

आयकर अपीलीय अधिकरण , 'ए' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, CHENNAI
श्री एन.आर.एस .गणेशन, न्यायिक सदस्य एवं
श्री एस जयरामन, लेखा सदस्य के समक्ष

**BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI S. JAYARAMAN, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No. 883/Chny/2019

निर्धारण वर्ष/Assessment Year : 2014-15

Assistant Commissioner of Income
Tax,
Non Corporate Circle 7(1),
121, Mahatma Gandhi Road,
Chennai – 600 034.

Shri. Jethanand Thakur Bakshani,
Vs. No. 14, I Block,
Anna Nagar East,
Chennai – 600 040.

[PAN: AACPB 6509M]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/Appellant by
प्रत्यर्थीकीओरसे/Respondent by

: Shri. AR.V. Sreenivasan, JCIT
: Shri. M. Karunakaran, Advocate

सुनवाईकीतारीख/Date of Hearing

: 27.11.2019

घोषणाकीतारीख/Date of Pronouncement

: 25. 02.2020

आदेश/ O R D E R

PER S. JAYARAMAN, ACCOUNTANT MEMBER:

The Revenue filed this appeal against the order of the
Commissioner of Income Tax (Appeals) – 7, Chennai in ITA No.
132/CIT(A)-7/2016-17 dated 30.01.2019 for assessment year 2014-15.

2. Shri. Jethanand Thakur Bakshani, the assessee, an individual and the managing director of M/s. BNT Connections Impacts Limited, a public limited company engaged in the business of manufacture and export of readymade garments. The shares of the company were held by the assessee and his brother and the assessee owned 85% of the stake in the company. The assessee is also the sole proprietor of M/s. BNT Connections. During the f y 2005-06, all the liability and assets, except the land and building situated in Perambur of M/s. BNT Connection's was taken over by M/s. BNT Connections Impacts Limited. During the year 2011-12, the company entered in to sale agreement with the assessee for the purchase of the land and building situated in Perambur for a sale consideration of Rs 10 crores and in pursuance of the agreement, the company made a property advance during the financial years viz, (f y) 2011—12: Rs 10,00,000, fy 2012-13: Rs .1,35,00,000, fy2013—14 :Rs. 2.31,00,000. On 05.12.2013, the two parties extended the period of agreement for one more year that is still 31.03.2016 and further an advance of Rs.79 lakhs was paid and thus a total of Rs. 4,55,00,000 paid. While making the assessment for the AY 20014-15, the A O considered these transactions and the assessee's explanation, material etc and treated Rs 2.31 crore as deemed dividend . The AO also found that the assessee has not received any rental income for the use of its land and building situated in Perambur

from 2005 onwards and found that from April 2015 onwards, started collecting rent of Rs.5lakhs per month . Therefore, the A O charged Rs 60 lakhs as rental income and after allowing the deduction u/s 24 , assessed Rs.42 lakhs as income from the house property and completed the assessment. Aggrieved the assessee filed an appeal before the CIT(A) and the Id CIT(A) allowed the appeal. Aggrieved against the order of the Id CIT(A), the Revenue filed this appeal with following grounds of appeal.

- "1.The Order of the learned Commissioner of Income Tax (Appeals) is contrary to the Law and facts of the case.*
- 2. The CIT(A) erred in deleting the addition made u/s.2(22)(e) of the Act for Rs.2,31,00,000/- by holding that advance received towards sale of property falls within the meaning of commercial and business purpose and cannot be treated as deemed dividend without considering the true nature of the transaction.*
- 3. The CIT(A) relied on the jurisdictional tribunal's decision in the case of G Sreevidya, Chennai vs Department of Income tax dated 23.05.2015 and deleted the addition made u/s.2(22)(e) of the Act, where as the facts of the case are distinguishable.*
- 4. The latest decision of the Hon'ble High Court of Delhi in the case of Vikram Krishnan vsPr.CIT, in ITA No.21712019 dated 06.03.2019, which is in favour of revenue and the facts are similar to the instant case.*
- 5. The CIT(A) failed to consider the fact that there is no necessity to purchase a land and building which was already in their possession.*
- 6. The CIT(A) failed to consider the fact that the AO has specifically stated in the assessment order that the documents produced in support of his claim, shows lack of genuineness. Further the assessee failed to give the adequate evidence and cogent, reliable and credible evidences even at the time of appellate proceedings.*

7. The CIT(A) ought to have appreciated the fact the agreement to sell and cancellation of such deed by agreement for the purchase of property is merely cover up and a camouflage for giving advance to the assessee by the company to avoid the contravention of the provision of Sec.2(22)(e) of the Act.

