

**IN THE INCOME TAX APPELLATE TRIBUNAL
“F” BENCH, MUMBAI**

**BEFORE SHRI PAWAN SINGH, JM &
SHRI S. RIFAUR RAHMAN, AM**

आयकरअपीलसं./ I.T.A. No. 7519/Mum/2016
(निर्धारणवर्ष / Assessment Year: 2013-14)

ACIT 1(2)(1), R. No. 535, 5 th floor Aayakar Bhava, M. K. Road, Mumbai -400 020	बनाम/ Vs.	M/s Jasubhai Engineering Pvt. Ltd. 210, 3 rd floor, Taj Building, Dr. D. N. Road, Fort, Mumbai-400 001
स्थायीलेखासं./जीआइआरसं./PAN No. AAACP2503N		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

&
C.O. No. 176/Mum/2019
(निर्धारणवर्ष / Assessment Year: 2009-10)

M/s Jasubhai Engineering Pvt. Ltd. 210, 3 rd floor, Taj Building, Dr. D. N. Road, Fort, Mumbai-400 001	बनाम/ Vs.	ACIT 1(2)(1), R. No. 535, 5 th floor Aayakar Bhava, M. K. Road, Mumbai -400 020
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)
अपीलार्थीकीओरसे/ Appellant by	:	Shri Mohd. Rizwan, DR
प्रत्यर्थीकीओरसे/ Respondent by	:	Shri K. Shivaram /Rahul Hakani, AR

सुनवाईकीतारीख/ Date of Hearing	:	11.12.2019
घोषणाकीतारीख / Date of Pronouncement	:	06.03.2020

आदेश / ORDER

Per S. Rifaur Rahman, Accountant Member:

The present Appeal has been filed by the revenue and CO filed by the assessee against the order of Ld. Commissioner of Income Tax (Appeals) – 2, Mumbai in short referred as 'Ld. CIT(A)', Mumbai, dated 19.08.2016 for Assessment Year (in short AY) 2013-14 respectively.

2. Since, the facts raised in the appeal filed by the revenue as well as C.O. filed by the assessee are identical, therefore for the sake of convenience; they are clubbed, heard and disposed of by this consolidated order. Firstly, we are taking ITA No. 7519/Mum/2016 for AY 2013-14 filed by the revenue.

3. The brief facts of the case are, assessee is engaged in the business of manufacturing of engineering goods and assessee is a shareholder in number of companies and assessee has beneficial share holding in 2 companies namely M/s Jasubhai Business

Services Pvt Ltd and M/s. ABM Steels Pvt. Ltd. The assessee is a 23.75% shareholder in M/s. Jasubhai Business Services Pvt Ltd and is also holds 26.76% shares of M/s ABM Steels Pvt. Ltd. During this assessment year, AO observed that assessee has taken loan of Rs.26,23,406/- from M/s ABM Steels Pvt. Ltd. and as per the balance sheet M/s. ABM Steels Pvt. Ltd. has an accumulated reserves of Rs 13.76 crores as on 01/04/2012 and Rs.15.88 crores as on 31/03/2013. Therefore, considering the above facts, AO observed that M/s. ABM Steels Pvt. Ltd is not a company in which public is substantially interested and assessee is holding beneficial interest and voting right and M/s ABM Steels Pvt. Ltd. is having accumulated reserves, therefore he invoked the provision of section 2(22)(e) of the Act by relying on various case law. He further observed that assessee in his reply submitted that inter corporate loan of Rs. 9 lakhs was repaid during the year and with regard to other portion of amount, it is for the purchase of machinery, therefore these addition will not fall under section 2(22)(e) of the Act. However, AO rejected the contention of the assessee and proceeded to make addition u/s 2(22)(e) of the Act.

4. Similarly, AO observed that assessee has received Rs. 4,16,25,000/- from M/s Jasubhai Business Services Pvt. Ltd. and even in this case, assessee is having beneficial shareholding and also other company is not a company in which public are not substantial interested, therefore the provisions of section 2(22)(e) is attracted. On enquiry, the assessee submitted that it has received the above amount for issue of redeemable debentures and it issued redeemable double options debentures to M/s Jasubhai Business Services Pvt. Ltd, which is redeemed during the year. The issue of debentures is a security and hence, it is not in the nature of loans and advances, therefore the provision of section 2(22)(e) of the Act are not applicable.

