IN THE INCOME TAX APPELLATE TRIBUNAL
"J" Bench, Mumbai

Before Shri G.S.Pannu, Vice President
and Shri Ravish Sood, Judicial Member

ITA No. 252/Mum/2018
(Assessment Year: 2007-08)

Mr. Narendra M. Ruia Plot No. 123, Street No. 17, MIDC, Marol, Andheri (E), Mumbai-400 093 PAN – AABPR3674C	Vs.	Income Tax Officer-10(3)(1) Aayakar Bhavan, New Marin Lines Mumbai-400 020
Appellant		**Respondent**

Appellant by: Shri D.M. Shah, A.R
Respondent by: Shri Abdul Hakeem M., D.R

Date of Hearing: 30.08.2018
Date of Pronouncement: 31.10.2018

O R D E R

Per Ravish Sood, JM

The present appeal filed by the assessee is directed against the order passed by the CIT(A)-13, Mumbai, dated 17.11.2017, which in turn arises from the order passed by the A.O under Sec. 143(3) r.w.s. 147 of the Income Tax Act, 1961 (for short 'Act'), dated 30.03.2015. The assessee assailing the order of the CIT(A) has raised before us the following grounds of appeal:

"1. On the facts and in the circumstances of the case, the learned CIT(A) erred in confirming that, the reassessment proceeding initiated u/s.147 of the Act is valid. The appellant prays that, the notice issued u/s.148 is contrary to the facts and evidence on record and hence the reassessment proceeding is bad in law and the assessment order passed be cancel.

2(a) On the facts and in the circumstances of the case, the learned CIT(A) erred in confirming that, the addition made u/s.2(22)(e) of Rs.1,08,75,412/- which addition be deleted.

(b) The learned CIT(A) erred in rejecting the details and explanation filed.

The appellant prays that, the addition of Rs.1,08,75,412/- being bad in law and the same be deleted.

3. The appellant craves leave to add amend or alter any or all the grounds of appeal."

2. Briefly stated, the assessee had filed his return of income for A.Y 2007-08 on 25.10.2007, declaring total income at Rs.13,24,260/-. The return of income was processed as such under Sec. 143(1) of the Act. Subsequently, the case of the assessee was reopened under Sec. 147 of the Act.

3. The A.O during the course of the assessment proceedings observed that the assessee viz. Shri Narendra M. Ruia was a shareholder of M/s Arco Electro Technologies Pvt. Ltd. (holding more than 10% of the total shareholding of the company) and M/s Narmina Trade Investment Pvt. Ltd. (holding more than 25% of the total shareholding of the company). It was noticed by the A.O that during the year under consideration viz. A.Y 2007-08 M/s Arco Electro Technologies Pvt. Ltd. had advanced a sum of Rs.2,24,45,000/- to M/s Narmina Trade Investment Pvt. Ltd. Further, it was noticed by him that the accumulated profits of M/s Arco Electro Technologies Pvt. Ltd. as on 31.03.2006 amounted to Rs.4,42,71,439/-. In the backdrop of the aforesaid facts, the A.O held a bonafide belief that the aforesaid loan advanced by M/s Arco Trade Technologies Pvt. Ltd. was liable to be taxed in the hands of the assessee as deemed dividend within the meaning of Sec. 2(22)(e) of the Act. Observing, that the assessee along with his another family member i.e Ms. Minakshi Narendra Ruia were substantial shareholders of M/s Narmina Trade Investment Pvt. Ltd., thus the A.O was of the view that the aforesaid sum of Rs.2,24,45,000/- was liable to be allocated and brought to tax in the hands of the said shareholders on a pro rata basis. The objections filed by the assessee, both as regards the validity of the reopening of his case, as well as the addition of the aforesaid amount as 'deemed dividend' in his hands did not find favour with the A.O, who vide his letter dated 13.03.2015 declined to accept the same and disposed off the objections. On the basis of his aforesaid observations, the A.O made an addition of Rs.1,08,75,412/- as 'deemed dividend' under Sec. 2(22)(e) of the Act in the hands of the assessee.

