

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'E' NEW DELHI**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

**ITA No.-3387/Del/2016
Assessment Year: 2011-12**

Dy. Commissioner of Income Tax Circle-1, Ghaziabad	Vs.	Shri Davinder Singh Chawla R-2/9, Raj Nagar, Ghaziabad
Appellant		Respondent

Assessee by : None
Revenue by : Ms. Rakhi Vimal, Sr. DR

ORDER

PER ANADEE NATH MISSHRA, A.M.:

[A] This appeal has been filed by Revenue against the impugned appellate order dated 30.03.2016 passed by Learned Commissioner of Income Tax (Appeals)- Ghaziabad [in short, "Ld. CIT(A)"] pertaining to Assessment Year 2011-12. The Assessee has raised following grounds of appeal :-

- 1. "The Ld. CIT(A) has erred in law as well as on fact in deleting addition of Rs.1,44,00,000/-when the assessee has failed to prove the capacity, identity and creditworthiness of the lenders.*

2. *The Ld. CIT(A) has erred in law as well as on fact in deleting addition of Rs.1,44,00,000/- as the plethora of decisions of the Hon'ble Supreme Court and High Courts made it clear that assessee is expected to establish proof of identity of his creditors, capacity of creditors to advance money and genuineness of the transactions.*

3. *The Ld. CIT(A) has erred in law as well as on fact in deleting addition as per provision to section 2(22)(e) of the I.T. Act of Rs.1,13,83,287/-(14941811 - 3558524) when assessee is having substantial interest in the companies from where loan was taken.*

4. *The Ld. CIT(A) has erred in law as well as on fact in deleting addition as per provision to section 2(22)(e) of the I.T. Act of Rs. 1,13,83,287/-(14941811 -3558524) when assessee was not filed any explanation during the course of assessment proceedings despite specific query by notice U/s 142(1) dated 20.03.2016.*

5. *Therefore, the order of Ld. CIT(A) may be set aside*

and that of the AO be restored.”

[B] Vide the assessment order dated 31.03.2014 passed u/s 143(3) of Income Tax Act, the total income of the assessee was determined at 4,47,87,971/-, rounded off to 4,47,87,970/- (and agricultural income of Rs. 2,70,000/- for rate purposes) as against returned income of Rs. 17,01,775/-. The relevant portion of the assessment order is reproduced as under :-

1. During the year under consideration the assessee has shown to have taken unsecured loans from various parties. Vide notice U/s 142(1) dated 09.07.2013 the assessee was requested to provide requisite details in respect of unsecured loans. Vide order-sheet entry dated 16.01.2014 the assessee was specifically asked to produce bank A/c, computation of income, balances sheet of all the persons who have advanced the loan. Informations were also called from the alleged lenders directly by sending letters to them directly on the addresses given by the assessee himself. The assessee was also given opportunity on 06.01.2014 and 26.02.2014. Vide notice dated 20.03.2014 it was brought to the knowledge of the assessee that confirmations and other relevant documents to prove the loans have

not been received and opportunity was given to the assessee to explain as to why the additions should not be made in those cases. The assessee has not filed any explanation/reply of the above notice. However, details from some of the parties have been received. Thus, the assessee has not been able to prove the loans in the following cases:

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M/s Akhil Bharat Chit Fund Pvt. Ltd. – The assessee has taken loans of Rs.24,00,000/- in the concern M/s Ganesh Medicos and loan of Rs. 1,50,00,000/- in the case of M/s Heaven Hotels, Noida . A letter for confirmations were sent on the address given by the assessee has returned unserved. The assessee has also not filed any balance sheet, P & L A/c, Return of income or computation of income of the assessee. In these circumstances the assessee has not been able to prove the credits shown to be taken from M/s Akhil Bharat Chit Fund Pvt. Ltd. and therefore, added to the income of the assessee U/s 68 of the I.T. Act, 1961.

(Addition :Rs. 1,74,00,000/-)

1.1 M/s Onset Solutions Pvt. Ltd. – The assessee has taken loans of Rs.5,00,000/-. The letter for confirmations were sent on the address given by the assessee. The assessee has also not filed any balance sheet, P & L A/c, Return of income or computation of income of the assessee. In these circumstances the assessee has not been able to prove the credits shown to be taken from M/s Onset Solutions Pvt. Ltd. and therefore, added to the income of the assessee U/s 68 of the I.T. Act, 1961.

(Addition Rs. 5,00,000/-)

1.2 M/s Vijay Finvast–..... The assessee has taken loans of Rs.1,02,44,385/-. The letter for confirmations were sent on the address given by the assessee has returned unserved. The assessee has also not filed any balance sheet, P & L A/c. The copy of acknowledgement of ITR has been filed by the assessee showing income of merely Rs. 1,43,668/-. Neither the assessee nor the alleged lender has furnished vital details as mentioned from which the capacity to advance such a huge amount of loan may be deduced. In these circumstances, the assessee has not been able to prove the credits shown to be taken from M/s Vijay Finvast and therefore, added to the income of the assessee U/s 68 of the I.T. Act, 1961.

