

**IN THE INCOME-TAX APPELLATE TRIBUNAL,
AGRA BENCH, AGRA**

**Before: Shri A.D. Jain, Judicial Member And
Shri Dr. Mitha Lal Meena, Accountant Member**

**ITA Nos. 121 & 122/Agra/2017
A.Ys: 2011-12 & 2012-13**

ACIT, Circle-2(1), Gwalior (Appellant)	vs.	Royal Automobiles Pvt. Ltd., Chandravadni, Jhansi Road, Gwalior PAN: AACCR 9514 K (Respondent)
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Appellant by	Shri Waseem Arshad, Sr. DR
Respondent by	Shri Mahesh Agarwal, CA

Date of Hearing	13/11/2017
Date of Pronouncement	07/12/2017

ORDER

PER BENCH:

These appeals by the Revenue are directed against the order dated 12.01.2017 passed by the CIT(A), Gwalior for the Assessment Years 2011-12 and 2012-13, wherein following grounds of appeal have been raised.

ITA No. 121/Agra/2017

1. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law and in fact in deleting the addition of Rs.1,16,72,608/- which has been added by the AO on account of deemed dividend u/s 2(22)(e) of the I.T. Act, during the relevant financial year, in spite of the facts on records that the assessee has failed to produce any admissible evidence during the course of assessment proceeding before the AO.

2. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law and in fact in deleting the addition of Rs.9,50,150/- which has been added by the AO on account disallowances of keyman insurance policy, during the relevant financial year, in spite of the facts on records that the assessee has failed to produce any admissible evidence during the course of assessment proceeding before the AO.”

ITA No. 122/Agra/2017

1. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law and in fact in deleting the addition of Rs.46,83,972/- which has been added by the AO on account of deemed dividend u/s 2(22)(e) of the I.T. Act, during the relevant financial year, in spite of the facts on records that the assessee has failed to produce any

admissible evidence during the course of assessment proceeding before the AO.

2. Apropos first ground is common where the Revenue objected the action of Id. CIT(A) in deleting the addition of Rs.1,16,72,608/- and Rs. 46,83,472/- made by the Assessing Officer on account of deemed dividend u/s 2(22)(e) of the Act, in respect of the assessment year 2011-12 and 2012-13 respectively.

2.1 The brief facts of the case are that the assessee is engaged in the business of trading of automobiles. The Assessing Officer made addition towards loan from its group concerns M/s Royal Motors Bhopal Pvt. Ltd. (RMBPL), M/s Royal Motors Gwalior Pvt. Ltd. (RMGPL) and M/s Samadhiya Financial Services Pvt. Ltd. (SESPL). He applied section 2(22)(e) mainly on the ground that there exist common shareholding between the lending and the receiving companies, relying on the order of ITAT, Delhi in the case of NCK Exports Pvt. Ltd, reported as 102 ITD 311. The assessee explained before the AO that it was neither a registered nor a beneficial shareholder in its group concerns. Therefore, the provisions of section 2(22)(e) are not applicable. The AO was not satisfied with the reply of the assessee and the cases of 'CIT vs. Ankitech Pvt. Ltd and

others', reported in 340 ITR 14; 'CIT vs. Hotel Hilltop', reported in 313 ITR 116 (Raj) and 'CIT vs. Universal Medicare Pvt. Ltd.' reported in 324 ITR 263 (Mum). Since the Assessing Officer was being not satisfied with the contention of the assessee and relied on the judgment of ITAT, Delhi Bench in the case of 'NCK Sons Exports (P.) Ltd. vs. ITO', Delhi in 102 ITD 311 and held that it is the case of common shareholding between lending and receiving company, the provisions of deemed dividend u/s 2(22)(e) are attracted and accordingly made the additions in both the assessment years under appeal.