4 Aggrieved, the assessee carried the matter in appeal before the CIT(A). The CIT(A) after deliberating on the contentions advanced by the assessee as

regards the validity of the assumption of jurisdiction by the A.O under Sec.147 of the Act, was however not persuaded to subscribe to the same. Further, the contentions advanced by the assessee to impress upon the CIT(A) that the amount of Rs.1,08,75,412/- had wrongly been assessed as deemed dividend under Sec. 2(22)(e) in his hands, also did not find favour with him. On the basis of his aforesaid deliberations the CIT(A) dismissed the appeal.

5. The assessee being aggrieved with the order of the CIT(A) has carried the matter in appeal before us. The ld. Authorized Representative (for short 'A.R') for the assessee, at the very outset of the hearing of the appeal objected to the assumption of jurisdiction by the A.O for reopening of the case under Sec.147 of the Act. The ld. A.R took us through the copy of the notice issued by the A.O under Sec. 148 of the Act, dated 25.03.2014 (Page 10) of assesses 'Paper book' (for short 'APB'), and vehemently submitted that as the same was a 'blank notice', thus nothing could be gathered therefrom. In the backdrop of his aforesaid contention, it was submitted by the ld. A.R that the assessment framed by the A.O on the basis of a vague notice issued under Sec.148, could not be sustained and was liable to be vacated. In support of his aforesaid contention, the ld. A.R relied on the judgment of the Hon'ble High Court of Allahabad in the case of Madanlal Aggarwal Vs. CIT, Kanpur (1983) 144 ITR 746 (All). Further, the ld. A.R took us through the copy of the 'reasons to believe' (Page 11-12 of 'APB'). It was submitted by the ld. A.R that there was no mention of the approval having been accorded by the CIT(A) under Sec. 151 of the Act. The ld. A.R further taking us through the approval obtained by the A.O from the Commissioner of Income-tax-8, Mumbai, dated 14.03.2014, submitted that the CIT while granting the sanction had adopted a casual approach and had at Column No. 12 merely scrolled "Yes" against the same. It was the contention of the ld. A.R that a bare perusal of the approval granted by the CIT revealed that he had adopted a casual approach, and the application of mind on his part was clearly amiss. On the basis of his aforesaid contention, it was averred by the ld. A.R that the very assumption of jurisdiction by the A.O for reopening the

case of the assessee under Sec.147 was devoid of any force of law, and thus liable to be vacated. The ld. A.R further took us through the relevant extract of the letter dated 13.03.2015 of the A.O, wherein the objection raised by the assessee as regards the reopening of his case under Sec.147 was disposed off by him. In the backdrop of the aforesaid contentions, it was the claim of the ld. A.R that the A.O had adopted a casual approach for reopening the case of the assessee, which not being in conformity with the settled position of law could not be sustained. In support of his aforesaid contention the ld. A.R relied on the following judicial pronouncements:

(i) Dulraj U Jain Vs. ACIT (C.W.P No. 1641 of 2018, dated 06.07.2018) (Bom)
(ii) Piramal Enterprises Ltd. Vs. DCIT (C.W.P) 2958 of 2016; dated 15.02.2017) (Bom).
(iii) DCIT Vs. Minakshi Overseas Pvt. Ltd. (2017) 395 ITR 677 (Del).
(iv) Harkishan Suderlal Virmani (2017) 394 ITR 146 (Guj); and
(v) Pioneer Town Planners Pvt. Ltd. Vs. DCIT (ITA No. 132/Del/2018; dated 06.08.2018(ITAT-Delhi)

The ld. A.R further submitted that as the complete details as regards its shareholding in the aforementioned companies viz. M/s Arco Electro Technologies Pvt. Ltd. and M/s Narmina Trade Investment Pvt. Ltd., stood duly disclosed in its 'balance sheet' for the year under consideration, thus the reopening of his case beyond a period of 4 years was not validly done. In support of his aforesaid contention the ld. A.R took us through the relevant extract of the 'balance sheet' for the year under consideration viz. A.Y 2007-08, wherein the disclosure as regards the shares held by the assessee in the aforementioned companies was found mentioned (Page 3-4 of 'APB'). The ld. A.R further drew our attention to the 'balance sheet' of the assessee for the year under consideration, which revealed that the assessee had advanced a loan to the aforementioned companies viz. (i) M/s Narmina Trade Investment Pvt. Ltd. (Rs.1,29,10,000/-); and (ii) M/s Arco Electro Technologies Pvt. Ltd: (Rs.70,000/-). The ld. A.R further drew our attention to the copy of account of M/s Narmina Trade Investment Pvt. Ltd. as appearing in the books of accounts of M/s Arco Electro Technologies Pvt. Ltd. for the year under consideration viz. A.Y 2007-08 (Page 64-65 of 'APB'). It was the contention of the ld. A.R, that the A.O after reducing the 'Opening

balance' of Rs.10,80,226/- from the aggregate of credits of Rs.2,35,25,226/- i.e the amounts received by M/s Narmina Trade Investment Pvt. Ltd., had held the balance amount of Rs.2,24,45,000/- as 'deemed dividend'. The ld. A.R submitted that the A.O while concluding as hereinabove, had failed to appreciate that the account of M/s Narmina Trade Investment Pvt. Ltd. in the books of account of M/s Arco Electro Technologies Pvt. Ltd. was squared up and stood reflected at Rs. nil as on 31.03.2007. Adverting to the merits of the case, the ld. A.R averred that the advancing of the amount by M/s Arco Electro Technologies Pvt. Ltd. to M/s Narmina Trade Investment Pvt. Ltd. was not in the nature of a loan transaction, but the same were the amounts which were advanced in the regular course of business between the said parties. In the backdrop of his aforesaid contention, the ld. A.R submitted that the amounts received by M/s Narmina Trade Investment Pvt. Ltd. pursuant to regular business transactions with M/s Arco Electro Technologies Pvt. Ltd. would not be hit by the provisions of Sec.2(22)(e) of the Act. Alternatively, it was submitted by the ld. A.R, that as the assessee himself had advanced loans to the aforementioned companies which were outstanding as on 31.03.2007, thus it was incorrect on the part of the lower authorities to observe that the assessee was in receipt of a loan from the said companies. Further, the ld. A.R in support of his contention that the lower authorities had erred in assessing the amount of Rs. 2,24,45,000/- as deemed dividend, therein relied on the following judicial pronouncements :

(i) National Travel Services Vs. CIT, Delhi (Civil Appeal Nos. 2068-2071 of 2012; dated 18.01.2018)(SC)

(ii) DCIT, Kolkata Vs. M/s The Hoogly Mills Company Ltd.(ITA No. 421/Kol/2014; dated 01.03.2017).

It was the contention of the ld. A.R, that as the transactions *inter se* the aforesaid companies were in the nature of "current account" transactions, and not a loan transactions, thus the provisions of Sec.2(22)(e) would not be attracted.

6. Per contra, the ld. Departmental Representative (for short 'D.R') relied on the orders passed by the lower authorities. The ld. D.R rebutting the contentions advanced by the ld. A.R as regards the validity of the Notice issued under Sec. 148, submitted that the CIT(A) after deliberating at length on the contentions advanced by the assessee before him on the said issue, had concluded that in no way the notice issued under Sec. 148 by the A.O could be termed as vague. The ld. D.R submitted that the case laws relied upon by the counsel for the assessee being distinguishable on facts and the issues involved therein, would thus not assist the case of the assessee. The ld. D.R submitted that earlier the amount advanced by M/s Arco Electro Technologies Pvt. Ltd. to M/s Narmina Trade Investment Pvt. Ltd. was brought to tax as 'deemed dividend' in the hands of the recipient company viz. M/s Narmina Trade Investment Pvt. Ltd. However, on appeal the said addition was deleted by the Tribunal, vide its order dated 16.04.2013. Further, the order passed by the Tribunal was upheld by the Hon'ble High Court of Bombay in its order passed in Commissioner of Income Tax-8, Mumbai Vs. M/s Narmina Trade Investment Pvt. Ltd. (ITA No. 2311 of 2013; dated 16.02.2016) (copy placed on record). The ld. D.R submitted, that the Hon'ble High Court while upholding the order of the Tribunal has held that the deemed dividend shall be liable to be assessed in the hands of the person who is the shareholder of the company advancing the loan. In the backdrop of the aforesaid facts, it was submitted by the ld. D.R that as the assessee was a shareholder in the company advancing the loan viz. M/s Arco Electro Technology Pvt. Ltd., and had substantial interest in the recipient company i.e. M/s Narmina Trade Investment Pvt. Ltd., thus the lower authorities had rightly assessed the amount as deemed dividend in the hands of the assessee. It was averred by the ld. D.R, that as the appeal filed by the assessee was devoid of any merits, thus the same may be dismissed.