(Addition Rs.1,02,44,385/-)

The ratio of several judgements are applicable in the case of the assessee in respect of unproved unsecured loans. The judgement of Hon'ble Supreme Court in the case of Sumati Dayal Vs. CIT 214 ITR 801 (SC) where in it is held that the taxing authorities are entitled to look into the surrounding circumstances to find out the reality and the matter has to be considered by applying the test of human probabilities. Mere filing of confirmation letters from alleged creditors cannot be treated as sufficient evidence to prove the genuineness of cash credits. [Nanak Chand Laaxman Das V. CIT (1983) 140 ITR 151 (All); Anraj Narain Das V. CIT (1951) 20 ITR 562 (Punj); A.D. Jayveerapandia Nadar V. CIT (1964) 54 ITR 401 (Mad); CIT V.K. Mahim (1995) 213 ITR 820 (Ker)]

After considering the above it is concluded that the loans/advance received from these parties are not genuine as the identity and capacity of the lender/parties who have advanced the amount are not proved, which is proved by plethora of decisions of the Hon'ble Supreme Court and High Courts that the burden of proving that unsecured loans/ cash credit entry appearing in assessee's account books does not represent income of the assessee, the initial onus is on the assessee to offer explanation is not found satisfactory or reasonable, the Assessing Officer can treat such money as the assessee's income from undisclosed source. It is not necessary for the Assessing Officer to locate the exact source of credits. The assessee can prove the genuineness of the credits, the identity of the creditor and his

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creditworthiness by establishing some plausible evidence. The Calcutta High Court in the cases of CIT V. Precision Finance (P) Ltd. (1994) 208 ITR 465, CIT V. United Commercial & Industrial Co. Ltd. V. CIT(1991) 187 ITR 596, Oriental Wire Industries (P) Ltd. V. CIT (1981) 131 ITR 688 (Cal.), C.Kant & Co. V. CIT 198;) 126ITR 63, Prakash Textile Agency V. CIT (1980) 121 ITR 890, Shankar Industries V. CIT (1978)

114 ITR 689 (Cal.), and the Herala High Court in the case of M.A. Unneeri Kutti V. CIT (199) 198 ITR 147, dealing with the extent of onus of assessee have laid down that the assessee is expected to establish (a) prof of identity of his creditors, (b) capacity of creditors to advance money and (c) genuineness of the transactions. Thus, unsecured loans received from.

2. An information was received from Office of the Income Tax Officer, Ward -15(3), New Delhi that the assessee has made transactions of huge amounts with the companies in which he is Director having substantial interest. Vide notice U/s 142 (1) of the I.T. Act, 1961 dated 20.03.2014 fixing the compliance on 26.03.2014, the assessee was required to explain as to why deemed dividends on loans should not be added to the income U/s 2(22)(e) of the I.T. Act, 1961 as he had taken loans from the following companies in which he had substantial share holdings:

Sl.No.	Name of company	Amount of loan during F.Y. 2010-11	Share holding of Shri Devender Singh Chawla
1	Precious Hospitality & Leisure Pvt.Ltd.	79,00,000/-	61.67%
2	R.A. Wines Pvt. Ltd.	23,82,370/-	50.00%
3	Hymn Hotels & Resorts Pvt. Ltd.	60,000/-	49.00%
4	Kirat Hotels Pvt. Ltd.	32,89,760/-	90.00%
5	Hymn Hospitality Services Ltd.	12,97,500/-	
6	Moirra Estates Pvt. Ltd.	12,181/-	
	Total	1,49,41,811/-	

On the date fixed for compliance neither anybody attended nor submitted any written reply, therefore, it is clear that assessee has nothing to say in the matter. The Provisions of Section 2(22)(e) of the I.T. Act, 1961 are read as under:-

"any payment by a company, not being a company in which the public are substantially interested, of any sum (whether as representing a part of the assets of the company or otherwise) by way of advance or loan to a shareholder, being a person who is beneficial owner of shares (not being shares entitled to fixed rate of dividend whether with or without a right to participate in profits) holding not less than ten percent of the voting power, or to any concern in which such shareholders is a member or a partner and in which he has a substantial interest (hereafter in this clause referred to as the said concern) 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 possesses accumulated profits" are applicable in the case of assessee."

2.1 The assessee did not file any reply/explanation in this regard and therefore it is inferred that the assessee does not have to offer any explanation and apparently accepted the addition in this regard. Therefore, as per the provision of section U/s 2 (22)(e) of the I.T. Act, 1961 the amount of loan taken by the assessee amounting to Rs.1,49,41,811/- from the companies in which he is having substantial

..4..

