

IN THE INCOME TAX APPELLATE TRIBUNAL

"G" BENCH, MUMBAI

BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA No.1667/MUM/2024

(Assessment Year : 2014-15)

Subhash Chander Oberoi,

Saidham Building, Dr. Jawkar Lane,

Sion Chunabhatti Road,

Mumbai - 400022

Maharashtra

PAN: AADPO9185B

..... Appellant

v/s

ACIT, 26(3),

Kautilya Bhavan, Bandra Kurla Complex,

Mumbai - 400051

Maharashtra

..... Respondent

Assessee by : Shri Dharan Gandhi, Adv.

Revenue by : Dr. Kishor Dhule – CIT-DR

Shri Bhangapatil Pushkaraj Ramesh, Sr.DR

Date of Hearing – 09/10/2024

Date of Order – 06/01/2025

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The assessee has filed the present appeal against the impugned order dated 07/02/2024 passed under section 250 of the Income Tax Act, 1961 ("*the Act*") by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [*learned CIT(A)*], for the assessment year 2014-15.

2. In this appeal, the assessee has raised the following grounds: –

"The grounds of appeal hereunder are without prejudice to one another;

1. On the facts and circumstances of the case as well as in law, the Learned CIT (A) has erred in confirming the action of the Learned Assessing Officer in treating the amount of Rs. 1,20,06,226/- received from M/s. Agiv (India) Pvt. Ltd. as advance under section 2(22)(e). Reasons assigned by him for doing the same are wrong and insufficient.

2. On the facts and circumstances of the case as well as in law, the Learned CIT (A) has erred in confirming the action of the Learned Assessing Officer in initiating penalty proceedings under section 271(1)(c).

3. The order confirmed by the Learned CIT (A) is devoid of any merit, arbitrary, uncalled for and bad in law and therefore the appellant be given such relief or reliefs as prayed for."

3. The solitary grievance of the assessee is against the addition made by treating the amount received by the assessee as deemed dividend under section 2(22)(e) of the Act.

4. The brief facts of the case pertaining to this issue, as emanating from the record, are: The assessee is an individual and is a proprietor of M/s Paros Corp, a firm trading in paints, lens and garments. For the year under consideration, the assessee filed his return of income on 30/09/2014 declaring a total income of INR 1,99,74,690. The return filed by the assessee was selected for scrutiny and statutory notices under section 143(2) and section 142(1) of the Act were issued and served on the assessee. During the assessment proceedings, it was noticed from the balance-sheet of M/s Paros Corp that the assessee has obtained an advance of INR 1,20,06,226 from M/s AGIV India Pvt. Ltd. Accordingly, the assessee was asked to provide the shareholding pattern of the company and also asked to provide the financials of the said company. On perusal of the details, it was noticed that the assessee is one of the shareholders of AGIV India Pvt. Ltd. having 35% holding in the company. Further, it was also noticed that M/s AGIV India Pvt.

Ltd. has reserves and surplus to the tune of INR 6,34,58,869. In order to verify the issue, the case was converted into complete scrutiny as against limited scrutiny. During the assessment proceedings, the assessee was asked to show cause why the advance received from the said company should not be treated as deemed dividend as per the provisions of section 2(22)(e) of the Act. In response, the assessee submitted that he holds 35% shares in M/s AGIV India Pvt. Ltd. and is also proprietor of M/s Paros Corp, where an advance of INR 1,20,06,226 has been received from M/s AGIV India Pvt. Ltd. The assessee further submitted that the promoters of M/s AGIV India Pvt. Ltd. has initiated the discussion with M/s FOR-A Group Japan for selling their shares to the prospective buyers, however, the buyers are interested in only prime Broadcast System Integrated Business of M/s AGIV India Pvt. Ltd. Further, M/s FOR-A Group Japan are not interested in taking over the subsidiary companies and allied facilities and liabilities connected with those facilities. It was further submitted that M/s AGIV India Pvt. Ltd. holds 72% shares in IND-AGIV Commerce Ltd. and 90% shares in RST Technologies Ltd. Accordingly, all the shareholders unanimously decided that M/s AGIV India Pvt. Ltd. will advance the money amounting to INR 1,20,06,226 to M/s Paros Corp to purchase the stake of M/s AGIV India Pvt. Ltd. in IND-AGIV Commerce Ltd. and RST Technologies Ltd. and the said amount will be returned as soon as M/s FOR-A Group Japan purchased the shares of the promoters. The assessee further submitted that the advance was granted on 31/03/2014 and the said advance was returned on 05/08/2014. Thus, it was submitted that the advance given to M/s Paros Corp was for the overall benefit of M/s AGIV India Pvt. Ltd. and not for the individual benefit of the assessee.