7. We have heard the authorized representatives of both the parties, perused the orders of the lower authorities and the material available on record. We shall first advert to the contentions advanced by the ld. A.R as

regards the validity of the jurisdiction assumed by the A.O for reopening the case of the assessee under Sec. 147 of the Act. We have perused the copy of the notice issued by the A.O under Sec.148 of the Act, dated 25.03.2014 (Page 10 of APB). We find that in the aforementioned notice, it was clearly mentioned that as the A.O has 'reasons to believe' that the income of the assessee chargeable to tax for assessment year 2007-08 had escaped assessment within the meaning of Sec. 147 of the Act, thus on the said ground the assessee was called upon to furnish his return of income in the prescribed form within a period of 30 days from the date of service of the notice. Further, it was clearly mentioned in the notice that the same was being issued after obtaining the satisfaction of the Commissioner of Income Tax-8, Mumbai. We have deliberated at length on the contentions advanced by the ld. A.R as regards the validity of the aforesaid notice, and are unable to persuade ourselves to subscribe to the same. We are of the considered view that in no way the aforementioned notice which clearly spells out the requisite details can be held as vague as canvassed by the ld. A.R before us. Further, we are also not impressed with the contention of the ld. A.R that the notice issued by the A.O under Sec. 148 of the Act was a "blank notice". The reliance placed by the ld. A.R on the judgment of the Hon'ble High Court of Allahabad in the case of Madanlal Aggarwal Vs. CIT Kanpur (1983) 144 ITR 745 (All), being distinguishable on facts would not advance the case of the assessee. We find that in the aforementioned case as the A.O had failed to mention in the notice that the same was being issued to the assesses HUF, thus taking cognizance of the said material fact that the High Court had observed that the notice issued was clearly vague, and thus the proceedings following such an invalid notice would stand vitiated. Unlike the facts involved in the aforementioned case, no such infirmity does emerge from the notice issued by the A.O under Sec. 148 in the case before us. We, thus, in terms of our aforesaid observations decline to accept the contention of the ld. A.R that as the assessment was framed on the basis of a vague notice, thus the same was liable to be vacated.

8. Further, on a perusal of the 'reasons to believe' recorded in the case of the assessee, it can safely be concluded that the "belief" arrived at by the A.O that the income of the assessee chargeable to tax had escaped assessment, bears a clear nexus with the 'material' available on record and was not arrived at by the A.O in a whimsical or a fanciful manner *san* any supporting basis. We are also not inclined to accept the contention of the ld. A.R, that the CIT(A) had accorded his sanction for issuance of notice under Sec.148 by the A.O in a stereotype manner, without assigning any reason as to why as per him it was a case fit for reopening. We are of the considered view, that the CIT-8, Mumbai, by mentioning "Yes" against Col. 12 of the form for obtaining approval under Sec.151 of the Act, has clearly recorded his satisfaction that the case was fit for the issuance of a notice under Sec.148. We are not persuaded to accept the contention of the ld. A.R that there was no application of mind by the CIT-8, Mumbai, while recording his satisfaction on the reasons recorded by the A.O that it was fit case for issuance of a notice under Sec. 148. Rather, we are of a strong conviction that what is expected on the part of the sanctioning authority at the time of granting of approval under Sec. 151(1) of the Act, is an expression of his satisfaction on the reasons recorded by the A.O, that it is a fit case for issuance of a notice under Sec.148 of the Act. We are of the considered view, that as the necessary satisfaction of the CIT-8, Mumbai is clearly discernible from a perusal of the "form for obtaining the approval" to which our attention has been drawn by the ld. A.R, thus no infirmity as regards the grant of sanction by the aforementioned authority does emerge from the record.

