IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES, 'D', MUMBAI

BEFORE SHRI D.K.AGARWAL (JM) AND SHRI T.R.SOOD(AM)

ITA No.2576/Mum/2011
(Assessment Year: 2006-07)

Income Tax Officer 9(1)(3), Room No.224, Aayakar Bhavan, M.K.Road, Mumbai-400020	V/s	M/s Direct Information Pvt.Ltd., 330, Link Way Estate, Link Road, Mumbai-400064. PAN: AABCD0497L
APPELLANT		RESPONDENT
Date of Hearing : 25.1.2012 Date of Pronouncement : 31 .1.2012		

Appellant by : Shri Vijaykumar Jaiswal
Respondent by : Shri Feroze Andhyarujina

O R D E R

PER D.K.AGARWAL (JM)

This appeal preferred by the Revenue is directed against the order dated 18.1.2011 passed by the ld. CIT(A) for the Assessment Year 2006-07.

2. Briefly stated facts of the case are that the assessee company is engaged in the business of website hosting, domain name registration & allied services, filed return declaring total income at Nil after claiming deduction u/s 10A of Rs.64,87,472/-.

During the course of assessment proceedings, the AO on perusal of balance sheet, under schedule 10 being 'current liabilities' observed that the assessee has shown share application money received from Transecute India Pvt.Ltd(TIPL) of Rs.1.3 crores. According to the AO since the directors were common i.e. Shri Divyank Turakhia and Shri Bhavin Turakhia hold 39.22% each in TIPL and 40% shares each in the assessee's company. Therefore, there was prima facie reason that the money advanced by TIPL to the assessee shown under the head 'current liability' as share application money received may be covered by the provisions of section 2(22)(e) of the Income Tax Act, 1961(in short the Act). On being asked, it was interalia submitted by the assessee that the sum received by the assessee is towards the share application and it should not be deemed to be dividend in the hands of the assessee company in view of the decision in Ardee Finvest (P) Ltd. V/s DCIT (2001) 70 TTJ Del 378. However, the AO did not accept the assessee's submissions. He observed that since this amount was shown under the head current liability, clearly this amount is in the nature of loan/advances to the assessee-company and hence condition for invoking the provisions of section 2(22)(e) are satisfied and accordingly, the AO added Rs.16,60,652/- as deemed dividend income u/s 2(22)(e) of the Act.

3. On appeal, the ld. CIT(A) observed that it is agreed by the AO that the sums received are towards share application money and there is no disagreement on this aspect. He further observed that when the nature of receipt partakes the character of share application money, it cannot be treated as loan/advance. He further observed that at the time of receipt of money the intention was to invest in shares of the appellant company and hence the nature of the receipt was not that of loan or advance. He further observed that only loans and advances can be considered as deemed dividend for the purpose of section 2(22)(e) and accordingly held when what has been received as share application money on which there is no dispute, the provisions of section 2(22)(e) are not attracted and hence deleted the addition made by he AO.

4. Being aggrieved by the order of the ld. CIT(A), the Revenue is in appeal before us challenging in all the grounds the deletion of addition of Rs.16,60,652/- made by the AO u/s 2(22) (e) of the Act.

5. At the time of hearing, the ld. DR while relying on the order of the AO further submits that since the assessee has refunded the said amount on 2.9.2006, therefore, it is not a share application money but the loan/advance to the assessee-company liable to tax u/s 2(22)(e) of the Act and therefore, the ld.CIT(A) was not justified in deleting the addition made by the AO. He, therefore, submits that the order passed by the AO be restored.

6. On the other hand, the ld. Counsel for the assessee while reiterating the same submissions as submitted before the AO and ld. CIT(A) further submits that according to Companies Act when the shares are not allotted, the share application money received by the company has to be shown in the balance sheet as 'current liabilities' and in support he placed on record Form of balancesheet as per Schedule-VI (Part-I) of the Companies Act. In the

light of the above he submits that the assessee has rightly treated the share application money under the head loans/advances but in any case it was not a loan or advance. The reliance was also placed on the decision (a) CIT V/s Visisth Chay Vypapar Ltd. (2011) 339 ITR 157 (Del) and (b) CIT V/s Integrated Finance Co. Ltd .(2011) 339 ITR 391(Mad) for the proposition that it is not loan/advances to the assessee company. He, therefore, submits that the order passed by the ld.CIT(A) be upheld.

7. We have carefully considered the submissions of the rival parties and perused the material available on record. We find that there is no dispute that the assessee has shown share application money received from TIPL of Rs.1.3 crores under the head current liabilities of its balancesheet. According to the AO the said amount is in the nature of loan and advances since directors are common and provisions of section 2(22)(e) are applicable. Per contra, according to the assessee, it is a share application money pending for allotment, therefore, it is not in the nature of loan and advances. It is a settled law that making of entry or absence of an entry cannot determine right and

liability of party. This being so and in the absence of any material placed on record by the Revenue to show that TIPL has not applied for shares or the entries recorded in the books of account in this regard are false, untrue and without any basis, we are of the view that the amount received by the assessee does not come under the scheme of loan and advances, therefore, the ld.CIT(A) was fully justified in holding that the provisions of section 2(22)(e) are not attracted and hence the case falls outside the ambit of deemed dividend u/s 2(22)(e). We while upholding the order passed by the ld. CIT(A) on this account reject the grounds taken by the Revenue.

8. In the result, Revenue's appeal stands dismissed. Order pronounced in the open court on 31st Jan., 2012.

Sd	sd
(T.R.SOOD) ACCOUNTANT MEMBER	(D.K.AGARWAL) JUDICIAL MEMBER

Mumbai, 31st January, 2012

SRL:

Copy to:
1. Appellant
2. Respondent
3. CIT Concerned
4. CIT(A) concerned
5. DR concerned Bench
6. Guard file.

BY ORDER

True copy

ASSTT. REGISTRAR,
ITAT, MUMBAI