

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

TAX APPEAL No. 212 of 2010

For Approval and Signature:

HONOURABLE MR.JUSTICE V. M. SAHAI

HONOURABLE MR.JUSTICE N.V. ANJARIA

1	Whether Reporters of Local Papers may be allowed to see the judgment?	
2	To be referred to the Reporter or not?	
3	Whether their Lordships wish to see the fair copy of the judgment?	
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder?	
5	Whether it is to be circulated to the civil judge?	

COMMISSIONER OF INCOME TAX-I

Versus

DAISY PACKERS PVT LTD

Appearance :

MR KM PARIKH for Appellant(s) : 1,
MRS SWATI SOPARKAR for Opponent(s) : 1,

CORAM : HONOURABLE MR.JUSTICE V. M. SAHAI

and

HONOURABLE MR.JUSTICE N.V. ANJARIA

Date : 18/07/2012

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE V. M. SAHAI)

This tax appeal has been filed by Revenue challenging the order of the Tribunal and this Court had admitted the appeal on the following question of law.

“ Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in reversing the order of CIT(A) and thereby deleting the addition made on account of deemed dividend u/s.2(22)(e) of the Act on inter-corporate deposits?”

2.0 The brief facts are that the assessee filed return of income for the Assessment Year 2000-01 declaring a loss of Rs.4,22,792/-. The return was processed under Section 143(1)(a) of the Income Tax Act, 1961 (for short 'the Act') and income of the assessee was declared under Section 115JA of the Act. Thereafter the case was reopened under Section 147 of the Act which was served on the assessee. The case of the department was that the Amigo Brushes Pvt. Ltd. had a total surplus of Rs.70 lacs as on 31st March 1999 and it has advanced a loan to the assessee to the tune of Rs.25 lacs. Whereas the assessee contended that he received deposit from Amigo Brushes Pvt. Ltd. and Daisy Packers Pvt. Ltd. was not a shareholder in Amigo Brushes Pvt. Ltd. The Assessing Officer by his order dated 30th September 2004 rejected the claim of the assessee and treated the deposits as loan and consequently deemed to be a deemed dividend under Section 2(22)(e) of the Act and accordingly computed the tax. The assessee filed appeal which was dismissed by CIT(A) on 11th May 2006. The assessee filed Second Appeal which has been allowed by the Tribunal on 5th June 2009 and the Tribunal has hold that it was not the case of the deemed dividend and it was the case of the deposits. The Tribunal further recorded finding that it was not a loan given by Amigo Brushes Pvt Ltd. to the assessee company and it was inter-corporate deposits. However, we need not go into various questions raised by learned counsel for the parties as admittedly the assessee was not shareholder in the Amigo Brushes Pvt. Ltd. The Division Bench of this Court in **Commissioner of Income Tax vs. Ankitach(P) Ltd. [(2012) 340 ITR 14]**. The Delhi High Court has held that if the assessee company does not hold a share in other company from which it had received

deposit then it cannot be treated to be a deemed dividend under Section 2(22)(e) of the Act. In view of this admitted position that assessee is not a shareholder in Amigo Brushes Pvt. Ltd. and therefore, the deposit received by the assessee of Rs.25 lacs from Amigo Brushes Pvt Ltd. was an inter-corporate deposit and not a deemed dividend and, therefore, though this aspect has not been considered by the Tribunal but since the order of the Tribunal can be supported by another legal reason on the admitted facts, we need not send the matter back.

3.0 For the aforesaid reasons, we are of the considered opinion that substantial question of law formulated by the Division Bench is to be answered in affirmative against the assessee in favour of the department.

[V. M. SAHAI, J.]

[N. V. ANJARIA, J.]

Amit

