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

Before Shri Pramod Kumar, Vice President
and Shri Ravish Sood, Judicial Member

ITA No.7442/Mum/2016
(Assessment Year: 2012-13)

ACIT- 16(1), Room No.439, Aayakar Bhavan, M.K.Marg, Mumbai 400 049.	Vs.	Shri. Prem Sagar, Sagar Villa, N.S Road No. 12A, JVPD Scheme, Vile Parle (W), Mumbai – 400 049.
PAN – AAPPS2469E		
(Appellant)		**(Respondent)**

Appellant by	:Shri. KumarPadmapani Bohra, D.R
Respondent by	: Shri. K. Gopal &Ms. Neha Paranjpe, A.R's
Date of Hearing	: 03.10.2019
Date of Pronouncement	: 16.10.2019

O R D E R

PER RAVISH SOOD, JM

The present appeal filed by the revenue is directed against the order passed by the CIT(A)-4, Mumbai, dated 08.09.2016, which in turn arises from the order passed by the A.O under Sec. 143(3) of the Income Tax Act, 1961 (for short 'Act'), dated 26.02.2015 for A.Y. 2012-13. The revenue has assailed the impugned order on the following grounds of appeal :-

"1. Whether on the facts and circumstances of the case and as per law, the Ld. C1T(A) has erred in not following the ratio laid down in the case of Canton Hotels (P) Ltd., vs ACIT (2009) (122 TTJ 515) (Lucknow), which clearly states that Provisions of section 50 C being special provisions, would override provisions of Section 45(3) of the Act.

2. Whether on the facts, in the circumstances of the case and as per law, the Ld. CIT(A) has erred in not appreciating the importance of the insertion of word "assessable" in Section 50C, which makes it even more clear that even in the absence of

registration of the deed, the stamp duty value/market value has to be adopted as deemed full value of consideration in Section 48 of the Act.

3. Whether on the facts, in the circumstances of the case and as per law, the Ld. CIT(A) has erred in directing to delete the addition of deemed dividend made u/s. 2(22)(e) of the Income-tax Act, 1961 in the hands of the assessee in respect of advance of Rs. 5,37,46,284/- received by M/s. Gayatri Films & Music Pvt. Ltd., (for sake of brevity, GFMPL) from M/s Sagar Entertainment Pvt. Ltd., (for the sake brevity, SEPL) was perverse, since the finding of fact given in the order in the order of Ld. CIT(A) are inconsistent with the material on record?

4. Whether on the facts, in the circumstances of the case and as per law, the Ld. CIT(A) has erred in holding that the assessee did not have the more than 20% beneficial shareholding in GFMPL whereas the Audited Annual Report of GFMPL clearly states that the assessee holds 25.34% of shareholding in GFMPL.

5. Whether on the facts, in the circumstances of the case and as per law, the Ld. CIT(A) has erred in directing to delete the addition made u/s. 2(22)(e) of the Income-tax Act, 1961 in respect of the advance of Rs. 5137,46,284/- received by GFMPL from SEPL despite the fact that all the conditions stipulated for treating an advance from the company as Deemed Dividend in the hands of the beneficial shareholder as laid down in Section 2(22)(e) of the Act has been fulfilled in this case.

6. The appellant prays that the order of CIT(A) on the above grounds be set aside and that of the Assessing officer be restored.

7. The appellant craves leave to amend or alter any ground or add a new ground which may be necessary."

2. Briefly stated, the assessee who is engaged in the business of providing direction services had filed his return of income on 28.09.2012, declaring a total income of Rs. 3,04,55,845/-. Subsequently, the assessee filed a revised return of income on 09.05.2013 disclosing an income of Rs. 3,05,39,140/-. Return of income filed by the assesseewas processed as such u/s 143(1) of the Act. Thereafter, the case of the assessee was selected for scrutiny assessment u/s 143(2) of the Act.

