

**IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH, MUMBAI  
BEFORE SHRI RAJENDRA, AM AND SHRI RAVISH SOOD, JM**

ITA No.2794/Mum/2016

(निर्धारण वर्ष / Assessment Years:2011-12)

ACIT-16(1), Room. No. 439, Aayakar Bhavan, M.K. Road, Mumbai-20	<b>बनाम/</b>  <b>Vs.</b>	M/s Cine Studios Shree Sound Complex, Madhav Das Pasta Road, Dadar (E) Mumbai-400014
स्थायी लेखा सं./जीआइआर सं./PAN No. AA AFC2778B		
(अपीलार्थी / Revenue)	:	(प्रत्यर्थी / Assessee)

अपीलार्थी की ओर से / <b>Revenue by</b>	:	Shri Rajat Mittal, D.R
प्रत्यर्थी की ओर से / <b>Assessee by</b>	:	Shri Mehul Shah, A.R

सुनवाई की तारीख / <b>Date of Hearing</b>	:	08.05.2018
घोषणा की तारीख / <b>Date of Pronouncement</b>	:	23.05.2018

**आदेश / O R D E R**

**PER RAVISH SOOD, JUDICIAL MEMBER:**

The present appeal filed by the revenue is directed against the order passed by the CIT(A)-4, Mumbai dated 22.01.2016 which in itself arises from the order passed by the A.O under Sec.143(3) of the Income tax Act, 1961, (for short 'Act'), dated 26.02.2014 for A.Y 2011-12. The revenue assailing the order of the CIT(A) had raised before us the following grounds of appeal:-

- “1) *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the addition made by*

*the AO amounting to Rs.2,98,96,696/- on account of deemed dividend u/s 2(22)(e) of the Income Tax Act, 1961.*

- 2) *The appellant prays that the order of CIT(A) on the above grounds be set aside and that of the Assessing officer be restored.*
- 3) *The appellant craves leave to amend or alter any ground or add a new ground which may be necessary.*

2. Briefly stated, the facts of the case are that the assessee firm had e-filed its return of income for A.Y 2011-12 on 24.09.2011, declaring total income of Rs.66,92,475/-. The case of the assessee was selected for scrutiny assessment under Sec.143(2).

3. During the course of the assessment proceedings, it was observed by the A.O that the assessee firm had received an amount of Rs.2,98,96,969/- towards finance creditors under the head "Current Liabilities and Provisions" in the balance sheet. It was observed by the A.O that the partners of the assessee firm i.e. M/s Cine Studio were also directors of the sister concerns, viz. (i) M/s Nagindas Properties Pvt. Ltd.; (ii) M/s Shree Sound P. Ltd.; and (iii) M/s Putco P. Ltd. The A.O noted that the partners of the assessee firm were having substantial share holding of approximately 90% in the aforementioned three companies. The assessee on being called upon by the A.O to explain as to why the aforesaid amount may not be assessed in its hands as deemed dividend under Sec. 2(22)(e) of the Act, submitted that as it was not a shareholder in either of the said companies, therefore, the amount could not be assessed as deemed dividend in its hands. However, the explanation of the assessee did not find favour with the A.O who assessed the amount of Rs.2,98,96,969/- as deemed dividend in the hands of the assessee firm.

4. Aggrieved, the assessee carried the matter in appeal before the CIT(A). It was submitted before the CIT(A) that as the assessee firm was neither a registered shareholder nor a beneficial shareholder of either of the aforesaid companies, therefore, the A.O had erred in assessing the aforesaid amount of Rs.2,98,96,969/- as deemed dividend in its hands. The CIT(A) after deliberating on the contentions advanced by the assessee in the backdrop of the order passed by the A.O, observed that the assessee firm during the year

under consideration had received an amount of Rs.88,56,686/- from M/s Nagindas Properties Pvt. Ltd. It was further observed by the CIT(A) that the assessee was having Opening balance of loan of Rs.49,20,834/- from M/s Shree Sound Pvt. Ltd; Rs.1,52,38,831/- from M/s Putco Pvt. Ltd; and Rs.74,30,118/- from M/s Nagindas Properties Pvt. Ltd. The CIT(A) holding a conviction that the opening balances of loans could not be a subject matter of addition during the year under consideration, thus concluded that the A.O had erred in including the same while working the addition under Sec. 2(22)(e) of the Act. The CIT(A) on the basis of his aforesaid deliberations concluded that the additions under Sec. 2(22)(e) during the year, if any, were liable to be restricted up to the amount of loan of Rs.88,56,686/- received by the assessee from M/s Nagindas Properties Pvt. Ltd during the year under consideration.

