
(2012) 01 DEL CK 0045
In the Delhi High Court
Case No : ITA No. 780 of 2011

CIT

APPELLANT

Vs

Standipack Pvt. Ltd.

RESPONDENT

Date of Decision : 25-01-2012

Acts Referred:

Citation : (2012) 206 TAXMAN 32

Hon'ble Judges : R.V. Easwar, J

Bench : Single Bench

Advocate : Deepak Chopra, for the Appellant; Mohit Jolly, for the Respondent

Final Decision : Dismissed

Judgement

Sanjiv Khanna, J.—Revenue, by this appeal, u/s 260A of the Income Tax Act, 1961, impugns the order dated 22nd December, 2010 passed by the Tribunal in the case of Standipack Pvt. Ltd. in ITA No. 3791/Del/2010 and cross objection No. 293/Del/2010 pertaining to the assessment year 2006-07.

2. By the impugned order, the Tribunal has held that the provision of deemed dividend in section 2(22)(e) of the Act was not applicable as the respondent/ assessee was not the beneficial owner of the shares of M/s. Wecan Services Limited. It has been held that Saumya Meattle was the beneficial owner of the said shares and therefore, the requirement of Section 2(22)(e) was not satisfied. The tribunal has held that the requirement is that the shareholder should also be the beneficiary owner of the shares.

3. M/s. Wecan Services Ltd. had advanced Rs.70 lacs to the respondent/ assessee. The Revenue claims that the respondent/assessee was a registered shareholder of Wecan Services Limited and therefore the fact that Ms. Saumya Meattle was the beneficiary owner of the said shares was inconsequential. Learned counsel for the Revenue has relied upon Section 153 of the Companies Act, 1956 and the decision of the Madras High Court in Commissioner of Income Tax Vs. T.P.S.H. Sokkalal, .

4. As far as Delhi High Court is concerned, this question is no longer res Integra and stands concluded vide decision dated 11th May, 2011 in ITA No. 352/2011 titled CIT Vs. Indian Technocraft Limited. This ITA was disposed of along with number of other ITAs including ITA No. 462/2009 titled CIT Vs. Ankitech Pvt. Limited.

5. The Special Bench of the ITAT, in the case of ACIT Vs. Bhaumik Colour Pvt. Ltd, 118 ITD 1 (Mum.)(SB) referred to Commissioner of Income Tax, Andhra Pradesh Vs. C.P. Sarathy Mudaliar, and has elucidated:-

20. In the case of CIT v. C.P. Sarathy Mudaliar (supra), provisions of Section 2(6A)(e) of the Act, 1922, which was synonymous to Section 2(22)(e) of the IT Act, 1961 came up for consideration. In the said case, members of HUF acquired shares in a company with the fund of the family. Loans were granted to HUF and the question was whether the loans could be treated as dividend income of the family falling within Section 2(6A)(e) of the Act, 1922. The apex Court held that only loans advanced to shareholders could be deemed to be dividends u/s 2(6A)(e) of the Act; the HUF could not be considered to be a "shareholder" u/s 2(6A)(e) of the Act and hence, loans given to the HUF will not be considered as loans advanced to "shareholder" of the company and could not, therefore, be deemed to be its income. The apex Court further held that when the Act speaks of shareholder it refers to the registered shareholder.

21. The aforesaid decision of the apex Court in the case of C.P. Sarathy Mudaliar (supra) has been followed by the apex Court in the case of Rameshwarlal Sanwermal v. CIT (supra). In this case, the company advanced the loans to the assessee HUF who was the beneficial owners of the shares in the company, but the shares were registered in the name of the individual Karta, who held the shares for and on behalf of the HUF. On the above facts, the question before the Supreme Court was whether the loans advanced to the HUF-beneficial owner of the shares-would be taxed as deemed dividend in the hands of the HUF. The Supreme Court held that the HUF being only the beneficial shareholder and not a registered shareholder would not fall within the purview of Section 2(6A)(e) of the 1922 Act. The apex Court observed as follows:...What Section 2(6A)(e) is designed to strike at is advance or loan to a "shareholder" and the word "shareholder" can mean only a registered shareholder. It is difficult to see how a beneficial owner of shares whose name does not appear in the register of shareholders of the company can be said to be a "shareholder". He may be beneficially entitled to the share but he is certainly not a "shareholder". It is only the person whose name is entered in the register of the shareholders of the company as the holder of the shares who can be said to be a shareholder qua the company and not the person beneficially entitled to the shares. It is the former who is a "shareholder" within the matrix and scheme of the company law and not the latter. We are, therefore, of the view that it is only where a loan is advanced by the company to a registered shareholder and the other conditions set out in Section 2(6A)(e) are satisfied that the amount of the loan would be

liable to be regarded as "deemed dividend" within the meaning of Section 2(6A) (e).