8. The CIT(A) erred in deleting the estimated income from house property at Rs.42,00,0001 by holding that the company was not as a tenant but only an intended buyer and therefore no rent is payable by the company to the assessee nor is the assessee entitled to receive any rent from the company during the sale agreement period.

9. The CIT(A) ought to have appreciated the fact that the lease agreement clearly says that the company should have paid rental income to the assessee for the previous years.

10 For these and other grounds that may be adduced at the time of hearing, it is prayed that the Order of the learned Commissioner of Income Tax (Appeals) be set aside and that of the Assessing Officer be restored."

The Id DR presented the case on the above lines and relied on the decisions of Supreme Court in the case of Smt. Tarulata Shyam vs CIT 108 ITR 345 (SC) and CIT vs. P.K. Abubucker, 259 ITR 507 (Mad) and pleaded to restore the order of the AO .

3. Per contra, the Id AR submitted that the assessee was then carrying on business as manufacturer and exporter of garments individually under the name and style of BNT Connections. He is a substantial shareholder of M/s BNT Connections Impex Ltd. ("company"). The company is carrying on business as Manufacturer and exporter of readymade garments. During the year 2005/06, the

management decided to consolidate the operations and hence decided to merge the Garment Division of M/s BNT Connections with M/s BNT Connections Impex Ltd as a going concern. As a result, they entered into Memorandum of Understanding with BNT Connections dated 07/07/2005 wherein the business of the Manufacturer and Exporter viz BNT connections was taken over by the M/s BNT Connections Impex Ltd as a going concern in as-is-where-is condition along with all the movable assets, rights, licenses, export performance, entitlements etc as a going concern with effect from 1st April 2005 for a consideration of Rs. 7,97,00,000/- This take over was without factory Land and Building at that particular point of time. During the last quarter of the year 2011/2012, the management felt that it would be in the long term interest of the company to acquire the Factory land and Building of BNT connections also and that it would enable the BNT Connections Impex Ltd to improve infrastructure in the production facilities, in the said Factory building by installation of additional new Plant and Machines of latest state of art technology to improve the capacity, output and turnover leading to growth and development. Accordingly, the BNT connections Impex Ltd obtained the approval of Board of Directors and its shareholders and entered into Sale Agreement dated 31/03/2012 with BNT connections for purchase of the said factory Land and Building which has the best infrastructure for manufacture of garments. It was

also agreed between the parties that the sale would be completed within a period of three years. The management finalised the sale consideration at Market Value, considering the locations of the properties, the facilities available, prevailing rates in the area and fixed the sale consideration as Rs.10,00,00,000/- . Furtherance to the sale agreement, the company has paid Rs.Rs. 3,76,00,000 from fy 2011-12 to fy 2013-14. The assessee has shown the amount received from the company as 'Property Advance" and even in the books of the company the amount paid by the company to the assessee is shown under the group "Loans and Advances" being property purchase. As the BNT connections Impex Ltd felt that it would not be able to make full payments within the time frame of 3 years as originally agreed, the duration for completion of the sale was extended for a further period of one year. Accordingly, during the financial year 2014-15 relevant to the asst year 2015-16 a further payment of Rs 79,00,000/- was also made totalling in all a sum of Rs 4,55,00,000/-.

3.1 When BNT connections Impex Ltd contemplated entering into sale agreement on March 2012 for purchase of the property from BNT connections, the Bankers were taken into confidence and explained the rationale behind the intended purchase. The banks welcomed the BNT connections Impex Ltd. initiative and were supportive of company's

plan. However, they advised the company to use the premises for manufacture and export of garments for company operations without paying any rent to the promoters' premises since the company was been permitted by the bankers to pay purchase consideration during the next three years in order to strengthen and to expand the company manufacturing base. Hence the assessee being the principal founder promoter of the company, went ahead and signed the agreement on the understanding that the company would have the right to use the premises for the manufacture of export garments without payment of rent from the company to the assessee. The company is not entitled for any interest on the advances paid under the sale agreement in lieu of non-payment of rent during the sale agreement period.