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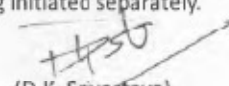
interest is treated as deemed dividends and hence added to the income of the assessee.

(Addition : Rs.1,49,41,811/-)

After discussion income of the assessee is computed as under:

Sl.No.	Description	Amount
1	Returned income	Rs. 17,01,775/-
2	Addition as discussed in Para 1.1.	Rs. 1,74,00,000/-
3	Addition as discussed in Para 1.2.	Rs. 5,00,000/-
4	Addition as discussed in Para 1.3	Rs.1,02,44,385/-
5	Addition as discussed in Para 2.1	Rs. 1,49,41,811/-
	Total income	Rs.4,47,87,971/-

Assessment is completed on income of Rs.4,47,87,971/- or 4,47,87,970/- (and agricultural income of Rs. 2,70,000/- for rate purposes.). Issue notice of demand and necessary forms. Interest is being charged as per law. Penalty proceedings under Section 271(1)(c) are being initiated separately.


(D.K. Srivastava)
Dy. Commissioner of Income Tax,
Circle-1, Ghaziabad

[C] The Assessee filed appeal before the Ld. CIT(A) who, vide impugned appellate order dated 30.03.2016 allowed partial relief to the assessee while he sustained additions of Rs. 1,44,00,000/- made u/s 68 of Income Tax Act and Additions of Rs. 1,13,83,287/- as deemed dividend u/s 2(22)(e) of Income Tax Act. The relevant portion of the aforesaid impugned appellate order dated 30.03.2016 of the Ld. CIT(A) is reproduced as under :-

4. During appellate proceedings, the appellant filed application under Rule 46A on 11.08.2015 requesting to admit the following additional evidences which was not called for by the A.O. but is considered relevant to the case in view of the stand taken by the AO while framing the assessment u/s 143(3) of the Act:-

1. Copy of I.T. Return Sheets of the loan creditors whose balances were added back u/s 68 of the Act in the hands of the assessee.
2. Audited balance sheets of the loan creditors whose balances were added back u/s 68 of the Act in the hands of the assessee.
3. Copies of bank statements 2011-12 in the case of the said loan creditors.
4. Copies of memorandum of association & MCA downloaded certificate of M/s Maria Estates Private Ltd. in which it has been held that the appellant hold substantial share holdings.

5. Vide this office letter dated 12.08.2015, the application under Rule 46A alongwith additional evidences were forwarded to the A.O. for his comments. In response, the A.O. vide his report dated 22.12.2015 received through Addl. CIT, R-1, Ghaziabad on 22.12.2015 has submitted that:-

“The issue involved for addition in this case was of unsecured loans taken by the assessee from various parties. The AO vide notice U/s 142(1) dated 09.07.2013 and order sheet entry dated 16.01.20014 and 26.02.2014 has specifically asked the assessee to produce bank a/c. computation of income, balance sheet of all the persons who had advanced loan. Information were also called from the alleged lenders directly by sending letters to them on the addresses given by the assessee himself. Further, vide notice dated 20.03.2014 it was brought to the knowledge of the assessee that confirmation and other relevant documents to prove the loans have not been received and was asked to explain as to why the additions should not be made in those cases. The assessee has not filed any explanation/reply to the above notice. In the

absence to required documents to prove the capacity, identity and creditworthiness of the lenders, the AO made the additions in the income of the assessee. Hence, the plea taken by the assessee before your goodself that the AO has not called for evidences which are relevant in the case is not correct. The plethora of decisions of the Hon'ble Supreme Court and High Courts made it clear that assessee is expected to establish proof of identity of his creditors, capacity of creditors to advance money and genuineness of the transactions. Thus, it is default of the assessee that he is unable to prove the identity and creditworthiness of the unsecured loans/cash credit entry appearing in assessee's account books. Assessee has not shown any reasonable cause either in furnishing the additional evidences. Hence, additional evidences should not be kindly accepted by your honor as the assessee did not produce them before the AO despite being no sufficient cause. The additions have been correctly made. The figure of Rs. 1,50,00,000/- of unsecured loans pertains to M/s Ganesh Medicose(a proprietorship concern of the assessee) and Rs. 25,00,000/- pertains to M/s Heaven Hotels(another proprietorship concern of the assessee). Hence, both the amounts added are factually correct.”

6. A copy of the above report of the A.O. was provided to the appellant against which he has submitted rejoinder on 29.02.2016 as under:-

“The assessee has been engaged in the business of trading of medicines and restaurant business and has been a regular I.Tax assessee. Return of income for the A.Y. 2011-12 was e filed vide ackn. No. 303091581300911 Dt. 30-09-2011 declaring an income of Rs.17,01,775/- The case was selected for scrutiny and complete books of account, bank statements, bills vouchers etc. were produced and subjected to detailed scrutiny.

