IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC" NEW DELHI
BEFORE SHRI S.V. MEHROTRA : ACCOUNTANT MEMBER

ITA no. 3025 /Del/2015
Asstt. Yrs: 2007-08

Puneet Bhagat, A-8, Sector-17, Noida, UP-201301. PAN: AACPB 3904 C	Vs.	Income-tax Officer, Ward 1(2), New Delhi.

AND

ITA no. 3026 /Del/2015
Asstt. Yrs: 2007-08

Smt. Sunita Bhagat, A-8, Sector-17, Noida, UP-201301 PAN: AACPB 3893 Q	Vs.	Income-tax Officer, Ward 1(2), New Delhi.
(Appellant)		(Respondent)

Appellant by : Shri Sunil Arora CA
Respondent by : Shri Ved Prakash Mishra Sr. DR

Date of hearing : 22/09/2015.
Date of order : 16/12/2015.

O R D E R

PER S.V. MEHROTRA, A.M..:

These appeals, preferred by different assessees of the same group, have been preferred against separate orders dated 12-02-2015, passed by the CIT(A)-I, New Delhi, relating to A.Y. 2007-08. Issues being common in both the appeals, the

same were heard together and are being disposed of by this order for the sake of convenience.

2. Brief facts of the case are that Shri Puneet Bhagat was director in M/s Aesthete Exim Pvt. Ltd. and M/s Aesthete International Ltd. The other director in these companies was Ms. Sunita Bhagat, the share holding patterns of these two directors in the companies were as under:

S No.	Name of Shareholder	M/s Aesthete Exim Pvt. Ltd.		M/s Aesthete International Ltd.	
		Amount of shareholding as on 31.03.2007	% of shareholding	Amount of shareholding as on 31.03.2007	% of shareholding
1.	Sunita Bhagat	5,00,000/-	50%	11,56,100/-	46.11%
2.	Puneet Bhagat	5,00,000/-	50%	13,50,100/-	53.85%

3. Thus, both Shri Puneet Bhagat and Smt. Sunita Bhagat were holding more than 20% shares in these companies. The AO has pointed out that during the assessment proceedings of M/s Aesthete International Ltd. for AY 2007-08, the then AO noticed that M/s Aesthete International Ltd. had received an amount of Rs. 10 lacs from its sister concern M/s Aesthete Exim Pvt. Ltd. and this amount of loan was treated as deemed dividend u/s 2(22)(e) in the hands of M/s Aesthete International Ltd. However, the said addition was deleted by ld. CIT(A), inter alia, observing that the amount could be brought to tax only in the hands of share holder of lender company i.e. Shri Puneet Bhagat and Smt. Sunita Bhagat and not in the hands of company, which is not a registered share holder of the lender company. Accordingly, the assessee was show caused as to why loan advanced to M/s Aesthete International Ltd. by M/s Aesthete Exim Pvt. Ltd. should not be treated as deemed dividend in the hands of Shri Puneet Bhagat. Similar notice was issued

to Smt. Su12nita Bhagat. The assessee took the plea that as per the directions of Hon'ble Delhi High Court in the case of CIT Vs. Ankitech Pvt. Ltd. 11 Taman.com 100(Delhi), addition had to be made in the hands of share holders of the loan recipient company but the said judgment did not prescribe the manner in which computation of income had to be done. The assessee pointed out that the share holding of the two directors in M/s Aesthete Exim Pvt. Ltd. was 50% each, whereas in M/s Aesthete International Ltd. it was 53.85% (Puneet Bhagat) and 46.11% (Smt. Sunita Bhagat). It was further pointed out that no manner of computation for making the addition in the hands of the two shareholders has been prescribed, either under the Income tax Act or in the ruling of Ankitech Pvt. Ltd. (supra). Therefore, it was not clear as to how much income was to be assessed as deemed dividend in the hands of Puneet Bhagat and Sunita Bhagat. Further, it was submitted that in the absence of any mechanism for computation of income in the hands of share holders, the charging provisions would also fail and no addition could be made in such a case. The assessee relied on the decision of Hon'ble Supreme Court in the case of CIT Vs. B.C. Srinivasa Setty (1981) 5 Taxmann 1 (SC), wherein it was, inter alia, held as under:

> "……. A transaction to which those provisions cannot be applied must be regarded as never intended by section 45 to be the subject of charge. This inference flows from the general arrangement of the provisions in the Income-tax Act, where under each head of income the charging provision is accompanied by a set of provisions for computing the income subject to that charge. The character of the computation provisions in each case bears a relationship to the nature of the charge. Thus, the charging section and the computation provision together constitute an integrated code. When there is a case to which the computation provisions cannot apply at all,

> it is evident that such a case was not intended to fall within the charging section., Otherwise one would be driven to conclude that while a certain income seems to fall within the charging section, there is no scheme of computation for quantifying it. The legislative pattern discernible in the Act is against such a conclusion. It must be borne in mind that the legislative intent is presumed to run uniformly through the entire conspectus of provisions pertaining to each head on income."