5. The Assessing Officer ("AO") vide order dated 28/10/2016 passed under section 143(3) of the Act disagreed with the submissions of the assessee and held that the amount of loan received by the assessee and the proprietary concern from M/s AGIV India Pvt. Ltd. was liable to be taxed as deemed dividend in the hands of the assessee within the meaning of the provisions of section 2(22)(e) of the Act. The AO further held that even if the loan or advance fee ceased to be outstanding at the end of the previous year, it could still be deemed as a "*dividend*". The AO held that the provisions of section 2(22)(e) of the Act do not mention any purpose of the loan and therefore there are no merits in the submission of the assessee that the advance was made for commercial purposes. Accordingly, the AO held that the amount of INR 1,20,06,226 advanced to the proprietor concern of the assessee is a deemed dividend under the specific provisions of section 2(22)(e) of the Act and the same was added to the total income of the assessee.

6. The learned CIT(A), vide impugned order, dismissed the appeal filed by the assessee, by observing as follows: –

"4.3.1 I have considered the facts of the case, grounds of appeal, statement of facts, the assessment order and submissions of the appellant. According to sec. 2(22)(e) when a company in which the public are not substantially interested, extends a loan or an advance to any of its shareholders who has more than 10% voting power in the company or to any concern in which such shareholder is substantially interested or for the individual benefit of such shareholder or on behalf of such shareholder to the extent the company has accumulated profits, such payment would be deemed as a dividend under sec. 2(22) a company in which public is not substantially interested is otherwise called a closely held company. In the instant case, M/s. AGIV India P Ltd is not a company in which public is substantially interested and the appellant is holding shares in excess of the limit prescribed in sec. 2(22)(e) of the I T Act. The transaction in the name of M/s. Paros Corp which is a proprietary concern of the appellant. Therefore, both were related concerns and apparently the conditions necessary for invoking the provisions of sec. 2(22)(e) are satisfied

so far these parameters are concerned. The AO property dealt with the issue that as far as the contention of the appellant that it was done for some commercial purposes is concerned, the section clearly spells regarding loan / advance only and it has no mention of purposes of loan. If this proposition has been accepted, then the very purpose of insertion of these provisions will be defeated. Deemed dividend u/s. 2(22)(e) is taxable in the hands of the shareholder. Even if the loan has been repaid, the loan amount granted to the extent of accumulated profits are treated as deemed dividend. Considering the gamut of issues dealt with in the assessment order, the decision of the assessing officer is upheld and Ground raised in this appeal is dismissed."

Being aggrieved, the assessee is in appeal before us.

7. We have considered the submissions of both sides and perused the material available on record. In the present case, the assessee is an individual and is a proprietor of a firm named M/s Paros Corp. The assessee is also a director and shareholder of M/s AGIV India Pvt. Ltd., holding 35% of the shareholding. Apart from the assessee, two other shareholders, namely, Mr. S.B. Rupani and Mr. Rajan Chona hold 55% and 10% shareholding, respectively, in M/s AGIV India Pvt. Ltd. M/s AGIV India Pvt. Ltd. deals in Broadcast System Integration with intellectual capabilities and other business interests and facilities. M/s AGIV India Pvt. Ltd. was developing ICT Performance Centre, a joint venture project with IND-AGIV Commerce Ltd. and RST Technologies Ltd. M/s AGIV India Pvt. Ltd. holds 72% shares in IND-AGIV Commerce Ltd. and 90% shares in RST Technologies Ltd.

