आयकर अपीलीय अधिकरण 'ए" न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, CHENNAI

माननीय श्री मनोज कुमार अग्रवाल ,लेखा सदस्य एवं
माननीय श्री मनु कुमार गिरि, न्यायिक सदस्य के समक्ष।
BEFORE HON'BLE SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER
AND HON'BLE SHRI MANU KUMAR GIRI, JUDICIAL MEMBER

आयकरअपील सं./ ITA No.404/Chny/2024
(निर्धारणवर्ष / Assessment Year: 1999-2000)

The Income Tax Officer, Corporate Ward 3(1) Chennai.	**Vs.**	The Reliance Motor Company Ltd, 761, Anna Salai, Chennai 600 002.
		[PAN: AAACT 1230A]
(**अपीलार्थी**/Appellant)		(**प्रत्यर्थी**/Respondent)
अपीलार्थी की ओर से/ Appellant by	:	Shri. M. Karthikeyan, IRS, Addl CIT
प्रत्यर्थी की ओर से /Respondent by	:	Shri. R. Vijayaraghavan, Advocate & Shri. S. Nagarajan, C.A.
सुनवाई की तारीख/Date of Hearing	:	16.10.2024
घोषणा की तारीख /Date of Pronouncement	:	09.12.2024

आदेश / O R D E R

PER MANU KUMAR GIRI (Judicial Member)

This appeal by the assessee is arising out of the order of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi in order No.ITBA/NFAC/S/250/2023-24/1058493282(1) dated 06.12.2023. The assessment was framed by the ACIT, Company Circle-III(2), Chennai for the assessment year 1999-2000 u/s.143(3) r.w.s.147 of the Income Tax Act, 1961 (hereinafter the 'Act'), vide order dated 28.02.2005.

2. Grounds of appeal raised by the revenue are as under:

''1. The order of the learned Id. CIT (A) is contrary to law and facts and circumstances of the case.

2. The CIT (A) erred in allowing the appeal of the assessee on the issue of deduction of compensation under VRS scheme by placing reliance on the order of jurisdictional High Court in the case of CIT vs George Oaks Ltd [1992] 61 Taxman 225 (Madras) (E-10).

3. The CIT (A) failed to appreciate that facts of the relied upon case is different than that of present case, hence not applicable in assessee's own case.

4. The CIT(A) erred in giving relief to the assessee wrt addition made on account of deemed dividend u/s. 2(22)(e) of the Act.

5. The CIT(A) erred in holding that assessee is not a share holder in M/s. MCTM Corporation Pvt. Ltd. So, the first condition of section 2(22)(e) is not satisfied.

6. The CIT(A) failed to consider the decision of Hon'ble Supreme Court in case of M/s. National Travel Agency vs. CIT, wherein the Hon'ble Supreme Court revealed that One cannot be a registered owner and beneficial owner in the sense of a beneficiary of a trust or otherwise at the same time. Therefore, the moment there is a shareholder, who need not necessarily be a member of the company on its register, who is the beneficial owner of shares, the provisions of section 2(22)(e) gets attracted.

7. The CIT(A) failed to consider the decision of Hon'ble Supreme Court in the case of M/s. Gopal and sons (HUF) v. CIT, Kolkata-XI wherein it was held that even if HUF is not a registered shareholder in lending company, once payment is received by HUF and Karta, who is shareholder in lending company, has substantial interest in HUF, payment made to HUF shall constitute deemed dividend in HUF's hand as per Explanation 3 to section 2(22)(e).

8. For these and other grounds that may be adduced at the time of hearing. it is prayed that the order of the Id. CIT (A) may be set aside and that of the Assessing Officer be restored".

