

**IN THE INCOME TAX APPELLATE TRIBUNAL, BENCH “A”, MUMBAI
BEFORE SHRI G.S. PANNU, ACCOUNTANT MEMBER AND
SHRI PAWAN SINGH, JUDICIAL MEMBER**

ITA No. 6320 & 6321/Mum/2012 (Assessment Year-2006-07 & 2007-08)

Mr. Akashdeep Sabir 2503, Silver Arch, Building No. B-29, Shastri Nagar, Andheri (West), Mumbai-400053. PAN: AAFPS6738Q	Vs.	ACIT-11(1), Room No. 467, 4 th Floor, Aayakar Bhavan, Mumbai-400020
(Appellant)		(Respondent)

Assessee by : Miss. Dinkle Hariya (AR)

Revenue by : Shri Rajesh Kumar Yadav
(DR)

Date of hearing : 29.11.2017

Date of Pronouncement : 31.01.2018

Order Under Section 254(1) of Income Tax Act

PER PAWAN SINGH, JUDICIAL MEMBER:

1. These two appeal by assessee under section 253 of the Act are directed against the orders of Id. CIT(A)-3, Mumbai dated 07.08.2012 for Assessment Year (AY) 2006-07 & 2007-08. In both the appeals, the assessee has raised the identical grounds of appeal except variation of figure. Thus, both the appeals were heard together and are decided by a consolidated order. For appreciation of fact, we are referring the fact for AY 2006-07 in ITA No. 6320/Mum/2012. The assessee has raised the following grounds of appeal:

1. The CIT(A) erred in confirming the order of AO wherein he reopened the assessment u/s147 of LT Act. Under the facts and circumstances of the matter CIT(A) ought not to have confirmed the order of AO.

2. The CIT(A) erred in confirming the order of AO wherein he deemed u/s 2(22)(e) as dividend being debit balance existing in appellant's account in the books of Cinetek Telefilms Pvt Ltd. Under the facts and circumstances of the matter CIT(A) ought not to have confirmed the order of AO.

3. Without prejudice to the above, the CIT(A) erred in confirming the order of AO wherein he calculated total advance received by appellant at Rs.13,83,750 instead of Rs.6,98,026 after excluding the amount ofRs.9,61,200 towards decoration by the appellant at Lonavala premises which was for company's commercial use. Under the facts and circumstances of the matter CIT(A) ought not to have confirmed the order of AO.

2. Brief facts of the case are that the assessee is a Director and Major of shareholder in a company namely M/s Cinetek Telefilm Pvt. Ltd., filed his return of income for relevant AY on 31.10.2006 declaring taxable income of Rs. 19,06,057/-. The assessment was completed under section 143(3) on 07.12.2009. During the course of scrutiny proceeding under of M/s Cinetek Telefilm Pvt. Ltd. for assessment year 2007-08, the Assessing Officer (AO) noted that assessee hold 52% of share of that company. The reserve and surplus position of the company as on 31.03.2016 was at Rs. 1,42,44,425/- which increased to Rs. 1,83,71,235/- as on 31.03.2007. The said company has given a loan and advance to assessee for Rs. 22,29,140/- during the relevant AY, thereafter opening credit balance of Rs. 8,45,390/- in the ledger account of assessee in the books of company, for which the AO took a view that as on 31.03.2005 the company had taken a loan from assessee for Rs. 8,45,390/-. Thus, on the basis of above referred reasons, the AO was of the view that income

of Rs. (22,29,140 – 8,45,390 = 13,83,750/-) chargeable to tax had escaped assessment for the relevant AY. Notice under section 148 dated 08.03.2010 was served upon the assessee. The assessee filed his reply dated 07.04.2010 and contended that original of return may be treated as return in response to the notice under section 148 of the Act. The assessee asked for supply of reasons. The reasons for supply to the assessee along with letter dated 07.07.2010. The assessee further filed his detailed submission dated 16.07.2010. The contended that the provisions of section 2(22)(e) is not attracted and proceeding under section 147 & 148 be dropped. The contention of assessee was not accepted by AO. The AO proceeded to make the re-assessment proceeding under section 147 of the Act. The AO completed the re-assessment on 13.12.2010 under section 143(3) r.w.s. 147 of the Act. In the re-assessment order, the AO treated the amount of Rs. 13,83,750/- as deemed dividend in the hand of assessee. On appeal before the Id. CIT(A), the re-opening as well as addition under section 2(22)(e) was upheld. Thus, further aggrieved by the order Id. CIT(A), the assessee has filed the present appeal before us.

3. We have heard the Id. Departmental Representative (DR) for the Revenue and Id. Authorized Representative (AR) of the assessee and perused the material available on record. The Id. AR of the assessee argued that the objection filed by assessee against the re-opening was not decided by AO

and thus re-assessment order is invalid. On the other hand, the ld. DR for the Revenue supported the order of authorities below.

