

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G', NEW DELHI**

**BEFORE SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER
AND
SHRI SUDHIR PAREEK, JUDICIALMEMBER**

**ITA No. 5826/DEL/2018
(Assessment Year: 2014-15)**

DCIT, Circle 27(1),
New Delhi

vs.

Uniparts India Ltd.,
Block-5, Gripwel House,
C-6 & C-7, Vasant Kunj,
New Delhi – 110 070.

(PAN: AAACU0454D)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Satyen Sethi, Advocate
Shri A.T. Panda, Advocate
REVENUE BY : Shri Vivek Kumar Upadhyay, Sr. DR.

**Date of Hearing : 27.08.2024
Date of Order : 11.10.2024**

ORDER

PER S. RIFAUR RAHMAN, AM :

1. This appeal is filed by the Revenue against the order of Id. Commissioner of Income-tax (Appeals)-9, New Delhi (hereinafter referred to as 'Ld. CIT (A)') dated 04.06.2018 for Assessment Year 2014-15. Aggrieved with the above order, Revenue is in appeal before us raising following grounds of appeal :-

- “1. On the facts and circumstances of the case and in law, the Ld. CIT(A)-9 is not justified in deleting the addition of Rs. 1,66,97,147/- made by the AO on account of investment made in various subsidiaries located both in India and abroad u/s. 14A read with Rule 8 D of the Act.*
- 2. On the facts and circumstances of the case Ld. CIT(A)-9 is not justified in deleting the addition of Rs. 6,43,40,824/- made as deemed dividend u/s. 2(22)(e) of the I.T. Act on account of various amounts received from wholly owned subsidiary”*
2. With regard to ground no.1 which relates to section 14A of the Income-tax Act, 1961 (for short ‘the Act’), at the time of hearing, ld. DR for the Revenue submitted that ld. CIT (A) deleted the above disallowance based on the finding that there is no exempt income declared by the assessee during this year. He agreed that assessee has not declared any exempt income during the year, however he relied on the CBDT circular and findings of the Assessing Officer.
3. On the other hand, ld. AR for the assessee submitted that the issue raised by the Revenue is covered issue and he brought to our notice page 88 of the paper book in assessee’s own case in which coordinate Bench decided the issue in favour of the assessee in ITA No.6056/Del/2017 for AY 2010-11 vide order dated 28.02.2023 by observing that there is no exempt income.
4. Considered the rival submissions and material placed on record. We observed that assessee has not declared any exempt income during the year

and the issue is fairly settled and covered in favour of the assessee by various decisions of different courts, in specific Hon'ble jurisdictional High Court in the case of PCIT vs. Era Infrastructure (India) Ltd. (2022) 141 Taxmann.com 289 (Del.). Accordingly, ground no.1 raised by the Revenue is dismissed.

5. With regard to ground no.2 relating to issue of deemed dividend, the relevant facts brought to our notice by the ld. DR for the Revenue are that during assessment proceedings, Assessing Officer observed that assessee has received a loan of Rs.6,43,40,824/- from Gripwel Fasteners Pvt. Ltd. (GFPL) during the year. As per the balance sheet of the assessee under Note 12 Non-current Investment, GFPL is mentioned as a wholly owned subsidiary of the assessee. A query was raised to the assessee why the abovesaid loan taken from GFPL should not be treated as deemed dividend.

In response, assessee submitted as under :-

"Provisions of Section-2(22)(e) of the Act are applicable to all the corporate entities in which the public is not substantially interest i.e. closely held companies only. The Section-2(18) of the Income Tax Act, 1961 provides the definition of "Companies in which the public is substantially interested" and as per Sub-clause (c) in Section- 2(18)(b)(B), it is provided that the provisions would apply to any company to which clause (b) applies, which will also include _any company which may be subsidiary of a holding company. In other words, the requirements of sub-clause (c) could be fulfilled either by any company to which this clause applies or any subsidiary company

of such company, where such subsidiary company fulfills the conditions laid down in clause (b) of Section-2(18) applies.

Accordingly, in the present case, the assessee company is not a private company as defined in the Companies Act, 1956 and also, it wholly owned subsidiary company i.e. M/s Gripwel Fasteners Pvt. Ltd., from whom loan had been accepted, and which is not a private company as defined in the Companies Act, 1956. Further, the assessee company was holding the whole of the share capital of its wholly owned subsidiary company through out the previous year as prescribed in Section-2(J 8)(B)(c) of the Act.