3. Brief facts of the case are that assessee is a dealer in car and motor bikes. The assessee company filed its return of income on 29.12.1999 admitting a total loss of Rs.3,35,02,070/-. The assessment was reopened by issuing the notice dated

23.03.2004 u/s 148 of the Act. In response, the assessee submitted that the original return filed may be treated as return filled in response to notice u/s 148 of the Act. Further, notice u/s 143(2)/142(1) were issued to the assessee. In response to notice, the assessee filed details before the A.O. During the assessment proceedings the A.O. noticed that the assessee received a loan of Rs.2,24,00,000/- from M/s. MCTM Corporation Ltd. M/s MCTM Corporation Pvt. Ltd. is a sister concern of the assessee company. Since both the entities had common shareholders, Ld. AO proceeded to invoke the provisions of Sec.2(22)(e) against the assessee. The assessee submitted that the shareholders who are having 10% voting power in the MCTM Corporation P. Ltd. was not having 20% shareholding in the Reliance Motors Company and therefore, the provision of section 2(22)(e) are not applicable. The assessee submitted the list of shareholders and number of shares held by them in the Reliance Motor Co. Ltd. The ld. Assessing Officer asked the assessee to produce the share application forms filed by firms and HUF and other joint holders to verify where these shares are in the names of the entities and whether these entities have ever applied for allotment of share in this company. In response, the assessee stated that these are very old allotment and therefore it was not possible to submit share applications filed by these entities for allotment of shares. The reply of the assessee was not accepted by the A.O. The AO held that the assessee failed to explain the genuineness of the shareholdings in the HUF names of Met Muthiah and Met Pathachi. Hence, the loan taken from the MCTM Corporation Pvt. Ltd. by the assessee was treated as deemed dividend u/s 2(22)(e) of the I.T.Act, 1961.

4. The A.O. further noted that the assessee claimed VRS payments to the tune of Rs.2,12,08,000/- The assessee claimed this entire amount as revenue expenditure for the purpose of determining the income under the Act. The A.O. held that expenditures incurred by the assessee was a capital expenditure having benefit for several years and therefore, the assessee was requested to explain why this amount should not be treated as capital expenditure. The assessee submitted that the Sec. 35DDA was introduced only from the A.Y. 2001-02 and therefore the amount incurred constitutes revenue expenditure in all the earlier years. This expenditure was in the nature of capital loss. The reply of the assessee was not accepted by the A.O. Accordingly, the entire amount of Rs.2,12,08,000/- was treated as capital expenditure and the Ld. Assessing Officer disallowed the same. Aggrieved, the assessee preferred an appeal before the ld. CIT(A). During appellate proceedings, the assessee drew attention to the shareholding pattern of the lending company as well as that of assessee entity. It was stated that none of the shareholder who held more than 10% shares in the lending company beneficially hold 20% or more share in the assessee company.

5. The ld. CIT(A) on perusal of the records found that MCT Muthiah and MCT Pethachi held more than 10% in the lending company but do not hold more than 20% in the appellant company. However, the AO proceeded to include the shares held by a person in their individual capacity as well as in the capacity of partner in the firm and also as a member of the HUF. The A.O has made the addition on account of the fact that these shareholders of M/s MCTM Corporation Pvt Ltd are

HUF and also joint holders and hence, ld. Assessing Officer asked for the share application forms to ascertain whether the composite shareholding of the individual as well as the holding of HUF would be more than 20 percent in the appellant company. The appellant was unable to produce the share application forms and consequently, A.O. proceeded to make the addition on the ground that the genuineness of the shareholding in the HUF of MCT Muthiah and MCT Pethachi were not verifiable. The ld. CIT(A) did not agree to the action of the A.O. for the reason that even if it be accepted that the total shareholding of MCT Muthiah and MCT Pethachi individuals along with their share of the HUF holding was more than 20 percent in the appellant company even then the same could not be taxed in the hands of the assessee company. Such deemed dividend would be taxable only in the hands of the person having the substantial interest in the appellant company being the concern in which had received the loan or advance. The taxability of the same would not be in the hands of the appellant company. Therefore, Ld. CIT(A) deleted the addition of deemed dividend.

6. On the issue of deduction of compensation under the VRS scheme, Ld. CIT(A) relied on the judgment of the Hon'ble Jurisdictional High Court in the case of *CIT vs George Oaks Ltd [1992] 61 Taxman 225 (Madras*) and deleted the addition. Aggrieved, the Revenue is in further appeal before us.

