Principal Commissioner Of Income Tax 1 vs Dishman Pharmaceuticals And Chemicals ... on 25 June, 2019

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Bench: J.B.Pardiwala, A.C. Rao

C/TAXAP/193/2019 ORDER

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/TAX APPEAL NO. 193 of 2019

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PRINCIPAL COMMISSIONER OF INCOME TAX- 1 Versus DISHMAN PHARMACEUTICALS AND C H E M I C A L S L T D

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Appearance:

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CORAM: HONOURABLE MR.JUSTICE J.B.PARDIWALA and HONOURABLE MR.JUSTICE A.C. RAO Date: 25/06/2019 ORALORDER (PER: HONOURABLE MR.JUSTICE J.B.PARDIWALA)

1. The Revenue, in its Tax Appeal, has proposed the following two questions as the substantial questions of law :

"(A) Whether the Appellate Tribunal has erred in law and on facts in deleting the addition of Rs.2.41 crore made on account of deemed dividend u/s.2(22)(e) for A.Y.2005-06 ?

(B) Whether the Appellate Tribunal has erred in not appreciating the findings of the AO that the amounts were not shown in raw material account, sales account or in any expense account clearly implying that they were not in the nature of ordinary business transactions but in the nature of loan transactions ?"

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2. We propose to re-frame the question no.1 before we proceed to admit this Tax Appeal.

3. For the purpose of re-framing the question no.1, we need to state few facts in brief.

4. The question no.1 proposed by the Revenue is with regard to deletion of the addition of Rs.2.41 crore made on account of the deemed dividend under Section 2(22)(e) of the Act for the Assessment Year 2005-06.

5. It appears that the Assessing Officer, in the course of the assessment proceedings for the Assessment Year 2005-06, noticed that M/s.Schutz Dishman Biotech Ltd. ('SDBL', for short) had given loans to the assessee. The assessee holds 22.3% share holdings of the SDBL. The Assessing Officer took the view that the loans given to the assessee deserved to be treated as deemed dividend under Section 2(22)(e) of the Act. Similarly, according to the Assessing Officer, the assessee herein had received loan from B.R. Laboratories Private Limited amounting to Rs.16,03,933=00. Both these loans were treated by the Assessing Officer as deemed dividend in the hands of the assessee herein and addition of Rs.2,41,03,933=00 was made under Section 2(22)(e) of the Act in the re-assessment order.

6. The assessee herein carried the matter in appeal before the CIT(A). The appeal filed by the assessee came to be allowed by the CIT(A). Being dissatisfied, the Revenue preferred appeal before the Appellate Tribunal. The Appellate Tribunal dismissed the appeal and affirmed the order passed by the CIT(A).

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7. Some clarification is required in view of the order passed by this Court in the Tax Appeal No.958 of 2015 and Tax Appeal No.959/2015 respectively, in which the appeals were preferred by the Revenue and the assessee was Schutz Dishman Bio-Tech Private Limited. We quote the order passed by a coordinate bench of this Court dated 21st December 2015 thus :

"1. The appeals are filed by the Revenue calling in question the judgement of Income Tax Appellate Tribunal, raising following question for our consideration :

"Whether on facts and in law the ITAT was right in cancelling the order passed u/s 201(1) and 201(A) of the Act, without appreciating that the amount advanced was in the nature of deemed dividend u/s 2(22)(e) of the Act?"

2. According to the Revenue, the assessee company had made advances in favour of one M/s. Dishman Pharmaceuticals & Chemicals Ltd. having 22.23% holding in the assessee company. According to the Revenue, therefore, such advances were in the nature of deemed dividend under section 2(22)(e) of the Income tax Act. Since no deductions were made at the time of payment of such dividend, section 201 of the Act, was invoked.

