IN THE HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD

THURSDAY, THE FOURTH DAY OF DECEMBER TWO THOUSAND AND TWENTY FIVE

PRESENT

THE HONOURABLE SRI JUSTICE P.SAM KOSHY
AND
THE HONOURABLE SRI JUSTICE NARSING RAO NANDIKONDA

INCOME TAX TRIBUNAL APPEAL Nos: 354, 355, 469 & 476 OF 2013

INCOME TAX TRIBUNAL APPEAL NO: 354 OF 2013

Income Tax Tribunal Appeal Under Section 260A of the Income Tax Act,1961 against the Order dated 14-12-2012 passed in ITA No.443/Hyd/2012/CO 101/Hyd/2012 for the Assessment Year 2002-2003 on the file of the Income Tax Appellate Tribunal, Hyderabad Bench 'A', Hyderabad.

Between:

Sri B.Dhanunjayarao, Hyderabad.

...Appellant

AND

Dy.Commissoner OF Income Tax, Circle 1(3), Ayakar Bhavan, Basheerbagh, Hyderabad.

...Respondent

INCOME TAX TRIBUNAL APPEAL NO: 355 OF 2013

Income Tax Tribunal Appeal Under Section 260A of the Income Tax Act,1961 against the Order dated 14-12-2012 passed in ITA No.445/Hyd/2012/CO 99/Hyd/2012 for the Assessment Year 2003-2004 on the file of the Income Tax Appellate Tribunal, Hyderabad Bench 'A', Hyderabad.

Between:

Smt. B.Seetharatnam, W/o Danunjayarao, Hyderabad.

...Appellant

AND

Dy.Commissioner OF Income Tax, Circle 1(3), Ayakar Bhavan, Basheerbagh, Hyderabad.

...Respondent

INCOME TAX TRIBUNAL APPEAL NO: 469 OF 2013

Income Tax Tribunal Appeal Under Section 260A of the Income Tax Act,1961 against the Order dated 14-12-2012 passed in ITA No.446/Hyd/2012/CO 100/Hyd/2012 for the Assessment Year 2006-2007 on the file of the Income Tax Appellate Tribunal, Hyderabad Bench 'A', Hyderabad.

Between:

Smt. B.Seetharatnam, W/o. Danunjayarao, Hyderabad.

...Appellant

AND

Dy.Commissioner OF Income Tax, Circle 1(3), Ayakar Bhavan, Basheerbagh, Hyderabad.

...Respondent

INCOME TAX TRIBUNAL APPEAL NO: 476 OF 2013

Income Tax Tribunal Appeal Under Section 260A of the Income Tax Act,1961 against the Order dated 14-12-2012 passed in ITA No.444/Hyd/2012/CO 98/Hyd/2012 for the Assessment Year 2006-2007 on the file of the Income Tax Appellate Tribunal, Hyderabad Bench 'A', Hyderabad.

Between:

Sri B.Dhanunjayarao, Hyderabad.

...Appellant

AND

Dy. Commissioner OF Income Tax, Circle 1(3), Ayakar Bhavan, Basheerbagh, Hyderabad.

...Respondent

Counsel for the Appellant: SRI N PURNACHANDRA RAO

Counsel for the Respondents: Ms. BOKARO SAPNA REDDY (SENIOR SC INCOME TAX)

The Court made the following: COMMON JUDGMENT

IN THE HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD

THE HON'BLE SRI JUSTICE P.SAM KOSHY
AND
THE HON'BLE SRI JUSTICE NARSING RAO NANDIKONDA

INCOME TAX TRIBUNAL APPEAL NOS.354, 355, 469 AND 476 OF 2013

Date: 04.12.2025

Between

Sri B.Dhanunjayarao ...Appellant

And

Deputy Commissioner of
Income Tax, Circle 1 (3),
Ayakar Bhavan, Basheerbagh,
Hyderabad. ...Respondent

COMMON JUDGMENT (per Hon'ble Sri Justice Narsing Rao Nandikonda)

Since the parties and issue involved in all these appeals being common, they are being heard together and are disposed of by way of this common judgment.

2. Heard Mr. N.Purnachandra Rao, learned counsel for the appellants and Ms. Bokaro Sapna Reddy, learned Senior Standing Counsel for Income Tax Department, appearing for the respondent.

3. These appeals are filed under Section 260-A of the Income Tax Act, 1961 (for short, the Act, 1961') aggrieved by the common order passed by the learned Income Tax Appellate Tribunal, Hyderabad Bench 'A', Hyderabad (for short the 'Tribunal') in ITA Nos.443/Hyd/2012 CO 101/Hyd/2012, ITA 444/Hyd/2012 CO 98/Hyd/2012, ITA 445/Hyd/2012 CO 99/Hyd/2012 and ITA 446/Hyd/2012 CO 100/Hyd/2012, dated 14.12.2012, for the Assessment Years 2002-2003, 2006-2007, 2003-2004 and 2006-2007 respectively.