7. The Ld. DR has referred to the decision of Hon'ble Supreme Court in the case of *National Travel Services Vs CIT [2018] 89 taxmann.com 332 SC* wherein ratio of the judgment of the *Ankitech's (P.) Ltd [2011] 199 Taxman 341/340 ITR 14 (Delhi*) has been doubted. The Ld. AR, on the other hand, submitted that impugned

issue of deemed dividend is covered by the decision of the co-ordinate Bench in assessee's own case in ITA No.2160/Chny/2017 for AY 2000-01 dated 15.06.2022 wherein the co-ordinate bench has followed the judgment of the Hon'ble Supreme Court in the case of *CIT Vs. Madhur Housing and Development Company (2017) 100 CCH 46 ISCC.* In fact, the judgment of the Hon'ble Supreme Court in the case of *CIT Vs. Madhur Housing and Development Company* has affirmed the case of *CIT Vs Ankitech (P) Ltd [340 ITR 14 Del HC].*

8. We concur that the impugned issue of deemed dividend is squarely covered in assessee's favor by the earlier decision of Tribunal in assessee's own case for AY 2000-01 in ITA No.2160/Chny/2017 order dated 15.06.2022 as under:

> *''5. Before us, the ld.counsel argued that none of the shareholders who beneficially hold more than 10% of the shares carrying voting rights in lending company beneficially hold more than 20% of shares carrying voting rights in the assessee company. The ld.counsel stated that both the sections 2(22)(e) & 2(32) of the Act uses the beneficial ownership tests only. None of the shareholders who beneficially hold more than 10% shares carrying voting rights in the lending company. The assessee before us and even the same before the AO and CIT(A) filed details of share holding pattern as under:-*

As on 01st April 1999

Name of the Shareholder	*No. of Shares*	*Percentage held*
M Ct Muthiah	*2,500*	*50%*
Kamala Muthiah	*2,500*	*50%*
TOTAL	*5,000*	*100%*

As on 31st March 2000

Name of the Shareholder	*No. of Shares*	*Percentage held*
M Ct Muthiah	*60,500*	*51%*
Kamala Muthiah	*17,500*	*15%*
Arti Meenakshi	*15,300*	*13%*
Nandini Valli	*15,300*	*13%*
Art Meenkashi Trust	*5,000*	*4%*
Nandini Valli Trust	*5,000*	*4%*
TOTAL	*1,18,600*	*100%*

The ld.counsel for the assessee also stated that this issue is now settled by the decision of Hon'ble Supreme Court in the case of CIT vs. Madhur Housing and Development Company, (2017) 100 CCH 46 ISCC, wherein the judgment of Hon'ble Delhi High Court in the case of CIT vs. Ankitech (P) Ltd., (2012) 340 ITR 14 affirmed. He narrated that the Hon'ble Delhi High Court has concluded that, it is the definition of dividend which is enlarged by the deeming provision of section 2(22)(e) and not that of 'shareholder' and therefore a concern which is given loan or advance by a company cannot be treated as shareholder/member of the latter simply because a shareholder of the lender company holding voting power of 10% or more therein has substantial interest in such concern and such loan or advance cannot be treated as deemed dividend u/s.2(22)(e) of the Act at the hands of the concern. According to Hon'ble High Court any company is supposed to distribute the profits in the form of dividend to its shareholders/members and such dividend cannot be given to non-members. The second category specified under Section 2(22)(e) of the Act, viz., a concern (like the assessee herein), which is given the loan or advance is admittedly not a shareholder/member of the payer company. Therefore, under no circumstance, it could be treated as shareholder/member receiving dividend. If the intention of the Legislature was to tax such loan or advance as deemed dividend at the hands of deeming shareholder‖, then the Legislature would have inserted deeming provision in respect of shareholder as well, that has not happened. Hon'ble High Court observed that most of the arguments of the learned counsels for the Revenue would stand answered, once we look into the matter from this perspective. In a case like this, the recipient would be a shareholder by way of deeming provision. It is not correct on the part of the Revenue to argue that if this position is taken, then the income is not taxed at the hands of the recipient. Such an argument based on the scheme of the Act as projected by the learned counsels for the Revenue on the basis of Sections 4, 5, 8, 14 and 56 of the Act would be of no avail. Simple answer to this argument is that such loan or advance, in the first place, is not an income. Such a loan or advance has to be returned by the recipient to the company, which has given the loan or advance. Precisely, for this very reason, the Courts have held that if the amounts advanced are for business transactions between the parties, such payment would not fall within the deeming dividend under Section 2(22)(e) of the Act. Insofar as reliance upon Circular No. 495 dated 22.09.1997 issued by CBDT is concerned, such observations are not binding on the Courts. Once it is found that such loan or advance cannot be treated as deemed dividend at the hands of such a concern which is not a shareholder, and that is the correct legal position, such a circular would be of no avail. The definition of shareholder is not enlarged by any fiction.