3. During the course of the assessment proceedings it was observed by the A.O that the assessee had transferred certain ancestral plot of land by way of his capital contribution as a partner in two partnership firms viz. (i). M/s Mansagar Infrastructure; and (ii). M/s MaaShaki Infrastructure, and had worked out the 'Long Terms Capital Gain'(for short 'LTCG') under Sec. 45(3), as under:

Consideration – Amount credited in the books of Mansagar infrastructure to the capital account for bringing in said plot for the benefit of said firm [u/s 45 (3)] under Declaration	1,28,62,887
Consideration – Amount credited in the books of Maa Shakti Infrastructure to the capital account for bringing in said plot to the benefit of said firm [u/s 45(3)] under Deed of Partnership dt. 26.01.2012 effective from 19.01.2012	1,05,18,716
Consideration – For confirming the ownership of Sagar Entertainment Pvt. Ltd. (granting NOC) under declaration	15,02,674
Total consideration	2,48,84,277
Indexed cost of the land (cost of plot no 33 Rs.1949297/- + cost of plot no. 19 Rs. 2323061/- = total cost Rs.4272358/- [as per original deed of purchase dt. 7.03.1998] [applicable index 331 x 785] assesses shae in property 20.04% hence indexed cost Rs.2030078/- - copy of purchase deed already placed on your record	20,30,078
Cost of transfer/ cost of improvement - Amount payable to SEL for reimbursing capital expenditure by SEL incurred on plot no. 33 Rs.200357/- and plot no. 19 Rs. 400713/- copy of MOU enclosed	6,01,070
Long Term Capital Gain	2,22,53,129

Being of the view, that the LTCG on the transfer of the aforesaid property was to be supposedly worked out as per Sec. 50C of the Act, the A.O called upon the assessee to put forth his explanation as regards the same. In reply, the assessee tried to impress upon the A.O that the provisions of Sec. 50C were not attracted in his case for two fold reasons, viz. (i). that, as per Sec. 45(3) the amount credited to the partners account was deemed to be the full value of consideration accruing or received by the partner; and (ii). that, as introduction of asset by the partner in a firm by way of his capital contribution was not a transfer, therefore, the provisions of Sec. 50C were not attracted. However, the A.O not being persuaded to subscribe to the aforesaid contentions of the assessee invoked the provisions of Sec. 50C and worked out the 'LTCG' on the aforesaid transfer transaction at Rs. 6,43,56,086/-. As the assessee had already offered to tax LTCG of Rs. 2,22,53,129/- in his return of income, therefore, the A.O made a consequential addition of Rs. 4,21,02,957/- [Rs. 6,43,56,086/- (-) Rs. 2,22,53,129/-]. Further, it was noticed by the A.O, that in the course of the assessment proceedings in the case of M/s Gayatri Films & Music Pvt. Ltd., it was observed that the said company had received substantial advances of Rs.5,37,46,284/- from M/s Sagar Entertainment Ltd. (now known as M/s Sagar Entertainment Pvt. Ltd.), i.e a related

party, which was prima facie covered by Sec. 2(22)(e) of the Act. Observing, that two of the substantial shareholders of M/s Sagar Entertainment Pvt. Ltd., viz. (i). Sh. Jyoti Sagar (26.17%); and (ii). Sh. Prem Sagar, i.e the assessee (18.40%), were also holding substantial shareholding in M/s Gayatri Films & Music Pvt. Ltd., viz. (i). Sh. Jyoti Sagar (32.40%); and (ii). Sh. Prem Sagar, i.e the assessee (25.34%), the assessee was called upon to explain as to why the aforesaid amount of advances may not be treated as 'deemed dividend' in his hands. As the reply filed by the assessee did not find favour with the A.O, therefore, he added the entire amount of Rs. 5,37,46,284/- advanced by M/s Sagar Entertainment Ltd. to M/s Gayatri Films & Music Pvt. Ltd. as 'deemed dividend' u/s 2(22)(e) in the hands of the assessee. On the basis of his aforesaid deliberations, the A.O after inter alia making the afore stated additions assessed the income of the assessee at Rs. 12,68,30,630/- (including enhancement in the amount of LTCG).