4. Brief facts of the case are that these appeals are preferred by assessees. They are wife and husband. The appellants are Directors of M/s.BDR Projects Private Limited, Hyderabad, holding more than 10% shares in the Company and they are assessed to tax regularly. It is stated that during the Assessment Years 2002-2003, 2003-2004 and 2006-2007, both the Directors have taken advances from Andhra Bank against the credit facility be availed by the company for its business purposes for the purpose of construction of building jointly in respect of property bearing No.8-2-293/82/NL/64, situated at

MLA & MP Colony Road No.10C, Jubilee Hills, Hyderabad, admeasuring 600 square yards, which was acquired during the year 2000.

4.a. It is further stated that as the subject property was already pledged to the bank as a collateral security against the credit facilities availed by the company for development of its business purposes, any further loans could not be obtained on the said property to construct a house building. It is further stated that both the appellants who are wife and husband have no other option except to draw advances from the company and with the help of said advances to construct a building on the said open plot. On account of construction of the building, the value of property shoot up and the company availed further credit facilities for its business purposes from the said bank and the entire property including the building was under the custody of the bank by way of collateral security.

4.b. It is further stated that considering the above facts and circumstances of the case, the Assessing Officer while completing the Income Tax Assessment proceedings for all four

years treated the above advances in both the hands as **'deemed dividend'** by invoking the provision of Section 2 (22) (e) of the Act, 1961.

4.c. Being aggrieved by the said Assessment Order, the assessee preferred appeal before the learned Commissioner of Income Tax (Appeals)-II, Hyderabad, holding that there was no individual benefit to both the Directors on taking advances since the property / house building was pledged to the bankers as security for the loans obtained by the company for its business purposes and no further loan or advance could be obtained by the Directors on the said property as it was already pledged. It is further stated that even though there is a personal element of individual benefit to the assessee-appellant, the company from which the advances taken was also benefited by using the property as collateral security to the bank. It was further observed that the loan or advance given in return is an advantage upon the company and is not a gratuitous loan or advance given by the company and does not come under the permission of Section 22 (2) of the Act, 1961 and accordingly

the Commissioner **'deleted'** the advances made by the Assessing Officer.

4.d Being aggrieved by order passed by the learned Commissioner of Income Tax (Appeals); the Revenue filed an appeal before the Tribunal and contended that there was no need for a company to advance a loan, instead the company could have utilized the money for its own operations. He further contended that the company derived advantage by granting loan to the assessee though it was the assessee who derived the advantage and what was offered by him was only a collateral security in terms of personal guarantee. He also contended that the advances were drawn by the assessees for two years and three years respectively and the plea that the house was constructed only for the purpose of pledging with the bank is for fetching and to derive a conclusion that there is an advantage to the company in advancing such loan.

4.e. Further, the assessee also submitted by way of cross-objections to the appeal filed by the Revenue, wherein the Tribunal had held that the payments made by the company

towards advances to the assessee fulfils all the Characteristics of **'dividend'** as envisaged in Section 2 (22) (e) of the Act, 1961. In the aforesaid circumstances, there cannot be any other conclusion excepting to consider the advances given by the company to the assessees as **'deemed dividend'** at the hands of the assessees. It is also held that the Commissioner of Income Tax (Appeals) was not justified in granting the relief to the assessees and thereby the order passed by the learned Commissioner of Income Tax (Appeals) was accordingly set aside and the additions made by the Assessing Officer were restored considering it to be a **'deemed dividend'** in terms of Section 2 (22) (3) of the Act, 1961.

4.f. The main grievance of the of the appellant before this Court is that the Tribunal did not consider the evidentiary value of the letter filed and as it is not an additional evidence at all as it is only filed on the directions of the Tribunal. It is further contended that the letter dated 27.09.2002 clearly speaks about the details of the properties pledged with the bank in getting the credit facilities by the Company and that

not only considered the issue of 'pledge' as that of 'mortgage' which is not a case in the appellants' case, but also the date of letter dated 27.09.2002 read as 27.09.2012 as against the correct one of 27.09.2002. It further ignored the vital fact that the company is also getting benefit of credit facilities on account of pledge of the assessee property with the bank as rightly held in the case laws quoted by the Department are not only differ with that of the case of **Pradip Kumar Malhotra v. Commissioner of Income Tax**[1], as in these cases there is no return benefit to the said companies from where the advances were taken.

5. He further contended that though there are personal elements of the individual benefit to the assessees, the company from which the advances were taken also got benefited by using the property as collateral security for getting credit facilities. It was further stated that the Tribunal also erred in viewing that the said property against which credit facilities were availed is not figured in the letter dated

[1] 2011 338 ITR 538 (Cal)

31.05.2008, when the said property was actually figured in the letter dated 27.09.2002, during which period alone the property was kept as a collateral security.