6. In view of the above, we are of the view that this issue is covered by the decision of Hon'ble Supreme Court wherein it is held that as per provisions of section 2(22)(e) of the Act, the concern like the assessee

which has received loan from M.Ct.M Corporation P Ltd., which is giving loan or advance is not a shareholder or member of the receiver company. Therefore, under no circumstances the assessee could be treated as shareholder, member receiving dividend. Hence, the assessment of this loan received by assessee cannot be treated as deemed dividend u/s.2(22)(e) of the Act. Hence, we delete the addition and allow this issue of assessee's appeal".

The bench held that under no circumstances, the assessee could be treated as shareholder / member receiving dividend. In other words, the assessee not being a shareholder, cannot be visited with impugned addition. Facts being pari-materia the same, taking the same view, we confirm the adjudication of Ld. CIT(A). The corresponding grounds of appeal stand dismissed.

9. The issue of VRS payment has also been decided by coordinate bench in AY 2000-01 as under: -

"7. The next issue in this appeal of assessee is as regards to the order of CIT(A) confirming the action of AO in disallowing VRS payment claimed. For this, assessee has raised following two grounds:-

vi. The L'd CIT(A) erred in adding back a sum of Rs.76,55,667 towards VRS payments. He must have found that the sum was already added back by the Appellant in computing the loss of Rs.47,24,790.

vii. The L'd CIT(A) erred in holding that VRS payments made by the assessee to its employees in connection with Voluntary Retirement Scheme is in the nature of Capital expenditure.

8. At the outset, the ld.counsel for the assessee stated that the AO while framing assessment added a sum of Rs.76,55,667/- being amount written off in the books of accounts of the assessee on account of Voluntary Retirement compensation paid in earlier years. The ld.counsel before us stated that this amount was added back by the AO notwithstanding the fact that the assessee itself disallowed the same in computing the taxable income for assessment year 2000-01. The ld.counsel for the assessee before us filed computation of total income and drew our attention to the relevant addition of VRS payment amortized in the books amounting to Rs.76,55,667/-. When this paper was referred to ld. Senior DR, he only requested that the same can be verified by the AO and the matter can be remanded back. For this, the ld.counsel for the assessee agreed.

9. After hearing both the sides, we remand this matter back to the file of the AO who will verify the fact that the assessee himself disallowed in the computation of income or not and accordingly, will decide the same. This issue of assessee's appeal is set aside and allowed for statistical purposes'.

Facts being pari-materia the same, taking the same view, this issue stand restored back to Ld. AO on similar lines. The corresponding grounds stand allowed for statistical purposes.

10. In result, appeal of the revenue stands partly allowed for statistical purposes.

Order pronounced on 9th day of December, 2024 at Chennai.

Sd/-	Sd/-
(मनोज कुमार अग्रवाल)	**(मनु कुमार गिरि)**
(MANOJ KUMAR AGGARWAL)	**(MANU KUMAR GIRI)**
लेखा सदस्य / ACCOUNTANT MEMBER	**न्यायिक सदस्य / JUDICIAL MEMBER**

चेन्नई Chennai:
दिनांक Dated : 9-12-2024
KV

आदेश की प्रतिलिपि अग्रेषित /Copy to :

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT, Chennai/Coimbatore/Madurai/Salem.
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF