IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : A : NEW DELHI

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
AND
SHRI KULDIP SINGH, JUDICIAL MEMBER

ITA No.3318/Del/2017
Assessment Year: 2007-08

Anil Nanda, 12-C, Friends Colony, New Delhi.	Vs	DCIT, Circle-68(1), New Delhi.

PAN AAFPN4381A

(Appellant) (Respondent)

Assessee by	:	Shri Deepak Ostwal, CA
Revenue by	:	Shri Satpal Gulati, CIT, DR
Date of Hearing	:	02.06.2021
Date of Pronouncement	:	18.08.2021

ORDER

PER R.K. PANDA, AM:

This appeal filed by the assessee is directed against the order dated 31st March, 2017 of the CIT(A)-32, New Delhi relating to assessment year 2007-08.

2. Facts of the case, in brief, are that the assessee is an individual and it filed its return of income on 30th July, 2007 declaring total income at Rs.8,25,64,675/-. The assessment was completed u/s 143(3) of the Act on 30th October, 2009

accepting the returned income. Subsequently, the AO reopened the assessment u/s 147 of the IT Act, 1961 after recording the following reasons:-

Reasons recorded u/s 147 of the I T Act for initiating assessment proceedings

An addition of Rs. 18,75 crore was made by ACIT, Circle -2 Jammu in the case of M/s G I Power Pvt. Ltd. for the Assessment year 2007-08 as per provisions of Section 2(22) (e) of the I. T. Act on the ground that a sum of Rs. 18.75 crore was taken by M/s G I Power Pvt. Ltd. as unsecured loan from the group company M/s joint investment Pvt. Ltd. having a common share holding with M/s G I Power Pvt. Ltd. However, the addition was deleted by Ld CIT (A) in the hands of M/s G I Power Pvt Ltd., by holding that the issue may be taken up in the hands of common share holder Sh Anil Nanda, who is holding substantial interest in both the payer and the payee company holding 65.6% of M/s Joint Investment Pvt Ltd., and 27.90% share holding of M/s G.I.Power Corporation Ltd., as on 31/3/2007.

2. The Jurisdictional Delhi High Court In the case of CIT Vs Ankitech Pvt. Ltd, held that if the advance is by (or) to a concern in which the shareholder is substantially interested, then the shareholder is deriving an indirect advantage or benefit through such concern. The said decision of Hon'ble Jurisdictional High Court is directly applicable in this case as Sh Anil Nanda is holding substantial interest in both the payer and payee company.

3. As per the provisions of Explanation.3(b) to Section 2(22)(e) *'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.'*

4. Shri Anil Nanda, the assessee, who has substantial interest in both the payer and the payee company holding 65.6% share holding in M/s Joint Investment Pvt Ltd and 27.90% share holding of M/s G I Power Corporation Ltd., as on 31/03/2007, is liable for reassessment of the escaped income of the assessee on account of deemed dividend to the extent of Rs 18.75 crore as per the provisions of Section 2(22)(e) of I T Act, 1961. During the year under consideration, the Income of the assessee has been returned at Rs 8,25,64,675/- and further Income to the extent of Rs 18.75 crore has escaped assessment by reason by failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment.

5. In view of the above, I have reason to believe that the income to the tune of Rs. 18.75 Crore over and above the returned income for Assessment Year 2007-08 of Shri Anil Nanda has escaped assessment and assessee has failed on his part to disclose fully and truly all material facts necessary for his assessment within the meaning of Section 147 of the I T Act, 1961 and it is a fit case for issuance of notice u/s 148 of the IT Act, 1961.

(VIRENDER KUMAR)
Deputy Commissioner of Income Tax,
Circle -44(1), New Delhi.

3. Accordingly, notice u/s 148 of the Act was issued to the assessee on 28th March, 2014 which was duly served on the assessee. In response to the same, the assessee filed a reply dated 30th April, 2014 stating that the return already filed should be treated as return filed in response to notice u/s 148 of the Act. The assessee also asked for the reasons recorded for reopening of the assessment which were duly provided to the assessee.

4. After receiving reasons recorded for reopening of the assessment, the assessee filed his objection challenging the validity of issuance of notice u/s 148 of the Act on account of the following grounds:-

a) The statutory requirements u/s 151 of the Act has not been made by the AO by not taking approval of the CIT before issuance of notice u/s 148 of the Act.
b) The reasons are recorded after issue of notice u/s 148 of the Act.
c) The facts not disclosed by the assessee are not stated in the reasons so recorded.
d) The onus lies on the Revenue to prove that there has been failure on the part of the assessee to fully and truly disclose all material particulars necessary for his assessment.
e) Action u/s 148 of the Act on the direction of the CIT(A) is illegal.
f) The AO has not applied his mind to the direction of the CIT(A) and has simply gone by the satisfaction of the ACIT, Circle-2, Jammu and CIT(A),

Jammu. He has nowhere independently stated in the reasons that Rs.18.75 crore is a loan/advance and not inter-corporate deposit and, hence, section 2(22)(e) was attracted.

g) The satisfaction of the AO is not his satisfaction, but, borrowed satisfaction.

h) Further, it is a case of reason to suspect and not reason to believe.

