आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL ,
'A' BENCH, CHENNAI
श्री एन.आर.एस. गणेशन,न्यायिक सदस्य एवं श्री ए. मोहन अलंकामणी,लेखा सदस्य के समक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER

आयकरअपीलसं./**I.T.A.No.356/Mds/2017**
(निर्धारणवर्ष / Assessment Year: 2013-14)

M/s. CAI Industries P Ltd., 1547-A, Avinashi Road, Peelamedu, Coimbatore – 641 004.	Vs	The DCIT, Corporate Circle – 2, Coimbatore
PAN: AABCC2146F		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Shri S. Sridhar, Advocate
प्रत्यर्थीकीओरसे/Respondent by	:	Shri V. Sreenivasan, JCIT

सुनवाईकीतारीख/Date of hearing	:	01.08.2017
घोषणाकीतारीख /Date of Pronouncement	:	21.09.2017

आदेश / O R D E R

PER A. MOHAN ALANKAMONY, AM:

This appeal by the assessee is directed against the order passed by the Ld. Commissioner of Income Tax (Appeals)-1, Coimbatore dated 30.11.2016 in Appeal No.220/15-16 for the assessment year 2013-14 passed u/s.250(6) r.w.s.143(3) of the Act.

2. The assessee has raised several grounds in its appeal however the cruxes of the issues are as follows:-

(i) The Ld.CIT(A) has erred in sustaining the order of the Ld.AO who had disallowed expenditure of Rs.4,60,482/- by invoking Section 14A and Rule 8D of the Rules.

(ii) The Ld.CIT(A) has erred in sustaining the order of the Ld.AO who had made addition of Rs.2,90,09,110/- by invoking the provisions of Section 2(22)(e) of the Act.

3. The brief facts of the case are that the assessee is a authorized dealer of Mahindra & Mahindra Ltd, Tractors, filed its return of income for the assessment year 2013-14 electronically on 25.09.2013, declaring total income of Rs.2,00,67,550/-. The case was selected for scrutiny under CASS and finally assessment order U/s.143(3) of the Act was passed on 09.03.2016, wherein the Ld.AO made the above stated additions.

4. **Ground No.2 (i) : Addition of Rs.4,60,482/- by invoking Section 14A and Rule 8D of the Rules:-**

During the course of scrutiny assessment, the Ld.AO observed that the assessee had made investment in shares as on 31.03.2013 for Rs.64,42,600/- and had earned dividend

income of Rs.5,13,800/-. Therefore the Ld.AO invoked the provision of Section 14A of the Act and Rule 8D(2)(i),(ii) & (iii) of the Rules and computed the disallowance at Rs.4,60,482/-. On appeal the Ld.CIT(A) sustained the order of Ld.AO by relying on the order of the ITAT Chandigarh Bench in the case Anil Kumar Singhania reported in 51 taxmann.com 98, wherein it was held as follows:

> *"further there is no force in the submissions that the Assessing Officer has not given any cogent reason for making disallowance in the sense that he has not pointed out which expenditure is relatable. First of all the assessee has not given any working wherein disallowance was made by the assessee himself while filing return. Secondly when the common expenditure and common interest is incurred then allocation has to be made on proportionate basis in terms of Sec. 14A r.w.r. 8D for which discussion has been made in case of Chadha Super Cars (Supra) and relevant paras has already been extracted above."*

Further the Ld.CIT(A) observed that the assessee had not submitted any proof such as bank statement to prove that the investments were made out of non-interest bearing fund. Accordingly the issue was decided against the assessee by the Ld.CIT(A).

4.1 Before us the Ld.AR submitted that the assessee had not incurred any expenditure towards making the investment or managing the investments. Hence it was pleaded that the

addition made by invoking the provision of Section 14A of the Act, may be deleted, while as the Ld.DR argued in support of the orders of the Revenue authorities.