9. We have perused the judicial pronouncements relied upon by the ld. A.R, in order to impress upon us that the A.O had wrongly assumed jurisdiction for reopening of the case of the assessee under Sec.147 of the Act. We are of the considered view that the judicial pronouncements relied upon by the ld. A.R being distinguishable on facts would thus not assist the case of the assessee before us. In the case of Dulraj U. Jain Vs. ACIT & Ors. (C.W.P No. 1641 of 2018; dated 06.07.2018), the Hon'ble High Court taking

cognizance of the fact that the 'reasons to believe' recorded by the A.O merely endorsed the belief of the DDIT, and further did not indicate any application of mind and/or further processing of the information on his part to come to a reasonable belief that income chargeable to tax has escaped assessment, thus it was in the backdrop of the said facts that the Hon'ble High Court had arrived at a *prima facie* view that the notice issued under Sec. 148 was without jurisdiction. We are of the considered view, that as observed by us hereinabove, the 'reasons to believe' in the case before us clearly has an inextricable nexus with the 'material' available on record of the A.O. In the backdrop of our aforesaid observations, it can safely be concluded that the facts involved in the case before us are clearly distinguishable from those which were there in the aforementioned case. Further, in the case of Piramal Enterprises Ltd. Vs. DCIT [C.W.P No. 2958 of 2016; dated 16.02.2017], the notice issued by the A.O under Sec.148 was held by the Hon'ble High Court as being without jurisdiction, for the reason that the A.O had reopened the case of the assessee only on the basis of the information received from the office of the Chief Commissioner of Income Tax, without applying his mind to the 'material' available before him and arriving at an independent view that the income of the assessee chargeable to tax had escaped assessment. We are of the considered view, that as in the case before us there is a clear application of mind by the A.O while arriving at a *bonafide* belief that the income of the assessee chargeable to tax as 'deemed dividend' has escaped assessment, thus the aforesaid judgment so relied upon by the ld. A.R would not assist him in the present case before us. We further find that Hon'ble High Court of Delhi in the case of PCIT Vs. Minakshi Overseas Pvt. Ltd. (2017) 395 ITR 677 (Del) had struck down the proceedings initiated by the A.O under Sec.147, for the reason that he had merely reproduced the investigation report in the reasons recorded, and there was nothing from where it could be gathered that he had arrived at an independent *belief* on his part that the income of the assessee chargeable to tax had escaped assessment. Further, in the case of Harkishan Sundarlal Virmani Vs. DCIT (2017) 394 ITR 146 (Guj), the reopening of the case under Sec.147 was *inter alia* vacated for the reason that the A.O after receiving the

information /material from an external source, had thereafter failed to form an independent belief on the basis of 'material' available on record, that the income of the assessee chargeable to tax had escaped assessment. In so far, the reliance placed by the ld. A.R on the case of Pioneer Town Planners Pvt. Ltd. Vs. DCIT (ITA No. 132/Del/2018; dated 06.08.2018) is concerned, we are unable to persuade ourselves to be in agreement with the contention of the ld. A.R that Commissioner of Income-tax-8, Mumbai, without being satisfied on the reasons recorded by the A.O, had accorded his sanction for issuance of notice under Sec. 148 of the Act. On a perusal of the "Form for obtaining of the approval of the Addl. CIT/Commissioner of Income-tax/ Central Board of Direct taxes", it emerges that the "Reasons to believe" on the basis of which sanction of the CIT-8, Mumbai to issue Notice u/s 148 was sought by the A.O i.e DCIT-8(3), Mumbai, and forwarded through the office of the Addl. CIT, Range 8(3), Mumbai on 14.03.2014, formed part of the said 'Form' as Annexure 'A'. It is in the backdrop of the aforesaid material facts, that the satisfaction arrived at by the CIT-8, Mumbai on the reasons recorded by the A.O has to be deliberated upon. Admittedly, the CIT-8, Mumbai as on 19.03.2014 had against Column No. 12 of the 'Form', answered in affirmative as regards his satisfaction on the reasons recorded by the A.O, that it was a fit case for the issuance of a notice under Sec. 148 of the Act, by stating "Yes" against the same. We are of the considered view, that the aforesaid sanction granted by the CIT-8, Mumbai cannot be divorced from the remaining contents of the 'Form', on the basis of which it can safely be gathered that the CIT-8, Mumbai after perusing the exhaustive "Reasons to believe", and applying his mind to the same, therein accorded his sanction for issuance of a Notice u/s 148 on 19.03.2014. We are unable to persuade ourselves to subscribe to the contention of the ld. A.R, who we find by divorcing the term "Yes" from the remaining part of the aforesaid "Form", had therein tried to impress upon us that the CIT-8, Mumbai has accorded his sanction for issuance of the notice under Sec. 148 in a mechanical manner. In the backdrop of our aforesaid observations, as the case laws relied upon by the ld. A.R are distinguishable on facts, thus the same would in no way assist his case.