5. However, the AO rejected all the objections raised by the assessee challenging the validity of the reassessment proceedings. Rejecting the various explanations given by the assessee and relying on the decision of the Hon'ble Delhi High Court in the case of CIT vs. Ankitech Private Ltd., vide order dated 16th May, 2011, the AO made addition of Rs.18,75,00,000/- u/s 2(22)(e) of the Act on the ground that Shri Anil Nanda was a substantial shareholder of both the payer and the payee company and, therefore, the sum/deposit of Rs.18.75 crore taken by M/s GI Power Corporation Ltd. from M/s Joint Investment Pvt. Ltd., is in the nature of advance or loan and this sum/deposit is taxable in the hands of Shri Anil Nanda.

6. Before the CIT(A), the assessee, apart from challenging the validity of reassessment proceedings also challenged the addition on merit. However, the ld. CIT(A) also was not satisfied with the arguments advanced by the assessee and upheld the validity of reassessment proceedings as well as the addition on merit.

6.1 So far as the validity of reassessment proceedings are concerned, the ld.CIT(A) dismissed the grounds raised by the assessee on this issue by observing as under:-

> ñ5.6.3 I have carefully examined the objections raised by the appellant challenging the validity of the notice u/s 148. It is seen that similar objection had been raised before the AO. The AO had disposed these objection vide his order dated 19/02/2015 and has also reproduced the same in page 2 to 5 of the assessment order, wherein he has given detailed reasoning for not accepting the objections raised by the appellant.
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> 5.6.4 The AR of the appellant requested that copy of fax from CIT(A), Jammu and other documents consisting of (i) certified true copy of letter from CIT(A) Jammu to CIT-XV, Delhi,(ii) Certified true copy of letter from CIT-XV to DCIT, Circle-44(l)Delhi and (iii) certified true copy, of letter from ACIT, Circle-2, Jammu to DCIT, Circle-44(1), New Delhi, may be provided to the appellant to effectively represent the case. Such request is beyond the scope of the appellate proceeding and does not constitute a relief that can be sought u/s 246 of the Act. Hence, this request is not entertained.
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> 5.6.5 From the correspondence of the appellant with the AO, it is seen that the appellant did not believe that the order dated 20/03/2014 could have been received by the AO by 28/03/2014, i.e. the day of issue of notice u/s 148 of the Act. The appellant's apprehensions ted that the reasons have been recorded after the issue of notice u/s 148 of the Act is unfounded and is without valid basis. Communication process in the present day does not take much time. The presumption that the officers concerned would have taken time to go through 47 pages is a mere speculation. What-is material is that the AO had information, which farmed the basis of his belief that income of the appellant has escaped assessment for the relevant year. Based on the same that recorded seasons to re-open the assessment. He has independently applied his mind, and not on the basis of directions of CIT(A), Jammu. The Hon'ble ITAT has directed to delete the observation of the CIT(A), Jammu in respect of appellant. Information received from the CIT(A) does not constitute a direction to the AO. The AO has duly applied his mind on the basis of information with him. Administratively the AO is not under the CIT(A). It is because of this reason, approval u/s 151 is required to be taken from the administrative CIT of the AO.
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> 5.6.6. The AR of the appellant has contended that exactly which material facts had not been disclosed by the appellant has not been mentioned by the AO in the reasons and that the onus was on revenue to prove that there was failure on the part of the appellant to fully and truly disclose all material particulars necessary for assessment. It is seen that the AO in the reasons

recorded u/s 147 of the Act has clearly mentioned the deemed dividend u/s 2(22) (e) of the Act amounting to Rs. 18.75 crore has escaped assessment due to failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment.

5.6.7 The AR of the appellant has contended that the satisfaction of the AO was borrowed satisfaction, as he had not verified the information from the records of either of the companies. He has also relied upon judicial decisions in support of his claim. However, it is pertinent to note that it is not a case where some other authority has recorded satisfaction and the AO has issued the notice mechanically. Rather, the AO has dully applied his mind, based on the information with him.

5.6.8 The presumption that the CIT has mechanically granted the permission without applying his mind on the actual material is not correct. It has been alleged that the AO has filled up a proforma and the CIT has recorded his satisfaction on the same. It is seen that the AO has given detailed reasons alongwith the proforma, in an Annexure . The letter from CIT(A), Jammu had been received by CIT-XV, Delhi, who In turn had passed on the information to the AO. Hence, the CIT- XV had duly applied his mind not only to the information received, but also to the reason for the belief by the AO, that income has escaped assessment. While the proforma is type written, the CIT has not just signed the approval, but has recorded in his own handwriting that it was a fit case for issue of notice u/s 148 of the Act. Hence, the claim of the appellant is misfounded.

5.6.9 The AR of the appellant has contended that the AO had incomplete information as indicated in the reasons, which could have led the AO to have reasons to suspect, but, not reasons to believe. However, the reasons recorded by the AO do not show that he merely suspected that income has escaped assessment. Rather, the AO was fully aware about the exact quantum of income that has escaped assessment and why this amount was taxable in the hands of the appellant. Hence, the reason recorded was 'reason to believeô not based merely on any suspicion.

5.6.10 Thus, the grounds challenging the validity of the notice issued u/sl48 are not valid. The claim that the case law relied upon by the AO was not relevant is not correct. As has been discussed above, the information received by the AO from the CIT (A) did not constitute a direction and the AO had duly applied his mind before issue of the notice u/s 148 of the Act. These grounds are rejected.ò

7. Similarly, he dismissed the grounds raised by the assessee on merit by observing as under:-

ñ5.7.5 The issues that need to be examined are:-

(1) Whether the amount was an Inter-corporate Deposit and different from unsecured loan.

(2) Whether ICD is beyond the preview of being considered as deemed dividend.

(3) Whether the appellant derived any benefit out of the transaction, so as to be taxed by treating the amount as deemed dividend in his hands.

5.7.6 Admittedly, the appellant Sh. Anil Nanda held substantial share in both the companies, i.e. 65.6% share of M/s Joint Investment Pvt. Ltd, and 27.90% shares of M/s G.I. Power Corporation Ltd., as on 31/07/2007. The amount of Rs. 18.75 crore had been shown under the grouping unsecured loans by both the companies in their balance sheets. This issue had been discussed by the CIT(A), Jammu in the appellate order in the case of M/s G.I. Power Corporation Ltd., wherein the CIT(A) had observed that the appellant had itself accepted that it had received loan from M/s joint Investment (P) Ltd. The matter was further examined by the Hon'ble ITAT, Amritsar Bench, which has held that ICD falls under the broader term 'deposit' and therefore cannot be distinguished from loans & advances as argued by the appellant. The Hon'ble Bench dismissed the ground of the company M/s G.I. Power Corporation Ltd. that ICD was different from loans and advance.

5.7.7 The appellant has tried to distinguish that in case of a loan, the debtor approaches the creditor, whereas in case of ICD, the depositor places the deposit with the recipient. It may be true in case of an unrelated transaction, where a company with available funds may approach a needy company, through a broker or finance consultant, to place the deposit. However, in the instant case the companies are group companies. The copy of resolution dated 24/03/2006 of M/s Joint Investment Pvt. Ltd. shows that it did not deal with only this transaction in particular, but was a general resolution to 'place/ receive' Inter Corporate deposits from companies in which certain directors are interested. The transaction are between related parties and are not at arm's length. It cannot be said that the well went to the thirsty to quench his thirst. The artificial distinction attempted by the appellant is without any merit. Hence, provisions of section 2(22)(e) are equally applicable in this case, firstly, because ICD cannot be treated differently from loan and secondly, even an inter-corporate deposit cannot go beyond the purview of the rigors of this provision.

5.7.8. The AR of the appellant has claimed that the transaction has not benefited the appellant Sh. Anil Nanda. Details of actual utilization of the funds has been furnished to show that no part was received, or utilized by Sh. Anil Nanda. In this regard it is pertinent to note that the appellant Sh. Anil

Nanda held substantial interest in both the companies. The issue of taxability of the receipt in the hands of the common share-holder, holding substantial interest has been examined in detail by the Hon'ble Delhi High Court in the case M/s Ankitech Pvt.Ltd. This decision shows that the transaction provides indirect benefit to the common share-holder holding substantial interest in both companies.

5.7.9 The transaction of loan/advance between the two companies are definitely not in the course of business, because neither of the company is engaged in the business of lending of money. The fact that a loan was given does not per se make it a business transaction. Hence, provision of section 2(22)(e) are clearly applicable.

5.8 Provision relating to deemed dividend u/s 2(22) (e) of the Act has been examined in detail by the Hon'ble Delhi High Court in the case of M/s Ankitech Pvt. Ltd.