4. We have considered the rival submission of the parties and have gone through the orders of authorities below. First ground of appeal relates to validity of re-opening. The main argument of ld. AR of the assessee was that all material facts were available on record at the time of original assessment proceedings. We have noted that AO made re-opening of the assessment while making the scrutiny assessment of M/s Cinetek Telefilm Pvt. Ltd. During the scrutiny proceeding of M/s Cinetek Telefilm Pvt. Ltd. the AO noted that assessee is shareholder of 52% in the said company. It was further noted that company has given loan and advances to assessee during Financial Year 2005-06. Thus, the AO took a view that the income of Rs. 13,83,750/- escaped from the assessment within the meaning of section 147. We have noted that while making assessment of M/s Cinetek Telefilm Pvt. Ltd., the AO has sufficient reason to believe that income has escaped assessment. The AO has recorded subjective satisfaction. Further, we have noted that the assessee has not filed any evidence on record to show that the issue of taxability of the deemed dividend was examined by assessing officer during the original assessment proceedings. No copy of notice under section 143(2) or 142 is placed on record. No reply of any questionnaire filed before the assessing officer is also filed. Thus, we do not find any infirmity in the

re-opening of the assessment. Thus, Ground no. 1 of the appeal is dismissed.

5. Ground No.2 relates to treating the advance as deemed dividend and Ground No.3 relates to confirming the addition of Rs. 13,83,750/- as advance(deemed dividend). Both the grounds are interconnected hence, the submissions on both grounds were heard and are discussed together. The ld AR for the assessee argued on merit, that assessee has properly explained the fact before the AO as well as ld. CIT(A). During the assessment proceeding, all the details of loan and advances given by the company were explained. It was explained that loan and advances were given for the purpose of business of company. The copy of ledger account of M/s Cinetech Telefilm Pvt. Ltd. in the books of account was also submitted. The contention of company spent a sum of Rs. 9,61,200/- of set and decoration at the premises of Director in Lonawala to be exploited by company in its T.V. serials and film production without any rental payment to Director after excluding the amount from assessee's account in the books of company, in fact there remains an amount of Rs. 2,63,173/- is liable to pay by the company with the assessee. The payment made to meet the expenses in the regular course of business cannot be treated as loan or advances. There was no diversification of surplus fund which cannot be characterized as advance under section 2(22)(e). The ld DR for the revenue supported the order of the authorities

below. It was argued that all the conditions for treating the advance loan availed as deemed dividend is fulfilled. The entries shown in the books of accounts don't support the pleas of the assessee.

6. We have considered the rival submissions of the parties and have gone through the orders of the authorities below. The assessing officer during the re-assessment noted that assessee was holding 52% shares of M/s Cinetech Telefilm Pvt Ltd which is closely held Pvt Ltd Company. M/s Cinetech Telefilm Pvt Ltd had accumulated profit up to date as of such payment to the assessee as on 31.03.2007. M/s Cinetech Telefilm Pvt Ltd made payment of Rs. 13,83,750/- on behalf of assessee. Therefore, the said payment was treated as taxable deemed dividend at the hand of assessee as there was sufficient reserve in the books of accounts of the said company as on the date. The AO also took the view of debtor and creditor relationship between the Company and the assessee. The AO further concluded that provisions of section 2(22)(e) is a deeming fiction under Income tax Act, wherein any fund of closely held company is used by shareholder, which he could not use otherwise than by way of declaration of dividend by such closely held company, bringing it within the tax liability under section 115O, can be brought to tax as deemed dividend. During the first appellate stage the assessee made similar contentions as urged before us. The Id CIT(A) examined the Audited books of accounts of Cinetech Telefilm Pvt Ltd, which shows the debit

balance in the name of the assessee for purchases of furniture and fixture. The copy of the ledger accounts also supports this fact. The name of the assessee is clearly mentioned as Akashdeep Sabir (loan) account. Thus, the Id CIT (A) also took the view that the payments received is in the nature of loan and advance. The said amount is in the name of Lonawala Bungalow is also duly appearing in the schedule of loan and advances of Cinetech Telefilm Pvt Ltd. Therefore, the payment of Rs. 13,83,750/- is deemed dividend and taxable at the hand of assessee. We have noted that the assessee has not filed any documentary evidence to prove otherwise. Further the assessee failed to prove the contention that any money was spent on set and decoration at the premises of Director in Lonawala to be exploited by company in its T.V. serials and film production without any rental payment to Director after excluding the amount from assessee's account in the books of company. Hence, we do not find any illegality or infirmity in the order passed by Id CIT(A). In the result the ground No.2 & 3 of the appeal are dismissed.

7. In the result, appeal of the assessee of the assessee for AY 2006-07 is dismissed.

ITA No. 6321/ M/2012 for AY 2007-08.

8. The assessee has raised identical grounds of appeal as raised in appeal for AY 2006-07. The facts for this assessment year are also similar except variation of figures in additions. As we have already dismissed the appeal of assessee on identical grounds of appeal in earlier year, hence, following

the principal of consistency the appeal for this year is also dismissed with similar findings.

9. In the result the appeal for AY 2007-08 is dismissed.

Order pronounced in the open court on 31st day of January 2018.

Sd/-

(G.S. PANNU)
ACCOUNTANT MEMBER

Sd/-

(PAWAN SINGH)
JUDICIAL MEMBER

Mumbai; Dated 31/01/2018

S.K.PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

BY ORDER,

(Asstt.Registrar)
ITAT, Mumbai