5. After considering the submission of assessee, AO equated the securities with loans and advances by relying on the decision in the case of P. K. Badiani Vrs. CIT (1977 ITR 642) (SC) and invoked the provision of section 2(22)(e) of the Act to the extent of outstanding liability in the books of the assessee to the extent of Rs. 2,02,25,000/-

6. Aggrieved with the above order, assessee preferred the appeal before Ld. CIT(A) and Ld. CIT(A) after considering the submission of assessee, deleted the addition made by AO.

7. Aggrieved with the above order, revenue is in appeal before us raising the following grounds:-

1. "Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was correct in not upholding the finding of AO to assessee Rs. 26,23,406/- and Rs. 2,02,25,000/- as deemed dividend u/s. 2(22)(e) of the I.T. Act as the parameters for such finding were found by him to be applicable?"

2. Whether on the facts and in the circumstances of the case and in law, the decision of the Ld. CIT(A) was correct in applying the judgement of IFB Agro India Ltd. (ITA . No. 1721 Kolkata 2012 dated 12/03/2013) given by ITAT in disregard to the judgment of highest Court given in the case of CIT Vs. P K Badiani 1976 (76ITR 379) (SC), when the Assessing Officer has correctly applied the law? "

8. Before us, Ld. DR brought to our notice facts of the case with reference to para 4 and 4.7 of the order of AO and para 6 of

the finding of Ld. CIT(A) and submitted that in this case the provision of section 2(22)(e) of the Act are clearly attracted. He further submitted that assessee has received loans from the other sister concern in which assessee is already holding substantial interest and in this regard, he relied on the following case law:-

- i) Bajaj Auto Holding Ltd vrs. DCIT (2005) 95 ITD 356.
- ii) Smt. Tarulata Shyam & Others vrs. CIT (1977) 108 ITR 345 (SC).
- iii) CIT vrs. Bhagwat Tewari (1979) 105 ITR 62 (Kol)

9. Accordingly, Ld. DR submitted that it is clear case of application of provisions of deemed dividend and relied on the findings of AO.

10. On the other hand, Ld. AR submitted that Ld. DR is referring to the case of Bajaj Auto Holding Ltd vrs. DCIT, which is relating to international taxation, whereas we are dealing with section 2(22)(e), he reiterated that the charging section of 271 is different and cannot be applied in deeming provision. He submitted that during this assessment year, assessee has taken 9 lakhs as inter corporate loan and assessee has repaid the same

before the end of the year, therefore the inter corporate loan cannot be equated with loans and advances. For that purpose, he relied on page 111 of the paper book in the case of Bombay Oil Industries Ltd. Vrs. DCIT and further relied on page 84 of the paper book in the case of IFB Agro Industries Ltd. vrs. JCIT.

11. With regard to other transaction involving Rs. 17.29 lakhs, Ld. AR submitted that it is a business transaction and assessee has purchased a machinery and sister concern has made the payment on behalf of the assessee and subsequent assessment year, the similar machinery was transferred to the sister concern, therefore it will fall under business transaction and cannot be termed different as loan and advance.

12. With regard to debentures, Ld. AR submitted that assessee has received payment from M/s Jasubhai Business Services Pvt. Ltd on the scheme of issue of debentures and the debentures are securities. Pursuant to the above scheme, M/s Jasubhai Business Services Pvt. Ltd subscribed for the debentures and the same were allotted. During this current assessment year, M/s Jasubhai Business Services Pvt. Ltd exercised the redemption option which

is placed on record at page 68 to 74 of the paper book and it is also confirmed in writing which is placed at page 43 of the paper book. Therefore, he submitted that debentures will fall under the category of securities and this security cannot be termed as loan within the meaning of section 2(22)(e) of the Act. For that purposes, he relied in the case of DCIT vrs. Sahara India Commercial Corp. Ltd. (2013) 147 ITD 176 (Del Trib). He further submitted that the case P. K. Badiani Vrs. CIT (1977 ITR 642) (SC) relied by AO, is not applicable in this case and is distinguishable to the facts of the present case.

13. With regard to Cross Objection, Ld. AR submitted that CO filed by the assessee in support of the findings of Ld. CIT(A).