5.8.1 M/s Ankitech Pvt. Ltd. (APL) had common share holders with that of M/s Jakson Generators (P) Ltd (JGPL). M/s Ankitech Pvt. Ltd. (APL) received advance from JGPL by book entry. The AO treated this as deemed dividends However, the Hon'ble High Court affirmed the decision of the ITAT that though the amount received by the assessee (APL) by way of book entry is a deemed dividend within the meaning of Section 2(22) (e) of the Act, the same cannot be assessed in the hands of the assessee company, as it was not a share-holder in the company JGPL. A dividend cannot be paid to a non-share holder.

5.8.2 In this judgement, Hon'ble Court has analyzed the provisions of the section 2(22) (e) of the Act, in detail. Paras 23 to 26, of the judgement is reproduced as under:-

"23. It is rightly pointed out by the Bombay High Court in Universal Medicare (P) Ltd. (supra) that Section 2(22)(e) of the Act is not artistically worded. Be as it may, we may reiterate that as per this provision, the following conditions are to be satisfied:

(1) The payer company must be a closely held company.
(2) It applies to any sum paid by way of loan or advance during the year to the following persons:
(a) A shareholder holding at least 1C of voting power in the payer company.
(b) A company in which such shareholder has at least 20% of the voting power.
(c) A concern (other than company) in which such shareholder has at least 20% interest.

(3) The payer company has accumulated profits on the date of any such payment and the payment is out of accumulated profits.
(4) The payment of loan or advance is not in course of ordinary business activities.

24. The intention behind enacting provisions of Section 2(22)(e) is that closely held companies (i.e. companies in which public are not substantially interested), which are controlled by a group of members, even though the company has accumulated profits would not distribute such profit as dividend because if so distributed the dividend income would become taxable in the hands of the shareholders. Instead of distributing accumulated profits as dividend, companies distribute them as loan or advances to shareholders or to concern in which such shareholders have substantial interest or make any payment on behalf of or for the individual benefit of such shareholder. In such an event, by the deeming provisions, such payment by the company is treated as dividend. The intention behind the provisions of Section 2(22)(e) of the Act is to tax dividend in the hands of shareholders. The deeming provisions as it applies to the case of loans or advances by a company to a concern in which its shareholder has substantial interest, is based on the presumption that the loans or advances would ultimately be made available to the shareholders of the company giving the loan or advance.

25. Further, it is an admitted case that under normal circumstances, such a loan or advance given to the shareholders or to a concern, would no t qualify as dividend. It has been made so by legal fiction created under Section 2(22)(e) of the Act. We have to keep in mind that this legal provision relates to — dividend. Thus, by a deeming provision, it is the definition of dividend which is enlarged. Legal fiction does not extend to - shareholder. When we keep in mind this aspect, the conclusion would be obvious, viz., loan or advance given under the conditions specified under .Section 2(22.}(e) of the Act would also be treated as dividend. The fiction has to stop here and is not to be extended further for broadening the concept of shareholders by way of legal fiction. It is a common case that any company is supposed to distribute the profits in the form of dividend to its shareholders/members and such dividend cannot be given to non-members. The second category specified under Section 2(22)(e) of the Act, viz., a concern (like the assessee herein), which is given the loan or advance is admittedly not a shareholder/member of the payer company. Therefore, under no circumstance, it could be treated as shareholder/member receiving dividend. If the intention of the Legislature was to tax such loan or
advance as deemed dividend at the hands of —deeming shareholder, then the Legislature would have inserted deeming provision in respect of shareholder as well, that has not happened. Most of the arguments of the

learned counsels for the Revenue would stand answered, once we took into the matter from this perspective.

26. In a case like this, the recipient would be a shareholder by way of deeming provision. It is not correct on the part of the Revenue to argue that if this position is taken, then the income —is not taxed at the hands of the recipient. Such an argument based on the scheme of the Act as projected by the learned counsels for the Revenue on the basis of Sections 4, 5, 8, 14 and 56 of the Act would be of no avail. Simple answer to this argument is that such loan or advance, in the first place, is not an income. Such a loan or advance has to be returned by the recipient to the company, which has given the loan or advance."

5.8.3 It may be seen that in the case of M/s Ankitech Pvt. Ltd. the fact that the company was not a shareholder in the company JGPL came in way of the deeming provision as dividend cannot be paid to non-shareholders. However, as the appellant Sh. Anil Nanda has substantial interest in both the concerns, the amount of advance received by one company from the other results in indirect benefit Sh. Anil Nanda. Hence, this amount is to be considered as deemed dividend in his hands u/s 2(22)(e) of the Act.

5.8.4 It is pertinent to reproduce the observation of the Hon'ble High Court in the judgement in the case of M/s Ankitech Pvt. Ltd.:-

ñ30. Before we part with, some comments are to be necessarily made by us. As pointed out above, it is not in dispute that the conditions stipulated in Section 2(22)(e) of the Act treating the loan and advance as deemed dividend are established in these cases.

Therefore, it would always be open to the Revenue to take corrective measure by treating this dividend income at the hands of the shareholders and tax them accordingly. As otherwise, it would amount to escapement of income at the hands of those shareholders."
(emphasis supplied)

Thus, the Hon'ble Court had decreed that the dividend income deemed u/s 2(22) (e) must be brought to tax in the hands of the shareholders and there should be no escapement of income from their hands. Respectfully following the decision of the Hon'ble Delhi High Court, I hold that the loan received by the appellant is deemed dividend in his hands u/s 2 (22) (e) of the Act.

5.9 After due consideration of the facts it is held that the AO has rightly made the addition invoking the provision of section 2(22) (e) of the I.T. Act and treating the amount of Rs. 18.75 crore as deemed dividend in the hands of the appellant Sh. Anil Nanda.ò

8. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal by raising the following grounds:-

> ñ1. On the facts and in the circumstances of the case, the CIT(A) has erred both on facts and in law, in upholding the illegal action without jurisdiction of the AO to issue notice and reopen the assessment of the appellant under section 147 and the perverse order passed by the AO ought to have been vacated and failure to do so has vitiated the impugned order as the entire action, order and notice for reassessment are illegal, without jurisdiction, unsustainable and hence liable to be vacated as being nonest in law.
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> 2. The CIT(A) has erred in not being guided by correct factual and legal position, records, and binding precedents placed before him and has passed the impugned order erroneously which is therefore liable to set aside and quashed.
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> 3. The CIT(A) has erred in not being guided by correct factual and legal position, and the issue of Notice u/s 148 being illegal and without jurisdiction, the entire re-assessment proceeding were void-ab-initio and hence ought to have been quashed by him and failure to do so has vitiated the impugned order.
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> 4. The CIT (A) has also erred in upholding the re-assessment order without appreciating a fact that AO rejected the objection raised for assuming jurisdiction u/s 147/148 clearly against the law declared by the Supreme Court in the case of G K N Driveshaft was not followed and hence, the impugned order of the A O could not have been upheld by him.
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> 5. The CIT(A) has also erred both on facts and in law, in sustaining the illegal addition of Rs. 18,75,00,000/- perversely made by the AO u/s 2(22)(e) of the Income Tax Act as alleged deemed dividend and impugned orders are therefore liable to be quashed and the additions so illegally made and confirmed in first appeal ought to be deleted.
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> 6. The CIT(A) has also erred in upholding the erroneous view taken by the AO ignoring the fact that inter-corporate deposit in the normal course of business of banking or financing activity carried on by the company would not at all fall within the purview of Section 2(22)(e) and the impugned order being perverse is liable to be vacated.
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> 7. The CIT(A) has also erred in upholding the illegal demands of tax as well as interest erroneously raised by the AO to the extent of illegal additions made by him and the entire illegal demands of tax as well as interest must be set aside and quashed as unsustainable both on facts and in law.

8. The CIT(A) ought to have dealt with all the factual and legal submissions and objections of the appellant and ought to have followed the binding decisions of the Courts and Tribunals placed before him but has unfortunately not done so and has thus passed the impugned order erroneously solely to cause hardship and harassment to the appellant for which the impugned order is liable to be vacated.

9. The CIT(A) has by the impugned order demonstrated his clear bias and prejudice against the appellant and has passed the same by disregarding the correct factual and legal position and by not following the binding precedents for which also the impugned order cannot be sustained.

10. The authorities below also erred in ignoring the fact that based on an incorrect observation/order of the Commissioner of Appeal in the case of another assessee, the assessment of the appellant could not have been reopened and the entire action for reopening of the assessment earlier made by the A O after thorough verification of facts and law, could not have been superseded by the impugned reassessment proceedings and order, wrongly confirmed by the CIT(A.

11. The authorities below have also erred in issuing/confirming Notice u/s 147 dated 28.3.2014 which is also the date of order of CIT(A), Jammu in the case of G.I. Power Corporation Ltd. wherein he has granted relief to that assessee and the A O in Delhi could not have got the order dated 27.3.2014 and could not have recorded reasons, without any application of mind and could not have obtained the necessary approvals from the competent authority to issue notice u/s 148 on 28.3.2014 and hence, the entire case is false and fabricated by the Revenue which is totally unsustainable and unauthorized by law.

