

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'B': NEW DELHI

BEFORE SHRI G.D. AGRAWAL, PRESIDENT AND  
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER

ITA Nos.4209/Del/2017 and 4210/Del/2017  
Assessment Years : 2011-12 and 2012-13

Shri Deven Chachra,  
Satyam Cinema Building,  
Ranjit Nagar,  
New Delhi.  
PAN : AAMPC7318K.  
(Appellant)

Vs. Deputy Commissioner of  
Income Tax,  
Erstwhile Circle-48(1),  
[New Circle 72(1)],  
New Delhi.  
(Respondent)

Appellant by : Shri Gautam Jain, Advocate and  
Shri Lalit Mohan, CA.  
Respondent by : Shri F.R. Meena, Senior DR.

Date of hearing : 24.10.2017  
Date of pronouncement : 02.11.2017

ORDER

PER G.D. AGRAWAL, PRESIDENT :-

These appeals by the assessee for the assessment year 2011-12 & 2012-13 are directed against the order of learned CIT(A)-21, New Delhi dated 18<sup>th</sup> April, 2017.

2. In both these appeals, the assessee has challenged disallowance under Section 2(22)(e) of the Income-tax Act, 1961 amounting to ₹2,84,87,233/- in assessment year 2011-12 and ₹6,37,55,557/- in assessment year 2012-13.

3. At the time of hearing before us, it is submitted by the learned counsel that the assessee is a major shareholder in the following companies :-

Sr.No.	Name of company	Nature of business	Assessee shareholding (in %)
i)	Superior Films (P) Ltd.	Interest income and renting of property	26.91
ii)	Superior Clothing (P) Ltd.	Manufacturer and Exporter of readymade garments	40.9
iii)	Superior Crafts (P) Ltd.	Manufacturer and exporter of readymade garments	30.51
iv)	Satyam Autoserve (P) Ltd.	Authorized dealer of Toyota vehicle sales & service	49

4. That there were business transactions inter-se between these group companies, the details of which is given at page 1 of the assessment order for assessment year 2012-13. For ready reference, the same is reproduced below :-

Sl.No.	Name of the company	Nature of transaction	Percentage share holding of assessee	Loan Amount
1	Superior Films (P) Ltd.	Lender company	26.9%	
2	Superior Clothing (P) Ltd.	Borrower Companies	40.9%	23,13,81,230
3	Superior Crafts (P) Ltd.	Borrower Companies	30.5%	14,89,805
4	Satyam Autoserve (P) Ltd.	Borrower Companies	49.0%	40,50,395

5. That no money is paid by any of these companies to the assessee. However, the Assessing Officer has made huge additions for deemed dividend u/s 2(22)(e) while the fact remains that no loan is received by the assessee which can be treated as deemed dividend. He further stated that the transactions between M/s Superior Films (P) Ltd. and other group companies were business transactions because interest was duly charged by M/s Superior Films (P) Ltd. on the money

advanced to these concerns during the normal course of business and such interest income was offered to tax in the hands of M/s Superior Films (P) Ltd. He pointed out that M/s Superior Films (P) Ltd. received interest amounting to ₹78,51,725/- from M/s Superior Clothing (P) Ltd. and ₹29,650/- from M/s Superior Crafts (P) Ltd. during the assessment year 2011-12 and ₹2,62,90,476/- and ₹33,11,489/- in assessment year 2012-13. He also stated that even in earlier and subsequent years also, the money was advanced by M/s Superior Films (P) Ltd. to these concerns and interest was charged on regular basis. Thus, there was a regular transaction of advancing of money by M/s Superior Films (P) Ltd. to the group concerns from whom interest was charged at the normal market rate year after year and the Revenue has also accepted the same as a normal business transaction and did not make any addition u/s 2(22)(e) either in the case of the borrower company or in the case of the assessee in any other year except these two years under consideration, that too, in the case of the assessee who is an individual and who has not borrowed any money. He stated that Section 2(22)(e) is not applicable in respect of a normal business transaction. In support of this contention, he relied upon the decision of Hon'ble High Court of Calcutta in the case of Pradip Kumar Malhotra Vs. CIT – [2011] 338 ITR 538. He also relied upon the Circular No.19/2017 of CBDT.

6. Learned DR, on the other hand, relied upon the orders of authorities below and he stated that since the assessee has substantial interest in the concerns which advanced the money and also the concerns which received the borrowed money, Section 2(22)(e) of the Act was clearly applicable. He relied upon the decision of learned CIT(A) in this regard and stated that learned CIT(A) has discussed this issue at length and has rightly sustained the addition on account of deemed dividend.