It was only in the last week of March 2014 that the assessee was asked to furnish information / details and also to present certain parties for examination. The assessee sought time to do the same (as the request was made to produce outstation parties) which was denied as the case was getting time barred on the 31st March 2014. The assessing officer went ahead and framed the assessment on 31-03-2014. The assessing officer while doing so and specially due to the constraint of time at his disposal did not allow the assessee enough opportunity to bring complete and correct facts on record. The same are being presented herein below.

1. Following Unsecured Loans which have been added back to the returned income of the assessee

a) M/s. Akhil Bharat Chit Fund Pvt. Ltd. – Rs. 1,74,00,000/-

This amount has been built up as follows

Loan	Amount	Misread as
M/s. Heaven Hotels	15 Lacs	1.5 Crores
M/s. Ganesh Medicos	15 Lacs	24 Lacs

The assessee had raised Rs. 15 Lacs in M/s Ganesh Medicos and Rs. 15 Lacs in M/s Heaven Hotels.

The figure of Rs. 15 Lac raised in M/s Heavens Hotel has been misread by the assessing officer as Rs. 1.50 Cr.

The figure of Rs.15 Lac raised in M/s. Ganesh Medicos has been misread by the assessing officer Rs.24 Lacs as he overlooked that cheque of Rs.9 Lacs was Dishonoured and then redeposited again

During the course of the assessment proceedings and as desired by the assessing officer the assessee submitted the following documents in order to establish the identity as well as the credit worthiness of the loan creditor:-

- a) Confirmation of account
- b) Bank statement of the loan creditor.
- c) Assessment particulars.

The assessing officer further called for filing of the Balance Sheet, Profit & Loss account as well as the return of income of the Loan creditor. The assessee appraised the assessing officer that procuring these documents would take some time and request for the same. However due to constraint of time the assessee's request was declined.

The assessee has since been able to procure this evidence also and has moved an application u/s 46A of the I T Rules 1962, before your honor.

Perusal of these documents placed clearly establish that the identity, genuiness of the transaction and the credit worthiness of the loan creditor.

Relevant documents to prove the error in reading the amount as Rs. 1.50 Cr. Instead of Rs. 15 Lac and 24 lacs instead of 15 lacs /evidences are annexed for ready reference.

b) M/s. Onset Solutions Pvt Ltd. – Rs. 5,00,000/-

During the course of the assessment proceedings and as desired by the assessing officer the assessee submitted the following documents in order to establish the identity as well as the credit worthiness of the loan creditor:-

- d) Confirmation of account
- e) Bank statement of the loan creditor.
- f) Assessment particulars.

The assessing officer further called for filing of the Balance Sheet, Profit & Loss account as well as the return of income of the Loan creditor. The assessee appraised the assessing officer that procuring these documents would take some time and request for the same. However due to constraint of time the assessee's request was declined.

The assessee has since been able to procure this evidence also and has moved an application u/s 46A of the I T Rules 1962, before your honor.

Perusal of these documents placed clearly establish that the identity, genuiness of the transaction and the credit worthiness of the loan creditor.

Relevant documents / evidences are annexed for ready reference.

c) M/s. Vijay Fininvest Ltd.- Rs. 1,02,44,385/-

During the course of the assessment proceedings and as desired by the assessing officer the assessee submitted the following documents in order to establish the identity as well as the credit worthiness of the loan creditor:-

- g) Confirmation of account
- h) Bank statement of the loan creditor.
- i) Assessment particulars.

The assessing officer further called for filing of the Balance Sheet, Profit & Loss account as well as the return of income of the Loan creditor. The assessee apprised the assessing officer that procuring these documents would take some time and request for the same. However due to constraint of time the assessee's request was declined.

The assessee contests the entire addition however, it may not be out of place to mention that the assessing officer failed even to appreciate that the peak credit in this account was much below the figure of the addition made by him. The assessing officer has simply added all the credit entries, including the opening balance and not considered repayments during the year.

The assessee has since been able to procure this evidence also and has moved an application u/s 46A of the IT Rules 1962, before your honor.

Perusal of these documents placed clearly establish that the identity, genuineness of the transaction and the credit worthiness of the loan creditor.

Relevant documents / evidences are annexed for ready reference.