3.2 After the factory building's sale agreement was executed and the additional new plant and machinery were installed in the said assessee's factory buildings, the company's operating profits started turning positive from the financial year 2013-14 as against the operating losses till the financial year 2012-13.

3.3 However after three years, during the last quarter of the financial year 2014-15 , the management felt that the Company was very much affected by rising costs, stagnant productivity, intense competition from

the garment exporters operating from the neighbouring countries etc. The management realized the imperative need to improve efficiency and output and to reduce costs and overheads in order to stay competitive for survival and growth. Moreover, skilled labour was becoming scarce within Chennai. The management realized that in order to attract and retain skilled labour, which was imperative to improve efficiency and output, and to reduce its overheads, it was necessary to shift the entire manufacturing operations out of Chennai and in particular to A P .

3.4 Further in overall interest in company's business operations, the management considered various options including shifting the manufacturing operations to Andhra Pradesh. The state of Andhra Pradesh offered various advantages about which the Id AR invited were our attention to the relevant portion of the order of the Id CIT(A) and continued her submissions stating that BNT Connections Impex Ltd, further planned to consolidate its operations at one location to have a better control over production and productivity, which would result in a reduction in its overheads. The Management estimated that the above advantages would result in a reduction in manufacturing costs significantly, by 20-30%, thereby leading to substantial cost savings for the company. Therefore , the Company has started looking for properties outside Chennai particularly in A P for its business needs and

ultimately found a property in Ekatalur Village, Chittore District, AP, Chennai to Thirupathi National Highway approximately 80 km from Chennai, which was found to be suitable for setting up a integrated readymade garment manufacturing unit at one place instead of having four manufacturing units in Chennai. The property had access to the required infrastructure and the surrounding areas had ready availability of labour which could be trained and suitably placed in the factory. The management entered into negotiations with the seller and finalized the price of the property at Rs.1.8 crores. During the last quarter of the financial year 2014/15, the company paid an advance for the purchase of this property. The balance amount was paid during April 2015 and the property was registered in the name of the company . The company is now in an advance stage of planning to set up an integrated factory in the said land. As the company had acquired a better and more convenient property at Andhra Pradesh, it has simultaneously dropped the idea of purchasing the property of the appellant during the last quarter of the financial year 2014-15 and accordingly the agreement of sale was cancelled in march 2015 and the entire advance of Rs. 4.55 Crores was repaid by the appellant at one stroke on 31 .03.2015.

3.5 Therefore, the assessee has submitted that the transaction by a company to purchase a property for its business purposes is a

transaction in the nature of commercial transaction and therefore the advance for purchase of property cannot be considered as deemed dividend u/s 2(22)(e) in the light of the above binding Circular of the CBDT No.19 of 2017 dated 12th June, 2017 wherein the Board has clarified as under:

"In view of the above it is, a settled position that trade advances, which are in the nature of commercial transactions would not fall within the ambit of the word 'advance' in section 2(22)(e) of the Act. Accordingly, henceforth, appeals may not be filed on this ground by Officers of the Department and those already filed, in Courts Tribunals may be withdrawn/not pressed upon."

After considering the assessee's explanation , material , case laws etc , the Id CIT(A) held that the impugned advances fell within the meaning of Commercial and Business purposes and cannot be treated as deemed dividend u/s 2(22)(e) of the Act and correctly directed the Assessing Officer to delete the addition of Rs.2,31,00,000/- .