12. The appellant craves leave to raise additional grounds and file necessary paper book before the Hon'ble Tribunal takes up hearing of the case and records of both the lower authorities be directed to be placed before the Tribunal by the Revenue and the appeal be taken up for early out-of-turn hearing in view of the huge illegal demand and harassment caused to the appellant by the authorities below.

It is prayed accordingly.ò

9. The ld. Counsel for the assessee strongly challenged the order of the CIT(A) in upholding the validity of reassessment proceedings and the addition on merit. So far as the validity of reassessment proceedings is concerned, the ld. Counsel submitted that in response to the letter of the assessee for supply of reasons dated 8th May, 2014, the AO supplied the reasons on 27.11.2014 which shows that such reasons were not provided within a reasonable time and, therefore, it raises doubts that the reasons were non-existent at the time of issue of notice. He submitted that the AO while disposing off the objections filed by the assessee had stated, ñthis office had advance information from CIT(A) through fax on 24th March, 2014 and the fax letter was marked to the AO by the CIT on the same date.ò Therefore, it clearly shows that the reasons were recorded on the basis of fax dated 24th March, 2014 received from CIT(A), Jammu having no valid jurisdiction or whatsoever to issue such orders or direction to the respondent AO. Therefore, such reopening on the basis of direction of the CIT(A), Jammu is not in accordance with law. The ld. Counsel for the assessee, referring to the order of the Amritsar Bench of the Tribunal in the case of GI Power Corporation Ltd. vide ITA No.305/Asr/2014, order dated 23rd March, 2016, for A.Y. 2007-08, drew the attention of the Bench to para 31 of the order and submitted that the Tribunal has deleted all the observations/directions of the CIT(A) relating to Shri Anil Nanda. Therefore, the reopening of the assessment on the basis of observations/directions of the CIT(A), Jammu does not survive. He accordingly submitted that once the basis for reopening of the assessment does not exist, notice u/s 148 is *ex facie* illegal,

arbitrary and without jurisdiction. Therefore, all subsequent proceedings are also illegal.

10. In his second plank of argument, the ld. Counsel submitted that there are certain factual errors in the proforma of the notice where the AO while answering the question No.8 under clause, ñwhether the assessment is proposed to be made for the first time? If the reply is in affirmative, please stateò has mentioned, ñyes, for the first timeò which is patently wrong. He submitted that the AO himself has admitted in the assessment order that return of income for A.Y. 2007-08 was filed by the assessee on 13th July, 2007 declaring total income at Rs.8,25,64,675/-. This shows that there is complete non-application of mind by the AO while recording reasons and the approval has been given in a mechanical manner.

11. The ld. Counsel for the assessee, relying on various decisions, submitted that the reassessment proceedings are also not in accordance with law since which facts are not disclosed in the return are not stated in the reasons and the reassessment proceedings were initiated on the basis of borrowed satisfaction. The ld. Counsel for the assessee drew the attention of the Bench to reasons recorded and submitted that the same was based on borrowed satisfaction. Further, the onus is on the Revenue to prove the failure of the assessee to disclose fully and truly all material facts necessary for completion of assessment, which, in the instant case, has not been discharged.

11.1 The ld. Counsel for the assessee in his next plank of arguments, while challenging the validity of the re-assessment proceedings, submitted that the ld.CIT(A), in para 6 of the order raises a suspicion that income u/s 2(22)(e) might have escaped, but, the AO had to examine the facts to ascertain the same only when such income has escaped. He could have reasons to believe escapement, but, in the instant case, the AO did not verify the facts at all which is conclusively proved by the fact that the balance sheet of the payer and payee company clearly indicate that M/s Joint Investment Pvt. Ltd. has given ICD to M/s GI Power Corporation Ltd. He submitted that such incomplete information in the reasons recorded may lead the AO to have órеasons to suspectô, but, cannot lead him to have órеasons to believe.ô Relying on various decisions he submitted that reassessment proceedings cannot be initiated on the basis of reasons to suspect. He submitted that the various decisions relied on by the AO and CIT(A) are not applicable to the facts of the present case.

12. So far as the merit of the case is concerned, the ld. Counsel for the assessee submitted that the provisions of section 2(22)(e) covers only loans and advances and not inter-corporate deposits. Referring to various decisions, he submitted that deposit is different from loan/advance and cannot be taxed as deemed dividend u/s 2(22)(e). He submitted that section 2(22)(e) being a deeming fiction must be given a strict interpretation. Therefore, the words ñadvance or loanò mentioned in section 2(22)(e) cannot be extended to include ñdeposit.ò He submitted that the

legislature in its wisdom did not include the word ñdepositò in this section while in other sections like section 13(1)(d)(i), the word ñdepositò has been used as against òloanò in section 13(2)(a). Thus, the two terms have been used differently by the legislature.

