

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "G", MUMBAI**

**BEFORE SHRI RAJESH KUMAR, ACCOUNTANT MEMBER AND
SHRI RAVISH SOOD, JUDICIAL MEMBER**

**ITA No.1193/M/2018
Assessment Year: 2012-13**

ACIT 16(1), Room No.439, 4 th Floor, Aayakar Bhavan, M.K. Marg, Churchgate, Mumbai – 400 020	Vs.	M/s. Gayatri Films & Music Pvt. Ltd., Sagar Villa, Road No.12A, JVPD Scheme, Vile Parle (W), Mumbai – 400 049 PAN: AAACG8142J
(Appellant)		(Respondent)

Present for:

Assessee by : Shri K. Gopal, A.R.
Revenue by : Shri T.S. Khalsa, D.R.

Date of Hearing : 15.07.2021
Date of Pronouncement : 26.07.2021

ORDER

Per Rajesh Kumar, Accountant Member:

The present appeal has been preferred by the Revenue against the order dated 18.12.2017 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2012-13.

2. The issue raised in ground No.1 to 3 is against the order of Ld. CIT(A) directing the AO to delete the addition of deemed dividend of Rs.5,37,46,284/- as made by the AO under section 2(22)(e) of the Act.

3. The facts in brief are that the AO during the course of assessment proceedings observed that assessee has received an advance of Rs.5,37,46,284/- from M/s. Sagar Entertainment Pvt. Ltd. in which the two shareholders Shri Jyoti Sagar and Shri Prem Sagar held 26.17% and 18.40% of holdings in the lending company and also held substantial interest in the assessee company equal to 32.40% and 25.34% respectively and consequently the AO invoked the provisions of section 2(22)(e) of the Act and made an addition on account of a deemed dividend of Rs.5,37,46,284/- in the hands of the assessee.

4. The order of Ld. CIT(A) was challenged before the first appellate authority and Ld. CIT(A) deleted the addition by observing and holding as under:

“6.3/ I have carefully considered the facts of the case, oral contentions and written submission of the assesses, discussion of the AO in the assessment order and material available on record. It is seen that the said issue on the addition made of the same amount in the hands of Shri Prem Sagar in A.Y. 2012-13 u/s 2(22)(e) of the Act has been decided by my Ld. Predecessor by his order in appeal No. CIT(A)-4/IT-41/ACIT-16(1)/2015-16 dated 09/09/2016, where in at para 4.3 of the order it has been observed as under:

"I have considered the above submissions made by Authorised representative and find substance into it. Section 2(22)(e) very clearly speaks about the beneficial ownership of the shareholder and thus the holding of the appellant in his individual capacity cannot be combined with the holding of his HUF and holding of Jyoti Sagar in his individual capacity cannot be combined with the holding by him as Executor to the Estate of Late Subhash Sagar and held that section 2(22)(e) cannot be invoked in the present case. The shareholding pattern as explained by the Appellant is as under :-

Gayatri Films & Music Pvt Ltd (Lender company)			Sagar Arts Pvt. Ltd. (Receiver company)		
Name	Shares	%	Name	Shares	%
Mr. Anand Sagar	800	8	Mr. Anand Sagar	373	11.89
Mr. Prem Sagar	1400	14	Mr. Prem Sagar	398	12.69

<i>Mr. Jyoti Sagar</i>	706	7.06	<i>Mr. Jyoti Sagar</i>	392	12.49
<i>Mr. Jyoti Sagar (Of Estate of Subhash Sagar holding for Rekha Sagar & Others)</i>	1400	14	<i>Mr. Jyoti Sagar (Of Estate of Subhash Sagar holding for Rekha Sagar & Others)</i>	453	14.45
<i>Mr. Anand Sagar HUF</i>	603	6.03	<i>Mr. Anand Sagar HUF</i>	150	4.78
<i>Mr. Prem Sagar HUF</i>	1134	11.34	<i>Mr. Prem Sagar HUF</i>	125	3.99
<i>Mr. Subhash Sagar HUF</i>	1134	11.34	<i>Mr. Subhash Sagar HUF</i>	200	6.38
<i>Mr. Shanti Sagar</i>	800	8	<i>Mr. Shakti Sagar</i>	523	16.68
<i>Mr. Shanti Sagar HUF</i>	905	9.05	<i>Mr. Shiv Sagar</i>	522	16.55
<i>Sarita Choudhary</i>	905	9.05			
<i>Rekha Sagar</i>	425	4.25			
<i>Sagar Lila Fin vest</i>	90	9			
<i>Total</i>	10000	100%	<i>Total</i>	10000	100%