6. On contra, the learned counsel for the Revenue has argued that in view of the provisions of Section 2(22)(e) of the Act, 1961, any payment by way of advance or loan amounts should be treated as a **'deemed dividend'**. The purpose for which the loan was taken is immaterial.

7. Having heard learned counsel for the appellants, learned Senior Standing Counsel for the Department and considering the material on record, the substantial question of law which arose before this Court is as follows:

> Whether on the facts and circumstances of the case the ITAT was justified in law in allowing the revenue appeal in treating the advances taken from company as deemed dividend u/s 2(22)(e)?"

8. Admittedly, the appellants herein, who are the Directors of M/s. BDR Projects Private Ltd., holding share of 10% by Smt. B.Seetharatnam and 33.33% by

Sri Danunjayarao and during the period of Assessment Year 2002–2003, 2003–2004 and 2006–2007 both the Directors intend to construct a building jointly on the property bearing No.8-2-293/82/NL/6A, situated at MLA &MP Colony Road, No.10C, Jubilee Hills, Hyderabad, admeasuring 600 square yards, which was acquired during the year 2000 in the name of Smt. B.Seetaratnam. The said plot was pledged as collateral security in Andhra Bank against the credit facility availed by the company for its business purpose. It is also stated that during the assessment year 2002– 2003 and 2006–2007, the Director Sri B.Dhanunjaya Rao had obtained advance of Rs.08.59 lakhs and Rs.20.00 lakhs respectively, making total sum of Rs.28.59 lakhs and Smt. B.Seetaratnam, the other Director for the year 2003-2004 and 2006-2007 availed advance of Rs.30.00 lakhs and Rs.20.00 lakhs respectively making total sum of Rs.50.00 lakhs and in total both Directors have availed advance of Rs.78.59 lakhs.

9. It is stated that the reason cited is that the properties were pledged to the bank as collateral security

against credit facilities availed by the company for its business purpose and they have not obtained for their individual benefit. The Assessing Officer while processing the assessments filed by the Directors for the Assessment year 2002–2003, 2003–2004 and 2006–2007, the Assessing Officer processed under Section 143 of the Act, 1961, wherein it was noticed that they have taken advances for an amount of ₹78.59 lakhs in total by both the Directors who were holding share of 18.69% and 33.33% of individual, as such said advances were treated as deemed dividend and within the meaning of Section 2(22)(e) of the Act, 1961, as such a notice was as issued under Section 148 of the Act, 1961 on 16.07.2007 and accordingly made an addition of the advances made to the Directors and completed the assessment and taking the total income, a test order of assessment was passed under Section 143 (3) and Section 147 of the Act, 1961.

10. As it is the case of the assessee that since it has mortgaged the property with the bank to enable the company to avail the finance facilities from the bank, the advance by the

company is not a gratuitous loan or advance, but in return for an advantage which the company has already availed on account of mortgaging of the properties done by the assessee. The appellants have relied upon the judgment of the High Court of Calcutta in **Pradip Kumar Malhotra's** case, wherein at paragraph Nos.11, 12, 13, it was held as follows:

> "In the case before us, the assessee permitted his property to be mortgaged to the bank for enabling the company to take the benefit of loan and in spite of request of the assessee, the company is unable to release the property from the mortgage. In such a situated, for retaining the benefit of loan availed of from Vijaya Bank if decision is taken to give advance to the assessee such decision is not to give gratuitous advance to its shareholder but to protect the business interest of the company.
>
> The view we propose to take finds support from the two decisions, one of the Bombay High Court and the other of the Delhi High Court relied upon by Mr.Khaitan as indicated earlier.
>
> We, therefore, find that the authorities below erred in law in treating the advance given by the company to the assessee by way of compensation to the asessee for keeping his property as mortgage on behalf of the company to reap the benefit of loan as deemed dividend within the meaning of section 2 (22)(e) of the Act."

11. The contention of the assessee is that they being the Directors of the said Company have taken loans from the banks for its business purposes and as Directors they have offered

personal security of their properties worth Rs.309.61 lakhs and Rs.139.09 lakhs respectively to the financial institution and the said loans are utilized for the purpose of construction of the property and the same was pledged to the bank as personal security by the Directors. It is further contended that the said loans were not utilized for their personal benefit.

12. On contra, the learned Senior Standing Counsel for the Department argued that in view of the provisions of Section (2) (22)(e) of the Act, 1961, any payment by way of advance or loan amounts should be treated as a **'deemed dividend'**. The purpose for which the loan was taken is immaterial.