It is further submitted that more than 20% of the issued share capital of the company is held by the persons including foreign investment companies other than the promoters of the company and hence, the assessee company is not a closely held company. Further, all the shares of the company are freely transferable and there is no restriction on the transfer of shares of the assessee company.

In view of the above explanation, it is evident that the assessee company as well as its subsidiary company are the companies in which public is substantially interested and hence, the provisions of Section-2(22)(e) of the IT. Act, 1961 are not applicable in case of the assessee company.

Further, notwithstanding with whatsoever mentioned earlier, we wish to mention that as per Section-2(22)(e) of the Act, . the amount of deemed dividend shall not exceed the accumulated profit of the company which had advanced loan to other company. In the present case, the accumulated profits of M/s Gripwel Fasteners Pvt. Ltd., the company which had advanced loans to the assessee company as on 01.04.2013 was Rs.2,25,17,222/-. Copy of the Audited balance sheet as at 31.03.2013 and necessary schedule of "Reserves and Surplus" is enclosed herewith for your kind reference. Accordingly, the amount of deemed dividend shall not exceed the amount of Rs.2,25,17,222/-.

It is further submitted that the assessee company had mentioned in its audit report total amount of all the transactions and not the maximum amount advances at any time during the year under

assessment and thus, the total amount mentioned in the report cannot be considered as deemed dividend and maximum amount outstanding on any day during the year should be considered as deemed dividend."

6. After considering the above submissions of the assessee, Assessing Officer rejected the same and observed that a substantial shareholding to the extent of 70.79% are in the hands of four individuals belonging to one family and also rejected the free transfer of shares claimed by the assessee by referring to the Article of Association of the company which revealed that any allotment of shares are transferred thereof is at the discretion of the Board of Directors. By relying on the case laws discussed in the assessment order, he made the addition as deemed dividend in the hands of the assessee.
7. Aggrieved with the above order, assessee preferred an appeal before the Id. CIT (A) who deleted the addition.
8. Ld. DR for the Revenue brought to our notice findings of the Id. CIT (A) at page 15 of the order and submitted that Id. CIT (A) has not disputed the fact that assessee has taken a loan from GFPL and he gave relief on the basis that the transactions were in the nature of current account transfers rather than loan transfers which are relating to travelling expenses, imprest, fooding expenses, taxes paid on behalf of GFPL, conveyance expenses, etc..
9. On the other hand, Id. AR for the assessee brought to our notice page 16 of the first appellate order and submitted that Id. CIT (A) has deleted the

addition with the finding that no loan was given by the assessee company to GFPL and the transactions between two companies are in the nature of current account transactions and there was no credit balance of GFPL in the books of the recipient i.e. assessee company, as evident from the ledger account filed before him. In this regard, he brought to our notice pages 69 to 71 of the paper book wherein the details of transactions are given in ledger account. He submitted that all the transactions are nature of reimbursement transactions wherein travelling, food and conveyance expenses are incurred on behalf of GFPL and basically in the nature of current account wherein assessee receives certain advance and incurs expenditure on behalf of them. Therefore, this can never be considered as loan transaction. In this regard, he relied on the case laws page 48 of the paper book in which ITAT, Mumbai Bench decided the similar issue in favour of the assessee in the case of Ravindra R Fotedar vs. ACIT 167 ITD 100 (Mumbai).

10. Considered the rival submissions and material placed on record. We observed that GFPL is the wholly owned subsidiary company of the assessee and the Assessing Officer observed that the assessee has taken certain loan from them and considering the fact that it is a wholly owned subsidiary, he treated the transaction as deemed dividend u/s 2 (22)(e) of the Act. However, we observed from the ledger copy submitted before us which

shows that assessee has taken certain advances from the company and incurs certain expenditure on behalf of them which basically relates to travelling, conveyance expenditure and certain expenditure incurred on behalf of them. As per the transactions involved between these two entities, it does not give any impression that it is a loan transaction. More or less, the details of transactions show that it is only a revenue expenditure and transactions are seemed to be current transactions. Therefore, we are inclined to agree with the findings of Id. CIT (A) and ground raised by the Revenue is dismissed.

11. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in the open court on this 11th day of October, 2024.

Sd/-

sd/-

**(SUDHIR PAREEK)
JUDICIAL MEMBER**

**(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER**

**Dated : 11.10.2024
TS**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)-9, New Delhi.
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI