

**आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'B' अहमदाबाद ।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**“B” BENCH, AHMEDABAD**

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**  
**& SMT. MADHUMITA ROY, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A. Nos. 3133/Ahd/2015 & 1659/Ahd/14  
(निर्धारण वर्ष / Assessment Years : 2012-13 & 2010-11)

<b>DCIT</b> Circle 1(1)(1), Ahmedabad & ITO Ward – 1(2), Ahmedabad	<b>बनाम/</b> Vs.	<b>Shri Mehul Pratap Asnani</b> 4, Garden Enclave, Law Garden, Ellis Bridge, Ahmedabad 380006
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : ACMPA6996R		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

&

CROSS OBJECTION No. 205/Ahd/2015

(in I.T.A. No. 3133/Ahd/2015)

(निर्धारण वर्ष / Assessment Year : 2012-13)

<b>Shri Mehul Pratap Asnani</b> 4, Garden Enclave, Law Garden, Ellis Bridge, Ahmedabad 380006	<b>बनाम/</b> Vs.	ITO Ward – 1(1)(4), Ahmedabad
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

राजस्व की ओर से/Revenue by :	Shri Vidhyut Trivedi, Sr.D.R.
अपीलार्थी ओर से /Assessee by :	Shri Bandish Soparkar, A.R.

सुनवाई की तारीख / Date of Hearing	29/11/2019
घोषणा की तारीख /Date of Pronouncement	29/11/2019

## आदेश/ORDER

### PER BENCH:

The captioned appeals and cross objection have been filed at the instance of the Revenue and assessee against the respective orders of the Commissioner of Income Tax (Appeals)-1 & VI, Ahmedabad (CIT(A)' in short), dated 26.08.2015 & 28.03.2014 arising in the assessment orders dated 13.02.2015 & 01.03.2014 passed by the Assessing Officer (AO) under s. 143(3) of the Income Tax Act, 1961 (the Act) concerning AYs. 2012-13 & 2010-11.

2. The grievances raised being common, both the cases were heard together and disposed of by common order.

3. The substantive ground of appeal raised by the Revenue in ITA No. 3133/Ahd/2015 reads as under:-

*“(1) That the ld. CIT(A) has erred in law and on facts in deleting the addition of Rs.1,47,89,965/- being deemed dividend u/s 2(22)(e) of the Act despite the fact that the assessee had availed a loan from Bio-tech Vision Care Pvt. Ltd. in which one of its shareholder had 94.92% share holding.”*

4. The substantive ground of appeal raised by the Revenue in ITA No. 1659/Ahd/2014 reads as under:-

*“(1) The CIT(A) has erred in law and on facts by deleting the addition of Rs.1.41 crores towards deemed dividend u/s 2(22)(e) despite the fact that the assessee had availed huge advances from BVCPL in which the assessee had substantial interest (Share holding of 94.92%).*

*(2) The CIT(A) has not appreciated the findings of the AO in the assessment order and also the fact that as per the provisions of section 2(22)(e) any advance to a person who is a beneficial owner of more than 10% of shares is required to be treated as deemed dividend.”*

5. At the time of hearing, it was submitted by the Ld.AR for the assessee that both appeals filed by the Revenue are hit by recently issued CBDT Circular No.17 of 2019 dated 08/08/2019 revising the previous

thresholds pertaining to tax effects. It is *inter alia* noticed that the CBDT vide Instruction No. F. No. 279/Misc/M-93/2018-ITJ dt. 20/08/2019 has observed that Circular No.17/2019 dated 08/08/2019 relating to enhancement of monetary limits is also applicable to all pending appeals. As per aforesaid Circular read with instruction, all pending appeals filed by Revenue are liable to be dismissed as a measure for reducing litigation where the tax effect does not exceed the prescribed monetary limit which is now revised at Rs.50 Lakhs. In the instant both cases, the tax effect on the disputed issues raised by the Revenue is stated to be not exceeding Rs.50 lakhs and therefore both appeals of the Revenue are required to be dismissed *in limine*.

6. The Learned DR for the Revenue fairly admitted the applicability of the CBDT Circular No. 17 of 2019. Accordingly, both appeals of the Revenue are dismissed as not maintainable. However, it will be open to the Revenue to seek restoration of its appeals on showing inapplicability of the aforesaid CBDT Circular in any manner.

7. In the result, both appeals of the Revenue are dismissed.

**CROSS OBJECTION No. 205/Ahd/2015 (in ITA No.3133/Ahd/2015) - AY 2012-13)**

8. The substantive ground of appeal raised by the assessee in CO No. 205/Ahd/2015 reads as under:-

“1. *On the facts and in the circumstances of the case, the CIT(A) erred in directing the Assessing Officer to compute and levy interest u/s.201(1A) of the I.T. Act, in the case of Biotech Vision Pvt. Ltd.*”

9. When the matter was called for hearing, the learned AR for the assessee referred para 4.6 of the order of the CIT(A) and submitted that while dealing with the issue of applicability of provisions of Section 2(22)(e) of the Act in the given facts of the case, the CIT(A) exceeded its mandate and observed that interest liability under s.201(1A) of the Act is required to be computed in the hands of the third party i.e. Biotech Vision

Pvt. Ltd. The learned AR pointed out that while concluding the appeal of the assessee, the CIT(A) could not have given direction for levy of interest in the hands of third party either under s.250(6) or under s. 150(1) r.w.s. 153(6) of the Act.

10. For this proposition, the learned AR relied upon the decision of the co-ordinate bench in *ITO vs. Biotech Ophthalmic Pvt. Ltd.* ITA No. 443/Ahd/2011 order dated 31.08.2014.

11. The learned DR for the Revenue, on the other hand, relied upon the order of the CIT(A) and submitted that the assessee is not aggrieved against these directions against the third party and therefore the cross objection should not lie.

12. We have carefully considered the rival submissions. The solitary issue in the cross objection is on the scope of authority of the CIT(A) to give finding or directions for action against the third party while adjudicating the appeal of the present assessee. We find that identical issue has been examined by the co-ordinate bench in *Biotech Ophthalmic Pvt. Ltd. (supra)*. The relevant portion thereof is reproduced hereunder:

*"12. We have heard the rival contentions, perused the material on record and duly considered facts of the case in the light of the applicable legal position.*

*13. In our considered view, it is important to first understand the role played by the findings or directions of this nature. We are dealing with the assessment year 2006-07 and the order of the CIT(A) was served on the Assessing Officer on 5th January 2011. Obviously, the assessment must have attained finality, by the time the Assessing Officer came to know of these directions, since in terms of Section 153(1) "no order of assessment shall be made under section 143 or section 144 at any time after the expiry of—(a) two years from the end of the assessment year in which the income was first assessable; or (b) one year from the end of the financial year in which a return or a revised return relating to the assessment year commencing on the 1st day of April, 1988, or any earlier assessment year, is filed under sub-section (4) or subsection (5) of section 139, whichever is later". No doubt, under section 153 (2A), when an assessment is set aside or cancelled under section 250, 254, 263 or 264 a fresh assessment, as a result of such a cancellation, can be framed within one year from the end of the financial year in which the order under section 250 or section 254 is received by the Commissioner or the*

*order under section 263 or section 264 is passed by the Commissioner. However, this provision comes into play only when the order passed under section 250, 254, 263 or 264 in the case of the assessee himself. That is not the situation that we are dealing with at present.*

14. *Section 153 (3), dealing with the impact of the findings or direction given by the revisionary, appellate or judicial authorities, prescribes that "the provisions of" inter alia section 151(1) "shall not apply to the ..... assessments, reassessments and recomputations which may, subject to the provisions of sub-section (2A) be completed at any time where the assessment, reassessment or re-computation is made on the assessee or any person in consequence of or to give effect to any finding or direction contained in an order, under sections 250, 254, 260, 262, 263 or 264 1535 or in an order of any court in a proceeding otherwise than by way of appeal or reference under this Act". In other words, when effect of a finding or direction of an revisionary, appellate or judicial authority is to be given, that exercise can be carried out any point of time de hors the time limits specified in section 153(1). However, even this relaxation of time limits is subject to certain riders, including rider contained in Explanation 3 to Section 153(3) which provides that, where by a revisionary, appellate or judicial order of the above nature, an income is excluded from the income of one assessee and held to be income of the other assessee, the assessment of such an income in the hands of another assessee "be deemed to be one made in consequence of or to give effect to any finding or direction contained in the said order, provided such other person was given an opportunity of being heard before the said order was passed (Emphasis by underling supplied by us)." Clearly, therefore, unless the person in whose hand income is directed to be added has been heard before such directions are issued, the directions issued by the revisionary, appellate or judicial authority are an exercise in futility. This rider is equally relevant in respect of reopening of an assessment under section 154, as a result of the findings or directions of the revisionary, appellate or judicial authorities.*

15. *It is an undisputed position, on the facts of this case, that Shri Mehul P Asnani, in whose hands CIT(A) has directed this income to be added, has not been granted an opportunity of hearing by the CIT(A) before these directions were issued. Such being the admitted facts, it is beyond doubt that a completed assessment cannot be disturbed or reopened to give effect to such findings or directions.*

16. *There is, however, an even more fundamental issue, and that issue is whether the direction that the deemed dividend income being brought to tax in the hands of Shri Asnani is a direction necessary for the disposal of the case. This issue assumes significance in view of the legal position that, as held by Hon'ble Supreme Court in the case of **CIT vs Rajinder Nath [(1979) 120 ITR 14 (SC)]**, "As regards the expression "direction" in s. 153(3)(ii) of the Act, it is now well settled that it must be an express direction necessary for the disposal of the case before the authority or Court. It must also be a direction which the authority or Court is empowered to give while deciding the case before it." Their Lordships then added that "The expressions "finding" and "direction" in s. 153(3)(ii) of the Act must be accordingly confined" and that " Sec. 153(3)(ii) is not a provision enlarging the jurisdiction of the authority or Court."*

17. As to what constitutes "**an express direction necessary for disposal of a case**", we find the following guidance from Their Lordships:

***To be a necessary finding, it must be directly involved in the disposal of the case. It is possible in certain cases that in order to render a finding in res peel of A, a finding in respect of B may be called for. For instance, where the facts show that the income can belong either to A or B and no one else, a finding that it belongs to B or does not belong to B would be determinative of the issue whether it can be taxed as A's income. A finding respecting B is intimately involved as a step in the process of reaching the ultimate finding respecting A. If, however, the finding as to A's liability can be directly arrived at without necessitating a finding in respect of B, then a finding made in respect of B is an incidental finding only. It is not a finding necessary for the disposal of the case pertaining to A. The same principles seem to apply when the question is whether the income under enquiry is taxable in the assessment year under consideration or any other assessment year. As regards the expression "direction" in s. 153(3)(ii) lit the Act, it is now well settled that it must be an express direction necessary for the disposal of the case before the authority or Court. It must also be a direction which the authority or Court is empowered to give while deciding the case before it.***

18. Let us now, in the above light, revert to the facts of the case before us. The authorities below were dealing with a deeming fiction, i.e. deemed dividend, about an income. The case of the assessee was that this deeming fiction of deemed dividend could not be invoked in the present case because the assessee did not hold the shareholdings in the company which had extended loan to the assessee. This plea has been accepted by the CIT(A), but, for accepting such a plea, it is not a condition precedent that this deeming fiction must come into play in the hands of some other assessee other than this assessee. Whether the loan received by the assessee is held to be deemed dividend in the case of some other person or not is wholly irrelevant for deciding whether or not this is deemed dividend in the hands of this assessee or not. Learned CIT(A) holds that since Mehul P Asnani is a shareholder in the said company, the receipt can be added as deemed dividend in the hands of Mehul P Asnani, but then what he overlooks is that all the conditions precedent for taxing a receipt as deemed dividend are to be satisfied qua the assessee in whose income is to be taxed, and being a shareholder is only one such precondition. Learned CIT(A) has, as noted earlier in this order, observed that "**If the recipient of loan is not a shareholder and the transaction is covered by this provision, the addition is to be made in the hands of the shareholder**", but then it is difficult to comprehend as to how one can come to a conclusion that a transaction is covered by this provision, i.e. deeming fiction of the deemed dividend, without examining the transaction between the shareholder of the company and the company in which such shares are held. Without even giving a finding about satisfaction of all these conditions, learned CIT(A) proceeds to hold that it is an income to be taxed in the hands of the shareholder i.e. Mehul P Asnani. It is a classic case of putting cart before the horse and is wholly based on fallacious logic. The direction is thus not only unnecessary but patently incorrect. Viewed thus, the direction given by the CIT(A), for taxability of this deemed dividend in the hands of Shri Asnani, does not constitute "**an**