10. We shall now advert to the contention of the ld. A.R that as the assessee had in the 'annexure' forming part of his 'balance sheet' for the year under consideration viz. A.Y 2007-08 disclosed the fact that he was holding the shares of the aforementioned companies viz. M/s Arco Electro Technologies Pvt. Ltd. and M/s Narmina Trade Investment Pvt. Ltd., thus, its case could not have been reopened after the expiry of a period of 4 years from the end of the relevant assessment year. We are unable to persuade ourselves to subscribe to the aforesaid contention of the ld. A.R. We are of the considered view, that the *first proviso* of Sec. 147 of the Act would come to the rescue of an assessee, only in a case where an assessment under Sec.143(3) or under Sec.147 had earlier been framed. In so far, the case of the assessee is concerned, as the issuance of notice under Sec.148 was not preceded by an assessment under Sec. 143(3) or under Sec. 147 of the Act, thus, the exception carved out in the *first proviso* of Sec. 147 in context of reopening of a case beyond a period of four years from the end of the relevant assessment year would not come to his rescue. We thus, without adverting to the merits of the case in context of the aforesaid contention so raised by the ld. A.R, reject the same.

11. We find that the ld. A.R has further averred that as the assessee had advanced loans to the aforementioned companies viz. M/s Arco Electro Technologies Pvt. Ltd. and M/s Narmina Trade Investment Pvt. Ltd, thus it was incorrect on the part of the lower authorities to conclude that the assessee was in receipt of loans from the said companies. We are not impressed with the said contention of the ld. A.R. We are of the considered view, that an independent transaction of receipt of loan by a shareholder, either directly or through another concern in which he has a substantial interest, would suffice for bringing the same within the sweep of Sec. 2(22)(e) of the Act, and characterizing the it 'deemed dividend' in his hands. In our considered view, an independent transaction of advancing of an amount by such a person holding substantial interest to the company, would in no way have any bearing on the characterisation of the aforementioned amounts so

received as deemed dividend in his hands. Be that as it may, the aforesaid contention of the assessee would even otherwise fail on merits. We find that the issue under consideration revolves around the characterisation of an amount of Rs. 2,24,45,000/- advanced by M/s Arco Electro Technology Pvt. Ltd. to M/s Narmina Trade Investment Pvt. Ltd., wherein an amount of Rs.1,08,75,412/- on a pro rata allocation has been held as deemed dividend under Sec.2(22)(e) in the hands of the assessee, who was admittedly having substantial interest in both of the aforesaid companies. On a perusal of the 'balance sheet' of the assessee (Page 2 of APB), it emerges that as on 31.03.2007 an amount of Rs.70,000/- was recoverable by the assessee from M/s Arco Electro Technologies Pvt. Ltd. Thus, in the backdrop of the fact that only an amount of Rs. 70,000/- was recoverable by the assessee from M/s Arco Electro Technologies Pvt. Ltd., we are not inclined to accept the contention of the ld. A.R that now when the assessee himself had advanced funds to M/s Arco Electro Technologies Pvt. Ltd., thus it would be wrong to infer that the assessee had received a loan from the said company. In terms of our aforesaid observations, the contention advanced by the assessee fails.

12. We have further deliberated on the contention advanced by the ld A.R, that as the entire amount of Rs.2,35,25,226/-received by M/s Narmina Trade Investment Pvt. Ltd. from M/s Arco Electro Technologies Pvt. Ltd. was squared up and reduced to nil during the year, thus the receipt of the said amount could not have been characterised as 'deemed dividend'. We are of the considered view, that the very stance of payment by a company by way of an advance or a loan to a shareholder, being a person who is the beneficial owner of shares holding not less than 10% 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, 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 possess accumulated profits, would suffice for characterisation of the said amount as a 'deemed dividend' in the hands of the shareholder. We have deliberated on the contention advanced by the ld. A.R and are unable to persuade ourselves to subscribe to the

same. We are of the considered view, that the subsequent squaring up/repayment of the amounts would not have any bearing on the characterisation of the receipt as a deemed dividend in the hands of the shareholder. We thus, decline to accept the aforesaid contention of the assessee and reject the same.