4. Aggrieved, the assessee assailed the aforesaid assessment in appeal before the CIT(A). Insofar, the claim of the assessee that the amount recorded in the 'books of account' was to be deemed to be the full value of consideration received or accruing on the transfer of the capital asset was concerned, the same did find favour with the CIT(A). It was observed by the CIT(A), that as it was specifically provided u/s 45(3), that for the purpose of Sec. 48 the amount recorded in the 'books of accounts' of the firm shall be deemed to be the full value of consideration, therefore, the provisions of Sec. 50C would not be applicable to such transaction. As regards the addition of Rs. 5,37,46,284/- that was made by the A.O u/s 2(22)(e) of the Act, it was observed by the CIT(A), that none of the shareholder of M/s Gayatri Films & Music Pvt. Ltd. was having more than 20% of equity capital and was simultaneously having more than 10% shareholding in the lending company. Also, it was observed by the CIT(A), that as Sec. 2(22)(e) referred to the beneficial ownership of the shareholder, therefore, the holding of the assessee in his individual capacity could not be clubbed with the holding of his HUF. On a similar footing, it was observed by him, that the holding of the other shareholder i.e Sh. Jyoti Sagar in his individual capacity could also not be combined with his shareholding in the capacity as that of Executor to the Estate of Late Subhash Sagar. In the backdrop of his aforesaid deliberations, it was concluded by the CIT(A) that the addition made by the A.O u/s 2(22)(e) was not sustainable and was liable to be vacated.

5. The revenue being aggrieved with the order of the CIT(A) has carried the matter in appeal before us. Order of the CIT(A) has been assailed by the revenue before us on two grounds, viz. (i). that, the CIT(A) was in error in vacating the addition of LTCG of Rs. 4,21,02,957/- made by the A.O u/s 50C of the Act; and (ii). that, the CIT(A) had wrongly vacated the addition of Rs. 5,37,46,284/- made by the A.O u/s 2(22)(e) of the Act.

6. We shall first advert to the grievance of the revenue that the CIT(A) had erred in dislodging the well founded LTCG addition of Rs. 4,21,02,957/- that was made by the A.O u/s 50C of the Act. As observed by us hereinabove, the assessee had transferred certain ancestral plot of land by way of his 'capital contribution' as a partner in two partnership firms viz. (i). M/s Mansagar Infrastructure; and (ii). M/s Maa Shakti Infrastructure. Amount recorded in the 'capital account, of the assessee with the said respective firms, was as under:

Particulars	Amount Credited in the 'Capital account' of the assessee.
M/s Mansagar Infrastructure	Rs. 1,28,62,887/-
M/s Maa Shakti Infrastructure	Rs. 1,05,18,716/-

As per the mandate of Sec. 45(3) of the Act, the assessee had adopted the amount recorded in the 'books of accounts' of the respective firms as the deemed full value of consideration received or accruing as a result of the respective transfer of the aforesaid plot of land and worked out the amount of LTCG at Rs. 2,22,53,129/-. Observing, that the provisions of Sec. 50C would be applicable to the aforesaid transfer transaction, the A.O adopted the 'market value' of the property as per the ready reckoner rates and worked out the LTCG at Rs. 6,43,56,086/-. On appeal, the CIT(A) not finding favour with the reading of the deeming provisions of Sec. 50C for working out the LTCG u/s 45(3) by the A.O, vacated the addition made by him. Our indulgence has been sought by the revenue, to adjudicate, as to whether the view taken by the CIT(A) is sustainable in the eyes of law, or not. On a perusal of Sec. 45(3), we find that the same provides that for the purpose of Sec. 48, the amount recorded in the 'books of account' of the firm, association or body

as the value of the capital asset shall be deemed to be the full value of the consideration received or accruing as a result of the transfer of the capital asset. On the other hand, Sec. 50C provides, that where the consideration received or accruing as a result of the transfer by an assessee of a capital asset, being land or building or both, is less than the value adopted or assessed or assessable by any authority of a state government for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed or assessable shall, for the purpose of section 48, be deemed to be the full value of the consideration received or accruing as a result of such transfer. As observed by us hereinabove, both of the aforesaid statutory provisions i.e Sec. 45(3) and Sec. 50C envisages a deeming provision for the purpose of adopting the 'full value of consideration' received or accruing as a result of transfer of the 'capital asset', in order to work out the 'capital gain' in the hands of the assessee. In our considered view, the deeming provisions of Sec. 45(3) would be rendered as otiose and the working of the said statutory provision would stand jeopardised, in case, the deeming provisions of Sec. 50C are allowed to be transposed and read into the same. For the purpose of resolving the controversy involved, it would be relevant to consider the circumstances which had led to insertion of Sec. 45(3) on the statute w.e.f 01.04.1988. As can be gathered from a perusal of CBDT Circular No. 495, dated 22.09.1987 (para 24.1), Sec. 45(3) was made available on the statute in order to overcome the problem of income going untaxed due to the decision of the **Hon'ble Supreme Court** in the case of **Kartikeya V. Sarabhai Vs. CIT (1997) 94 Taxman 164 (SC)**. As per the Hon'ble Apex Court, the capital gain could not be computed in respect of a transaction of contribution of capital asset by a partner in the firm since the value of consideration could not be determined. It was observed by the Hon'ble Apex Court, that the amount credited in the partners capital account in the books of the partnership firm did not represent the true value of consideration, as it was only a notional value intended to be taken into account at the time of determining the value of the partners share in the net partnership assets on the date of dissolution or his retirement. Accordingly, it was only with the introduction of Sec. 45(3), the notional value of the asset recorded in the 'books of account' was deemed as the "full value of consideration" for the purpose of computing the capital gain under Sec. 48, and the aforesaid transactions which were earlier going untaxed were made taxable. Although, the Hon'ble Apex Court in the case of Kartikeya V. Sarabai (supra) had observed that the amount of

consideration which accrued in case of contribution of a capital asset to a firm by a partner is indeterminable, however, the same as observed by us hereinabove was deemed to be determined only pursuant to insertion of Sec. 45(3) on the statute. As observed by the **Hon'ble Supreme Court** in the case of **G. Viswanathan Vs. Speaker Tamil Nadu Legislative Assembly (1996) 2 SCC 353**, a deeming provision is an admission of the non-existence of the fact deemed. It was held by the Hon'ble Apex Court, that the legislature is competent to enact a deeming provision for the purpose of assuming the existence of a fact which does not even exist. On the basis of our aforesaid observations, it can safely be concluded that the provisions of Sec. 45(3) deem the value recorded in the 'books of accounts' as the full value of consideration (which is otherwise not), in order to make the transaction taxable. As observed by us hereinabove, Sec. 45(3) comprises of two limbs, viz. (i). the *first limb*, is the charging section which enables the levy of capital gains tax on the profits or gains arising on the transfer of a 'capital asset' by a partner as its capital contribution in a firm or other association of persons or body of individuals; and (ii). the *second limb*, is a deeming fiction which enables adoption of the amount recorded in the 'books of accounts' of the firm or other association of persons or body of individuals, as the "full value of consideration" received or accruing as a result of the transfer of the capital asset. As can be gathered from a perusal of Sec. 45(3), the 'charging' of the transaction therein envisaged to levy of capital gain tax and quantification of such tax, both go hand in hand for facilitating quantification of the capital gains tax. Now, in case the quantification of the capital gain tax as envisaged in Sec. 45(3) is substituted by Sec. 50C, then, in our considered view, the charging to tax of the transaction under consideration would in itself stand jeopardised and the section would be rendered as inoperative. In sum and substance, the provisions of Sec. 45(3) cannot be substituted. In other words, the deeming of the amount recorded in the 'books of accounts' of the firm or other association of persons or body of individuals, as the "full value of consideration" received or accruing as a result of the transfer of the capital asset in Sec. 45(3), cannot be dissected and the charging provision therein provided be allowed to subsist in isolation. As such, we are of a strong conviction, that the deeming of the amount recorded in the 'books of accounts' of the firm or other association of persons or body of individuals, as the "full value of consideration" received or accruing as a result of the transfer of the capital asset in Sec. 45(3), cannot be substituted by the deemed sale

consideration contemplated in Sec. 50C of the Act. Apart there from, we find that as per the Latin maxim *generallia speciali bus non derogant,* which is a rule of construction, the special provisions prevail over the general provisions. In fact, the **Hon'ble Supreme Court** in the case of **D.R Yadav Vs. R.K Singh (2003) 7 SCC 110**, had observed, that where there are two conflicting provisions of law in operation in the same field, the rule that specifically operates in that field would apply over the general rule. In the backdrop of our aforesaid observations, we are of a strong conviction that in case the legislature in all its wisdom would had intended to apply the deeming provisions of Sec. 50C to the transactions contemplated in Sec. 45(3) of the Act, then it would have removed Sec. 45(3) from the Act. Having not so done, we are of the considered view, that the deeming provisions of Sec. 50C cannot be transposed and therein be read into Sec. 45(3) of the Act, as the same would frustrate the very chargeability to tax of the transactions therein provided. Our aforesaid view is fortified by the orders of the coordinate bench of the **ITAT, "C" Bench, Mumbai**in the case of :**ITO- 21(2), Mumbai Vs. M/s Chirayu Estate & Developer Pvt. Ltd. [ITA No. 263/Mum/2010; dated 24.08.2011]** and that of **ITAT, "B" Bench, Chennai** in the case of **Shri SarrangamAshok Vs. the Income-Tax Officer, Chennai [ITA No. 544/Chhny/2019]**. In the case of ITO- 21(2), Mumbai Vs. M/s Chirayu Estate & Developer Pvt. Ltd., it was observed by the Tribunal, that once the price recorded in the joint venture's books was treated as full value of consideration, the substitution of any value so as to make addition under section 45(3) would not be permissible. It was observed by the Tribunal, as under:

> "14. A plain reading of the said provision would reveal that the profits or gains arising from the transfer of a capital asset to another entity by way of capital contribution or otherwise shall be chargeable to tax. The profit or gain would arise only when the transfer has been made at a price which is more than the cost price and the difference between the cost price and amount at which transfer has taken place can be charged under section 45(3). In the instant case the purchase price of land as recorded in the transferor's book and recorded in the books of the joint venture are the same. As per provisions of section 45(3) price of land recorded in the books of joint venture is required to be considered as receipt of full value of consideration received or accrued as a result of transfer of capital assets. Once the price recorded in the joint venture's books is treated as full value of consideration, the provisions do not permit substitution of any value so as to make addition under section 45(3). In fact the approach of the A.O. is also not correct in the sense that under section 45(3) once the full value of consideration is taken as the amount recorded in the books of the joint venture, the capital gain can be worked out by reducing the cost of purchase as per the books of assessee. In case the A.O. substitutes the cost of purchase, by whatever means, then that cost price has to be adjusted in the capital gains. This may result in a loss of equal amount as the books of jointventure show the book value as consideration and substituted cost price (value determined by AO in the order) as a deduction. This working would result in a loss but not a gain. This simple arithmetic calculation

> was missed by the A.O. and he made the addition under section 45(3) which does not permit him to substitute the full value of consideration other than the amount recorded in the books of account of the joint venture. As the Assessing Officer's action is not according to the provisions of Sec 45(3), there is no justification for upholding the contentions of Revenue. We uphold the order of the CIT(A) and reject the ground of appeal."

We thus, in terms of our aforesaid observations, and also finding ourselves to be in agreement with the view taken by the aforesaid coordinate benches of the Tribunal, are of the considered view that the CIT(A) had rightly vacated the addition of Rs. 4,21,02,957 that was made by the A.O by substituting the market value of the property as per the ready reckoner rates u/s 50C, as against the amount recorded in the 'books of accounts' of the respective firms, which was adopted by the assessee as the "full value of consideration" received or accruing as a result of the transfer. Accordingly, finding no infirmity in the order of the CIT(A) to the said extent, we uphold the same. **Grounds of appeal Nos. 1 & 2** are dismissed.

7. We shall now advert to claim of the revenue that the CIT(A) is in error in vacating the addition of Rs. 5,37,46,284/- that was made by the A.O under Sec. 2(22)(e) of the Act. As observed by us hereinabove, the A.O while framing the assessment observed, that M/s Gayatri Films & Music Pvt.Ltd. had received substantial advances of Rs.5,37,46,284/- from M/s Sagar Entertainment Ltd. (now known as M/s Sagar Entertainment Pvt. Ltd.). Observing, that two of the substantial shareholders of M/s Sagar Entertainment Pvt. Ltd., viz. (i). Sh. Jyoti Sagar (26.17%); and (ii). Sh. Prem Sagar i.e the assessee (18.40%), were also holding substantial shareholding in M/s Gayatri Films & Music Pvt. Ltd., viz. (i). Sh. Jyoti Sagar (32.40%); and (ii). Sh. Prem Sagar i.e the assessee (25.34%), the A.O had brought the entire amount of Rs. 5,37,46,284/- to tax as 'deemed dividend' u/s 2(22)(e) in the hands of the assessee. On appeal, the CIT(A) observed that none of the shareholders of M/s Gayatri Films & Music Pvt. Ltd. was having more than 20% of equity capital and was simultaneously having more than 10% shareholding in the lending company. Also, it was observed by the CIT(A), that as Sec. 2(22)(e) referred to the beneficial ownership of the shareholder, therefore, the shareholding of the assessee in his individual capacity could not be clubbed with the holding of his HUF. On a similar footing, it was observed by him, that the shareholding of the other shareholder i.e Sh. Jyoti Sagar in his individual capacity could also not

have been combined with his shareholding in his capacity as that of an Executor to the Estate of Late Subhash Sagar. Accordingly, in the backdrop of his aforesaid deliberations, the CIT(A) holding a conviction that the requisite conditions for bringing the transaction within the sweep of Sec. 2(22)(e) were not satisfied, therefore, vacated the addition of Rs. 5,37,46,284/- that was made by the A.O by invoking the said statutory provision.

8. We have perused the orders of the lower authorities in context of the issue under consideration, and are persuaded to subscribe to the view taken by the CIT(A). As a matter of fact, the adjudication by the CIT(A) is backed by his observation, that as the requisite conditions for invoking the provisions of Sec. 2(22)(e) were not found to be satisfied, therefore, the advance received by M/s Gayatri Films & Music Pvt. Ltd. from M/s Sagar Entertainment Ltd. could not have been stamped as 'deemed dividend'. In fact, the genesis of the controversy involved hinges around the working of the shareholding of Sh. Prem Sagar, i.e the assessee and Sh. Jyoti Sagar in the aforesaid respective companies. A.O was of the view, that two of the substantial shareholders of M/s Sagar Entertainment Pvt. Ltd., viz. (i). Sh. Jyoti Sagar (26.17%); and (ii). Sh. Prem Sagar, i.e the assessee (18.40%), were also holding substantial shareholding in M/s Gayatri Films & Music Pvt. Ltd., viz. (i). Sh. Jyoti Sagar (32.40%); and (ii). Sh. Prem Sagar, i.e the assessee (25.34%). Observing, that the A.O had worked out the shareholding on the basis of misconceived facts, the CIT(A) being of the view that none of the shareholders of M/s Gayatri Films & Music Pvt. Ltd. was having not less than 20% of equity capital and was simultaneously having not less than 10% shareholding in the lending company i.e M/s Sagar Entertainment Ltd., had thus, on the said count vacated the addition made by the A.O u/s 2(22)(e). Observations of the CIT(A) as regards the respective shareholding of the aforesaid persons has been assailed by the revenue before us. In this regard, we may herein observe, that a similar issue as regards working out the shareholdings of Sh. Jyoti Sagar in M/s Gayatri Films & Music Pvt. Ltd. and M/s Sagar Arts Pvt.Ltd.(i.e a 'sister concern'), had been looked into by the tribunal in the case of the aforesaid 'sister concern' viz. **ACIT-16(1), Mumbai Vs. M/s Sagar Arts Pvt. Ltd [ITA No. 7444/Mum/2016; dated 18.09.2019]** for A.Y 2013-14. In the said case, the A.O for the purpose of working out the shareholding of Sh. Jyoti Sagar in the aforesaid companies for the purpose of Sec. 2(22)(e) had clubbed his individual