8. As the Foreign Direct Investment opened up and large multinationals like Sony, Hitachi, Canon, etc. opened in India, with newer technology and high cost of investment, as per the assessee, the promoters of M/s AGIV India Pvt. Ltd. initiated the discussion with M/s FOR-A Group Japan for selling their stakes. However, M/s FOR-A Group Japan was only interested in the prime

Broadcast System Integration Business and taking over the intellectual properties of M/s AGIV India Pvt. Ltd. M/s FOR-A Group Japan was not interested in taking over the subsidiary companies and allied facilities and liabilities connected with those facilities. Accordingly, a Memorandum of Understanding ("MOU") was signed between M/s Paros Corp and other stakeholders of M/s AGIV India Pvt. Ltd. in order to facilitate the sale of the business of M/s AGIV India Pvt. Ltd. to M/s FOR-A Group Japan. From the perusal of the aforesaid MOU dated 10/03/2014, forming part of the paper book from pages 43-47, we find that it was agreed that M/s AGIV India Pvt. Ltd. shall advance the amount to M/s Paros Corp for purchase of shares of IND-AGIV Commerce Ltd. and RST Technologies Ltd., which were held by M/s AGIV India Pvt. Ltd., for completion of the aforesaid deal with M/s FOR-A Group Japan. It was further agreed that the said advance cannot be used by M/s Paros Corp for any other purpose. It was also agreed that M/s Paros Corp shall return the entire amount to M/s AGIV India Pvt. Ltd. after the assessee receives the sale proceeds of shares which will be sold to M/s FOR-A Group Japan.

9. As per the assessee, the aforesaid arrangement was necessary as M/s AGIV India Pvt. Ltd. had taken a loan from Canara Bank, Mumbai and for that purpose, the assessee has provided his personal assets as collateral security and also stood as a personal guarantor along with his wife. In this regard, the assessee has furnished a copy of the loan sanction letter dated 02/02/2013, which forms part of the paper book from pages 48-57. Therefore, it is the plea of the assessee that he had no funds to purchase the shares of IND-AGIV

Commerce Ltd. and RST Technologies Ltd. in order to facilitate the sale of the business of M/s AGIV India Pvt. Ltd. to M/s FOR-A Group Japan. Accordingly, pursuant to the aforesaid MOU, M/s AGIV India Pvt. Ltd. considered the amount of INR 1,20,06,226 as an investment in M/s Paros Corp and duly disclosed the same in its balance sheet for the year ending 31/03/2014. As per the assessee, the amount of INR 1,20,06,226 was paid in two trenches vide two separate cheques dated 22/03/2014 which were cleared on 05/04/2014 and 07/04/2014. As per the assessee, the aforesaid amount of INR 1,20,06,226 was immediately utilised by M/s Paros Corp for the purchase of shares of IND-AGIV Commerce Ltd. and RST Technologies Ltd. On 07/04/2014 an amount of INR 88,45,726 was paid to M/s AGIV India Pvt. Ltd. for purchase of 7,22,100 shares of IND-AGIV Commerce Ltd. Further, amounts of INR 3,78,000 and INR 27,82,500 were paid on 05/04/2014 and 07/04/2014, respectively, to M/s AGIV India Pvt. Ltd. for purchase of 3,01,500 shares of RST Technologies Ltd.

10. Since the payment was made by a company, i.e. M/s AGIV India Pvt. Ltd., in which the public is not substantially interested by way of advance or loan to a concern, i.e. M/s Paros Corp, in which the shareholder was substantially interested and such shareholder was holding not less than 10% of the voting power in the company, the AO considered the payment as deemed dividend under the provisions of section 2(22)(e) of the Act and added to the total income of the assessee. On the contrary, as per the assessee, the entire transaction is on account of business expediency and therefore is not covered within the ambit of the provisions of section 2(22)(e)

of the Act. As noted above, it is the plea of the assessee that since the promoters of M/s AGIV India Pvt. Ltd. decided to sell their shares to M/s FOR-A Group Japan, M/s AGIV India Pvt. Ltd. advanced a sum of INR 1,20,06,226 to M/s Paros Corp for purchase of shares of IND-AGIV Commerce Ltd. and RST Technologies Ltd. from M/s AGIV India Pvt. Ltd. Thus, it is the plea of the assessee that the advancing of the sum of INR 1,20,06,226 by M/s AGIV India Pvt. Ltd. to M/s Paros Corp was to give effect to the transaction entered into between M/s AGIV India Pvt. Ltd. and M/s FOR-A Group Japan, which was for the benefit of M/s AGIV India Pvt. Ltd. as the company was becoming part of a Japanese manufacturer of professional broadcast video and audio equipment, which was founded more than 50 years ago and has spread globally, with subsidiaries in America, Canada, Korea, Italy, United Kingdom, India, Hong Kong, Middle East and Africa.