2. Additions have been made on account of Deemed Dividend by invoking the provisions of Section 2(22)(e) on account of transactions with the following companies:-

The assessee's shareholding in the said companies, relevant to the assessment year was:

S. No.	Name of the Company	Shareholding	Remarks
1.	M/s. Precious Hospitality & Leisure Pvt. Ltd	61.67%	Substantial shareholding as per 2(22)(e)
2.	M/s. R.A. Wines Pvt. Ltd.	50%	Substantial shareholding as per 2(22)(e)
3.	M/s. Hymm Hotels & Resorts Pvt Ltd.	49%	Substantial shareholding as per 2(22)(e)
4.	M/s. Kirat Hotels Pvt. Ltd.	90%	Substantial shareholding as per 2(22)(e)
5.	M/s. Hymm Hospitality Services Ltd.		
6.	M/s. Moira Estate Pvt. Ltd.	0%	Does not have any connection with this company

The learned assessing officer relying on the information received from the Income Tax Officer Ward – 15(3), New Delhi and without sharing the information so received with the assessee or investigating the same at his end chose to add a sum of Rs. 1,49,41,811/- to the returned income of the assessee u/s 2(22)(e) holding the same to be deemed dividend as detailed below:-

a)	M/s. Precious Hospitality & Leisure Pvt. Ltd	Rs. 79,00,000/-
b)	M/s. R.A. Wines Pvt. Ltd.	Rs. 23,82,370/-
c)	M/s. Hymm Hotels & Resorts Pvt Ltd.	Rs. 60,000/-
d)	M/s. Kirat Hotels Pvt. Ltd.	Rs. 32,89,760/-
e)	M/s. Hymm Hospitality Services Ltd.	Rs. 12,97,500/-
f)	M/s. Moira Estate Pvt. Ltd.	Rs. 12,181/-

Here it will be relevant to look at the provisions of section 2(22)(e) reproduced below which restricts the deemed dividend to the extent a company possesses accumulated profits.

(22)	"dividend" includes—
(a)	any distribution.....
(b)	any distribution.....
(c)	any distribution.....
(d)	any distribution.....
(e)	any payment by a company, not being a company in which the public are substantially interested, of any sum (whether as representing a part of the assets of the company or otherwise)

[made after the 31st day of May, 1987, by way of advance or loan to a shareholder, being a person who is the beneficial owner of shares (not being shares entitled to a fixed rate of dividend whether with or without a right to participate in profits) holding not less than ten per cent 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 (hereafter in this clause referred to as the said concern)] 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 possesses accumulated profits;

but "dividend" does not include—

- (i) a distribution made in
- (ia) a distribution made in
- (ii) any advance or loan made
- (iii) any dividend paid by a company
- (iv) any payment made by a company
- (v) any distribution of shares

Explanation 1.—The expression "accumulated profits", wherever it occurs in this clause, shall not include capital gains arising before the 1st day of April, 1946, or after the 31st day of March, 1948, and before the 1st day of April, 1956.

Explanation 2.—The expression "accumulated profits" in sub-clauses (a), (b), (d) and (e), shall include all profits of the company up to the date of distribution or payment referred to in those sub-clauses, and in sub-clause (c) shall include all profits of the company up to the date of liquidation, [but shall not, where the liquidation is consequent on the compulsory acquisition of its undertaking by the Government or a corporation owned or controlled by the Government under any law for the time being in force, include any profits of the company prior to three successive previous years immediately preceding the previous year in which such acquisition took place].

[*Explanation 3.*—For the purposes of this clause,—

- (a) "concern" means a Hindu undivided family, or a firm or an association of persons or a body of individuals or a company ;
- (b) a person shall be deemed to have a substantial interest in a concern, other than a company, if he is, at any time during the previous year, beneficially entitled to not less than twenty per cent of the income of such concern ;]

Arbitrary addition on this account have been made by the Assessing Officer without confirming, verifying or investigating whether in the said companies the assessee had substantial interest or not as also whether there were accumulated profits as on the date sums were advanced to the assessee. The factual position is as follows:-

S. No.	Name of the Company	Amount of loan	Accumulated profit as on 01.04.2011	Remarks
1	Precious Hospitality & Leisure Pvt. Ltd	79,00,000/-	Nil	Amount was given to the company not

2	R A Wines Pvt Ltd	23,82,370/-	2,68,764/-	taken. Addition should have been restricted to Rs. 2,68,764/-
3	HYMN Hotels & Resorts Pvt Ltd.	60,000/-	Loss 32,34,860/-	No Reserves or accumulated profits.
4	Kirat Hotels Pvt Ltd	32,89,760/-	36,36,350/-	
5	HYMN Hospitality Services Pvt Ltd	12,97,500/-	Loss 17006/-	No Reserves or accumulated profits
6	Moira Estates Pvt Ltd.	12,181/-	Nil	Assessee does not hold substantial interest in the company.

Copies of the audited balance sheets of the above said companies substantiating the figure of accumulated profits are annexed.”