4.2 We have heard the rival submissions and carefully perused the materials on record. From the Income Tax return filed by the assessee, it is apparent that the assessee has its own fund as detailed herein below:-

1.	Fully paid up equity share capital	– Rs. 2,63,19,300/-
2.	Capital Reserve	- Rs. 33,500/-
3.	Revaluation Reserve	- Rs. 10,30,279/-
4.	General Reserve	- Rs. 2,48,45,850/-
5.	Balance in P&L Account	- Rs.10,92,79,427/-

	TOTAL	Rs.16,15,08,356/-
		==========

The observation of the Ld.AO is that the assessee had made investments in shares for Rs.64,42,600/-, however we find that the assessee has own fund much above Rs.64,42,600/- even by excluding the capital reserve and revaluation reserve. Therefore it is obvious that the entire investment made by the assessee of Rs.64,42,600/- is from its own interest free funds. In such situation, it will be incorrect to apply Rule 8D(2)(i) & (ii) of

the Rules in the case of the assessee, because the assessee has not incurred any interest expenditure directly or indirectly with respect to its investment made for Rs.64,42,600/-. Therefore in the case of the assessee only Rule 8D(2)(iii) will be applicable and accordingly we hereby sustain the addition of Rs.32,213/- and further direct the Ld.A.O to delete the addition of Rs. 4,28,272/- (Rs.4,60,482 – Rs.32,213) made by applying the Rule8D(2)(i) & (ii) of of the Rules.

5. **Ground No.2 (ii) : Addition of Rs.2,90,09,110/- by invoking the provisions of Section 2(22)(e) of the Act:-**

During the course of scrutiny assessment proceedings, on verification of the ledger accounts of the assessee, the Ld.AO had noticed that the assessee company had received money from M/s. Rajshree Automotive Pvt. Ltd. On further verification it was observed that the assessee company and M/s. Rajshree Automotive Pvt. Ltd., were having the same individual as the Managing Director viz., M.S. Jaishree Varadaraj. It was further revealed that the assessee company was holding 18.39% shares of M/s. Rajshree Automotive Pvt. Ltd. Therefore, the Ld.AO came to the conclusion that the provisions of Section 2(22)(e) of the Act will be squarely applicable in the case of the assessee.

On query, the Ld.AR submitted the following explanation before the Ld.AO:-

(i) Both the companies were maintaining current account and there were interconnected commercial transactions between the companies.
(ii) The entire transactions were business transactions between the companies.
(iii) Certain expenses incurred on behalf of the sister concerns were reimbursed from time to time and at the end of the year they were squared up.
(iv) Both the companies were in the same line of business and there were some connected transactions between the companies.

5.1 It was therefore pleaded that in the case of the assessee provisions of Section 2(22)(e) will not be attracted. However the Ld.AO rejected the explanation offered by the assessee and its representative because of the following reasons:-

> *"The assessee has not proved that the transactions had occurred during the normal course of business between them and M/s.Rajshree Automotive Private Limited. The assessee company is dealing with Mahindra brand of vehicles and Mls.Rajshree Automotive Private Limited deals with Ford brand of vehicles. The argument of the company that "on certain occasions, the vehicles relating to M/s.Rajshree Automotive P. Ltd. are sent to us to carry on service and repair" has not been proved by the assessee. Further, the ledger submitted by the assessee does not show any proof that the payments are made for the trading activities between the companies. It could be clearly seen from the ledger that the*

amount paid on 11-8-2012 - Rs.32,00,000; 12-09-2012 - Rs.1,50,00,000; 7-12-2012 - Rs.39,00,000 constitute loans given by M/s.Rajshree Automotive Private Limited to Mls.CAI Industries Private Ltd. The ledger extract also confirms that certain payments has been made by the assessee company on behalf of M/s.Rajshree Automotive Private Ltd which is repaid by M/s.Rajshree Automotive Private Ltd. However, the amounts received by the assessee company from over and above the repayment amount is loans which has been reported by M/s.CAI Industries P. Ltd. in its Annual Report.

- *These advances were not trade advances as claimed by the assessee since both the companies are in to different line of businesses.*

- *The receipt of money from M/s.Rajshree Automotive Private Limited clearly show a definite pattern.*

- *As could be seen from the investments shown in the balance sheet, instead of declaring dividend income, M/s.Rajshree Automotive Private Limited had chosen to advance moneys to the assessee company on various dates.*

- *Also, in page 7 of the Annual Report of the assessee company, it is certified by the Chartered Accountant that" In respect of loans, secured or unsecured, granted or taken by the Company to or from companies, firms or other parties covered in the register maintained U/S 301 of the Companies Act, 1956, according to the information and explanations given to me:*

a)From Managing Director & Members : 95.001acs
Rajshree Automotive Private Ltd.
Maximum Amount involved during the year (in credit): 220.15 lacs
Maximum amount involved during the year (in Debit): 44.281acs

Closing balance NIL"

. From the above. it is amply clear that assessee company had received loans from M/s.Rajshree Automotive Private Limited which clearly come within the meaning of Deemed Dividend u/s 2(22)(e) of the I.T.Act, 1961.

