

**IN THE INCOME TAX APPELLATE TRIBUNAL**

**AHMEDABAD “SMC” BENCH**

**(BEFORE SHRI MAHAVIR PRASAD, JUDICIAL MEMBER  
& SHRI AMARJIT SINGH, ACCOUNTANT MEMBER)**

**ITA. No: 402/AHD/2018  
(Assessment Year: 2013-14)**

<b>Smt. Rameshbhai Panchal, 26, Sharthi-3, Surdihara Thaltej, 380052</b>	<b>Jyotsnaben Behind Bunglows, Ahmedabad-</b>	<b>V/S</b>	<b>Income –tax Officer, Mehsana Ward-5, Kadi</b>
<b>(Appellant)</b>			<b>(Respondent)</b>

**PAN: ABUPP4691H**

**Appellant by : Shri Anil Kshatriya, A.R.  
Respondent by : Shri Vikram S. Sharma, Sr. D.R.**

**(आदेश)/ORDER**

Date of hearing : 26 -07-2019  
Date of Pronouncement : 15 -10-2019

**PER MAHAVIR PRASAD, JUDICIAL MEMBER**

1. This appeal filed by the Assessee is directed against the order of the Ld. CIT(A), Gandhinagar, Ahmedabad dated 18.12.2017 pertaining to A.Y. 2013-14 and following grounds have been taken:

1. *On the facts and circumstances of the case as well as in law, the Ld. CIT(A) has grossly erred in confirming the addition of Rs. 23,50,000/- on account of trade advance treated as deemed dividend u/s. 2(22)(e) of the Act, when the appellant has not gained any benefit from the funds of the company and also when there is a genuine business transaction between the two entities, and hence it is outside the purview of the provisions of section 2(22)(e) of the Act.*
2. *Without prejudice to the above the Ld. CIT(A) has grossly erred in misinterpreting the contents of the circular no. 19/2017 dated 12/06/2017 issued by the CBDT in holding that the transaction entered into by the appellant is not covered by the circular, in total disregard to the settled view expressed therein, and to that effect the order of the Ld. CIT (A) is arbitrary, unreasonable and perverse, having been arrived at by ignoring the material facts and documents placed on record.*
2. The appellant is an individual, deriving income from capital gain, insurance commission and income from other sources showing total income of Rs. 18,59,780/-.
3. The appellant in her individual capacity is a Director holding 34% shares of a domestic company namely Rajvir Cotton Pvt. Ltd., Ahmedabad. During the course of the assessment proceedings, the A.O. noticed that the referred company has advanced Rs. 22 Lakhs on 05/04/2012 and further Rs. 1.5 Lakhs on 07/04/2012 making peak credit amount at Rs. 23,50,000/- . In this transaction, in view of the A.O., was assessable as deemed dividend u/s. 2(22)(e) of the Act and issued a notice to the appellant as to why provisions of section 2(22)(e) should not be made applicable to her case.
4. In its reply, assessee stated

(a) *The appellant has substantial shareholding in private company namely Rajvir Cotton Pvt. Ltd. The appellant has her immovable property i.e. office premises at 4th floor, Agrawal Mall, S.G. Highway, Ahmeadabad. The company Rajiv Cotton Pvt. Ltd. has been operating from the said premises and the appellant has not been charged any rent for the same, in the previous year.*

(b) *The company was in search of business premises on ownership basis and it was interested to purchase the referred property from the appellant. As per mutual understanding, the deal was in process and the Board of Directors passed a resolution on 2nd April, 2012 for purchase of the referred premises and for making part payment of Rs. 20 Lakhs to the appellant.*

(c) *As decided, the company was to make part payment of Rs. 20 Lakhs towards consideration, but since the appellant had already a credit balance of Rs. 4 Lakhs in the books of account of the company, as on 01/04/2012 the amount of Rs. 23,50,000/- was given on 05/04/2012, so as to make net payment of Rs. 19,50,000/-. Further, as per copy of ledger account, on 07/04/2012 a sum of Rs. 11 Lakhs was returned back to the company, leaving debit balance in the company's books of Rs. 7 Lakhs. On 07/05/2012, a further amount of Rs. 1,50,000/- was paid to the appellant.*