2.2 Aggrieved assessee filed appeal before Id. CIT(A) wherein the CIT(A) has deleted the whole addition in both the assessment year under appeal holding as under: -

ITA No. 121/Agra/2017 (A.Y. 2011-12)

"5.1.2. I have gone through, the averments of the appellant and perused the facts of the case and the observation of the AO in the impugned assessment order. The major argument on the issue of deemed dividend made by the AR of the appellant is that M/S Royal Motors (Gwl.) Pvt Ltd., M/S Royal Motors (Bhopal) Pvt Ltd. and M/s Samadhiya Financial Services (P) Ltd. are neither a beneficial nor a registered shareholder of the

appellant company and thus as it is not a shareholder the question of deemed dividend does not arise. On this issue, I am in agreement with the appellant that M/S Royal Motors (Gwl.) Pvt Ltd., M/S Royal Motors (Bhopal) Pvt Ltd. and M/s Samadhiya Financial Services (P) Ltd, are neither a beneficial nor registered shareholder of the appellant. As is apparent from the above arguments placed by the appellant and various case laws cited thereon, it seems to be an unanimity in decisions on the issue of contention and argument raised by the appellant. Various High Courts and Tribunals have held & passed similar judgments including the decision of special bench of the ITAT in the case of COMMISSIONER OF INCOME TAX V. BHAUMIK COLOUR (P.) LTD 11-8 ITD1, and the decision of jurisdictional ITAT bench, Agra in the case of Atul Engineering Udyog 133 ITD 1 and decision of various courts as under as cited by the appellant: -

1. CIT v. Ankitech Pvt Ltd and others 340 ITR 14 (Del)
2. CIT v. AR Magnetics (P.) Ltd. (2014) 220 Taxman 209 (Delhi) (HC)
3. CIT v, Daisy Packers (P.) Ltd. (2014) 220 Taxman 331 (Guj)(HC)
4. CIT v. Suram Holding (P.) Ltd. (2014) 220 Taxman 327(Raj.)(HC)
5. ACIT.v. Britto Amusement P. Ltd. (2014) 360ITR 544 (Bom)(HC)
6. CIT Vs Hotel Hilltop 313 ITR 116 (Raj)
7. CIT Vs Universal Medicare P Ltd 324ITR 263 (Mum)

5.1.3 In view of the view, I am of the opinion that the dividend even under section 2(22)(e) of the Act can be taxed only in the hands of the shareholder. As in the instant case, the appellant is neither a beneficial nor a registered shareholder of M/S Royal

Motors (Gwl.) Pvt. Ltd., M/S Royal Motors (Bhopal) Pvt Ltd. and M/s Samadhiya Financial Services (P) Ltd., thus any advance received by the appellant from such a concern does not qualify the tests of deemed dividend and hence, are not liable to be taxed. In view of the above the addition made by the Assessing Officer by invoking the provisions of section 2(22)(e) of the Act for an amount of 1,16,72,608 /- being amount received from M/s Royal Motors (Gwl.) Pvt. Ltd., M/s Royal Motors (Bhopal) Pvt. Ltd. and M/s Samadhiya Financial (P) Ltd. is hereby deleted and thus, these grounds of appeal are allowed.”

ITA No. 121/Agra/2017 (A.Y. 2012-13)

“5.1.2. I have gone through, the averments of the appellant and perused the facts of the case and the observation of the AO in the impugned assessment order. The major argument on the issue of deemed dividend made by the AR of the appellant is that M/S Royal Motors (Gwl.) Pvt Ltd., M/S Royal Motors (Bhopal) Pvt Ltd. and M/s Samadhiya Financial Services (P) Ltd. are neither a beneficial nor a registered shareholder of the appellant company and thus as it is not a shareholder the question of deemed dividend does not arise. On this issue, I am in agreement with the appellant that M/S Royal Motors (Gwl.) Pvt Ltd., M/S Royal Motors (Bhopal) Pvt Ltd. and M/s Samadhiya Financial Services (P) Ltd, are neither a beneficial nor registered shareholder of the appellant. As is apparent from the above arguments placed by the appellant and various case laws cited thereon, it seems to be a unanimity in decisions on the issue of contention and argument raised by the appellant. Various High Courts and Tribunals have held & passed similar judgments including the decision of special bench of the ITAT in the case of COMMISSIONER OF INCOME TAX V. BHAUMIK COLOUR (P.) LTD 11-8 ITD1, and the decision of jurisdictional ITAT bench, Agra in the case of Atul Engineering Udyog 133 ITD 1 and decision of various courts as under as cited by the appellant: -

CIT v. Ankitech Pvt Ltd and others 340 ITR 14 (Del)