14. Considered the rival contentions and the material placed on record, we notice from the record that assessee is having substantial interest in both the companies namely M/s ABM Steels Pvt. Ltd. and M/s Jasubhai Business Services Pvt. Ltd and it is clear fact that all the ingredients to invoke the provision of section 2(22)(e) of the Act are exist in both the cases. We notice that during this year, assessee has taken 9 lakhs from M/s ABM Steels

Pvt. Ltd. as intercorporate deposit and M/s ABM Steels Pvt. Ltd. made the payment of Rs. 17.23 lakhs on 11.12.12 on behalf of the assessee towards purchase of machinery, in return for the manufacturing assets purchased by assessee in FY 2013-14. Further, Assessee also issued debentures and M/s Jasubhai Business Services Pvt. Ltd subscribed and the same were allotted. During the same year, debentures were redeemed by the assessee and current outstanding balance in the balance sheet of the assessee stood at Rs. 2,02,25,000/- after initial allotment for the value of Rs. 4,16,25,000/-. Since there are 3 transactions involved in above disallowance, therefore each transactions are analysed separately.

15. With regard to inter corporate deposit of Rs. 9 lakhs, assessee has taken inter corporate deposits, but the same was repaid before the end of the current assessment year. However, we notice that since the assessee is having substantial interest in M/s ABM Steels Pvt. Ltd. and M/s ABM Steels Pvt. Ltd. is having substantial accumulative profit in its balance sheet and M/s ABM Steels Pvt. Ltd. is a company in which public are not substantial interested, therefore the provisions of section 2(22)(e) are very

much attracted. Therefore, any credit or advantage taken by the persons having substantial interest will attract the provision of section 2(22)(e) of the Act. Even though, assessee has repaid the deposit within the same year, it does not mean that the loan or benefit is not taken. We can call any name but ultimately assessee has taken a credit/ benefit, the assessee should have known that it is surpassing the deeming provisions particularly when it has holding beneficial interest. It is settled law that deemed dividend provisions get attracted as soon as it takes benefit and it does not matter whether it is repaid within the same year. It is similar to the case of Miss P. Sarada vrs. CIT (1986) 29 ITR 444(SC), the Hon'ble Apex court held that even though the loan is repaid at the end of the year, will attract the provision of section 2(22)(e) of the act. Therefore, in our considered view, even though assessee claims it as inter corporate deposit, the literal meaning will remain same as the short term loan enjoyed by the assessee, hence in our considered view, the provision of section 2(22)(e) is attracted in the present case.

16. With regard to payment of Rs. 17.26 lakhs by M/s ABM Steels Pvt. Ltd. on behalf of the assessee for the purchase of

machinery, it is brought on record that M/s ABM Steels Pvt. Ltd. has purchased the similar machinery from the assessee in the subsequent assessment year and it is a back to back purchase of machinery. Therefore, in our considered view, it is a business transaction and we are inclined to agree with the findings of Ld. CIT(A).

17. With regard to issue of debentures, since assessee has issued redeemable debentures and M/s Jasubhai Business Services Pvt. Ltd has subscribed for the debentures and during this year, they have also exercised the options and assessee has redeemed the debentures and current outstanding amount is of Rs. 2,02,25,000/-. This transaction involving issue of securities, even though it is a private placement but it cannot be considered as a loan transaction. The provisions of section 2(22)(e) of the Act are not attracted, it attracts only when loan and advances taken in place of direct issue of dividends. In order to avoid dividend tax, some of the assessee are resorting to taking loan instead of dividend being issued to the respective shareholders. The securities are a separate scripts and having stand alone capital liability, which cannot be equated with loan, which is current liability. Therefore, we are in agreement

with the findings of led CIT(A). Accordingly, grounds raised by revenue are dismissed.

18. In the net result the appeal filed by the revenue is partly allowed and CO filed by Assessee is dismissed **as infructuous.**

Order pronounced in the open court on 6th March 2020.

<i>Sd/-</i> (Pawan Singh) न्यायिकसदस्य / Judicial Member मुंबई Mumbai; दिनांक Dated : <i>Sr.PS. Dhananjay</i>	<i>Sd/-</i> (S. Rifaur Rahman) लेखासदस्य / Accountant Member 06.03.2020
---	--

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

अपीलार्थी/ The Appellant

प्रत्यर्थी/ The Respondent

आयकरआयुक्त(अपील) / The CIT(A)

आयकरआयुक्त/ CIT- concerned

विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR,
ITAT, Mumbai

गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई/ ITAT, Mumbai