

Deemed dividend provisions couldn't be applied on business transactions between shareholders & Co.

Summary – The High Court of Calcutta in a recent case of Gayatri Chakraborty, (the Assessee) held that where transactions between shareholder and company were in nature of current account, provisions of section 2(22)(e) would not be applicable

Facts

- The assessee was a director in a company, BAPL in which she held 25.24 per cent equity shares. There were transactions between the assessee and BAPL of giving money by the assessee to BAPL as well as by BAPL to the assessee. The Assessing Officer from the ledger account of BAPL in books of the assessee, took note only of the transactions whereby BAPL gave money to the assessee and was of the view that the same was 'loan or advance' within the meaning of section 2(22)(e) by a company (BAPL) to a person who held substantial interest in the company (BAPL) and had to be brought to tax as deemed dividend to the extent the company possessed accumulated profits.
- On appeal, the Commissioner (Appeals) as well as the Tribunal found that the said sum received by the assessee could not constitute loan attracting the deeming provision contained in section 2(22)(e).
- On appeal to High Court:

Held

- Law on this point is clear in the event transactions between a shareholder and a company in which the public were not substantially interested and the former had substantial stake, create mutual benefits and obligations, then the provision of treating any sum received by the shareholder out of accumulated profits as deemed dividend would not apply. The company in the instant case fits the description conceived in the aforesaid provision to come within the ambit of section 2(22)(e). The controversy which falls for determination is whether the sum received by the assessee formed part of running current account giving rise to mutual obligations or the payment formed one-way traffic, assuming the character of loan or advance out of accumulated profit.
- The Tribunal analysed the ledger account of the company so far as the payment made to and received from the assessee was concerned and found that a copy of the ledger of the assessee in the books of BAPL was placed. A copy of the statement showing the balance after every transaction in the assessee's ledger in the books of BAPL was placed. A perusal of the statement of balances of transactions between the assessee and BAPL shows that BAPL owed assessee certain sum. BAPL paid the assessee certain sum and the assessee owed BAPL certain sum. The amounts given in the bracket in the last column of the enclosed balances in the running current account is the amount which BAPL owed to the assessee. Mutual transactions go on in this fashion throughout the previous

year and as on the last date of the previous year the account is squared *i.e.*, neither the assessee owes BAPL nor BAPL owes assessee any sum. The assessee was beneficiary of the sums given by BAPL at some point of time during the previous year and BAPL was the beneficiary of the sums given by the assessee at another point of time during the previous year. It was case of mutual running or current account which created independent obligations on the the other and not merely transactions which created obligations on other side, those on the other being merely complete or partial discharge of such obligations and there were reciprocal demands between the parties and the account was mutual.

- In this factual and legal perspective, payment of the aforesaid sums to the assessee cannot be treated as dividend out of profit. No perversity has been pointed out on behalf of the revenue so far as such a concurrent finding of fact is concerned by the two statutory appellate fora. One is not inclined to disturb such finding of fact, which the Tribunal has backed with detailed analysis. If one embarks on a fresh factual enquiry into the accounts of the assessee or that of the company involved, such exercise would entail reappraisal of evidence. Such enquiry is impermissible at this stage. The Tribunal's order, thus, stands confirmed and the question formulated is answered accordingly, in favour of the assessee.