CIT v. AR Magnetics (P.) Ltd. (2014) 220 Taxman 209 (Delhi) (HC) CIT v, Daisy Packers (P.) Ltd. (2014) 220 Taxman 331 (Guj)(HC) CIT CIT v. Suram Holding (P.) Ltd. (2014) 220 Taxman 327(Raj.)(HC) ACIT.v. Britto Amusement P. Ltd. (2014) 360ITR 544 (Bom)(HC)

CIT Vs Hotel Hilltop 313 ITR 116 (Raj)

CIT Vs Universal Medicare P Ltd 324ITR 263 (Mum)

5.1.3 In view of the view, I am of the opinion that the dividend even under section 2(22)(e) of the Act can be taxed only in the hands of the shareholder. As in the instant case, the appellant is neither a beneficial nor a registered shareholder of M/S Royal Motors (Gwl.) Pvt. Ltd., M/S Royal Motors (Bhopal) Pvt Ltd. and M/s Samadhiya Financial Services (P) Ltd., thus any advance received by the appellant from such a concern does not qualify the tests of deemed dividend and hence, are not liable to be taxed. In view of the above the addition made by the Assessing Officer by invoking the provisions of section 2(22)(e) of the Act for an amount of Rs.46,83,972/- being amount received from M/s Royal Motors (Gwl.) Pvt. Ltd., M/s Royal Motors (Bhopal) Pvt. Ltd. and M/s Samadhiya Financial (P) Ltd. is hereby deleted and thus, these grounds of appeal are allowed.”

2.3 The Id. DR supported the assessment order. He submitted that the assessee company has received loan/advances from its group companies as discussed in the assessment order (para 3 on page 1). Since, the assessee company has received substantial amount of loan from the lending companies despite that the assessee company is neither a registered nor a beneficial shareholder in any of the lender company, provisions of section 2(22)(e) are fully applicable. In

support of his contention, he placed reliance on the order of Hon'ble Allahabad High Court in the case of Shri Krishan Gopal Maheswari (ITA No 23 of 2013), CIT V. Subrat Roy, Lucknow (Order dt. 27/08/2013) and an order of the Hon'ble Supreme Court in the case of 'Gopal & Sons (HUF) Vs. CIT, (Civil Appeal No. 12274 of 2016). On the basis of these cases, he vehemently argued that the loan/advance received by the assessee company from TAPL and VFARPL is fully covered by the provisions of section 2(22)(e) and the assessing officer was correct in treating the same as deemed dividend and assessing the same in the hands of the assessee company.

2.4 Per contra, the respondent Counsel for the assessee Shri Mahesh Agarwal supported the order of the CIT (Appeals). He contended that intention behind section 2(22)(e) was to curb the malpractices of closely held companies who do not distribute dividend but give loans / advances to their inter share holders and thereby avoid paying tax on dividend distribution. Since dividend could be given only to a registered shareholder, provisions of section 2(22)(e) could be attracted only in the hands of a registered shareholder. A non-shareholder cannot be deemed as shareholder for the purpose of

section 2(22)(e). His main contention was that addition u/s 2(22)(e) can be made only in the hands of the registered and beneficial shareholder and since the assessee company does not hold any shares in the lender companies, the provisions of the section 2(22)(e) could not be applied to it. Ld AR again submitted that the CIT(A) has discussed the issue in detail covering all aspects and related case laws and is fully justified in deleting the impugned addition. The Counsel relied on various case laws. He strongly relied on the recent decision of the Hon'ble Apex Court delivered on 5th October 2017 in the case of CIT, Delhi - II Vs. Madhur Housing and Development Company (Civil Appeal No. 3961 of 2013) and Others. (copy placed on record)

2.5 We have heard both the parties, perused the material on record and considered the case laws cited in support.

2.6 It is undisputed fact that the assessee company is neither a registered nor a beneficial shareholder in any of the lender companies i.e. RMBPL, RMGPL and SFSPL, though it has taken loans/advances from these companies. Therefore the question before us to consider under these facts, whether the loan/advance received by the

assessee company from these group companies could be taxed in its hand as "deemed dividend" within the provisions of section 2(22)(e).