11. As per the Revenue, the claim of the assessee that the company would have benefited from the takeover has no nexus with the loan transaction under consideration, as the said transaction was entered solely for the purpose of providing a way out to the shareholder to enable him to conclude its deal with the Japan-based company. The Revenue further submitted that the immediate purpose of the transaction is only to rescue the shareholder and enable him to sell its stake in M/s AGIV India Pvt. Ltd. Thus, as per the Revenue, extending of loan by M/s AGIV India Pvt. Ltd. to M/s Paros Corp has nothing to do with any direct commercial benefit to M/s AGIV India Pvt. Ltd.

12. Before proceeding further, it is relevant to note the shareholding of M/s AGIV India Pvt. Ltd. pre- and post-selling of shares to M/s FOR-A Group Japan,

as noted in the Share Purchase and Shareholders Agreement dated 11/07/2014, which is summarised as follows: –

<i>Name of the Shareholder</i>	<i>Shares held before share</i>	<i>% of Share Holding</i>	<i>Shares held after sale</i>	<i>% of Share Holding</i>
<i>For A</i>	<i>Nil</i>	<i>Nil</i>	<i>2800000</i>	<i>70%</i>
<i>Mr. S B Rupani</i>	<i>2200000</i>	<i>55%</i>	<i>660000</i>	<i>16.5%</i>
<i>Mr. S C Oberoi</i>	<i>1400000</i>	<i>35%</i>	<i>420000</i>	<i>10.5%</i>
<i>Mr. Chonna</i>	<i>400000</i>	<i>10%</i>	<i>120000</i>	<i>3%</i>
	<i>4000000</i>	<i>100%</i>	<i>4000000</i>	<i>100%</i>

13. From the perusal of the shareholding of M/s AGIV India Pvt. Ltd., it is evident that after the transaction with M/s FOR-A Group Japan, all the shareholders, i.e. Mr. S.B. Rupani, Mr. Rajan Chona and the assessee, still holds in-total 30% shareholding in M/s AGIV India Pvt. Ltd. Therefore, we find no merits in the submissions of the Revenue that the loan transaction was entered solely for the purpose of providing a way out to the shareholders and to rescue the shareholders to enable them to sell its stake in M/s AGIV India Pvt. Ltd. The fact that all the shareholders, i.e. Mr. S.B. Rupani, Mr. Rajan Chona and the assessee, still holds shareholding in M/s AGIV India Pvt. Ltd., though in minority, goes on to prove that the sole purpose for advancing the sum of INR 1,20,06,226 to M/s Paros Corp was only for commercial expediency in order to complete the transaction entered into between M/s AGIV India Pvt. Ltd. and M/s FOR-A Group Japan so that the company becomes a part of large Japanese conglomerate.

14. In support of its submission, the assessee has placed reliance upon the Circular No. 19 of 2017 dated 12/06/2017 issued by the Central Board of Direct Taxes, which provides that the trade advances, which are in the nature

of commercial transactions, would not fall within the ambit of the word “advance” in section 2(22)(e) of the Act. We find that the Hon’ble Calcutta High Court in Pradip Kumar Malhotra v/s CIT, reported in [2011] 338 ITR 538 (Cal.) held that gratuitous loan or advance given by the company to its shareholders would come within the purview of section 2(22)(e) of the Act but not the cases where the loan or advance is given in return to an advantage conferred upon the company by such shareholder. In the present case, as noted in the foregoing paragraph, upon receipt of advance from M/s AGIV India Pvt. Ltd., M/s Paros Corp purchased the shares of IND-AGIV Commerce Ltd. and RST Technologies Ltd., which facilitated the completion of the transaction between M/s AGIV India Pvt. Ltd. and M/s FOR-A Group Japan. Thus, we are of the considered view that the advance was given in return for an advantage conferred upon M/s AGIV India Pvt. Ltd. by the assessee. Therefore, we are of the considered view that such a transaction, being completely in the nature of a commercial transaction, would not fall within the ambit of the provisions of section 2(22)(e) of the Act and therefore the addition made by the AO is deleted. As a result, grounds raised by the assessee are allowed.

15. In the result, the appeal by the assessee is allowed.

Order pronounced in the open Court on 06/01/2025

Sd/-

**AMARJIT SINGH
ACCOUNTANT MEMBER**

MUMBAI, DATED: 06/01/2025

prabhat

Sd/-

**SANDEEP SINGH KARHAIL
JUDICIAL MEMBER**

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Mumbai; and*
- (5) *Guard file.*

By Order

Assistant Registrar
ITAT, Mumbai