

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

DATED: 23.07.2020

CORAM

**THE HON'BLE DR.JUSTICE VINEET KOTHARI**

AND

**THE HON'BLE MR.JUSTICE KRISHNAN RAMASAMY**

**TCA No.874 of 2016**

The Commissioner of Income Tax,  
Chennai.

... Appellant

Versus

M/s. Accel Limited,  
III Floor, Accel House,  
75, Nelson Manickam Road,  
Aminjikarai, Chennai – 600 029.

... Respondent

PANO: AACCA3042P

Prayer :- Appeal filed against the order of the Income Tax Appellate Tribunal Madras “C” Bench, Chennai in ITA No.144/Mds/2015 dated 25.05.2016.

For Appellant : Mr.T.Ravikumar, Senior Standing Counsel

For Respondent : Mr.S.R.Sivaraman

**ORDER**

(Order of the Court was made  
by MR.JUSTICE KRISHNAN RAMASAMY)

The Court was held by Video Conference, as per the Resolution of the Full Court dated 3 July 2020, by Judges at their respective residences and the counsel, staff of the Court appearing from their respective residences.

2.This appeal by the Revenue, under Section 260 (A) of the Income Tax Act, 1961 (hereinafter referred to as “the Act”), is directed against the order of the Income Tax Appellate Tribunal, Chennai “C” Bench, Chennai, in ITA No.144/Mds/2015, dated 25.05.2016 for the assessment year 2002-03.

3.This matter was listed today under the caption “notice regarding admission”.

4.Heard, Mr.T.Ravikumar, learned Senior Standing Counsel for the appellant and Mr.S.R.Sivaraman, learned counsel appearing for the

respondent and perused the materials available on record.

5.The respondent company is a holding company of M/s. Accel ICIM System and Service Limited. As on 01.04.2001, the respondent company was holding 92.43% of shares in its subsidiary company. The said share holding was subsequently reduced from 92.43% to 61.24% as on 31.02.2002. During the course of the assessment proceedings and the subsequent remand proceedings for the assessment year 2004-05, the Assessment Officer found that the respondent company had received a sum of Rs.3.00 Crores as loan from its subsidiary company during the financial year relevant to the assessment year 2002-03. The said loan amount of Rs.3.00 Crores have been shown in the balance sheet of the respondent company, relevant to the assessment years 2002-03 and 2004-05.

6.According to the Department, the amount advanced by the subsidiary company to its holding company, namely a sum of Rs.3.00 Crores is deemed dividend within the meaning of Section 2 (22)(e) of the Act.

7.On the other hand, the respondent contended that the amount received by it from the subsidiary company is only an advance towards

security for providing corporate guarantee. Though it has received the advance towards security, it has paid interest of 1%, higher than the normal Bank lending rate. Hence, the receipt of a sum of Rs.3.00 Crores will not fall within the meaning of Section 2(22)(e) of the Act, to consider it as deemed dividend. Further, a Co-ordinate Bench of this Court has dismissed the Department Appeal in TCA.No.167 of 2011, which was filed against the order of the Tribunal, relating to the assessment year 2004-05 and the same was also referred by the learned counsel for the respondent to contend that the issue is no more *res-integra*, since the said issue has already been decided by this Court in the above said appeal.

8.The department initiated two separate proceedings for the assessment years 2002-03 and 2004-05, for one time advance of Rs.3.00 Crores made by the subsidiary company to its holding company.

9.As far as the issue relating to the assessment year 2004-05 is concerned, it has reached a finality at the level of this Court in TCA.No.167 of 2011 dated 21.01.2019. This Court, while considering the materials available on record, found that there was no substantial question of law arising for consideration in the department appeal, since the entire dispute is

purely factual and therefore dismissed the appeal. The relevant portion of paragraph Nos.4 and 5 of the judgment is extracted hereunder:-

*“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.”*

10.The present appeal is relating to the assessment year 2002-03, questioning the sum of Rs.3.00 Crores advance made by the subsidiary company to the respondent/holding company. The Commissioner of Income

Tax (Appeals), referring to the decision rendered for the assessment year of 2004-05, held that a sum of Rs.3.00 Crores shown in the balance sheet of the respondent company for the assessment year 2002-03, is only an advance made by its subsidiary company, in the course of the business, for providing corporate guarantee by the respondent, and rejected the contentions of the department. As against the said order, the department has preferred an appeal before the Income Tax Appellate Tribunal Madras “C” Bench, Chennai in ITA No.144/Mds/2015 (for the assessment year 2002-03). The Tribunal has also passed its order in that appeal on 20.05.2016, holding that the Commissioner Income Tax (Appeals) have elaborately dealt with the facts of the case. Further, it has not found any error in the order passed by the Commissioner of Income Tax (Appeals). Therefore, the appeal of the Revenue in I.T.A.No.144/Mds/2015 was dismissed. As against the said order, the department has preferred the present appeal before this Court.

11.As stated above, this Court already has decided the said issue against the same appellant, holding that the sum of Rs.3.00 Crores received by the respondent company from its subsidiary relevant to the assessment

year 2004-05, is not deemed dividend within the meaning of Section 2(22)(e) of the Act.

12. Further, the advance received by the respondent from its subsidiary has been shown in the balance sheet of the respondent, relevant to the assessment years 2002-03 and 2004-05. The department has initiated two separate proceedings for the single transaction and the said proceedings have been dragged up to the level of this Court. Obviously, the department would have been well aware of the fact that the amount of Rs.3.00 Crores advanced by the subsidiary to its holding company, cannot be taxed twice. When such being the position, we are really surprised to see that the initiation of two separate proceedings for the same transaction is not appreciable. Had the department have applied its mind in a proper manner, they could have avoided these type of vexatious proceedings and it would have saved the precious time of this Court as well as the department.

