

**IN THE INCOME TAX APPELLATE TRIBUNAL,
'A(SMC)' BENCH, KOLKATA
[Virtual Court Hearing]**

Before Shri P.M. Jagtap, Vice-President

**I.T.A. No. 340/KOL/2020
Assessment Year: 2013-2014**

Manav Kumar Saraf,..... Appellant
14B, Halder Lane, Bowbazar,
Behind Yogayog Bhawan,
Kolkata-700012
[PAN:AKTPS7234D]

-Vs.-

Assistant Commissioner of Income Tax,..... Respondent
Circle-37, Kolkata,
3, Government Place West,
Room No. 13, 2nd Floor,
Kolkata-700001

Appearances by:

Shri Pramod Himmatsinghka, A.R., appeared on behalf of the assessee
Shri Jayanta Khanra, JCIT, Sr. D.R., appeared on behalf of the Revenue

Date of concluding the hearing : March 30, 2021

Date of pronouncing the order : April 23, 2021

O R D E R

This appeal filed by the assessee is directed against the order of Id. Commissioner of Income Tax (Appeals)-11, Kolkata dated 23.05.2019.

2. At the outset, it is noted that there is a delay of 199 days on the part of the assessee in filing this appeal before the Tribunal. In this regard, the assessee has moved an application seeking condonation of the said delay and keeping in view the reasons given therein, I am satisfied that there was a sufficient cause for the delay of 199 days on the part of the assessee in filing this appeal before the Tribunal. Even the Id. D.R. has not raised any objection in this regard. The said delay is accordingly condoned and this appeal of the assessee is being disposed of on merit.

3. The grounds raised by the assessee in this appeal read as under:-

"1. That under the facts & circumstances of the case Ld. CIT(A) erred in confirming the addition of Rs.5,10,590/- made by AO invoking section 2(22)(e) being the amount of loan or advance received by the assessee shareholder from M/s. Akshat Plywood (P) Ltd.; despite such amount was received in the ordinary course of his business and interest was paid by the assessee on the said amount, the addition so made is liable to be deleted.

2. That under the facts & circumstances of the case Ld. CIT(A) erred in disallowing interest paid on housing loan Rs.3,68,115/- (Rs. 5,18,115 -Rs.1,50,000 deduction claimed u/s 24b) arbitrarily, although the said interest Rs.3,68,115/- was not claimed by the appellant and was not matter of dispute.

3. That under the facts & circumstances of the case, Ld. CIT(A) erred in not considering the depreciation disallowance Rs.76,401/- on motor car, disallowance of motor car maintenance Rs.38,800/- made by AO".

4. As regards the issue raised in Ground No. 1 relating to the addition of Rs.5,10,590/- made on account of deemed dividend under section 2(22)(e) of the Act, the relevant facts of the case are that the assessee is an individual, who is engaged in the business of trading and retailing of ply and allied products. The return of income for the year under consideration was filed by him on 09.10.2013 declaring total income of Rs.15,42,711/-. Although the said return was initially processed by the Assessing Officer under section 143(1) of the Act, it was subsequently selected for scrutiny in CASS. During the course of assessment proceedings, it was noticed by the Assessing Officer that the assessee was 50% shareholder of the company, namely M/s. Akshat Plywoods Pvt. Ltd. and had taken a loan amounting to Rs.7,68,000/- from the said Company during the year under consideration. According to the Assessing Officer, the said transaction was falling within the purview of section 2(22)(e) of the Act and since M/s. Akshat Plywoods Pvt. Ltd. was having sufficient reserve and surplus, which was more than the loans and advances given to the assessee, the amount of Rs.7,68,000/- was added by the Assessing Officer to the total income of the assessee as deemed dividend under section 2(22)(e) of the Act.

5. The addition made by the Assessing Officer on account of deemed dividend under section 2(22)(e) of the Act was challenged by the assessee in the appeal filed before the Id. CIT(Appeals). During the course of appellate proceedings before the Id. CIT(Appeals), it was submitted on behalf of the assessee that the relevant transactions with M/s. Akshat Plywoods Pvt. Limited were purely of business nature and, therefore, section 2(22)(e) had no application. The Id. CIT(Appeals), however, found that there was another account in the books of Akshat Plywoods Pvt. Limited standing in the individual name of the assessee and there was an addition of Rs.5,10,590/- in the said account representing loan standing in the name of Akshat Plywoods Pvt. Limited. Since these transactions in the nature of loan were not business transactions, the Id. CIT(Appeals) treated the amount of Rs.5,10,590/- as deemed dividend and addition made by the Assessing Officer to that extent under section 2(22)(e) was sustained by him.