Thereafter the Ld.AO placed reliance in the decision of the Hon'ble Supreme Court in the case Tarulata Shyam and others vs. CIT reported in 108 ITR 345, wherein it was held

"payment by a company not being a company in which the public were substantially interested within the meaning of Section 23A of 1922 Act, of any sum by way of advance or loan to a shareholder, not exceeding the accumulated profits possessed by the company was to be deemed as his dividend u/s 2(6A)(e) read with section 12(1B) of 1922 Act, even it that advance or loan was subsequently repaid in its entirety during the relevant previous year in which it was taken."

and in the case Miss. P. Saradha vs. CIT reported in 222 ITR 444 (SC) wherein it was held

""From the facts, as stated hereinabove, it appears that the withdrawals made by the appellant from the company amounted to grant of loan or advance by the company to the shareholder. The legal fiction came into play as soon as the monies were paid by the company to the appellant. The assessee must be deemed to have received dividends on the dates on which she withdrew the aforesaid amounts of money from the company. The loan or advance taken from the company may have been ultimately repaid or adjusted but that will not alter the fact that the assessee, in the eye of law, had received dividend from the company during the relevant accounting period."

By applying the ratio laid down in the decisions cited supra the Ld.AO treated the amount of Rs.2,90,09,110/- as deemed dividend under Section 2(22)(e) of the Act and added the same to the income of the assessee.

5.2 On appeal, the Ld.CIT(A) sustained the order of the Ld.AO by holding that the assessee company has not proved the commercial nexus between both the sister companies.

5.3 Before us the Ld.AR reiterated his submissions made before the Ld.Revenue Authorities and further relied in the decision of the Jurisdictional High Court in the case CIT vs. C. Subba Reddy, reported in (2016) 97 CCH 0157. The Ld.AR also relied on the Circular F.N.279/Misc./140/2015/ITJ dated 12th June 2017 issued by the CBDT wherein it was held that trade advances in the nature of commercial transactions would not fall within the ambit of the provisions of Section 2(22)(e) of the Act.

5.4 while as on the other hand the Ld.DR argued in support of the orders of the Ld.Revenue Authorities and relied in the

decision of the Hon'ble Jurisdiction High Court in the case Sunil Kapoor vs. CIT, reported in 375 ITR 0001.

5.5 We have heard the rival submissions and carefully perused the materials on record. From the facts of the case, it is apparent that both the assessee and its sister company are dealers in automobiles of different nature and engaged in business with close proximity. The combined endurance to market the products in the same vicinity results in close commercial ties between the assessee company and its sister company. As a result both the companies were maintaining current accounts in order to achieve their respective business targets. Therefore it cannot be said that, the interdependence for meeting several business commitments of the assessee and its sister concerns does not result in commercial nexus between the assessee company and its sister concerns. As pointed out by the Ld.AR some expenses were met by both the companies which were reimbursed by either company. These facts are not disputed. Moreover at the close of the financial year the current account maintained by the assessee with its sister concern showed nil balance. In this situation, we are of the view that the decision of the Jurisdictional High Court in the case CIT vs. C.

Subba Reddy would be most appropriate, wherein it was held that *"when no benefit has accrued to assessee and credit was a result of business transaction and was neither in nature of loan or deposit hence, provisions of Sections 2(22)(e) of the Act do not stand attracted."* Further in the case of the assessee the circular No.19/2017 supra is also very relevant. Considering these aspects of the case, we are of the considered view that provisions of Section 2(22)(e) of the Act will not be applicable in the case of the assessee. Therefore we hereby direct the Ld.AO to delete the addition made by invoking the provisions of Section 2(22)(e) of the Act.

6. In the result, the appeal of the assessee is partly allowed.

Order pronounced on 21st September,2017 at Chennai.

Sd/-	Sd/-
(एन.आर.एस. गणेशन)	(ए. मोहनअलंकामणी)
(N.R.S. Ganesan)	(A. Mohan Alankamony)
न्यायिकसदस्य/Judicial Member	लेखासदस्य/Accountant Member

चेन्नई/Chennai,
दिनांक/Dated 21st September, 2017

RSR

आदेशकीप्रतिलिपिअग्रेषित/Copy to:

1. अपीलार्थी/Appellant	2.प्रत्यर्थी/Respondent	3. आयकरआयुक्त (अपील)/CIT(A)
4. आयकरआयुक्त/CIT	5. विभागीयप्रतिनिधि/DR	6. गार्डफाईल/GF