13. For better understanding of the case on hand, it is necessary to extract the meaning of the 'Deemed Dividend.'

> "Any benefit or payment other than the distribution of accumulated profits, made by a company to its shareholder, who holds more than 10% of voting rights or related parties, whether as an official dividend or not, is known as a **'deemed dividend'**. These payments can be in the form of an advance or transfer of an asset other than cash. The concept of 'deemed dividend' only applies to private companies or companies where public participation is minimal Advance or Loan by a company to its shareholders.

Section 2 (22)(e): As per Section 2(22)(e) of the Act, 1961, any advance or loan to the extent of accumulated profits given to a shareholder who has a beneficial interest, by a private company. Here a beneficial shareholder means one who holds 10% or more of the equity capital of the company.

The payment must be a loan, advance, or any sum paid on behalf of or for the individual benefit of a shareholder. Trade advances made in the ordinary course of a business that involves money lending are excluded.

Shareholder Criteria: The payment must be made to a shareholder who is the beneficial owner of shares carrying at least 10% of the voting power."

14. Section 2(22)(e) of the Act, 1961, clearly and categorically says that any loan or advance be availed by the shareholder for his individual benefit. Here in this case, as it is the case of the assessee that there is no such individual benefit, as the entire assets were given as a guarantee to raise funds by the company from financial institutions for purpose of business therefore the said provision will not be applicable to this case. As the case of the assessee is that the benefits goes to the company but not to an individual Director and since Section 2(22)(e) of the Act, 1961 mandates that any loan which has to be extended should be out of and from the accumulated profits

of the Company, as on 31.03.2002 and 3 03.2001, the Company has accumulated the profits to an extent of Rs. 2,49,53,925/- and Rs.1,80,47,986 reserves and surpluses. As per the company account extract, it shows that they have made the payments aggregating to Rs.8,59,130/- by way of advance during the year under the consideration.

15. As seen from the judgment passed by the Tribunal at Paragraph No.11, which shows that to believe the version of the assessee as the assessee did not produce any documentary evidence to show that they have in fact submitted their personal properties for mortgaging with the bank for the sake of availing loans by the company and except the letter dated 31.03.2008 in the Andhra Bank, which was submitted in the paper book and it is disbelieved by the Tribunal, contending that it does not establish the fact that the properties were mortgaged with the bank. Having disbelieved the said letter and also it is further held that assessees have also not produced any correspondence made either with the bank or with the company towards release of the properties mortgaged.

16. As was the fact in **Pradeep Kumar Malhotra's** case before the Calcutta High Court, wherein the said judgment though says that the loan to shareholder. The aforesaid judgment relied upon by the learned Standing Counsel and also by the assessee before this Court applies to the facts on the case. As the main reason for dismissal of the appeals was that the assessee did not place any material evidence to show that the property was subjected to mortgage by the pet itioner for the benefit of the company.

17. In the absence of any such documentary proof as it shows that the Tribunal disbelieved the version of the assessee and thereby dismissed the appeals of the assessees. As such, we are of the considerable opinion that the finding given by the Tribunal cannot be found fault with for the reason that the basically the assessee did not place any material to show that if the said loans were obtained by way of advances and loans were obtained for the benefit of the company and by mortgaging their property. In the absence of any such proof, the Tribunal has rightly disbelieved the version and set aside the order of the

commissioner and thereby restoring the finding to treat the advances and loans availed by the assessee as a deemed dividend.

18. Hence, for the aforesaid reasons, the substantial question of law stands answered accordingly in favour of the State-Revenue and against assessees. Consequently, the appeals filed by the appellant fail and are deserves to be dismissed.

19. Accordingly I.T.T.A.Nos.354, 355, 469 and 476 of 2013 are dismissed. There shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.

SD/- NAYANI CHANDRA SEKHAR RAO
DEPUTY REGISTRAR

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SECTION OFFICER

To,

1. The Income Tax Appellate Tribunal, Hyderabad Bench 'A', Hyderabad.
2. One CC to Sri N Purnachandra Rao, Advocate [OPUC]
3. One CC to Ms. Bokaro Sapna Reddy, (Senior SC Income Tax), Advocate [OPUC]
4. Two CD Copies

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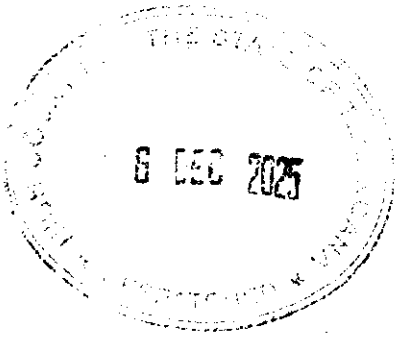
HIGH COURT

PSK,J
&
NNR,J

DATED: 04/12/2025

COMMON JUDGMENT

ITTA Nos: 354, 355, 469 & 476 OF 2013



DISMISSING ALL THE ITTA Nos. WITHOUT COSTS

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