

**IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA BENCH 'SMC', KOLKATA  
[Before Shri P.M. Jagtap, AM]**

**I.T.A. No. 2364/Kol/2017**  
Assessment Year: 2010-11

***M/s. MSV Securities Ltd. ....Appellant***  
***1/1, Monica Building,***  
***9B, Lord Sinha Road,***  
***Kolkata – 700 071.***  
***[PAN: AABCM 7325 A]***

***I.T.O. Ward 8(1) Kolkata,.....Respondent***  
***P-7, Chowringhee Square,***  
***Kolkata – 700 069***

**Appearances by:**

*Shri Nitesh Singh, CA appearing on behalf of the Assessee.*

*Shri S.M. Tauheed, Addl. CIT appearing on behalf of the Revenue.*

Date of concluding the hearing : February 12, 2018

Date of pronouncing the order : February 19, 2018

**ORDER**

**PER P.M. JAGTAP, AM**

This appeal filed by the assessee is directed against the order of Ld. CIT (Appeals) – 3, Kolkata dated 03.10.2017 and the solitary issue involved therein relates to the addition of Rs. 8,54,000/- made by the A.O. and confirmed by the Ld. CIT(A) on account of deemed dividend under section 2(22)(e) of the Act.

2. The assessee in the present is an investment and consultancy company. The return of income for the year under consideration was filed by it on 04.10.2010 declaring a total income at nil. As noted by the A.O. during the course of assessment proceedings, a sum of Rs. 8,54,000/- was appearing in the name of the assessee company in the books of M/s. Survottam Enterprises Ltd. as advance receivable in cash or in kind. In this regard, it was explained by the assessee that the said amount was payable to M/s. Survottam Enterprises Ltd.

towards purchase of shares made from them in the F.Y. 2004-05 and payment got delayed due to adverse financial position. This explanation of the assessee was not found acceptable by the A.O. and he proceeded to add the amount of Rs. 8,54,000/- to the total income of the assessee as deemed dividend u/s 2(22)(e) of the Act as the other conditions stipulated therein were duly satisfied. On appeal, the Ld. CIT(A) confirmed the said addition made by the A.O. under section 2(22)(e). Aggrieved by the order of the Ld. CIT(A), the assessee has preferred this appeal before the Tribunal.

3. I have heard the arguments of both the sides and also perused the relevant material available on record. As submitted by the authorised representative of the assessee, shares worth Rs. 14,55,060/- were purchased by the assessee company from M/s. Survottam Enterprises Ltd. in the F.Y. 2004-05 and the amount payable towards the said purchase was partly paid in the F.Y. 2006-07, 2008-09 and 2009-10 leaving outstanding balance of Rs. 8,54,000/- at the end of the year under consideration. He has also filed the relevant ledger account extract to show the year-wise transactions and a perusal of the same clearly shows that the amount of Rs. 8,54,000/- in question is not in the nature of any payment made by M/s. Survottam Enterprises Ltd. to the assessee company during the year under consideration, but the same represented the outstanding amount payable by the assessee against the purchase of shares made in the F.Y. 2005-06. Keeping in view this factual position, it is clear that the provision of section 2(22)(e) is not applicable to the amount in question and this position is not disputed even by the learned DR. He however has contended that since this factual position

was not specifically brought to the notice of the A.O. or the Ld. CIT(A) by the assessee, the matter may be sent back to the A.O. for verification. I find merit in this contention of the learned DR and since the authorised representative of the assessee has also not raised any objection in this regard, I set aside the impugned order of the Ld. CIT(A) on this issue and restore the matter to the file of the A.O. for deciding the applicability of section 2(22)(e) to the amount in question after taking into consideration the exact nature of the relevant transactions from the entries in the books of accounts of the assessee.

**5. In the result, the appeal of the assessee is treated as allowed for statistical purposes.**

Order Pronounced in the Open Court on 19<sup>th</sup> February, 2018.

Sd/-  
(P.M. Jagtap)  
ACCOUNTANT MEMBER

**Dated: 19/02/2018**  
Biswajit, Sr. PS

Copy of order forwarded to:

1. M/s. MSV Securities Ltd., 1/1, Monica Building, 9B Lord Sinha Road, Kolkata – 700 071.
2. ITO Ward 8(1), P-7, Chowringhee Square, Kolkata – 69.
3. The CIT(A)
4. The CIT

5. DR

True Copy,

By order,

Sr. P.S. / H.O.O.  
ITAT, Kolkata