7. Vide this office letter dated 08.03.2016, the matter was again remanded to the A.O. The contents of the said letter is as under:-

2. In this case inter alia an addition of Rs. 1,74,00,000/- has been made on account of unproved credit of Rs. 24,00,000/- in the concern M/s Ganesh Medicos and credit of Rs. 1,50,00,000/- in the case of M/s Heaven Hotels, Noida from M/s Akhil Bharat Chit Fund Pvt. Ltd. During appellate proceedings, the appellant has contended that the A.O. has misread the figure of Rs. 15,00,000/- to Rs. 1,50,00,000/- in the case of M/s Heaven Hotels, Noida. In the case of M/s Ganesh Medicos, actual loan was of Rs. 15,00,000/- only as there was an entry of bounce cheque of Rs. 9,00,000/-. Your remand report on this issue is not clear. You are requested to categorically report what was amount of loan received from M/s Akhil Bharat Chit Fund Pvt. Ltd. in these two concerns of the assessee. In case you differ from version of appellant, the supporting documents should be furnished.

3. An addition of Rs. 1,49,41,811/- has been made invoking provisions of section 2(22)(e). During appellate proceedings, the appellant has submitted that:-

S. No.	Name of the Company	Amount of loan	Accumulated profit as on 01.04.2011	Remarks
1	Precious Hospitality & Leisure Pvt. Ltd	79,00,000/-	Nil	Amount was given to the company not taken.
2	R A Wines Pvt Ltd	23,82,370/-	2,68,764/-	Addition should have been restricted to Rs. 2,68,764/-
3	HYMN Hotels & Resorts Pvt	60,000/-	Loss	No Reserves or

	Ltd.		32,34,860/-	accumulated profits.
4	Kirat Hotels Pvt Ltd	32,89,760/-	36,36,350/-	
5	HYMN Hospitality Services Pvt Ltd	12,97,500/-	Loss 17006/-	No Reserves accumulated profits
6	Moirra Estates Pvt Ltd.	12,181/-	Nil	Assessee does not hold substantial interest in the company.

The appellant has thus claimed that in one case money was advanced and not received and in some other cases that accumulated book profits were less than the loans received. You are requested to verify these facts and report as to what should be addition u/s 2(22)(e).

4. Your report should be reached this office latest by 16.03.2015."

However, even after lapse of enough time, the report of the A.O. has not been received so far.

8. Having considered facts of the case and rival contentions, the grounds of appeal are decided as under:-

8.1 Ground of appeal no. 2:

In this ground the appellant has contended that he was not allowed sufficient opportunity to produce evidences and loan creditors. In the assessment order and the report of the A.O. during appellate proceedings dated 22.12.2015, it has been brought out that the assessee had been specifically asked vide notice u/s 142(1) and order sheet entries to produce bank accounts, computation of income and balance sheet of the persons from whom advances had been received. The A.O. as a step further had addressed letters to the alleged lenders. None of the lenders or the assessee produced requisite details. This fact was brought to the notice of the assessee by the A.O. and he was asked to explain why addition should not be made. Even this notice was not replied by the

assessee. In these facts and circumstances, I do not find any merit in claim of the appellant that he was not provided proper opportunity. Such contention is not therefore tenable. I do not find any valid reason to admit so called additional evidences. This ground of appeal is therefore, rejected.

8.2 Grounds of appeal no. 1, 5 & 6:

In these grounds the appellant has agitated against action of the A.O. in holding the unsecured loan/outstanding at end of the year from M/s Akhil Bharat Chit Fund Pvt. Ltd, Onset Solutions Pvt. Ltd. & Vijay Finvast as unexplained. In the assessment order it has been brought out that the assessee failed to produce necessary evidences to establish genuineness of these loans. As has already been discussed above enough opportunity was provided to the assessee which he failed to avail. I do not find any merit in admittance of additional evidences. Despite adequate opportunity, the appellant has failed to prove genuineness of the loans. The action of the A.O. in holding the said loans unproved calls for no interference.

However, the claim of the appellant that loan from M/s Akhil Bharat Chit Fund Pvt. Ltd. was only Rs. 15,00,000/- in M/s Heavens Hotel and not Rs. 1.50 Cr. and loan in case of M/s Ganesh Medicos was not Rs. 24,00,000/- but only Rs. 15,00,000/- requires further discussion. In case of M/s Heavens Hotel it has been claimed that Rs. 15,00,000/- has been misread as Rs. 1.50 Cr. by the A.O. and in case of M/s Ganesh Medicos, the A.O. has overlooked that cheque of Rs. 9,00,000/- dishonored and deposited again and therefore, actual loan was of Rs. 15,00,000/- only.