13. The ld. Counsel for the assessee submitted that the balance sheet of M/s GI Power Corporation Ltd. clearly indicates that it has received inter-corporate deposit from M/s Joint Investment Pvt. Ltd. and not loan or advance. He submitted that in the balance sheet Schedule IV, the inter corporate deposit is placed under the head óUnsecured loanô because there is no other head in the balance sheet where it can be grouped. He submitted that Schedule VI of the Companies Act, 1956 prescribes the proforma in which a company is required to prepare its balance sheet. He submitted that under the head ñUnsecured loanò besides the loan, all other deposits including fixed deposits are to be included. Therefore, as per the prescribed proforma under Companies Act, 1956 for the balance sheet, there is no option with the assessee, but, to group the inter-corporate deposit under the head ñUnsecured loan.ò The ld. Counsel for the assessee submitted that details of ICD clearly indicate that out of Rs.19,90,00,000/-, Rs.18.75 crore were taken from M/s Joint Investment Pvt. Ltd. The grouping of inter-corporate deposit under the head ñUnsecured loanò otherwise also should not make any difference because the intention at the time of transaction is most important which is reflected from narration given in the balance sheet itself besides the acknowledgement given by

the assessee for the ICD to M/s Joint Investment Pvt. Ltd. He accordingly submitted that it is clearly established that the assessee received the inter-corporate deposit from M/s Joint Investment Pvt. Ltd. and not loan or advance and, therefore, section 2(22)(e) is not attracted. Similarly, M/s Joint Investment Pvt. Ltd. has also shown the sum given to M/s GI Power Corporation Ltd. under the head ñCurrent assets ï Loans and Advancesò in Schedule-F of its balance sheet. He accordingly submitted that since inter-corporate deposit is different from loan or advance and since section 2(22)(e) covers only loan or advance and not deposit, it cannot be invoked in the case of the assessee since the transaction pertains to inter-corporate deposit and not loan or advance. He accordingly submitted that the provisions of section 2(22)(e) are not applicable to the facts of the present case.

13.1 Referring to the decision of the Hon'ble Supreme Court in the case of CIT vs. Vegetable Products, reported in 88 ITR 192, he submitted that when there are different interpretations, the one in favour of the assessee should be accepted. Referring to CBDT Circular No.19/2017 dated 12th June, 2017, he submitted that provisions of section 2(22)(e) are not applicable to trade advances. The ld. Counsel for the assessee also relied on the following decisions:-

Sr. No	Citation	Court	Issue	Para	Page No.
1	Dcit vs. p c chandra holdings pvt ltd. ITA No. 1600/KOL 2011, Date Of Order- 19/12/2013	ITAT, KOLKATA	2(22)(e) ICDS are not Loans and Advances.		1-13
2	IFB Agro ICD deemed dividend VS JCIT ITA No. 114/Kol/2013 Date of order	ITAT, KOLKATA	ICD is different from loan and cannot be treated as a loan	9	14-27

	12/03/2 013.				
3	Asstt. Cit vs Global Agencies (P) Ltd. Equivalent citations (2004) 87 TTJ Del 1086	Delhi High Court	Deeming Fiction 2(22)(e)-Deposit, ICD Cannot be treated as loan	20	28-42
4	CIT vs Atul Engineering Udyog ITA No.223 of 2011 Date of order- 26/09/201.4 .	Allahabad High Court	Deposit is different from loan and advances	2nd Las	43-47
5	CIT vs Shaan Finance (P) Ltd (1998) 231 ITR 308(SC) Date of order 20/03/1998 _____	Supreme Court of India	Term "Deposit "is different		48-53
6	Nandlal Kanoria vs CIT Equivalent citationsl980 122 ITR 405 Cal Date of order-29/03/1979	Calcutta High Court			54-61
7	Seamist Properties Pvt. Ltd. vs Ito (2005) 95 TTJ Mum 201	ITAT, MUMBAI	Which material fact were not discussed by assesse	21	62-67
8	CIT vs Gupta Abhushan Pvt. Ltd ita no. 1079/2008,ITA 913/2008 & ITA 908/2008 Date of order-22/10/2008	Delhi High Court	Mere reason to suspect cannot be equal with reason to believe	5	68-70
9	CIT vs Universal Medicare Private ITA NO. 2264 of 2009 Date of order 22/0.3/2010 . _ _	Bombay High Court	Money was not advance for the benefit of the assessee is not Dividend.		71-75
10	Usha international 147 change opinion ITA NO. 2026/2010 Date of order-21/09/2012	Delhi High Court	Assesse disclosed full particulars at the time of the assessment-Sec 147 cannot be invoked		76-123
11	Transworld International Inc. vs Jt. Commissioner Of Income Tax Equivalent citations (2004)192 CTR DEL 97,113(20040 DLT865,2004(76)DRJ 626, 2005 273 ITR 242 Del Date	Delhi High Court	Only AO should examine the matter and no other higher or lower authority		124-132
12	Vijendra Kumar, Bulandshahr vs Department Of Income Tax ITA No. 1202/Del/09 Date of Order 04/02/2009.	ITAT DELHI	Borrowed Satisfaction	10.8	133-151
13	CIT Vs Ankitech deemed dividend ITA No. 462 of 2009 Date of Order 11/05-/2011.	Delhi High Court			152-201
14	Arjun Singh & Anr. vs Asstt. Direction Of Income Tax Equivalent citations (2000) 159 CTR MP 53 Date of Order 23/11/1998	Madhya Pradesh High Court			202-221