4. With regard to the addition made under the head house property, the Ld. AR submitted that the assessee has let out the property to the company only from 2014 after cancellation of the sale agreement and after return of the entire advance paid by the company and not earlier. The assessment year involved is 2014-15 and during this year the property was not let out by the assessee to the company nor any rent was received by the assessee from the company. Therefore, according

to the assessee, the assessing officer was not justified in assessing properly income on presumptive basis. The Ld. CIT(A) held that the AO appeared to have overlooked the fact that the assessee had agreed to sell the said property to the company and received advance for sale of the property also from the company. Further, the assessee had already sold all his business assets including the plant and machinery to the company much earlier and the company was using those assets for its business purposes. The company has paid a total advance of Rs. 4.45 cr. for purchase of property from the assessee and the assessee allowed the company to use the premises also as he has received interest free advance from the company and there was a clause in sale agreement to return the advance money without interest thereon in the event of cancellation of the impugned sale agreement dated 31.03.2012. Therefore, in his considered view, the possession of the property by the company was not as a tenant of the assessee but only as an intended buyer of the property and therefore no rent is payable by the company to the assessee nor is the assessee entitled to receive any rent from the company during the sale agreement period and hence, directed the AO to delete the addition. Therefore, the Id AR supported and relied on the order of the Id. CIT(A).

5. We considered the rival submissions. The relevant portion of the order of the Ld. CIT(A) is extracted as under:

"At this juncture, attention is drawn to Section 2(22)(e) of the Income tax act 1961 as follows.

The section 2(22)(e) is read as follows:

Any payment by a company, not being a company in which the public are substantially interested, of any sum by way of advance

or

Loan to a shareholder , being a person who is beneficial owner of Shares , holding not less than 10% of voting powers

or

To any concern in which such shareholder is a member or a partner and in which he has a substantial interest,

or

Any payment by any such company on behalf,

or

Any payment for the individual benefit of any such shareholder to the extent to which the company in either case possesses accumulated profits.

If we carefully go through the section it is clear that any payment made by the company to a shareholder having more than 10% of Voting rights for the individual benefit of the share holder then such payments are to be treated as deemed dividend. However in the assessee's case the company M/s BNT Connections Impex limited has substantially benefited by payment of property purchase advance of a sum of Rs.2,31,00,000/- in the asst year 2014-15. After the takeover of the possession of the premises by the company, the company has invested in additional plant and machinery and consequently the manufacturing base has expanded of the company substantially, which resulted in overall increase in turnover of the company from Rs 38.00 crores to Rs 50.00 crores and the operating profit of the company also substantially increased from Rs 2.6 crores to Rs 4.54 crores This is evident from the statement of Turnover and Profit or loss submitted by the assessee in the written submission. Therefore it is proved beyond reasonable doubt that the property advance of Rs 2.31

crores paid by the company to the appellant is purely business and commercial transaction and hence the provisions of section 2(22)(e) cannot be invoked for such business and commercial transaction as per CBDT Board Circular No 19/2017. Even otherwise this particular Business and commercial transaction is beyond the scope of section 2(22)(e) as per the Income tax Act, 1961. As a result of such transaction substantial benefit has only accrued to the company and not to the Individual benefit of the shareholder (appellant).

The appellant also drew my attention to the fact that the appellant has right from the inception of the company always funded the company by way of unsecured loan without interest thereon, whenever the company required funds for its business operations. A statement of unsecured loan given by the appellant to the company was enclosed for perusal to this effect.

The appellant also enclosed the letter received from the Federal Bank on 07/05/2014 wherein the bank has clearly stated that working capital funds should not be used by the company for the property purchase but must be paid out of other accruals i.e. rental income and the company should not pay rent to the assessee for using the factory premises. Further the property to be purchased should be used for manufacture and export of readymade garments. In this regard, copies of bank statement were submitted wherein the amount paid by the company to the appellant has gone out of rental income account operated in IDBI bank. Hence even from the above letter it is very clear that the transaction is for Business and Commercial purpose and there is no benefit accruing to the assessee from such transaction.

