

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“C” BENCH: BANGALORE**

**BEFORE SHRI B. R. BASKARAN, ACCOUNTANT MEMBER  
“SMC”**

ITA No.591/Bang/2019
Assessment Year: 2011-12

M/s. Zygo Bonsai Pvt. Ltd. Sy.No.21, Kollur Village Antharahalli Doddaballapur Bengaluru  <b>PAN NO : AAACZ0447R</b>	<b>Vs.</b>	ITO Ward-7(1)(4) Bengaluru
<b>APPELLANT</b>		<b>RESPONDENT</b>

<b>Appellant by</b>	:	Shri Raghavendra R. Chakraborty, A.R.
<b>Respondent by</b>	:	Shri Ganesh Ghale, Standing Counsel

<b>Date of Hearing</b>	:	19.04.2021
<b>Date of Pronouncement</b>	:	20.04.2021

**O R D E R**

The assessee has filed this appeal challenging the order dated 18.2.2019 passed by Ld. CIT(A)-7 Bengaluru and it relates to the assessment year 2011-12. The assessee is aggrieved by the decision of Ld. CIT(A) in confirming the addition made by the A.O. u/s 2(22)(e) of the Income-tax Act,1961 [‘the Act’ for short].

2. The facts relating to the issue are stated in brief. This is a reopened assessment. The A.O. noticed that the assessee company has borrowed loan from another company named M/s. Shri Hanuman Jute Mills Pvt. Ltd., Kolkata. It was also noticed that the assessee and the lender company are related parties under common

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management. Both companies has a common Director named Mr. Hemant Kumar Jalan, who held 98% shareholdings in the assessee company and also held more than 10% of voting rights in the lender company. Accordingly, the A.O. took the view that the loan amount received by the assessee company is liable to be taxed u/s 2(22)(e) of the Act as “deemed dividend”, since the loan has been received by a concern in which Shri Hemant Kumar Jalan is a major shareholder. Accordingly, the A.O. assessed the amount of Rs.34.55 lakhs as deemed dividend u/s 2(22)(e) of the Act in the hands of the assessee company herein. The Ld. CIT(A) also confirmed the same.

3. The Ld. A.R. submitted that the deemed dividend is assessable only in the hands of the shareholders. The assessee company herein is not the shareholder in the lender company and hence, the A.O. was not justified in assessing the loan amount as deemed dividend in the hands of the assessee company. In support of these contentions, the Ld. A.R. placed reliance on the following decisions:

- a) Ankitech Pvt. Ltd. (ITA No.462/2019) (Del)
- b) Universal Medicare Pvt. Ltd. 190 Taxman 144 (Bom)
- c) Bhoumik Colour Pvt. Ltd. 118 ITD 1 (SB)

4. On the contrary, the Ld. D.R. placed his reliance on the decision rendered by Hon'ble Supreme Court in the case of Gopal & Sons (HUF) Vs. CIT (Civil appeal No.12274 of 2016 dated 4.1.2017). The Ld. D.R. submitted that the deemed dividend can be assessed in the hands of the beneficial shareholder.

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5. I heard the parties on this issue and perused the record. In the case of Gopal & Sons (HUF), the Hon'ble Supreme Court has held the deemed dividend u/s 2(22)(e) of the Act can be assessed in the hands of beneficial shareholder. However, the question that arises in the present case is whether the assessee company is beneficial shareholder or not? Admittedly, the shareholding in both assessee company as well as in the lender company was held by Mr. Hemant Kumar Jalan. There is no finding on record to show that Mr. Hemant Kumar Jalan is holding the shares in lender company on behalf of the assessee company herein i.e. it is not the case of the A.O. that the assessee company herein is the beneficial shareholder. Hence, in my view, the decision rendered by Hon'ble Supreme Court in the case of Gopal & Sons (HUF) will not apply to the facts of the present case.

6. On the contrary, in the case of Ankitech Pvt. Ltd. (supra), Universal Medicare Pvt. Ltd. (supra), the Hon'ble High Courts have held the view taken by the special bench in the case of Bhoumik Colour Pvt. Ltd. (supra) that the deemed dividend is assessable only in the hands of the shareholder. Admittedly, in the instant case, the assessee company is not the shareholder in M/s. Sri Hanuman Jute Mills Pvt. Ltd. Hence, following the decision rendered by Hon'ble Delhi & Bombay High Courts, I hold that deemed dividend is not assessable in the hands of the assessee company and the same is assessable only in the hands of the shareholder subject to the provisions of sec.2(22)(e) of the Act. Accordingly, I set aside the order passed by Ld. CIT(A) and direct the A.O. to delete the impugned addition.

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7. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 20<sup>th</sup> Apr, 2021

**Sd/-**  
**(B.R. Baskaran)**  
**Accountant Member**

Bangalore,  
Dated 20<sup>th</sup> Apr, 2021.  
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

**Asst. Registrar,**  
**ITAT, Bangalore.**