

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'C', NEW DELHI**

**Before Sh. Bhavnesh Saini, Judicial Member**

**Dr. B. R. R. Kumar, Accountant Member**

**(Through Video Conferencing)**

**ITA No. 3941/Del/2016 : Asstt. Year : 2012-13**

DCIT, Circle-10(1), New Delhi	Vs	M/s Genesis Colors Pvt. Ltd., Flat No. 3A/1, Taj Apartments Rao, Tual Ram Marg, New Delhi-11002
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. AABCG4825H</b>		

**Assessee by : Sh. Ved Jain, Adv. &**

**Sh. Akshit Goel, CA**

**Revenue by : Ms. Sunita Singh, CIT DR**

<b>Date of Hearing: 20.01.2021</b>
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<b>Date of Pronouncement: 24.03.2021</b>
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**ORDER**

**Per Dr. B. R. R. Kumar, Accountant Member:**

The present appeal has been filed by the revenue against the order of the Id. CIT(A)-4, New Delhi dated 29.04.2016.

2. Following grounds have been raised by the revenue:

*"1. Whether on the facts and circumstances of the case and in law, the Ld. CIT (A) is correct in deleting the addition of Rs.1,21,00,957/- made by the AO u/s 14A without appreciating the departmental stand in the cases of M/s Chemninvest Ltd. and M/s Holcim India Ltd. which clarified the disallowance of expenditure u/s 14A r.w. Rule 8D in the absence of exempt income.*

*2. Whether on the facts and in the circumstances of the case and law, the Ld. CIT (A) erred in holding the purchase of computers and its part as revenue in*

*nature and deleting addition of Rs.1,85,592/- which was held by the AO as capital in nature ignoring the fact that purchase of new computers is not allowable as revenue expenditure.*

*3. Whether on the facts and in the circumstances of the case and law, the Ld. CIT (A) erred in deleting addition of Rs.10,24,849/- made by the AO on account of disallowance of advances written off ignoring the fact that the assessee company has failed to submit any documentary evidence in support of its claim during the assessment as well as appellate proceedings.*

*4. Whether on the facts and in the circumstances of the case and law, the Ld. CIT (A) erred in deleting addition of Rs.12,94,50,034/- made by the AO on account of deemed dividend ignoring the fact that loan and advances received by the assessee shareholder from certain company against sale of a property is also treated as deemed dividend under section 2(22)(e) of the Income Tax Act, 1961."*

3. The undisputed facts of the case are that the assessee, M/s Genesis Colors Pvt. Ltd. ("GCPL") has 61.00% shareholding in Genesis Luxury Fashion Pvt. Ltd. ("GLFPL") a related company. GCPL owned the property located at Plot No. 28, Sector-6, Industrial Estate, IMT Manesar, Haryana, having basement, Ground Floor, First Floor & Second Floor with a total area of 4050 Sq.mtrs. GCPL owns the brand "Satyapaul" and used this premises for warehousing activity. GLFPL is the sole distributors of international brands like Canali, Paul Smith, Jimmy Choo etc. GLFPL intended to purchase the GCPL property as it was dealing in multiple brands across the world and wanted its own store operations.

4. The sum of Rs.20 Crore had been given to GCPL on 30.07.2011 as advance for purchase of above said property by GLFPL for the purpose of construction of its own warehouse. The fact has been stated in the audited balance sheet of GCPL for the impugned assessment year.

5. An agreement has been entered between GLFPL and GCPL for purchase of property of the assessee vide "Agreement of Sale" dated 28.07.2011. GCPL could not fulfill the conditions prescribed in the agreement which included getting the property pledged to the bank to be released within 18 months of the execution of the agreement. Therefore, GLFPL decided not to purchase the aforesaid property and cancelled the agreement vide deed of cancellation dated 21.12.2012.

6. During the assessment proceedings, the Assessing Officer treated the advance received u/s 2(22)(e) holding,

- That GLFPL has granted loans of Rs. 15,00,00,000/- and Rs.5,00,00,000/- on 30.07.2011 to M/s Genesis Colours Pvt. Ltd. as per the related party transaction chart shown in Notes to accounts of the accounts of GLFPL and copy of accounts submitted with GCPL by GLFPL at the time of its scrutiny assessment.
- That Agreement to sell and deed of settlement are neither notarized and nor registered anywhere.
- That Agreement showing the advance as capital advance and cancellation thereof has been prepared to give colour of loan amount as capital advance.

7. Against the contentions of the Assessing Officer, the assessee submitted an agreement, to be enforceable by law, must possess the essential elements of a valid contract as contained in section 10 of the Indian Contract Act. According to Section 10, "All agreements are contract if they are made by the free consent of the parties, competent to contract, for a lawful consideration and with a lawful object and are not expressly declared to be void." It was submitted that the entire transaction is supported by the board resolution, agreement to sell and confirmation. There was no dispute about the facts that the amounts have been paid on 30.07.2011 and received back on 21.12.2012 and are pertaining to the intended purchase of the property from the assessee by GLFPL and it is a business transaction, purely commercial in nature and hence provisions of Section 2(22)(e) are not attracted.

8. Heard the arguments of both the parties and perused the material available on record.

9. We find that the decision cannot be made merely on the basis of non-notarization or registration of the document. The revenue need to prove that the documents have been fabricated or made believe to bring the amount to tax u/s 2(22)(e). The burden of proof laid on the department has not been discharged. The commercial transaction between the related company do not necessarily attract the provisions of Section 2(22)(e) unless convincingly proved that the transactions were not commercial in nature by bringing appropriate material on record and with proper investigation. In the present case, there is no *prima facie* reason to dispute that GLFPL intended to

purchase the space from the assessee and the assessee failed to release the mortgage which consequently led to cancellation of the transaction and returning of the amounts. Hence, we decline to interfere with the order of the Id. CIT (A).

10. In the result, the appeal of the revenue is dismissed.  
Order Pronounced in the Open Court on 24/03/2021.

Sd/-

**(Bhavnes Saini)**  
**Judicial Member**

**Dated: 24/03/2021**

\*Subodh\*

Copy forwarded to:

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

Sd/-

**(Dr. B. R. R. Kumar)**  
**Accountant Member**

**ASSISTANT REGISTRAR**