

\$~29 to 31

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Date of Decision : 30th March, 2012.

+ ITA 224/2012
+ ITA 225/2012
+ ITA 226/2012

RAJ KUMAR GUPTA Appellant
Through Dr. Rakesh Gupta with Ms. Rani
Kiyala, Advs.

versus

CIT Respondent
Through Mr. Kamal Sawhney, sr. standing
counsel

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE R.V. EASWAR

SANJIV KHANNA,J: (ORAL)

These three appeals by the assessee, which pertains to assessment years 2000-01, 2002-03 and 2004-05 impugn order dated 16.9.2011 passed by the Income Tax Appellate Tribunal

(Tribunal, for short). The three authorities including the Tribunal have given concurrent finding that Section 2(22)(e) of the Act were attracted on the loans of ₹7,91,000/-, ₹7,82,100/- and ₹14,50,000/- advanced in AYs 2000-01, 2002-03 and 2004-05 respectively by A M Overseas Pvt. Ltd. to sole proprietorship of the assessee, Asha Ram Mukand Lal and A M Exports. It is not in dispute that the appellant-assessee had 20.56% shareholding in A M Overseas Pvt. Ltd.

The appellant-assessee had before the Tribunal for the first time raised a contention relying upon Clause (ii) to Section 2(22)(e) and had submitted that the advance or loan given to the shareholder was in normal course of business, where lending of money was substantial part of business of the company. The Tribunal has rejected the said contention in view of the factual matrix noticed by them, which reads as under :

“The plain reading of clause (ii) of section 2(22)(e) of the Act shows that any advance or loan made by a company to a shareholder or a concern in which the shareholder has a substantial interest would not be

regarded as divided (sic.) if the advance or loan was made by the lending company, if two conditions are satisfied, namely, (i) that the loan or advance was made by lending company in the ordinary course of business; (ii) lending of money is a substantial part of the business of the lending company. Thus, the conditions are that the loan and advance must be by the lending company in the ordinary course of its money lending business and this business should be substantial part of business. Loans to assessee are also interest free. In this case, most of the advances have been given interest free. The interest free loans and advances cannot be said to be made in ordinary course of money lending business. Net interest income and loan and advances at the end of relevant F.Y. were as under :-

F.Y.	Loan & Advance	Net Interest Income
2000-01	Rs.4,99,82,880/- (20 parties)	Rs.7,68,190/-
2002-03	Rs.2,09,55,291/- (24 parties)	Rs.1,20,000/-
2004-05	Rs.3,09,88,434/- (27 parties)	Rs.15,521/-

It shows that most of advances were not earning interest to the assessee, only few advances were earning interest. Although substantial portion of assets of company has been deployed towards the loans and advances however, the majority of the advances made by M/s. A.M. Overseas Pvt. Ltd. were interest free. Granting loan and advance for no interest cannot be regarded as a part of money lending business. Moreover, the documents show that M/s A.M. Overseas

Pvt. Ltd. was doing the business of import and export and it was a recognized export house. The interest free loan and advances made to the group concerns or sister concerns or related parties cannot be termed as a business of lending money. No business can be carried out without the intention of profit or earning. In cases relied upon by the assessee, cited supra, the loan and advances were interest bearing. In this case, the loan and advances made to the assessee were interest free. Therefore, in our considered view, these advances or loan received by the assessee in its proprietorship concerns are not made by the lending company in the ordinary course of money lending business. Since the conditions as laid down by the provisions of clause (ii) of section 2(22)(e) are not satisfied, therefore, we find no fault in the order of CIT (A). In view of these facts, we uphold the order of the authorities below and dismiss all these three appeals.”

In view of the factual findings recorded by the Tribunal, we do not find any substantial question of law arises for our consideration.

The appeals are dismissed. No costs.

SANJIV KHANNA, J.

R.V.EASWAR, J.

MARCH 30, 2012/vld