4. The AO, after considering the assessee's submissions, concluded that the loan was to be treated as deemed dividend in the hands of individual directors and since Shri Puneet Bhagat and Smt. Sunita Bhagat were equal beneficiary of share to the tune of 50% each in M/s Aesthete International Ltd., the company which had received the loan, therefore, the amount of loan of Rs. 10 lacs was to be equally divided and added to the income of the assessee. He, therefore, made addition of Rs. 5 lacs each in the hands of the two directors.

5. Before ld. CIT(A) the assessee reiterated the submissions and, inter alia, pointed out that M/s Aesthete Exim Pvt. Ltd. had given loan of Rs. 10 lacs to M/s Aesthete International Ltd. and Shri Puneet Bhagat was common share holder along with Smt. Sunita Bhagat in both the said companies, but, there was different share holding pattern in both the companies. Therefore, the addition on account of the deemed dividend was against the principles

laid down by Hon'ble Supreme Court in the case of B.C. Srinivasa Setty (supra). Ld. CIT(A) confirmed the AO's action following the decisions of Hon'ble Jurisdictional High Court in the case of CIT Vs. Ankitech (P) Ltd. (supra) and CIT Vs. Navyug Promoters Pvt. Ltd.

6. Ld. counsel for the assessee submitted that, in the facts of the case, the addition u/s 2(22)(e) in the hands of two directors cannot be disputed because both the directors have substantial shareholdings in the two concerns, However, no mechanism has been provided in the Act regarding computation of deemed dividend in the hands of the two directors.

7. Ld. DR relied on the orders of authorities below.

8. I have considered the submissions of both the parties and perused the record of the case. The short point for consideration is whether the computation of Rs. 5 lacs each treated as deemed dividend in the hands of the two directors, is as per law or not. There is no dispute that cumulative reserves of M/s Aesthete Exim Pvt. Ltd. as on 31-3-2007 were Rs. 14,51,212/- and, therefore, the amount of Rs. 10 lacs given as loan to M/s International Ltd. was taxable as deemed dividend in the hands of two directors as both the directors were common shareholders in the two companies holding more than 20% shares of these companies. The contention of ld. counsel is that had the loan was given to one shareholder,

the same could be computed as per law but when the loan is given to a concern in which such shareholder is a partner or member, then for allocation of loan between the shareholders no mechanism is provided in the Act. In first blush the argument appears to be quite convincing but a little analysis of relevant provision makes it clear that this argument cannot be accepted.

9. Section 2(22)(e) reads as under:

> "2(22)(e): dividend includes –
>
> …..
>
> (e) any payment by a company, 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, 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 (herein 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."

10. The ingredients of the section are as under:-

I. Payment to individual shareholder:-

(A) The payment should be by a company (not being company in which public is substantially interested).

(B) The payment can be in cash or representing a part of the assets of the company.

(C) The payment should be in the nature of avance or loan to a shareholder who is holding at lest 10% shares beneficially.

(D) The above payment to the extent of accumulated profits of the lender company would be treated as deemed dividend in the hands of shareholder qualifying the criteria of holding 10% beneficial holding of shares.

II. Payment to concerns:

In this case all the conditions of payments in case of individual shareholder noted above have to be fulfilled. Thus, even if payment is made to a concern still the payment to concern will be taxed as deemed dividend in the hands of such shareholder.

III. Payment is by such company on behalf or for individual benefit of such shareholder. Here also all the conditions contemplated in (I) above have to be fulfilled.

11. Thus, the section clearly covers those cases where payment is to shareholder qualifying condition of beneficial holding of shares. The loan to concerns are also contemplated in the section itself and, therefore, it would be too technical to hold that legislature visualized only one shareholder in the concern.

12. The section clearly states that the shareholder may be a member of the concern or a partner, which implies that the interest of the shareholder in the

concern is to be determined with reference to the percentage of shareholding of the directors/ partners in the said concern. It is not necessary that in every case the detailed mechanism should be provided for computing the income and, if, by reasonable construction of the section, the income can be deduced then merely on the ground that specific provision has not been provided, it cannot be held that the computation provisions fails. It is well settled law that the construction which advances the object of legislation should be made and not the one which defeats the same. The percentage of shareholding in the concern to which loan is given, is the determining factor of the deemed dividend in case of shareholder. In the present case, since in M/s Aesthete International Ltd., Mr. Puneet Bhagat had 53.85 shareholding. Therefore, Rs. 5,38,500/- should have been assessed as dividend in the hands of Shri Puneet Bhagat and Rs. 4,61,100/- should have been taxed as deemed dividend in the hands of Mrs. Suneeta Bhagat. Since in case of Mr. Puneet Bhagat, this will lead to enhancement of income, I uphold the addition of Rs. 5 lakhs only in his case.

13. In the result. Mr. Puneet Bhagat's appeal is dismissed and Mrs. Suneeta Bhagat's appeal is partly allowed.

Sd/-
(S.V. MEHROTRA)
ACCOUNTANT MEMBER

Dated: 16/12/2015.
MP
Copy of order to:

1. Assessee
2. AO
3. CIT
4. CIT(A)
5. DR, ITAT, New Delhi.