2.6.1 It is fact on record that the loans and advances are not received by the assessee company on behalf or for the individual benefit of any shareholder. All the judgements cited at Bar suggests that loans/advances can be taxed as deemed dividend U/S 2(22)(e) in the hands of the registered or beneficial shareholder only. No contrary decision was brought to our knowledge. As far case laws, cited by the Ld DR, are concerned it would be suffice to say that they do not address the specific issue of treating receipt of an advance/loan as deemed dividend in the hands of the non-shareholder recipient which is the core dispute in the present case.

2.6.2 On similar facts, in the case of Royal Motors(Bhopal) Pvt Ltd (ITA No. 158/Agra/2015), following the decision of Sp. Bench in the case of BhaumikColoursPvt Ltd (2009) 118 ITD 0001, we have upheld the order of the Id. CIT(A) deleting the addition made by the AO u/s 2(22)(e) of the Act.

2.6.3 The issue in dispute as to applicability of section 2(22)(e) to a non-shareholder recipient of loan / advance, is now stands settled, by Hon'ble Apex Court in case of 'CIT, Delhi-II vs. Madhur Housing and

Development Company (Civil Appeal No.3961 of 2013) and others.

The abstract of the order is reproduced hereunder: -

ORDER

The impugned judgment and order dated 11.05.2011 has relied upon a judgment of the same date by a Division Bench of the High Court of Delhi in ITA No. 462 of 2009. Having perused the judgment and having heard arguments, we are of the view that the judgment is a detailed judgment going into Section 2(22)(e) of the Income Tax Act which arises at the correct construction of the said Section. We do not wish to add anything to the judgment except to say that we agree therewith.

These appeals are disposed of accordingly.

2.6.4 Following the decision of Hon'ble Apex Court in Madhur Housing and Development Company (supra), we hold that the CIT(A) has passed well-reasoned orders in respect of both the assessment years under appeal which do not suffer any infirmities. Therefore, the orders of Id. CIT(A) on this issue are confirmed. Thus, the 1st ground of appeal is rejected.

3. The next issue is related to disallowance of Rs.9,50,150/- by AO made on account of keyman issuance policy stating that assessee failed to produce any admissible evidence during the course of assessment proceedings.

3.1 The Id. CIT(A) deleted the addition considering the contention of the assessee that the claim of deduction of Rs.9,50,150/- is towards keyman insurance policy premium of its director, Shri Hari Kant Samodhiya is an allowable expenses in view of the Circular of CBDT No. 38/2016 dated 22nd November 2016 and various judicial pronouncements wherein it has been held that the premium paid by the firm on the keyman issuance policy of a partner is deductible from the total income of the firm, (para 5.2.2 page 28-30).

3.2 The Id. DR supported the Assessment Order.

3.3 The counsel for the assessee reiterated the submission made before the Id. CIT(A). He contended that the policy document was fully explanatory as “key man policy (APB -26). The policy holder was the assessee company while the life assured is that of Shri Hari Kant Samodhiya, its MD. The premium is allowed as business expenditure as per CBDT Circular No. 38/2016 dated 22nd November 2016.

3.4 In view of the above, we observe that the findings of the Id. CIT(A) are in conformity with the facts of the case which are not controverted by Id. DR. The order of the CIT(A) is confirmed on this issue accordingly.

4. In the result, both the appeals of the revenue are dismissed.

Order pronounced in the open court on 07/12/2017

**Sd/-
(A.D. Jain)
Judicial member**

**Sd/-
(Dr. Mitha Lal Meena)
Accountant Member**

Dated:..07/12/2017

Aks/-

Copy of order forwarded to:

(1) *The appellant*

(3) *Commissioner*

(5) *Departmental Representative*

(2) *The respondent*

(4) *CIT(A)*

(6) *Guard File*

By order

*Assistant Registrar
Income Tax Appellate Tribunal
Agra Bench, Agra*

		Date		
1.	Draft dictated /	13/11/2017		PS
2.	Draft placed before author			PS
3.	Draft proposed & placed before the second member			JM/AM
4.	Draft discussed/approved by Second Member.			JM/AM
5.	Approved Draft comes to the Sr.PS/PS			PS/PS
6.	Kept for pronouncement on			PS
7.	File sent to the Bench Clerk			PS
8.	Date on which file goes to the AR			
9.	Date on which file goes to the Head Clerk.			
10.	Date of dispatch of Order.			