shareholding with that which was held by him in his capacity as that of the Executor of the Estate of Shri. Subhash Sagar. On appeal, it was concluded by the tribunal that the shareholding of the estate of Late Shri. Subhash Sagar, which was held by Sh. Jyoti Sagar in his capacity as that of an Executor of the Estate of Shri. Subhash Sagar, could not have been clubbed for working out his individual shareholding in M/s Sagar Arts Pvt. Ltd and M/s Gayatri Films & Music Pvt. Ltd. The tribunal while concluding as hereinabove, had observed as under :

> "6. We have given a thoughtful consideration to the issue before us and are unable to persuade ourselves to subscribe to the claim of the ld. Departmental representative (for short 'D.R'). Admittedly, as is borne from the records, the assessee company is not a shareholder in M/s Gayatri Films & Music Pvt. Ltd. In fact, the entire issue hinges around the aspect as to whether any shareholder of M/s Gayatri Films & Music Pvt. Ltd. (holding not less than ten percent shares) was simultaneously during the year holding not less than twenty percent of equity shares in the assessee company viz. M/s Sagar Arts Pvt. Ltd., or not. As per the revenue, one common shareholder viz. Mr. Jyoti Sagar who was holding 21.06% shares in M/s Gayatri Films & Music Pvt. Ltd., was simultaneously having a 26.94% shareholding in the assessee company. We have perused the records and are unable to persuade ourselves to subscribe to the manner in which the shareholding of Mr. Jyoti Sagar in the assessee company and M/s Gayatri Films & Music Pvt. Ltd. has been worked out by the A.O. As is discernible from the assessment order, the shareholding pattern of Mr. Jyoti Sagar during the year was as under:

Gayatri Films & Music Pvt. Ltd.			Sagar Arts Pvt. Ltd. (assessee company)		
Name	Shares	% age	Name	Shares	% age
Mr. Jyoti Sagar	706	7.06	Mr. Jyoti Sagar	392	12.49
Mr. Jyoti Sagar (of Estate of Subhash Sagar, holding for Rekha Sagar & Others)	1400	14	Mr. Jyoti Sagar (of Estate of Subhash Sagar, holding for Rekha Sagar & Others)	453	14.45

> As observed by us hereinabove, the A.O for working out the shareholding of Mr. Jyoti Sagar in the assessee company and M/s Gayatri Films & Music Pvt. Ltd., had clubbed his individual shareholding with that which was held by him as an executor of the estate of Late Shri Subhash Sagar (i.e for Mrs. Rekha Sagar & Others). In our considered view, the shareholding of the estate of Late Shri. Subhash Sagar, being held by Shr./ Jyoti Sagar in a different capacity i.e as an executor of the estate of the deceased, could not have been clubbed for working out his individual shareholding in the assessee company and M/s Gayatri Films & Music Pvt. Ltd. As a matter of fact, the revenue even in the course of the proceedings before us had failed to place on record any irrefutable material which would evidence that the holding of Shri. Jyoti Sagar in M/s Gayatri Films & Music Pvt. Ltd. and the assessee company, was not less than 10% and 20%, respectively. Apart