13. Therefore, the issue in the present appeal and the appeal in TCA.No.167 of 2011 are one and the same. Since this Court already has decided the said issue, we are of the opinion that there is no need for further adjudication by this Court in the present appeal once again. Further, we do

not find any substantial question of law arising in this appeal, as the entire dispute is purely factual.

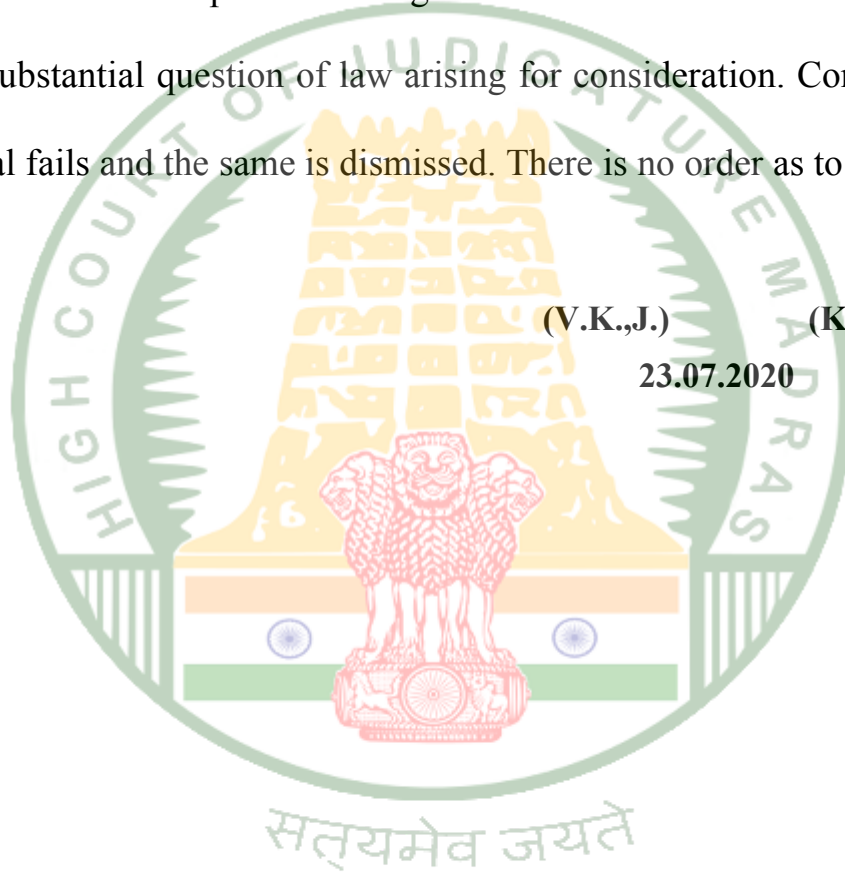
14. The first appellate authority as well as the Tribunal have rightly considered the factual position and granted relief to the assessee. Thus, we find no substantial question of law arising for consideration. Consequently, the appeal fails and the same is dismissed. There is no order as to costs.

(V.K.,J.)

(K.R.,J.)

23.07.2020

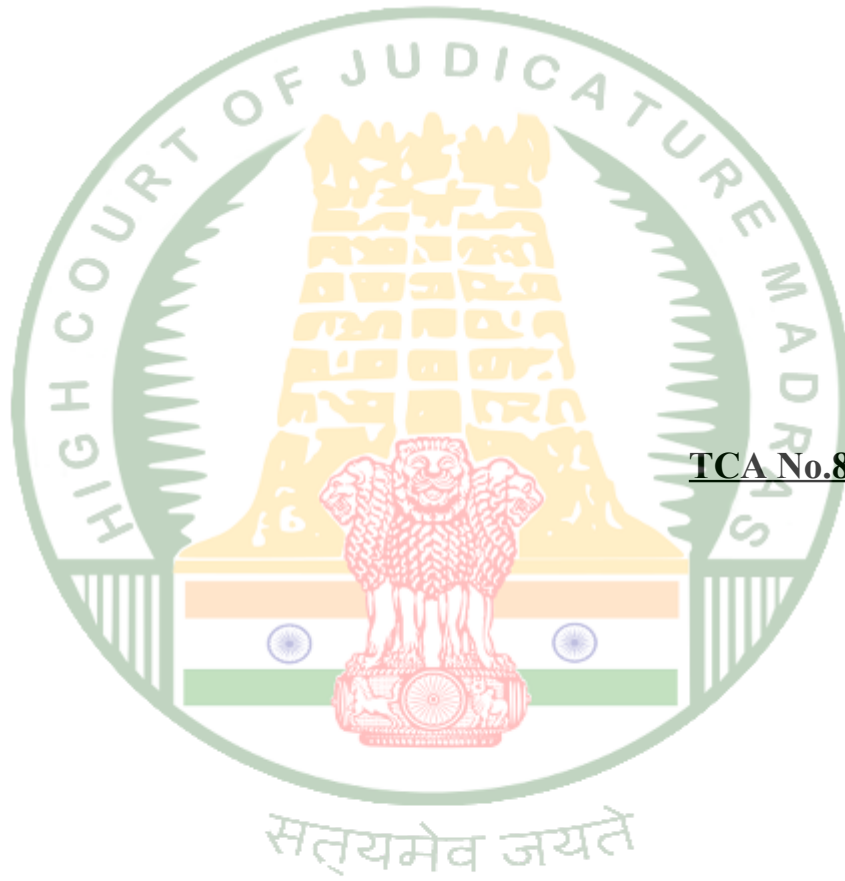
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**DR.VINEET KOTHARI, J.**  
and  
**KRISHNAN RAMASAMY, J.**

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