

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**TAX APPEAL NO. 958 of 2015****TO****TAX APPEAL NO. 959 of 2015**

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THE COMMISSIONER OF INCOME TAX(TDS)....Appellant(s)

Versus

SCHUTZ DISHMAN BIO-TECH PVT.LTD.....Opponent(s)

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Appearance:

MRS MAUNA M BHATT, ADVOCATE for the Appellant(s) No. 1

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CORAM: HONOURABLE MR.JUSTICE AKIL KURESHI
and
HONOURABLE MR.JUSTICE MOHINDER PAL**Date : 21/12/2015****ORAL ORDER****(PER : HONOURABLE MR.JUSTICE AKIL KURESHI)**

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 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 deduction of tax at source also would not

arise. This view is supported by the following direct decisions :

CIT vs. Creative Dyeing & Pringint (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)

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.

(AKIL KURESHI, J.)

सत्यमेव जयते (MOHINDER PAL, J.)

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THE HIGH COURT
OF GUJARAT

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