Obviously, the Ld. Assessing Officer has erred in holding that the Assessee has substantial interest in M/s. Gayatri Films & Music Pvt. Ltd. or in M/s. Sagar Entertainment Pvt. Ltd. The above chart reveals the fact that none of the shareholder of M/s. Gayatri Films & Music Pvt. Ltd. is having more than 20% of equity capital and is simultaneously having more than 10% share in the lending company. Thus, the facts of the case suggests that the Appellant is not a beneficial shareholder. If the above chart is correct and no contrary evidence is there on record, the contention of the Ld. A.R. deserves to be accepted. There are plethora of judgments over such issue favoring the Appellant. Some of them are;

- Mumbai IT AT (SB) in case of Bhaumik Colour Pvt. Ltd. (2009) 28 (II) ITCL 249 Mumbai E Bench
- Rameshwarlal Sanwarmal v. CIT (1980) 122 ITR 11 (SC)
- CIT v. CP Sarathy Mudaliar (1972) 83 ITR 170 (SC)
- CIT v. Ankitech Pvt. Ltd. (Delhi HC) ITA 2087 of 2010
- Pravin B Chheda v. CIT ITA 2483/MUM/2011 Mumbai Tribunal C Bench
- CIT v. National Travel Service ITA 219 of 2010 Delhi HC
- CIT v. Impact Containers Pvt. Ltd. ITA 114 of 2012 (Bombay HC)
- N S N Jewellers Pvt. Ltd. 57 Taxmann.com 113 Bombay HC
- ACIT v. Bombay Real Estate Development Co. Pvt. Ltd. (2011) 64 DTR 137 (Mum)Trib.

- K N Patel v. DC of IT Ahmedabad Trib.

Respectfully following the above judgments and considering the facts of the case, the Assessing Officer is directed to **delete** the addition of Rs. 5,37,46,284/- made u/s.2(22)(e) of the I.T. Act, 1961."

It is seen that my Ld. Predecessor has considered the holding of shares as has been by arriving at the fact that the assessee Shri Prem Sagar did not have substantial interest in M/s Gayatri Films and Music Pvt. Ltd. or in Sagar Entertainment Pvt. Ltd. The share holding chart submitted by the assessee in the instant case and that considered by my Ld. Predecessor is same. As per the chart submitted by the appellant, none of the shareholders of SEL has simultaneous holding of more than 20% in the assessee company and 10% holding in SEL. Accordingly, keeping in view the principles of consistency and respectfully following the decisions relied upon by the appellant, the AO is directed to delete the addition so made and the Ground No. 1 of the appeal is accordingly **allowed.**"

5. After hearing both the parties and perusing the material on record, we find that the AO had made protective addition of Rs.5,37,46,284/- in the hands of the assessee under section 2(22)(e) of the Act whereas the substantive addition was made in the hands of Shri Prem Sagar the shareholder of the assessee for A.Y. 2012-13. We note that Ld. CIT(A) in his findings has noted the share holding pattern of the assessee company and M/s. Sagar Entertainment Pvt. Ltd. which is reproduced above and came to conclusion that none of the shareholders of M/s. Sagar Entertainment Pvt. Ltd. has simultaneously held more than 20% in the assessee company and 10% in M/s. Sagar Entertainment Pvt. Ltd. and thus deleted the addition in the hands of the assessee. We note that Ld. CIT(A) relied on the order of predecessor in the case of Shri Prem Sagar for A.Y. 2012-13. We also note that the said order of the Ld. CIT(A) has been challenged by the Revenue before the Tribunal and the co-ordinate bench of the Tribunal has decided the issue in favour of the assessee in ITA No.7442/M/2016 vide order dated 16.10.2019 dismissing the department's appeal and affirming the order of Ld. CIT(A). The co-ordinate bench of the Tribunal

