kumar's case (supra) extensively referred to the report of the Taxation Enquiry Commission and the speech of the Finance Minister in the Budget while introducing the Finance Bill. Ultimately, this Court in the said judgment held as under:

"10.3 A bare reading of the recommendations of the Commission and the Speech of the then Finance Minister would show that the purpose of insertion of clause (e) to section 2(6A) in the 1922 Act was to bring within the tax net monies paid by closely held companies to their principal shareholders in the guise of loans and advances to avoid payment of tax.

10.4 Therefore, if the said background is kept in mind. it is clear that sub-clause (e) of section 2(22) of the Act, which is pari materia with clause (e) of section 2(6A) of the 1922 Act, plainly seeks to *bring within the tax net accumulated profits which are distributed by closely held companies to its shareholders in the form of loans. The purpose being that persons who manage such closely held companies should not arrange their affairs in a manner that they assist the shareholders in avoiding the payment of taxes by having these companies payor distribute, what would legitimately be dividend in the hands of the shareholders, money in the form of an advance or loan.*

10.5 If this purpose is kept in mind then, in our view, the word 'advance' has to be read in conjunction' with the word 'loan'. Usually attributes of a loan are that it involves positive act of lending coupled with acceptance by the other side of the money as loan: it generally carries an interest and there is an obligation of repayment. On the other hand, in its widest meaning the term 'advance' mayor may not include lending. The word 'advance' if not found in the company of or in conjunction with a word 'loan' may or may not include the obligation of repayment. If it does then it would be a loan. Thus, arises the conundrum as to what meaning one would attribute to the term 'advance'. The rule of construction to our minds which answers this conundrum is noscitur a sociis. The said rule has been explained both by the Privy Council in the case of Angus Robertson v. George Day [1879J 5 AC 63 by observing 'it is a legitimate rule of construction to construe words in an Act of Parliament with reference to words found in immediate connection with them' and our Supreme Court in the case of Rohit Pulp & Paper Mills Ltd. v. Collector of Central Excise AIR 1991 SC 754 and State of Bombay v. Hospital Mazdoor Sabha AIR 1960 SC 610." (p. 165)

12. Therefore, we hold that the Tribunal was correct in holding that the amounts advanced for business transaction between the parties, namely, the assessee-company and Mis. Pee Empro Exports (P.) Ltd. was not such to fall within the definition of deemed dividend under section 2(22)(e). The present appeal is therefore dismissed.

In view of the above, I hold that the transactions in the client ledger accounts, are transactions entered in the ordinary course of business and are relating to sale/purchase of share/currency/derivatives/commodities only. Therefore, I further hold that since these transactions are trading/business transactions, accordingly, provisions of section 2(22)(e), do not apply to the facts of the case of the appellant.

Accordingly, the addition made by the A.O. on account of deemed dividend of Rs. 7,88,99,522/-, is hereby deleted."

3. It is the aforesaid findings on facts which have come to be affirmed by the ITAT. The appellant has failed to establish that the transactions could have been characterised as loans or advances

received by the assessee so as to fall within the ambit of Section 2(22)(e) of the Act.

4. In view of the aforesaid, we find that no substantial question of law arises. The appeal fails and shall stand dismissed.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

APRIL 15, 2024/MJ