

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'SMC', NEW DELHI**

**BEFORE SH. R.K PANDA, ACCOUNTANT MEMBER**

ITA No.6305/Del/2016  
Assessment Year: 2008-09

|                                                                                                                                                          |    |                                                          |
|----------------------------------------------------------------------------------------------------------------------------------------------------------|----|----------------------------------------------------------|
| Kishore Bhatia Prop. M/s.<br>Vidhur Enterprises 3, Shankar<br>Market, Connaught Place,<br>New Delhi – 110001<br>PAN No. AHIPB1335N<br><b>(APPELLANT)</b> | Vs | ITO<br>Ward – 52 (3)<br>New Delhi<br><b>(RESPONDENT)</b> |
|----------------------------------------------------------------------------------------------------------------------------------------------------------|----|----------------------------------------------------------|

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|---------------|---------------------------|
| Appellant by  | None                      |
| Respondent by | Sh. S. L. Anuragi, Sr. DR |

|                        |            |
|------------------------|------------|
| Date of hearing:       | 18/02/2019 |
| Date of Pronouncement: | 21/02/2019 |

**ORDER**

**PER R.K. PANDA, AM:**

1. This appeal filed by the assessee is directed against the order dated 06.10.2016 of the CIT(A)-18, New Delhi relating to A. Y. 2008-09.
2. None appeared on behalf of the assessee despite service of notice. Therefore, this appeal is being decided on the basis of material available on record and after hearing the Ld. DR.
3. The grounds raised by the assessee are as under :-
  - “1. The order is bad in law, as it has been passed in gross violation of principles of Natural Justice.
  2. Learned assessing officer has erred in adding sum of Rs.6,22,901/- alleged as deemed dividend under the given facts and circumstances.
  3. Without prejudice to above the Ld. Assessing Officer has made addition of Rs.6,22,901/- u/s 2 (22) (e) of the IT Act, 1961.

4. *The appellant may be permitted to add, alter or amend any of the foregoing grounds of appeal.”*

4. The facts of the case, in brief, are that the assessee is an individual and filed his return of income on 30.09.2008 declaring total income of Rs.6,07,030/-. Subsequently, the case of the assessee was reopened by issue of notice u/s 148 and the Assessing Officer in the exparte order passed u/s 144/147 determined the total income of the assessee at Rs.12,29,930/- wherein he had made addition Rs.6,22,901/- u/s 2 (22) (e) of the IT Act on the ground that assessee has received unsecured loan of Rs.6,22,901/- from a company M/s. Bhatia Rasayan Udyog Pvt. Ltd in which the assessee has more than 10% shareholding. In appeal the Ld. CIT(A) upheld the action of the Assessing Officer. While doing so he had given an observation that despite being specifically asked to submit consolidated statement for the transaction with the company M/s. B. R. U Limited and the balance at the end of each transaction the assessee did not submit the same. Since the full details were not filed before the CIT(A), the Ld. CIT(A) relying upon various decision upheld the action of the Assessing Officer.

5. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal.

6. I have perused the material available on record and heard the Ld. DR. I find the assessment in this case was completed u/s 144 of the IT Act by the Assessing Officer wherein he made addition of Rs.6,22,901/- u/s 2 (22) (e) of the IT Act on account of deemed dividend. I find the Ld. CIT(A) upheld the action of the Assessing Officer. It is one of the ground by the assessee in the grounds of appeal that the accumulated profit for A. Y. 2008-09

has only Rs.4,58,794.94 and therefore, the deemed dividend cannot exceed this amount. Considering the totality of the facts of the case and interest of justice I deem it proper to restore this issue back to the file of the Assessing Officer with a direction to give one more opportunity to the assessee to substantiate his case and decide the issue as per fact and law. Accordingly the grounds raised by the assessee are allowed for statistical purpose.

6. In the result, the appeal filed by the assessee is allowed for statistical purpose.

Order pronounced in the open court on 21.02.2019.

Sd/-

**(R.K PANDA)**  
**ACCOUNTANT MEMBER**

*\*Neha\**

Date:- 21.02.2019

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT NEW DELHI

|                                                                                      |            |
|--------------------------------------------------------------------------------------|------------|
| Date of dictation                                                                    | 18.02.2019 |
| Date on which the typed draft is placed before the dictating Member                  |            |
| Date on which the approved draft comes to the Sr.PS/PS                               |            |
| Date on which the fair order is placed before the Dictating Member for Pronouncement |            |
| Date on which the fair order comes back to the Sr. PS/ PS                            |            |
| Date on which the final order is uploaded on the website of ITAT                     | 22.02.2019 |
| Date on which the file goes to the Bench Clerk                                       |            |
| Date on which file goes to the Head Clerk.                                           |            |
| The date on which file goes to the Assistant Registrar for signature on the order    |            |
| Date of dispatch of the Order                                                        |            |