7. We have carefully considered the contentions of both the sides and perused the material placed before us. We find that at page 4 of the assessee's written submissions, he has given a chart pointing out the interest income received by M/s Superior Films (P) Ltd. in the years under appeal as well as in the preceding and subsequent years. This chart gives the details of interest received from the group concern as well as others. For ready reference, the same is reproduced below :-

Sr.No.	A.Y.	Interest received from Superior Clothing	Interest received from Superior Craft	Interest received from other parties	Gross Interest	Other income	Revenue from operations	Assessment u/s
i)	2007-08	5,99,135	10,71,186	4,18,192	20,88,513	2,28,01,673	2,48,90,186	143(1)
ii)	2008-09	47,78,479	7,25,342	13,79,730	68,83,551	10,45,77,420	11,14,60,971	143(1)
iii)	2009-10	7,21,01,18	9,089	10,45,446	82,64,653	6,33,29,416	7,15,94,069	143(1)
iv)	2010-11	--	--	8,61,190	8,61,190	13,88,227	22,49,417	143(1)
v)	2011-12	78,51,725 (124,131G)	29,650 (124,131G)	72,65,167	1,51,46,542 (124)	74,05,288	2,23,03,697 (131)	143(3) Pages 188-190 of paper book for AY 2011-12
vi)	2012-13	2,62,90,476 (101)	33,11,489 (101)	85,83,797	3,81,85,762	1,18,49,712	5,00,35,474 (91 read with 99)	143(3) Page 104 of paper book for AY 2012-13
vii)	2013-14	3,91,85,297	2,53,643	88,69,752	4,83,08,692	1,83,37,728	6,66,46,420	143(3) Pages 191-192 of paper book for AY 2011-12
viii)	2014-15	3,66,45,585	--	1,09,86,305	4,76,31,890	1,20,66,381	5,96,98,271	143(3)
ix)	2015-16	4,39,68,508	--	2,24,02,759	6,63,71,267	1,53,01,200	8,16,72,467	143(1)
x)	2016-17	2,86,31,756	--	2,57,26,625	5,43,58,381	1,76,47,588	7,20,05,969	143(1)

8. From the above, it is evident that M/s Superior Films (P) Ltd. is receiving substantial interest from the group concerns as well as others right from assessment year 2007-08 to 2016-17. From page 6 onwards of the written submissions, the assessee has given the transactions between M/s Superior Films (P) Ltd. and other group concerns, from which, it is evident that there were several transactions of the payment and receipt of the money during the years under appeal. Considering the totality of above facts, we have no hesitation to hold that M/s Superior Films (P) Ltd. used to advance the money for earning interest income to various concerns which included group concerns also. The advancing of money was a regular course of business for M/s Superior Films (P) Ltd., not only in the years under appeal but also in the preceding as well as subsequent years. In view of the above, we have no hesitation to hold that advancing of money by M/s Superior Films (P) Ltd. to the group concerns was during the course of normal course of advancing money for the purpose of earning interest.

9. In the case of Pradip Kumar Malhotra (supra), Hon'ble High Court of Calcutta has held as under :-

*“Held, allowing the appeal, that for retaining the benefit of loan availed of from the bank if decision was taken to give advance to the assessee such decision was not to give gratuitous advance to its shareholder but to protect the business interest of the company. The sum of Rs.20,75,000 could not be treated as deemed dividend.”*

10. In Circular No.19/2017, paragraph 3, the CBDT has also held that 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. No contrary decision was brought to our knowledge.

11. In the case under consideration, the addition u/s 2(22)(e) is made in the case of an assessee who is an individual. Admittedly, no advance or borrowed money is received by the assessee from the concerns in which the assessee is a shareholder. There is a transaction of advancing of money by M/s Superior Films (P) Ltd. to the group concerns in the normal course of business. In view of the above decision of Hon'ble High Court of Calcutta as well as CBDT's Circular, Section 2(22)(e) is not applicable in the facts of the case under appeal before us. We, therefore, respectfully following the above decision of Hon'ble High Court of Calcutta as well as CBDT's Circular, delete the addition made u/s 2(22)(e) of the Act.

12. In the result, the appeals of the assessee are allowed.  
Decision pronounced in the open Court on 02.11.2017.

Sd/-  
**(SUDHANSHU SRIVASTAVA)**  
JUDICIAL MEMBER

Sd/-  
**(G.D. AGRAWAL)**  
PRESIDENT

VK.

Copy forwarded to: -

1. Appellant : **Shri Deven Chachra,**  
**Satyam Cinema Building,**  
**Ranjit Nagar, New Delhi.**
2. Respondent : **Deputy Commissioner of Income Tax,**  
**Erstwhile Circle-48(1), [New Circle 72(1)],**  
**New Delhi.**
3. CIT
4. CIT(A)
5. DR, ITAT

Assistant Registrar