My attention was also drawn to the Jurisdictional Tribunal's decision in the case of G. Sreevidya, Chennai vs Department of Income-tax dated 23.05.2015, the relevant extracts of which is reproduced below:

"The case of the assessee is squarely covered by Division Bench judgment of the Hon'ble Calcutta High Court in the case of Pradip Kumar Ma/hotra (Supra), wherein the facts were similar to the facts of the instant case. In Pradip Kumar's case assessee had substantial holding in a private company. The assessee permitted his immovable property to be mortgaged to the bank for enabling the company to take the benefit of

loan. The Board of Directors of the company passed a resolution to obtain interest free deposit upto 50 lakhs as and when required. The assessee obtained from the company a sum of 20,75,000/- by way of security deposit. Out of this amount, a sum of 20 lakhs was returned by the assessee to the company. The Assessing Officer added the sum of 20,75,000/- as deemed dividend. The Hon'ble High Court while allowing the appeal of assessee held that for retaining the benefit of loan availed of from the bank, if decision was taken to give advance to the assessee such decision was not to give gratuitous advance to its shareholder but to protect the business interest of the company. The sum of 20,75,000/- could not be treated as deemed dividend. The Division Bench of the Hon'ble Calcutta High Court followed the decision of the Hon'ble Delhi High Court in the case of CIT Vs. Creative Dyeing & Printing P. Ltd. Reported as 318 ITR 476(Del). In the instant case also the assessee was allowed to withdraw funds from the company as per requirement for personal purposes against the personal guarantee and the collateral security given by her to facilitate her availing of credit facility of the company.

It is a well settled law that loan or advance given to a shareholder by a company in which public is not substantially interested and which had accumulated profits, the amount advanced as loan to such shareholder is deemed to be dividend as per the provisions of section 2(22)(e) of the Act. However, the facts and circumstances of each case have to be scrutinized before applying the ratio of the cases holding above well settled law. In the facts and circumstances of the instant case, judgements relied upon by the DR in the cases of Sarada P.(supra), P.K.Abubucker (supra) and Trarulata Shyam (supra) are not applicable.

The Commissioner of Income Tax (Appeals) vide order dated 6.4.2011 has rightly deleted the addition made on account of "deemed dividend" by the Assessing Officer. We do not find any infirmity in the order passed by the Commissioner of Income-tax(Appeals). In view of aforesaid findings, the appeal of the Revenue falls and the same is dismissed being devoid of any merit."

Therefore the assessing officer's rejection of the submission of the appellant that the property sale advance was for purchase of property for

the use of the company for its business was on an incorrect footing. Therefore, it is held that such advances falls within the meaning of Commercial and Business purposes and cannot be treated as deemed dividend u/s 2(22)(e) of the Act.

The Assessing Officer is directed the delete the addition of Rs.2,31,00,000/- made under this head. This ground is allowed."

From the above, it is clear that the Ld. CIT(A) has examined thenature and scope of the transactions and found that the impugned transactions are towards business and commercial purpose and there is no benefit accruing to the assessee from such transaction. Thus, on the above facts and circumstances , the assessee has clearly established that the impugned transactions are not following within the scope of section 2(22)(e). The Revenue is not able to dislodge such findings recorded by the Ld. CIT(A) by relevant material. Therefore, the case laws relied on by the Ld DR is not of any help to the revenue on the above facts and circumstances of this case. Hence, we do not find any reason to interfere with the order of the Ld. CIT(A). Therefore, we dismiss the Revenue's corresponding grounds of appeal.

6. With regard to the addition made under the head house property, it is clear that the assessee is owner of the land and building. It was used by the company towards its business purposes. Therefore, the annual value of property, i.e. the income arising from the house property, has to be assessed to tax u/s.s 22 to 27 of the Income Tax

Act. The AO has based the rental income received by the assessee in the immediately succeeding year, as the sum for which the property might reasonably be expected to let from year to year and particularly for this assessment year. On which, the assessee has not placed any material to hold that the amount assessed by the AO is unreasonable. Therefore, we uphold the order of the AO. To this extent, the Revenue's appeal is allowed. In the result, the Revenue's appeal is partly allowed.

7. In the result, the Revenue's appeal is partly allowed.

Order pronounced on 25th February, 2020 at Chennai.

Sd/-

(एन.आर.एस .गणेशन)

(N.R.S. GANESAN)

न्यायिकसदस्य/Judicial Member

Sd/-

(एसजयरामन)

(S. JAYARAMAN)

लेखासदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated: 25th February, 2020

JPV

आदेशकीप्रतिलिपिअग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त) अपील(/CIT(A)
4. आयकरआयुक्त/CIT
5. विभागीयप्रतिनिधि/DR
6. गार्डफाईल/GF