22. It is thus clear from the aforesaid pronouncement of the Hon"ble Supreme Court that to attract the first limb of the provisions of Section 2(22)(e) the payment must be to a person who is a registered holder of shares. As already mentioned the condition under the 1922 Act and the 1961 Act regarding the payee being a shareholder remains the same and it is the condition that such shareholder should be beneficial owner of the shares and the percentage of voting power that such shareholder should hold that has been prescribed as an additional condition under the 1961 Act. The word "shareholder" alone existed in the definition of dividend in the 1922 Act. The expression "shareholder" has been interpreted under the 1922 Act to mean a registered shareholder. This expression "shareholder" found in the 1961 Act has to be therefore construed as applying only to registered shareholder. It is a principle of interpretation of statutes that where once certain words in an Act have received a judicial construction in one of the superior Courts, and the legislature has repeated them in a subsequent statute, the legislature must be taken to have used them according to the meaning which a Court of competent jurisdiction has given them.

23. In the 1961 Act, the word "shareholder" is followed by the following words "being a person who is the beneficial owner of shares". This expression used in Section 2(22)(e), both in the 1961 Act and in the amended provisions w.e.f. 1st April, 1988 only qualifies the word "shareholder" and does not in any way alter the position that the shareholder has to be a registered shareholder. These provisions also do not substitute the aforesaid requirement to a requirement of merely holding a beneficial interest in the shares without being a registered holder of shares. The expression "being" is a present participle. A participle is a word which is partly a verb and partly an adjective. In Section 2(22)(e), the present participle "being" is used to described the noun "shareholder" like an adjective. The expression "being a person who is the beneficial owner of shares" is therefore a further requirement before a shareholder can be said to fall within the parameters of Section 2(22)(e) of the Act. In the 1961 Act, Section 2(22)(e) imposes a further condition that the shareholder has also to be 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. It is not possible to accept the contention of the learned Departmental Representative that under the 1961 Act there is no requirement of a shareholder being a registered holder and that even a beneficial ownership of shares would be sufficient.

24. The expression "shareholder being a person who is the beneficial owner of shares" referred to in the first limb of Section 2(22)(e) refers to both a registered shareholder and beneficial shareholder. If a person is a registered shareholder but not the beneficial then the provision of Section 2(22)(e) will not apply. Similarly if a person is a beneficial shareholder but not a registered shareholder

then also the first limb of provisions of Section 2(22)(e) will not apply.

6. In the case of Indian Technocraft (supra), the Division Bench of Delhi High Court specifically approved the above observation of the Special Bench of the Tribunal in the case of ACIT Vs. Bhaumik Colour Pvt. Ltd., (supra). For the sake of convenience the paragraph 6 and 6.1 of the decision of the said Bench in Indian Techno Craft (supra) is reproduced below:-

6. We have heard both sides. We find ourselves in complete agreement with the ratio laid down by the Special Bench of the ITAT in the case of Bhaumik Colour Lab Pvt. Ltd. (supra). The Special Bench in the aforesaid case has opined that the provisions of Section 2(22)(e) of the I.T. Act create a fiction bringing in amounts paid as loans and advances otherwise than as divided into the net of dividends and such a provision must received strict interpretation. By applying the principle of strict interpretation the special Bench observed that no (sic.) attract the first limb of the provisions of section 2(22)(e), the payment must be to a person who is a registered holder of shares. The word "shareholder" alone existed in the definition of dividend in the 1922 Act and has been interpreted under the 1922 Act to mean a registered shareholder. This expression "shareholder" found in the 1961 Act has to be therefore construed as applying only to registered shareholders. It is a principle of interpretation of statutes that once certain words in an Act have received a judicial construction in one of the superior courts, and the legislature has repeated them in a subsequent statute, the legislature must be taken to have used them according to the meaning which a court of competent jurisdiction has given them.

6.1 In the 1961 Act, the word "shareholder" in section 2(22)(e) is followed by the following words "being a person (sic) who is beneficial owner of shares". This expression only qualifies the word "shareholder" and does not in any way alter the position that the shareholder has to be a registered shareholder nor substitute the requirement to a requirement of merely holding a beneficial interest in the shares without being a registered holder of shares. If a person is a registered shareholder but not the beneficial shareholder then the provisions of section 2(22)(e) will not apply. Similarly if a person is a beneficial shareholder but not a registered shareholder also the first limb of the provisions of section 2(22)(e) will not apply.

Thereafter the appeal was dismissed.

7. A similar view has also been taken in another decision dated 11th July, 2011 in ITA No. 223/2010 titled as Commissioner of Income Tax Vs. National Travel Services and other cases.

8. We may also note that the Bombay High Court in the case of The Commissioner of Income Tax Vs. Universal Medicare Private Limited, has approved the judgment of the Special Bench of the Tribunal in the case of Bhaumik Colour Pvt. Ltd.(supra).

9. In view of the aforesaid position and decisions of this Court, we do not find any substantial question of law arises for consideration of as the issue is covered by the earlier decisions of this court in Indian Technocraft (supra) and National Travel Services (supra).

10. The appeal is accordingly dismissed with no orders as to costs.