3. The Commissioner (Appeals) however, deleted the order of Assessing Officer making the following observations :

> "6. I have carefully considered the impugned orders and the submissions of the appellant. I am of the view C/TAXAP/193/2019 ORDER that the provisions of S.2(22)(e) of the Act are not applicable at all and therefore the question of deduction of tax at source does not arise and therefore, the liability u/s.201(1) and 201(A) of the Act also does not arise. For both the years under consideration, I have perused the copies of the ledger accounts placed on record. It can be seen that there are large number of debit and credit transactions. Meaning thereby, the appellant has given and received funds as and when required to and from its associate concern. It is not an account whereby loans and advances have been given to the associate concern. It is an account which is in the nature of current adjustment accommodation account wherein there is a movement of fund both ways, on need basis. Unlike transactions of loans and advances, in this kind of current adjustment accommodation account, the movement of hinds is both ways and the same is more in the nature of current account rather than a loan account. Transactions in the nature of loans and advances are usually very few and for a longer duration. In the facts of the present case, the nature of the transaction is in the form of current accommodation adjustment account and therefore, the same is not a transaction in the nature of loans and advances. In the absence of any loans and advances, the provisions of section 2(22)(e) of the Act in respect of deemed divided are not attracted and therefore, the question of C/TAXAP/193/2019 ORDER deduction of tax at source also would not arise. This view is supported by the following direct decisions :
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> CIT vs. Creative Dyeing & Printing (P) ltd. 318 ITR 476 (Del) CIT vs. Raj Kumar 318 ITR 462 (Del) NH Securities Ltd v. DCIT (2007) 11 SOT 302 (BOM) ACIT v. Global Agencies(P) ltd. (2005) 87 TTJ 1086(Delhi) CIT v. Nagindas M. Kapadia (1989) 177 ITR 393 (BOM) Even otherwise, if the transactions are not in the nature of current accommodation adjustment account, the same are in the nature of deposits as it apparent from the nomenclature of the ledger account. If the transactions are in the nature of deposits and the same are between two corporate, it is nothing but Inter Corporate Deposits (ICD) which in any case would be outside the purview of section 2(22)(e) of the Act. This view supported by the following direct binding decisions of the ITATs.

M/s. Utkarsh Fincap(P) Ltd., v ITO 1288 ITR 38 On.(Tri. Ahmedabad) C/TAXAP/193/2019 ORDER M/s. Bombay Oil Industries Ltd, v. DCIT, Central Circle-35 Mumbai 128 SOT 383 (Mum.)"

4. It can thus be seen that the Commissioner as a matter of fact found that the payments were not in the nature of current adjustment. There was movement of fund both ways on need basis. The transactions in the nature of loans and advances are usually very few in number whereas in the present case, such transactions are in the form of current accommodation adjustment entries. The Commissioner therefore, held that the transactions were not in the nature of loans and advances.

The Revenue carried the matter in appeal. The Tribunal concurred with the view of the CIT (Appeals) and held that the amounts were not in the nature of Inter Corporate Deposits and were therefore, not to be treated as loans or advances as contemplated in section 2(22)(e) of the Act.

5. The issue is substantially one of appreciation of facts. When the CIT(Appeals) as well as Tribunal concurrently held that looking to large number of adjustment entries in the accounts between two entities, the amounts were not in the nature of loan or deposit, but merely adjustments, application of section 2(22)(e) of the Act would not arise. Consequently, no question of law arises. Tax appeals are dismissed."

8. Thus, it appears that this Court, while dismissing the appeal preferred by the Revenue, upheld the findings recorded C/TAXAP/193/2019 ORDER by the Commissioner that the transactions were not in the nature of loans and advances. In the case of Schutz Dishman Bio-Tech Private Limited, the Tribunal concurred with the view of the CIT(A) and held that the amounts were not in the nature of Inter Corporate Deposits and were, therefore, not to be treated as loans or advances as contemplated in Section 2(22)(e) of the Act.

9. The Revenue is pressing for admission of this Tax Appeal only with regard to the transaction with B.R. Laboratories Private Limited. Therefore, we are not inclined to entertain this Appeal so far as the transaction with Schutz Dishman Bio-Tech Private Limited is concerned.

10. In the circumstances referred to above, we re-frame the question no.1 as under :

> "Whether the Appellate Tribunal has erred in law and on facts in deleting the addition of Rs.16,03,933=00 made on account of the deemed dividend under Section 2(22)(e) of the Act for the Assessment Year 2005-06 in so far as the transaction with B.R. Laboratories Private Limited is concerned ?"

11. This Tax Appeal is admitted on the aforesaid re-framed substantial question of law.

12. In view of the re-framed question of law, the question no.2 proposed in the Memorandum of the Tax Appeal would not survive.

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13. Let this Tax Appeal be heard along with the Tax Appeal No.133 of 2018.

(J. B. PARDIWALA,J.) (A. C. RAO,J.) /MOINUDDIN