

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

**I.T.A. No. 2273/Kol/2017
Assessment Year: 2008-09**

M/s. Pasma Distributors Pvt. Ltd..... Respondent
Basement, Jayajyanti Apartment
2A Mandavilla Garden
Gariahat
Kolkata - 700 019
[PAN : AADCP 5375 R]

Income Tax Officer, Ward-12(1), Kolkata.....Appellant
Aaykar Bhawan
P-7 Chowringhee Square
Kolkata - 700 069

Appearances by:

Shri B.K. Sahoo, FCA, appeared on behalf of the assessee.

Shri Pinaki Mukherjee, Addl. CIT, DR appearing on behalf of the Revenue.

Date of concluding the hearing : February 22nd, 2018

Date of pronouncing the order : February 23rd, 2018

O R D E R

Per P.M. Jagtap :-

This appeal filed by the assessee is directed against the order of the Id. Commissioner of Income Tax (Appeals)-16, Kolkata, dt. 27/09/2017, (hereinafter the 'Id. CIT (A)'), passed u/s 250 of the Income Tax Act, 1961 (the 'Act').

2. The assessee in the present case is a company which filed its return of income for the year under consideration declaring total income of Rs. 1,982,840/-. In the assessment originally completed under section 143 (3) vide an order dated 29/11/2010, the total income of the assessee was determined by the AO and Rs. 2,070,970/-. The said assessment, however was subsequently reopened by the AO issuing notice under section 148 of the recording the reasons and in the assessment completed under section 144/147 of the Act, vide an order dated 25/03/2014, the addition of Rs. 2,868,774/-was made by the AO on account of the amount of loan received by the assessee from M/s. Prapti Fashions Pvt. Ltd. by treating the same as the deemed dividend u/s 2 (22) (e) of the Act. While making the said addition, the assessing officer rejected the contention of the assessee

company that the same being not a registered shareholder of M/s. Prapti Fashions Pvt. Ltd., the amount of loan in question could not be added in its hands as deemed dividend u/s 2 (22) (e) of the Act, by relying on the decision of the Hon'ble Delhi High Court in the case of *CIT vs. Ankitech Pvt. Ltd. [ITA No. 462 of 2009]*. On appeal, the ld. CIT(A) confirmed the addition made by the Assessing Officer u/s 2 (22) (e) of the Act by relying again on the decision of the Hon'ble Delhi High Court in the case of *CIT vs. Ankitech Pvt. Ltd. (supra)*. Aggrieved by the order of the ld. CIT(A), the assessee has preferred this appeal before the Tribunal.

4. I have heard the arguments of both the sides and also perused the relevant material on record. As rightly submitted by the learned counsel for the assessee, the issue involved in the present case now stands fully covered in favour of the assessee by the decision of the Hon'ble Supreme Court in the case of *CIT vs. Madhur Housing and Development Company [SLP(c) No. 19007 of 2012, dated 05/10/2017]*, wherein it was held that the legal fiction created in section 2(22)(e) of the Act, does not extend to a beneficial shareholder and the loans received by the assessee company from another company of which it was not a registered shareholder cannot be assessed as deemed dividend u/s 2 (22) (e) of the Act. Respectfully following the said decision of the Hon'ble Supreme Court, I delete the addition made by the AO and confirmed by the Ld. CIT(A) u/s 2(22)(e) of the Act by treating the amount of loans received by the assessee company from M/s. Prapti Fashions Pvt. Ltd. as deemed dividend as the assessee company was not the registered shareholder of M/s. Prapti Fashions Pvt. Ltd. at the relevant time.

5. In the result, the appeal of the assessee is allowed.

Kolkata, the 23rd day of February, 2018.

Sd/-
[P.M. Jagtap]
Accountant Member

Dated :23.02.2018
{SC SPS}

Copy of the order forwarded to:

**1. M/s. Paspas Distributors Pvt. Ltd
Basement, Jayajyanti Appartment
2A Mandavilla Garden
Gariahat
Kolkata – 700 019**

**2. Income Tax Officer, Ward-12(1), Kolkata
Aaykar Bhawan
P-7 Chowringhee Square
Kolkata – 700 069**

3. CIT(A)-

4. CIT- ,

5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By order

Senior Private Secretary
Head of Office/ D.D.O. ITAT, Kolkata Benches