13. We shall now advert to the contentions advanced by the ld. A.R as regards the merits of the case. The ld. A.R has averred, that the amount advanced by M/s Arco Electro Technologies Pvt. Ltd. to the recipient company viz. M/s Narmina Trade Investment Pvt. Ltd. was in the course of the regular business transactions *inter se* the said concerns, and not in the nature as that of a loan transaction. However, the ld. A.R has failed to place on record any such material which could persuade us to conclude that the transaction between the aforesaid concerns was a 'commercial transaction' , and thus accept his aforesaid contention. Rather, a perusal of the copy of account of M/s Narmina Trade Investment Pvt. Ltd. speaks for itself, and clearly reveals that the same were in the nature of money transactions, which in no way could be held as business transactions. We thus, not finding any force in the aforesaid contention of the ld. A.R, reject the same.

14. We have further deliberated on the reliance placed by the ld. A.R on the judgment of the Hon'ble Supreme Court in the case of National Travel Services Vs. CIT, Delhi-VIII (Civil Appeal No. 2068-2071 of 2012; dated 18.01.2018). We find that the reliance placed by the ld. A.R on the aforesaid judgment is absolutely misconceived in context of the facts involved in his case. The issue before the Hon'ble Apex Court was as to whether for attracting the provisions of Sec. 2(22)(e), both the conditions have to be satisfied, namely, that the shareholder must first be a 'registered shareholder' and thereafter, also be a 'beneficial owner'. It is in context of the aforesaid issue, that the matter had been placed before the Hon'ble Chief Justice of India in order to constitute a larger bench for having a relook at the entire question. We are unable to comprehend as to in what context the aforesaid order of the Hon'ble Apex Court had been relied upon by the

assessee before us. The facts and the issue involved in the case before us are absolutely distinguishable, as against those which were there before the Hon'ble Apex Court. Interestingly, the assessee before us is both the registered and the beneficial owner of the shares of M/s Arco Electro Technologies Pvt. Ltd. holding more than 10% of the total shareholding of the company. Further, the assessee who is holding more than 25% of the total shareholding of M/s Narmina Trade Investment Pvt. Ltd., has substantial interest in the latter company to whom loan has been advanced. In the backdrop of our aforesaid observations, we are of the considered view that the issue and the facts involved in the case before the Hon'ble Apex Court in the case of National Travel Services (supra), being distinguishable, would thus not assist the case of the assessee before us. Further, reliance placed by the ld. A.R on the order of the ITAT "B" Bench, Kolkata in the case DCIT, Kolkata Vs. The Hoogly Mills Company Ltd. (ITA No. 421/Kol/2014; dated 01.03.2017) is also found to be distinguishable on facts. The Tribunal in the aforementioned case had observed that where both the parties, namely, the company and the shareholder mutually benefit from a transaction, the same would take the character of a commercial transaction and would fall beyond the sweep of 'deemed dividend' contemplated under Sec. 2(22)(e) of the Act. The ld. A.R has failed to demonstrate as to how the view taken by the Tribunal in the aforementioned case would assist its case. We thus, are of the considered view that the reliance placed by the ld. A.R on the aforesaid order of the coordinate bench of the Tribunal being absolutely misconceived, would thus not assist its case.

15. We thus, in backdrop of our aforesaid observations are of the considered view that the amount advanced by M/s Arco Electro Technologies Pvt. Ltd. to M/s Narmina Trade Investment Pvt. Ltd., wherein in both of the aforesaid companies the assessee was holding substantial interest as a shareholder, had rightly been held by the lower authorities as deemed dividend. In the backdrop of our aforesaid observations, we uphold the pro rata allocation of the amount of Rs.1,08,75,412/- [i.e Rs.2,24,45,000/- X assesses interest/total interest of assessee and other

substantial shareholder] as 'deemed dividend' in the hands of the assessee. We thus, not being inclined to accept the contentions advanced by the Ld. A.R, both as regards the validity of the assumption of jurisdiction by the A.O under Sec. 147 of the Act, as well as the assessing of the amount of Rs.1,08,75,412/-as deemed dividend in the hands of the assessee, thus reject the same.

16. The appeal filed by the assessee is dismissed in terms of our aforesaid observations.

Order pronounced in the open court on 31.10.2018

Sd/-	Sd/-
(G.S Pannu)	(Ravish Sood)
VICE-PRESIDENT	JUDICIAL MEMBER

मुंबई Mumbai; दिनांक 31.10.2018
.Ps. Rohit

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**