The A.O. vide this office letter dated 12.08.2015 was specially asked to comment on these two factual errors pointed out by the appellant. The A.O. vide his report dated 18.12.2015 simply submitted that both these amounts are factually correct but did not adduce any evidences or justification as to why figures of Rs. 1.50 Cr. and Rs. 25,00,000/- were correct. Accordingly one more

letter was written to the A.O. on 08.03.2016 to categorically report the exact amount of loan received from M/s Akhil Bharat Chit Fund Pvt. Ltd. in the two concerns of the appellant namely M/s Heavens Hotel and M/s Ganesh Medicos and the A.O. was asked to furnish supporting documents in case he differed from the appellant's version. The A.O. had been asked to report by 16.03.2016. However, despite sufficient opportunity no report has been received.

Having examined documents submitted by the appellant in this regard and there being no categorical report from the A.O. to the contrary with necessary evidences, I have no hesitation in accepting the claim of the appellant that amount of loan from M/s Akhil Bharat Chit Fund Pvt. Ltd. was only Rs. 30,00,000/- [Rs. 15,00,000/- each in concerns M/s Ganesh Medicos & M/s Heavens Hotel]. Therefore, addition is restricted to Rs. 30,00,000/- instead of Rs. 1,74,00,000/-. Addition of Rs. 5,00,000/- in case of Onset Solution Pvt. And Rs. 1,02,44,385/- in respect of M/s Vijay Finvast are confirmed. The appellant accordingly gets relief of Rs. 1,44,00,000/-. The appellant gets partial relief on this ground.

8.3 Ground of appeal no. 3 &4:

In these ground the appellant has contended that information received from ITO, Ward-15(3), New Delhi was not shared with the assessee and the A.O. was not justified in making addition of Rs. 1,49,41,811/- as deemed dividend u/s 2(22)(e). During appellate proceedings, the appellant has claimed that in case of M/s Precious Hospitality & Leisure Pvt. Ltd., the amount of Rs. 79,00,000/- was not received as advance by the assessee but it was loan given by the assessee to the company and therefore, this advance does not attract provisions of section 2(22)(e). In case of M/s R.A. Wines Pvt. Ltd. it has been contended that accumulated profits of R.A. Wines Pvt. Ltd. were only Rs. 268,764/- and therefore, addition u/s 2(22)(e) should have been restricted to only Rs. 2,68,764/-. In case of HYMN Hotels & Resorts Pvt. Ltd., it has been contended that it had accumulated loss of Rs. 32,34,860/- and therefore, no

addition to be made u/s 2(22)(e). In case of HYMN Hospitality Services Pvt. Ltd., it has been claimed that there was accumulated loss of Rs. 17,006/- and therefore, no addition to be made u/s 2(22)(e). In case of Moria Estates Pvt. Ltd., it has been claimed that the assessee did not hold any substantial interest in the company and therefore, provisions of section 2(22)(e) were not attracted.

The A.O. in his earlier report has not given any comments on these aspects. Therefore, one more opportunity was provided to the A.O. vide this office letter dated 08.03.2016 to give his comments on contentions of the appellant as above. However, no report has been received from the A.O. and therefore, it is inferred that the A.O. has nothing to say in this matter. Factually from account submitted by the appellant and the balance sheets of said companies, contentions of the appellant are found verifiable. In case of Precious Hospitality and Leisure (P) Ltd., the copies of accounts reveal that the assessee had advanced Rs. 1,48,10,000/- to this company and had received Rs. 79,60,000/- as repayment. There still was a closing balance of Rs. 75,50,000/- to be received from the company as per the following details:-

		Amount paid to company	Amount received back from company	Closing balance	Page No. in paper book
1.	M/s Ganesh Medicos (Precious Hospitality)	1110000	650000	1160000	86
2.	M/s Ganesh Medicos (Precious L G)	8580000	4145000	4435000	87
	M/s Heaven Hotels & Resort (Precious Hospitality & Leisure Pvt. Ltd.)	5120000	3165000	1955000	88
	Total	14810000	7960000	15,50,000	

Such repayment of loan by the company to share holder, in my considered opinion, does not attract provisions of section 2(22)(e).

The figure of book profit/losses of the companies who have advanced loan to the appellant are verifiable and therefore addition u/s 2(22)(e) is to be restricted to the extent of book profit only. The A.O. despite specific opportunity has not given any worthwhile comment on these aspects except stating that

additional evidence should not be admitted. When an addition u/s 2(22)(e) has been made, it is for the A.O. to justify that the requisite conditions have been fulfilled. He cannot shift onus on the assessee. Primary onus to justify addition lay on the Assessing Officer.

In view of provisions of section 2(22)(e) and facts discussed above and also elaborated in the appellant's submission, addition u/s 2(22)(e) is restricted to following advances received by the appellant:-

(i)	RA Wines Pvt. Ltd.	Rs. 2,68,764/-
(ii)	Kirat Hotels Pvt. Ltd.	<u>Rs. 32,89,760/-</u>
	Total	<u>Rs. 35,58,524/-</u>

In other cases conditions of section 2(22)(e) are not satisfied as discussed supra.