5. The CIT(A) further deliberating on the scope and gamut of the additions contemplated under Sec. 2(22)(e) of the Act, observed that as the assessee firm was not a shareholder of either of the aforesaid companies, therefore, no addition towards deemed dividend under Sec. 2(22)(e) was called for in its hands. The CIT(A) observed that out of the six partners of the assessee firm, only three partners i.e. Smt. Smita D. Patel, Mr. Dharmesh Patel and Smt. Basu B. Patel were having substantial interest in the assessee firm. The CIT(A) observed that as per the provisions of law contemplated under Sec.2(22)(e), if any company makes a payment to a concern in which such shareholder is a member or a partner having substantial interest or there is any payment by any such company on behalf of or for the individual benefit of any such shareholder to the extent to which the company in either case possesses accumulated profits, the same would fall within the sweep of the expression “deemed dividend” as contemplated under Sec.2(22)(e) of the Act. The CIT(A) on the basis of his aforesaid deliberations that as the assessee firm was not a shareholder in the aforesaid companies, therefore, concluded that the deemed dividend could not be brought to tax in its hands. The CIT(A) on the basis of his

aforesaid observations deleted the addition of Rs.2,98,96,969/- made by the A.O under Sec.2(22)(e) of the Act.

6. The revenue being aggrieved with the order of the CIT(A) had carried the matter in appeal before us. The ld. Departmental Representative (for short 'D.R') submitted that the assessee firm was in receipt of an amount of Rs.2,98,96,969/- from the aforesaid companies i.e M/s Nagindas Properties Pvt. Ltd., M/s Shri Sound Pvt. Ltd. and M/s Putco Pvt. Ltd. The ld. D.R submitted that as the partners having substantial interest in the firm were also beneficial owners of shares in excess of 10% of the voting power in the aforesaid companies, therefore, the A.O had rightly brought the aforesaid amount of Rs.2,98,96,969/- to tax as deemed dividend under Sec.2(22)(e) in the hands of the assessee firm. The ld. A.R in order to impress upon us that the A.O had rightly brought the amount to tax as deemed dividend under Sec. 2(22)(e) in the hands of the assessee firm, took support of the judgments of the Hon'ble Supreme Court in the case of National Travel Services Vs. CIT-VIII, Delhi (2018) 89 taxman.com 332 (SC) and Gopal & Sons (HUF) Vs. CIT, Kolkata-XI (2017) 391 ITR 1 (SC). Per contra, the Ld. Authorized Representative (for short 'A.R') for the assessee submitted that as the assessee firm was neither the beneficial owner nor a registered owner of the shares of either of the aforesaid companies, therefore, no addition in respect of deemed dividend under Sec. 2(22)(e) was called for in its hands. It was submitted by the ld. A.R that as the deemed dividend contemplated under Sec.2(22)(e) could only be brought to tax in the hands of a shareholder, therefore, as the assessee firm was not a shareholder in either of the aforesaid companies, the amount of loan/advance received from the aforementioned companies had thus wrongly been brought to tax in its hands. The ld. A.R in order to fortify his aforesaid claim that where a firm whose partners holding substantial interest were the beneficial owners of shares of a company (not being shares entitled to a fixed rate of dividend whether with or without a right to participate in profits) holding not less than 10% of the voting power, is in receipt of a loan/advance from such company, then the said amount could only be assessed as deemed dividend

in the hands of the shareholders and not in the hands of the firm, relied on the judgment of the Hon'ble High Court of Bombay in the case of CIT-9 Vs. Impact Containers (P.) Ltd. (2014) 367 ITR 346 (Bom). The Id. A.R further relied on a judgment of the Hon'ble High Court of Rajasthan in the case of Commissioner of Income tax, Udaipur Vs. Hotel Hill Top (2012) 18 taxmann.com 308 (Raj) and the judgment of the Hon'ble Supreme Court in the case of Rameshwarlal Sanwarmal Vs. Commissioner of Income Tax (1980) 3 taxman 1 (SC).

7. We have heard the authorized representatives for both the parties, perused the orders of the lower authorities and the material available on record. We find that the issue involved in the present case lies in a narrow compass. Our indulgence has been sought by the revenue to adjudicate as to where a firm whose partners having substantial interest are beneficial owner of shares of a company (not being shares entitled to a fixed rate of dividend whether with or without a right to participate in profits) holding not less than 10% of the voting power, then as to whether the amount of loan/advance received by the firm from such company could justifiably be assessed as the "deemed dividend" under Sec.2(22)(e) in the hands of the assessee firm or not. Before proceeding further, we consider it apt to reproduce the relevant statutory provision, viz. Sec. 2(22)(e), which reads as under:

*"Sec. 2. In this Act, unless the context otherwise requires:-*

*(22) 'dividend' includes:-*

*(e) any payment by a company, not being a company in which the public are substantially interested, of any sum (whether as representing a part of the assets of the company or otherwise) [made after the 31st day of May, 1987, by way of advance or loan to a shareholder, being a person who is the beneficial owner of shares (not being shares entitled to a fixed rate of dividend whether with or without a right to participate in profits) holding not less than ten per cent of the voting power, or to any concern in which such shareholder is a member or a partner and in which he has a substantial interest (hereafter in this clause referred to as the said concern)] or any payment by any such company on behalf, or for the individual benefit, of any such shareholder, to the extent to which the company in either case possesses accumulated profits;"*