has given a finding while passing the order in the case of Shri Prem Sagar that addition under section 2(22)(e) of the Act is principally not sustainable as none of the shareholders of M/s. Gayatri Films & Music Pvt. Ltd. was having not less than 20% of the equity capital and was simultaneously having not less than 10% of the share holding in the lending company M/s. Sagar Entertainment Pvt. Ltd. In view of these similar facts and decision of the coordinate bench as discussed above, we are inclined to uphold the order of Ld. CIT(A) by dismissing the ground No.1 to 3.

6. The issue raised in ground Nos.4 & 5 is against the deletion of Rs.1,70,00,000/- by Ld. CIT(A) as made by the AO on account of contract with Satar India Pvt. Ltd. by ignoring the fact that term and execution date of the agreement with Star India Ltd. clearly showed that income accrued during A.Y. 2012-13 as per mercantile system of accounting.

7. The facts in brief are that assessee entered into an agreement with M/s. Star India Pvt. Ltd. on 04.10.2011. By virtue of this agreement the assessee granted M/s. Star India Pvt. Ltd. a licence of telecasting rights for five years in respect of two of its flagship TV serials Sampurna Ramayan and Shri Krishna. Schedule D of the agreement provides the detail of consideration and condition of refund thereof for unexpired license period. Accordingly, the assessee offered Rs.13,00,000/- as income on account of agreement with M/s. Star India Pvt. Ltd. for impugned assessment year on the basis of period elapsed up to the year end and thus spreading the entire consideration received over the period covered under the licence.

According to the AO the entire consideration of Rs.2,00,00,000/- is to be taxed in the current year and accordingly called upon the assessee to show cause as to why the same should not be taxed in the current year. The assessee submitted before the AO that the consideration received was duly offered to tax in the subsequent years based upon the period proportionately. However, the reply of the assessee did not find favour with the AO and he added the remaining Rs.1,70,00,000/- with the income of the assessee.

8. In the appellate proceedings, the Ld. CIT(A) allowed the appeal of the assessee by holding and observing as under:

“I have carefully considered the facts of the case, oral contentions and written submission of the assessee, discussion of the AO in the assessment order and material available on record. It is seen that the AO in his order has mentioned that in the assessee's own case of A.Y. 2010-11, the addition was made in the year of agreement for receipt of such income. It implies that the facts of the year under consideration and in the A.Y. 2010-11 are similar. It is seen that the case of the appellant for A.Y. 2010-11 has been decided by the Hon'ble ITAT in ITA No.1881/Mum/2015 vide their order dated 21.06.2017, where in following their order in the case of Sagar Entertainment Pvt. Limited (ITA/1150/Mum/2013 for A.Y. 2009-10, dated 02/02/2015) the Hon'ble ITAT have decided the issue in the favour of the appellant. The facts in the case on hand and that in the case of the assessee for A.Y. 2010-11 are similar, therefore respectfully following the order of Hon'ble ITAT in the appellant's own case for A.Y. 2010-11, in ITA No.1881/Mum/2015, dated 21.06.2017, this ground of appeal is allowed.”

9. After hearing both the parties and perusing the material on record, we find that Ld. CIT(A) has followed the order of the coordinate bench of the Tribunal in ITA No.1881/M/2015 order dated 21.06.2017 for A.Y. 2010-11 in assessee's own case. We, therefore, do not find any infirmity in the order of Ld. CIT(A) and accordingly the ground Nos.4 & 5 are dismissed.

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

Order pronounced in the open court on 26.07.2021.

Sd/-
(Ravish Sood)
JUDICIAL MEMBER

Sd/-
(Rajesh Kumar)
ACCOUNTANT MEMBER

Mumbai, Dated: 26.07.2021.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.