there from, we are in concurrence with the view taken by the CIT(A), that the amount received by the assessee company from M/s Gayatri Films & Music Pvt. Ltd, being in the nature of an inter-corporate deposit could not have been brought within the realm of the definition of 'deemed dividend' under Sec. 2(22)(e) of the Act. In fact, we find that the Tribunal while disposing off the appeal of the assessee for the immediately preceding year viz. A.Y 2012-13 had deleted the addition which was made by the A.O by treating the amount received by the assessee from M/s Gayatri Films & Music Pvt. Ltd. as 'deemed dividend' u/s 2(22)(e) of the Act ,for the reason, that, none of the shareholders of the assessee company holding more than 20% of its shareholding were simultaneously holding more than 10% interest in M/s Gayatri Films& Music Pvt. Ltd. The Tribunal while concluding as hereinabove, had observed as under:

> "8. We notice that the Ld. CIT(A) had rightly pointed out that the appellant company is not a shareholder the lending company and none of the shareholders is having more than 20% equity and simultaneous holding more than 10% interest in the lending company. Therefore, the appellant company M/s Sagar Arts Pvt. Ltd. cannot be held as concern in which any shareholder is having more than 20% of stake. Since, the findings of the Ld. CIT(A) are based on evidence on record and as per the decisions of the Tribunal relied upon, we do not find any infirmity in the said order to interfere with. We therefore uphold the findings of he Ld. CIT(A) in deleting the addition of Rs. 2,51,50,000/-."

As the shareholding pattern of the assesse company and that of M/s Gayatri Films & Music Pvt. Ltd had not witnessed any change during the year under consideration, as in comparison to that of the immediately preceding year viz. A.Y 2012-13, and the facts therein involved also remain the same, therefore, we uphold the view taken by the CIT(A). Resultantly, the order of the CIT(A) deleting the addition of Rs. 8,50,80,367/- as had been assailed by the revenue before us is upheld."

Accordingly, we are of the considered view, that in the case before us also the shareholding of Shri. Jyoti Sagar in his capacity as that of the Executor of the Estate of Late Shri. Subhash Sagar, could not have been clubbed for working out his individual shareholding in M/s Sagar Entertainment Pvt. Ltd and M/s Gayatri Films & Music Pvt. Ltd. Also, on a similar footing, the shareholding of the assessee i.e Shri. Prem Sagar, could also not have been clubbed with that of its HUF i.e Pawan Sagar, HUF. On the basis of our aforesaid deliberations, we find no infirmity in the order of the CIT(A), who rightly observing that as none of the shareholders of M/s Gayatri Films & Music Pvt. Ltd. was having not less than 20% of equity capital and was simultaneously having not less than 10% shareholding in the lending company i.e M/s Sagar Entertainment Ltd., therefore, the addition made by the A.O u/s 2(22)(e) was principally not sustainable. At this stage, we may herein observe, that the revenue had not been able to point out before us that as to how the aforesaid observations of the CIT(A) suffered from any perversity. In the backdrop of our aforesaid deliberations, we are persuaded to subscribe to the view taken by the CIT(A) that in the

absence of the shareholding pattern required for applying deeming provisions of Sec. 2(22)(e), the addition of Rs. 5,37,46,284/- made by the A.O was not sustainable. Order of the CIT(A) in context of the aforesaid issue is upheld. **Grounds of appeal Nos. 2 to 5** are dismissed.

9. **Grounds of appeal No. 6 & 7** being general in nature are dismissed as not pressed.

10. Appeal of the revenue is dismissed.

Order pronounced in the open court on 16/10/2019.

Sd/-	Sd/-
(Pramod Kumar)	(Ravish Sood)
VICE PRESIDENT	JUDICIAL MEMBER

मुंबई Mumbai; दिनांक 16.10.2019
PS. Rohit

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent.
3. आयकरआयुक्त(अपील) / The CIT(A)-
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard file.

सत्यापितप्रति //True Copy//
आदेशानुसार/ BY ORDER,
उप/सहायकपंजीकार (Dy./Asstt. Registrar)
आयकरअपीलीयअधिकरण, मुंबई / **ITAT, Mumbai**