Still further, the term “concern” and “a person having substantial interest in a concern” has been defined in *Explanation 3* of Sec. 2(22)(e), which reads as under:-

*[Explanation 3- for the purposes of this clause,-*

- (a) “concern” means a Hindu undivided family, or a firm or an association of persons or a body of individuals or a company;*
- (b) a person shall be deemed to have a substantial interest in a concern, other than a company, if he is, at any time during the previous year, beneficially entitled to not less than twenty percent of the income of such concern;]*

We find, a bare perusal of the aforesaid statutory provision reveals beyond any scope of doubt that the same contemplates the deeming of an amount received as a dividend under certain circumstances. However, we are of a strong conviction that though the deeming aspect of the aforesaid statutory provision applies to treating of certain amounts received from a company as dividend in the hands of the shareholder, however, the said deeming provision cannot be carried any further to enlarge the meaning of the term shareholder. To be brief and explicit, though the receipt of amounts under certain specified circumstances is to be construed as a “deemed dividend” in the hands of a shareholder, but the said statutory provision does not in any way contemplates the deeming of a person who is not a shareholder, as being one. We are of the considered view that the self-suiting interpretation accorded by the Id. D.R to the scope and gamut of the deeming provisions of Sec. 2(22)(e), in order to impress upon us to return a finding that the amount received by a firm from a company whose shareholder is a partner having substantial interest in the firm is to be assessed as deemed dividend under Sec. 2(22)(e) in the hands of the firm, is absolutely misconceived. We further find that the judgment of the Hon’ble Supreme Court in the case of *Gopal & Sons (HUF) Vs. CIT, Kolkata-XI (2017) 391 ITR 1 (SC)* relied upon by the Id. D.R was in context of an issue that where the assessee HUF being a beneficial owner of shares, holding more than 10% voting power in the company, was holding such shares in the name of its Karta, then whether the amount so received by the assessee HUF could be assessed as deemed

dividend under Sec.2(22)(e) or not. We find that it was in the backdrop of the aforesaid facts that the Hon'ble Apex Court had observed that even if the HUF is not a registered shareholder in the lending company, the loans/advances received by the assessee HUF would be taxable as deemed dividend under Sec. 2(22)(e) in its hands if the Karta-shareholder had substantial interest in the HUF. We further find that the judgment of the Hon'ble Supreme Court in the case of National Travel Services vs. CIT, Delhi (2018) 89 taxman.com 332 (SC) was also delivered in a different context. In the aforementioned case, it was observed by the Hon'ble Apex Court that the moment there is a shareholder, who need not necessarily be a member of the company on its register and is a beneficial owner of the shares, the provisions of Sec. 2(22)(e) gets attracted and the amount is liable to be assessed as deemed dividend in the hands of such shareholder. We are thus of the considered view that the reliance placed by the ld. D.R on the aforesaid judicial pronouncements in no way assists the contentions so advanced by him. On the contrary, we find that the Hon'ble High Court of Bombay in the case of CIT-9 Vs. Impact Containers Pvt. Ltd. (2014) 367 ITR 346 (Bom) as relied upon by the ld. A.R, had observed that where certain companies had advanced money to an assessee company whose one of the director was holding more than 10% equity shares of the lending company, the amount so received by the assessee company which was not a shareholder in the aforesaid lending companies could not be assessed as deemed dividend in its hands by invoking the provisions of Sec. 2(22)(e) of the Act. We further find that the reliance placed by the ld. A.R on the judgment of the Hon'ble High Court of Rajasthan in the case of CIT, Udaipur Vs. Hotel Hill Top (2012) 18 taxman.com (Raj) is also well placed. The High Court in the aforementioned judgment had observed that where an assessee firm had received an advance from a company and the partners of the assessee firm and not the assessee firm were the shareholders in the said company, then such an advance could not be taxed as deemed dividend in the hands of the assessee firm.

8. We have given a thoughtful consideration to the issue before us and are of the considered view that as the assessee firm was not a shareholder in either of the aforesaid companies, viz. (i) M/s Shree Sound Pvt. Ltd; (ii) M/s Putco Pvt. Ltd; and (iii) M/s Nagindas Properties Pvt. Ltd, therefore, the amount of loan/advance received by the assessee firm from the said companies could not have been assessed as deemed dividend under Sec. 2(22)(e) in the hands of the assessee firm. We thus in terms of our aforesaid observations, finding ourselves to be in agreement with the view taken by the CIT(A), uphold his order.

9. The appeal filed by the revenue is dismissed.

Order pronounced in the open court on 23.05.2018

Sd/-

Sd/-

(Rajendra)  
ACCOUNTANT MEMBER  
मुंबई Mumbai; दिनांक 23.05.2018  
Ps. Rohit

(Ravish Sood)  
JUDICIAL MEMBER

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /  
DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

**आदेशानुसार/ BY ORDER,**  
**उप/सहायक पंजीकार (Dy./Asstt. Registrar)**  
**आयकर अपीलीय अधिकरण, मुंबई / ITAT,**  
**Mumbai**