In view of above addition of Rs. 35,58,524/- is confirmed and balance addition of Rs. 1,13,83,287/- (Rs. 1,49,41,811/- — Rs. 35,58,524/-) is deleted. The appellant gets partial relief on this ground.

8.4 Ground of appeal no. 7 is general in nature and therefore requires no comment.

[D] This present appeal before us was filed by Revenue against the aforesaid impugned appellate order dated 30.03.2016. At the time of hearing before us, Revenue was represented by Learned Senior Departmental Representative, Ms. Rakhi Vimal. However, the assessee was neither present in person nor was represented by any Authorised Representative. On an earlier date of hearing fixed on 11.04.2018 hearing was adjourned, at the written request of Sh. Sumit Bajaj, Advocate. On subsequent dates of hearings fixed on 25.09.2018, 17.12.2018, 13.08.2019, 13.05.2019, 08.07.2019, 16.09.2019 and 04.11.2019 also; neither the assessee was present in person nor was

represented by any Authorised Representative. In the absence of any representation from the assessee's side we are deciding this appeal after hearing the Learned Senior Departmental Representative ("Ld. Sr.DR" for short), in accordance with Rule 25 of Income Tax (Appellate Tribunal) Rules, 1962. At the time of hearing, the Ld. Departmental Representative drew our attention to the fact that nowhere in the impugned appellate order dated 30.03.2016 of the Ld. CIT(A), has the Ld. CIT(A) mentioned, that he has admitted the additional evidences furnished by the assessee during the appellate proceedings before the Ld. CIT(A). Yet, even without specifically admitting the additional evidences furnished by the assessee during appellate proceedings before the Ld. CIT(A), partial relief has been granted by Ld. CIT(A) to the assessee on the basis of additional evidences. She submitted that the Additional Evidences furnished by the assessee during the appellate proceedings before the Ld. CIT(A) should be ignored in the absence of specific admission of the same by the Ld. CIT(A), and the order of the Assessing Officer should be upheld.

[D.1] After hearing the Ld. DR and on perusal of the records, we find that the Ld. CIT(A) has indeed allowed partial relief to the assessee on the basis of Additional Evidences furnished by the assessee during appellate proceedings before Ld. CIT(A). However, we find no specific mention in the impugned appellate order dated 30.03.2016 of the Ld. CIT(A) to the effect that the Additional

Evidences had been admitted by him. Moreover, we also find that the Ld. CIT(A) has failed to record the reasons in accordance with Rule 46A(2) of Income Tax Rules, 1962. Further, the Ld. CIT(A) is duty bound, under Rule 46A(3) to allow a reasonable opportunity to the Assessing Officer (a) to examine the evidence or document or to cross-examine the witness produced by the appellant, or (b) to produce any evidence or document or any witness in rebuttal of the additional evidence produced by the appellant. However, the Ld. CIT(A) had failed to provide such reasonable opportunity to the Assessing Officer. The Ld. CIT(A) had only provided a perfunctory opportunity, and a very short time to the Assessing Officer. The letter asking the Assessing Officer to send report is dated 08.03.2016 whereas the time was allowed to the Assessing Officer up to an earlier date 16.03.2015. It is not understood how a letter dated 08.03.2016 can be responded to by the Assessing Officer by an earlier date of 16.03.2015. Even if 16.03.2015 is treated as a typographical mistake, and read as 16.03.2016, even then, the time allowed by the Ld. CIT(A) to the Assessing Officer was of only a few days in the month of March. Therefore, we are of the view that the Ld. CIT(A) had failed to provide reasonable opportunity to the Assessing Officer for which the Assessing Officer was entitled under Rule 46A(3) of Income Tax Rules. In view of foregoing, we are of the view that the Ld. CIT(A) had failed in due compliance of Rule 46A(2) as well as Rule 46A(3) of Income Tax Rules; in granting partial relief to the assessee on the basis of

Additional Evidences furnished by the Assessee during the appellate proceedings before Ld. CIT(A). Therefore, we set aside the impugned appellate order dated 30.03.2016 of the Ld. CIT(A), and direct him to pass a fresh order on merits after following due procedure prescribed under Rule 46A of Income Tax Rules.

[E] Appeal is partly allowed for statistical purposes.

Order pronounced in the open court on 18/02/2020

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Sd/-
(ANADEE NATH MISSHRA)
ACCOUNTANT MEMBER

Dated: 18/02/2020

BR

Copy forwarded to:

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

TRUE COPY

ASSISTANT REGISTRAR
ITAT, NEW DELHI

Date of dictation	05/02/2020
Date on which the typed draft is placed before the dictating Member	06 /02/2020
Date on which the typed draft is placed before the Other 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	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	