6. I have heard the arguments of both the sides and also perused the relevant material available on record. The Id. Counsel for the assessee has invited my attention to the extract of ledger account of the assessee in the books of M/s. Akshat Plywoods Pvt. Ltd. placed at page no. 5 of the paper book to show that interest of Rs.42,590/- was paid by the assessee to M/s. Akshat Plywoods Pvt. Limited on the outstanding loan amount during the year under consideration. In this regard, he has relied on the decision of the Hon'ble Calcutta High Court in the case of Pradip Kumar Malhotra -vs.- CIT (ITA No. 219 of 2003) dated August 02, 2011, wherein it was held that "if such loan or advance is given by the Company to a shareholder as a consequence of any further consideration which is beneficial to the company received from such a shareholder, such advance or loan cannot be said to be deemed dividend within the meaning of section 2(22)(e) of the Act". Explaining further it was observed by Their Lordships that "the gratuitous loan or advance given by a company to

those classes of shareholders would come within the purview of section 2(22)(e) but not the loans or advances which are given in return to an advantage conferred upon the company by such shareholder". In the present case, the amount of loan in question was given to the assessee by the concerned company on interest and since the said loan was not a gratuitous one and was given in return to an advantage conferred upon the company by the assessee in the form of interest, I find merit in the contention of the Id. Counsel for the assessee that the same cannot be treated as deemed dividend within the meaning of section 2(22)(e) of the Act. Even the Id. D.R. has not been able to raise any contention to rebut or controvert this position. I, therefore, respectfully follow the decision of the Hon'ble Jurisdictional High Court in the case of Pradip Kr. Malhotra (supra) and delete the addition made by the Assessing Officer and sustained by the Id. CIT(Appeals) on account of deemed dividend under section 2(22)(e) of the Act. Ground No. 1 of the assessee's appeal is accordingly allowed.

7. As regards the issue involved in Ground No. 2, the limited contention raised by the Id. Counsel for the assessee is that deduction on account of interest on Housing Loan was claimed by the assessee only to the extent of Rs.1,50,000/- under section 24(b) of the Act and not Rs.5,18,115/- as wrongly taken by the Id. CIT(Appeals). He has contended that the disallowance of Rs.3,68,115/- made by the Id. CIT(Appeals) on account of interest on Housing Loan thus is not sustainable. The Id. D.R. has contended that this claim made by the Id. Counsel for the assessee requires verification by the Assessing Officer. Since the Id. Counsel for the assessee has also not raised any objection for getting this matter verified by the Assessing Officer, I restore this issue to the file of the Assessing Officer for the limited purpose of verifying the claim of the assessee that deduction on account of interest on Housing Loan was claimed only to the extent of Rs.1,50,000/- and not Rs.5,18,115/- as wrongly taken by the Id. CIT(Appeals). If the claim of the assessee is

found to be correct on verification, the Assessing Officer shall delete the disallowance of Rs.3,68,115/- as directed to be made by the Id. CIT(Appeals) on this issue. Ground No. 2 of the assessee's appeal is accordingly treated as allowed for statistical purposes.

8. As regards the issue involved in Ground No. 3 relating to the disallowance of depreciation on motor car amounting to Rs.76,401/- and disallowance on motor car maintenance amounting to Rs.38,800/-, it is observed that the assessee was owner of two cars, one Chevrolet Beat and the other Maruti Van. Since the Maruti Van was being used by the assessee for the purpose of business, depreciation claimed on the said car was allowed by the Assessing Officer. The claim of depreciation amounting to Rs.76,401/- made by the assessee on account of Chevrolet Beat car, however, was disallowed by the Assessing Officer. In my opinion, even though the personal use of Chevrolet Beat car by the assessee cannot be ruled out, the claim of the assessee for depreciation on the said car cannot be entirely disallowed and it will be fair and reasonable to restrict the same to one-third for such personal use as the claim of the assessee of having used the said car for business purpose also cannot be outrightly rejected. I, therefore, direct the Assessing Officer to restrict the disallowance made on account of depreciation of Chevrolet Beat car to the extent of 1/3rd. Similarly the disallowance made by the Assessing Officer on account of car maintenance for personal use to the extent of 50% is directed to be restricted to one-third. Ground No. 3 of the assessee's appeal is accordingly partly allowed.

9. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced in the open Court on April 23rd, 2021.

**Sd/-
(P.M. Jagtap)
Vice-President**

Kolkata, the 23rd day of April, 2021

- Copies to :
- (1) **Manav Kumar Saraf,
14B, Halder Lane, Bowbazar,
Behind Yogayog Bhawan, Kolkata-700012**
 - (2) **Assistant Commissioner of Income Tax,
Circle-37, Kolkata,
3, Government Place West,
Room No. 13, 2nd Floor,
Kolkata-700001**
 - (3) *Commissioner of Income Tax (Appeals)-11, Kolkata;*
 - (4) *Commissioner of Income Tax- ,*
 - (5) *The Departmental Representative*
 - (6) *Guard File*

By order

*Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.