

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A' : NEW DELHI

BEFORE SHRI G.D.AGRAWAL, VICE PRESIDENT AND
SHRI A.D.JAIN, JUDICIAL MEMBER

ITA No.3247/Del/2012
Assessment Year : 2007-08

Deputy Commissioner of
Income Tax,
Circle-1,
Ghaziabad.

(Appellant)

Vs. M/s Ashok Kumar Amit Kumar &
Shipra Estates (P) Ltd.,
C-36, Patel Nagar-II,
Ghaziabad.

PAN : AAJFA2511K.

(Respondent)

Appellant by : Shri Bhim Singh, Sr.DR.
Respondent by : None.

ORDER

PER G.D.AGRAWAL, VP :

This appeal by the Revenue is directed against the order of learned CIT(A), Ghaziabad dated 30th April, 2012 for the AY 2007-08.

2. The Revenue has raised the following grounds:-

“1. That the Id.CIT(A) has erred in law and on facts of the case, by not appreciating the application of section 28 of the I.T.Act 1961 as per which the value of any benefit or perquisite, whether convertible into money or not arising from the business or exercise of a profession is chargeable under the head profit and gain from business or profession. In the present case the firm has given interest free loan to the respective partners leaving their capital balance in negative, thereby diverting the funds of the firms or utilizing the same in their hands.

2. That Id.CIT(A) erred in law and on the facts of the case by failing to appreciate that the partners have over-drawn funds from the firm which is equivalent to the deemed dividend under section 2(22)(e) of the IT Act, 1961 as these payments are also paid to partners by way of

advance or loans by the firm on behalf or for the individual benefit of the partners of the firm or the individual. As such, like deemed, notional interest is also chargeable in the given case.

3. Therefore, the order of the Id.CIT(A) be cancelled or set aside and the order of the AO may be restored.

4. The appellant craves leave to modify/amend or add any one or more grounds of appeal."

3. The facts of the case are that the assessee is a partnership firm and the Assessing Officer noticed that the debit balance in the partners' account was more than the credit balance. He, therefore, charged the interest on the net debit balance of partners at the rate of 12% and accordingly made the addition of ₹20,61,845/-. On appeal, learned CIT(A) deleted the same with the following finding:-

"4.1 It is clear from the assessment order and record that the AO has charged notional interest and has added the same as income in assessee's hand. I am afraid; this view of taxing income on notional basis can not be sustained in the eyes of law.

It would have been different matter altogether, had the firm been obtaining interest bearing loan and paying interest on the same chargeable to profit & loss a/c. In the present case, the appellant has not taken any loan and consequently, has not paid any interest either. Therefore, there is no question of any disallowances, fully or partly, out of interest debited to P & L A/c either!

4.2 Even in respect of partnership arrangement, there is no clause in the Partnership Deed which requires the firm to charge interest on debit balances in the partner's account, nor there is any provision for payment of any interest to the partners on their capital.

4.3 Thus, the entire basis of addition, as made by the AO, is merely hypothetical and notional, which can not be upheld. Addition of Rs.20,61,845/- is therefore deleted."

4. After considering the arguments of learned DR and perusing the material placed before us, we do not find any infirmity in the above finding of learned CIT(A). That in the Income-tax Act, 1961, there is no provision of taxing any income on notional basis. Admittedly, no interest is charged on the debit balance of the partners and in the partnership deed also, there is no provision for charging of such interest. Therefore, charging of interest by the Assessing Officer on the debit balance of the partners was only taxing of notional income. Learned CIT(A) also recorded the finding that in this case, there is no claim of interest payment by the assessee and, therefore, it can also not be said that there was diversion of interest bearing funds. This finding recorded by the learned CIT(A) has not been controverted before us. In the grounds of appeal, the Revenue has referred to Section 28 and claimed that the benefit or perquisite whether convertible into money or not arising from business or profession is chargeable as business income. However, in our opinion, on the facts of the assessee's case, there is no benefit or perquisite. It is simply a debit balance in the accounts of the partners. Similarly, vide ground No.2, the Revenue has claimed that the overdrawn amount should be treated as deemed dividend under Section 2(22)(e). That the question of deemed dividend can arise in the case of a company and not in the case of the partnership firm. The assessee is a partnership firm. In view of the above, we do not find any merit in the Revenue's appeal. The same is dismissed.

5. In the result, the appeal of the Revenue is dismissed.

Decision pronounced in the open Court on 27th August, 2013.

Sd/-

(A.D.JAIN)
JUDICIAL MEMBER

Sd/-

(G.D.AGRAWAL)
VICE PRESIDENT

Dated : 27.08.2013

VK.

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1. Appellant : **Deputy Commissioner of Income Tax,
Circle-1, Ghaziabad.**
2. Respondent : **M/s Ashok Kumar Amit Kumar &
Shipra Estates (P) Ltd., C-36, Patel Nagar-II,
Ghaziabad.**
3. CIT
4. CIT(A)
5. DR, ITAT

Assistant Registrar