

**IN THE INCOME TAX APPELLATE TRIBUNAL,
KOLKATA 'B(SMC)' BENCH, KOLKATA**

Before Shri P.M. Jagtap, Accountant Member

**I.T.A. No. 1270 /KOL/ 2015
Assessment Year: 2011-2012**

***Income Tax Officer,.....Appellant
Ward-12(1), Kolkata,
Aayakar Bhawan,
P-7, Chowringhee Square,
Kolkata-700 069***

-Vs.-

***M/s. Shining Consulting Pvt. Limited,.....Respondent
C/o. Samiran Bhattacharya, Advocate,
167B, S.P. Mukherjee Road,
Kolkata-700 026
[PAN: AAOCS 4689 JJ***

Appearances by:

*Shri Soumitra Choudhury, Advocate, for the assessee
Shri Rajat Kr. Kureel, JCIT, D.R., for the Department*

Date of concluding the hearing : August 04, 2016
Date of pronouncing the order : August 10, 2016

O R D E R

This appeal is preferred by the Revenue against the order of the Id. Commissioner of Income Tax (Appeals)-4, Kolkata dated 23.07.2015, whereby he deleted the addition of Rs.46,38,509/- made by the Assessing Officer on account of the loan obtained by the assessee from M/s. Shining Emotional Surplus Pvt. Limited by treating the same as deemed dividend under section 2(22)(e) of the Income Tax Act, 1961.

2. The assessee in the present case is a trading and investment company. The return of income for the year under consideration was filed by it on 22.09.2011 declaring total income at 'nil'. During the course of assessment proceedings, it was noticed by the Assessing Officer that the assessee-company has taken a loan of Rs.46,38,509/- from another Company, namely M/s. Shining Emotional Surplus Pvt. Limited. Since one

of the major shareholders of the assessee-Company, namely Mr. S.B. Reena Jhola was holding 95% of the shares of M/s. Shining Emotional Surplus Pvt. Limited and the said Company had accumulated profits of Rs.8.75 crores at the relevant time, the Assessing Officer was of the view that the loan amount received by the assessee-company from the said Company was liable to be treated as deemed dividend in its hands as per the provisions of section 2(22)(e) of the Act. When this matter was confronted by him to the assessee-company, it was contended before Assessing Officer that the assessee-company not being a shareholder of the lender Company, the amount in question could not be treated as deemed dividend in its hands as per the provisions of section 2(22)(e). In support of this contention, reliance was placed by the assessee on the decision of the Mumbai Bench of this Tribunal in the case of Aura Personal Products Pvt. Limited (ITA No. 3533/MUM/2011 for A.Y. 2008-09). This contention of the assessee was not found acceptable by the Assessing Officer and relying on the decision of the Hon'ble Delhi High Court in the case of CIT -vs.-Bharati Overseas Trading Company [2012] 21 Taxman.com 543(Delhi), he added the amount of loan in question to the total income of the assessee by treating the same as deemed dividend under section 2(22)(e).

3. The addition made by the Assessing Officer on account of deemed dividend under section 2(22)(e) was challenged by the assessee in the appeal filed before the Id. CIT(Appeals) and after considering the submissions made by the assessee as well as the relevant material available on record, the Id. CIT(Appeals) deleted the said addition made by the Assessing Officer on the ground that the assessee-company not being a shareholder in the lending company, the amount of loan in question could not be treated as deemed dividend under section 2(22)(e). Aggrieved by the order of the Id. CIT(Appeals), the assessee has preferred this appeal before the Tribunal.

4. I have heard the arguments of both the sides and also perused the relevant material available on record. As rightly submitted by the ld. counsel for the assessee, the decision of the Hon'ble Delhi High Court in the case of Bharati Overseas Trading Company (supra) relied upon by the Assessing Officer to treat the amount in question as deemed dividend in the hands of the assessee-company under section 2(22)(e) is distinguishable on facts, inasmuch as the shares in the lending company in the said case were held by the partners of the assessee-firm and since such shares were held by the partners on behalf of the assessee-firm, it was held by the Hon'ble Delhi High Court that the loan received by the assessee-firm from the lending Company was liable to be treated as deemed dividend under section 2(22)(e) in its hands, even though it was directly not the shareholder of the lending company. In the present case, the shares in the lending company, namely M/s. Shining Emotional Surplus Pvt. Limited, were held by Shri S.B. Reena Jhola, a major shareholder of the assessee-company in his individual capacity and not on behalf of the assessee-company. The ratio of the decision of the Hon'ble Delhi High Court in the case of Bharati Overseas Trading Company that is not applicable in the facts of the assessee's case and even the ld. D.R. has not been able to raise any argument to dispute this position. On the other hand, the decision of the Hon'ble Bombay High Court in the case of ACIT -vs.- Britto Amusement Pvt. Limited reported in 360 ITR 544 cited by the ld. counsel for the assessee is directly applicable in the facts of the assessee's case, wherein the loan amount was received by the assessee-company from a lending company, in which it was not the shareholder. The shares of lending company were held by the shareholders of the assessee-company in their individual capacity. In these facts and circumstances involved in the said case, which are similar to the facts of the present case, it was held by the Hon'ble Bombay High Court that the loan amount in question could not be treated as deemed dividend under section 2(22)(e) in the hands of the assessee-company as it was not the shareholder of the lending company. Respectfully following the judgment of the Hon'ble Bombay High Court in the case of Britto

Amusement Pvt. Ltd. (supra), we uphold the impugned order of the Id. CIT(Appeals) deleting the addition made by the Assessing Officer on account of deemed dividend under section 2(22)(e) and dismiss this appeal of the Revenue.

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

Order pronounced in the open Court on August 10, 2016.

Sd/-

**(P.M. Jagtap)
Accountant Member**

Kolkata, the 10th day of August, 2016

- Copies to :*
- (1) *Income Tax Officer,
Ward-12(1), Kolkata,
Aayakar Bhawan,
P-7, Chowringhee Square,
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 - (2) *M/s. Shining Consulting Pvt. Limited,
C/o. Samiran Bhattacharya, Advocate,
167B, S.P. Mukherjee Road,
Kolkata-700 026***
 - (3) *Commissioner of Income Tax (Appeals)-4, Kolkata;***
 - (4) *Commissioner of Income Tax- ,***
 - (5) *The Departmental Representative***
 - (6) *Guard File***

By order

*Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.