*express direction necessary for disposal of a case". Nothing really turns on his direction, as such. Even if this direction was correct, learned CIT(A) had no business to give such a direction without affording an opportunity of hearing to the affected party and that too when it was absolutely necessary to decide the issue in appeal before him. There is a certain degree of restraint that is expected of the appellate authorities in discharge of their judicial functioning.*

*19. As we part with our adjudication on this issue, we may also take note of learned Departmental Representative's contention that the assessee has no locus standi to raise any grievance against these directions as he is not the aggrieved party vis-a-vis these directions. We are unable to see any merits in this plea either. The manner in which the appeal has been decided by the CIT(A) gives an impression, which is a wholly inappropriate impression and which has also been reiterated before us by the learned Departmental Representative, that the impugned additions have been deleted in the hands of the assessee as these additions are required to be made in the hands of someone else. The deletion of the impugned addition in the hands of the assessee company has been thus projected to be, though perhaps at a somewhat subliminal level, dependent of the addition being confirmed in the hands of the director. The directions given by the CIT(A) do prejudice interests of the assessee inasmuch as these directions not being implemented may be viewed as detrimental to the interests of the assessee but then the directions suffer from legal infirmities, from glaring procedural flaws, and are incapable of being implemented anyway. In any case, since these directions are given in the case of this assessee and the appellate order by the CIT(A) in the case of this assessee cannot be challenged, in appeal before us, by a third party, the only way to prevent these directions reaching the finality is a challenge by this assessee himself, particularly because, as is the settled legal position, the statutory provisions are to be construed **ut res magis valeat quam pereat** i.e., in such a manner as to make it workable rather than redundant. The assessee before us, therefore, has, in our considered view, locus standi to challenge legality of these directions."*

12.1 As can be noted, the co-ordinate bench has examined the scope of power for giving any finding or direction in relation to third party while adjudicating the appeal of the assessee. After taking note of the decision of the Hon'ble Supreme Court, the co-ordinate bench held that the CIT(A) cannot have given such directions concerning third party while adjudicating the case of the assessee.

12.2 It is well settled that a direction or finding contemplated by Section 153(6) of the Act must be a finding necessary for disposal of a particular case that is to say, in respect of particular assessee and in reference to a particular assessment year. To be a necessary finding, it must be directly involved in the disposal of the case. The action of the CIT(A) is thus

contrary to the position of law enunciated in judicial precedents and cannot be sustained.

12.3 In view of the above discussions, we vacate the finding/direction in question. The cross objection of assessee is thus allowed.

13. In the combined result, Revenue's both appeals are dismissed and assessee's cross objection is allowed.

**This Order pronounced in Open Court on 29/11/2019**

Sd/-  
(MADHUMITA ROY)  
JUDICIAL MEMBER  
Ahmedabad: Dated 29/11/2019

Sd/-  
(PRADIP KUMAR KEDIA)  
ACCOUNTANT MEMBER

True Copy

S. K. SINHA

**आदेश की प्रतिलिपि अद्योषित / Copy of Order Forwarded to:-**

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद /  
DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

By order/आदेश से,

उप/सहायक पंजीकार  
आयकर अपीलीय अधिकरण, अहमदाबाद ।