(d) *However, subsequently the deal was cancelled for the reason that market value of the premises came to be on higher side and the company required the funds for the purpose of conducting its day to day business operations, could not afford to spend more hence, the company decided to drop the deal, the appellant was required to pay back the part payment received from the company. Accordingly a further resolution was passed on 1<sup>st</sup> October, 2012, on getting the payment back and resolving that the company shall not pay any rent to the Director for occupying the said premises during the period from*

*01/04/2012 to 30/09/2012 and further on credit balance in another account in the name of the appellant as unsecured loan account, no interest shall be paid. The terms and conditions as above were mutually agreed upon and thus, the business transaction remained to be unimplemented.*

*(e) The money i.e. part payment towards consideration in property deal had remained with the appellant for the period from 05/04/2012 to 25/09/2012 i.e. less than 9 months, it was agreed upon not to charge any rent from the company for the said period and the unsecured loan of the appellant that remained throughout the subsequent period up to 31/03/2013, no interest was payable by the company; further, in fact, the appellant had borrowed agri. loan Kotak Mahindra Bank of Rs. 25,00,000/- on 24/09/2012, which was given to the company as further unsecured loan.*

*(f) Considering the facts as above, it can be seen that no benefit was derived by the appellant by getting said Rs. 19,50,000/- from the company towards proposed purchase of office complex owned by the appellant. Also the debit, on account of genuine business transaction with the Board of Directors mandate, did not tantamount to loan or advance as defined in section 2(22)(e). The amount was for the specific purpose and there are documentary evidences on record to substantiate the explanation of the appellant that the amount was received only for the business purpose. The authorities have wholly disregarded all the material facts and appellant's written as well as submissions made before the authorities below.*

5. But ld. A.O. was not agree with the contention of the assessee and made addition of Rs. 23,50,000/-.
6. Against the said order, assessee preferred first statutory appeal before the ld. CIT(A) who confirmed the action of the Ld. Assessing Officer.

7. Now assessee has come before us by way of second appeal.
  
8. We have gone through the relevant record and impugned order and heard both the parties. The appellant is the director in the company Rajvir Cotton Private Ltd. as well as owner of the business premises at 4<sup>th</sup> Floor, Agrawal Mall, S.G. Highway, Ahmedabad. The Company Rajvir Cotton Private Ltd. is operating from the same premises and the appellant is not charging any rent for the same during F.Y. 2012-13. The company was in search of business premises on ownership basis and as it was feasible for the company to purchase the same instead of purchasing new premises and shifting the operations, therefore, it was decided the company may purchase the said premises itself and in order to purchase the said premises company after passing a board resolution advanced Rs. 23,50,000/- for payment of purchases the premises at 4<sup>th</sup> Floor, Agrawal Mall, S.G. Highway, Ahmedabad. And this amount was paid for a specific purpose and appellant has also filed certain document in support of its contention and same were submitted before the lower authorities as well.
  
9. In support of its contention, ld. A.R. cited a judgment of Calcutta High Court in the case of Pradip Kumar Malhotra vs. CIT (2011) 15 Taxmann.com 66 (Cal.) wherein similar circumstances matter was decided in favour of the assessee.
  
10. The CBDT issued a Circular No. 19/2017 dated 12<sup>th</sup> June, 2017 wherein the CBDT has noted that Courts in the recent past have held that trade advances in the nature of commercial transaction would not fall with the ambit of section 2(22)(e).

11. Thus, in view of the above facts and circumstances and respectfully following the above said judgment of Calcutta High Court and CBDT Circular No. 19/2017, we allow the appeal of the assessee.

12. In the result, appeal filed by the Assessee is allowed

Order pronounced in Open Court on 15 – 10- 2019

Sd/-

**(AMARJIT SINGH)**  
**ACCOUNTANT MEMBER True Copy**  
Ahmedabad: Dated 15 /10/2019

Sd/-

**(MAHAVIR PRASAD)**  
**JUDICIAL MEMBER**

Rajesh

Copy of the Order forwarded to:-

1. The Appellant.
2. The Respondent.
3. The CIT (Appeals) –
4. The CIT concerned.
5. The DR., ITAT, Ahmedabad.
6. Guard File.

By ORDER

Deputy/Asstt.Registrar  
ITAT,Ahmedabad