15	B.R. Arora, New Delhi vs Assessee ITA No. 6020/Del/2012 Date of Order 31/10/2012	ITAT DELHI	CIT(A) impugned direction as far as assessee is concerned has no legal force and cannot be reason for reopening		222-230
16	BSE Vs. DCIT 147 reasons Petition no. 2468 of 2011 Date of order 12/06/2014	Bombay High Court			231-256
17	Central india 147 CIT sanction ITA No. 17/1999 Date of Order 28/01/2011	Delhi High Court	Section 147 and 151		257-273
18	CIT vs MS Vegetables Products Ltd Supreme Court 88 ITR 192 Date of Order 29/01/1973	Supreme Court of India			274-277
19	Cit vs Shree Rajasthan Syntex Limited DATE OF ORDER 06/05/2008.	Rajasthan high court			278-286
20	Indian Oil Corporation vs Income Tax Officer, Equivalent citations: Central 1987 AIR 1897, 1986 SCR (2)1107 Date Of order 08/05/1986	Supreme Court of India			287-292
21	Acit, New Delhi vs Mrs. Seema Devi Bansal, New Delhi ITA No. 6462/Del/2014 Date of Order- 1 8/07/701 8.	ITAT DELHI	Business Transaction is not deemed Dividend u/s 2(22)(e)		293-301
22	Maveric Electronics v ITO Delhi ITAT ITA No. 1835/Del/2014 Date of Order: 23/01/2014	ITAT DELHI	Section 151 non application of mind by CIT for approval	7	302-313
23	SUNIL AGARWAL VS ITO Delhi ITAT ITA No. 988/Del/2018 Date of Order: 16/11/2017.	ITAT DELHI	Section 151-Commission Acted Mechanically	7 and 8	314-344
24	ACIT V KMS ASSOCIATES PVT LTD- ITAT Delhi ITA 4927/Del/2017 Date of Order: 09/05/2018	ITAT DELHI	Application of mind by AO himself is required for reopening the assessment and approval by CIT mechanically is illegal.		345-381
25	Bombay Oil Industries Ltd. vs Deputy Commissioner of... Equivalent citations 2002 82 ITD 626 Mum Date of Order: 15.11.2000	ITAT MUMBAI			382-391
26	Commissioner Of Income Tax vs Subrata Roy ITA No. 398/2010 Date of Order 17/03/2015	Delhi High Court	Business Transaction		392-405

27	Global Signal 147 W.P.(C) 747/2014 Date of Order 17/10/2014	Delhi High Court	Reopening after 4 years- AO not specifically indicated as to which material facts were not disclosed by assessee - Notice u/s 148 liable		406-416
28	Circular-19 2017 trade Advance not Deemed Dividend		Trade Advance is not deemed Dividend		417-418
29	G I Power Corporation Ltd,, New ... vs Assessee I.T.A No. 305(Asr)/2014 Date of Order 23/03/2016	ITAT Amritsar	ICD is different from loan and cannot be treated as a loan		419-435
30	United Electrical Co. (P) Ltd. vs Cit & Ors Equivalent citations: (2002) 178 CTR Del 192	Delhi High Court	Approval by Commissioner u/s 151 must be with application of his own mind not mechanical		436-444

14. The ld. DR, on the other hand, heavily relied on the order of the CIT(A). Referring to the provisions of section 150 of the IT Act, he submitted that reopening can be made at any time in consequence of or to give effect to any finding or direction contained in an order passed by any authority in any proceedings under this Act by way of appeal, reference or revision or by a court following proceedings under any other law. He submitted that there is no direction by the CIT(A) of Jammu and it was only an information and, therefore, the AO has validly reopened the assessment. In the reasons recorded, the AO has mentioned that the assessee has filed the return of income declaring income of Rs.8,25,64,675/-. While reopening the assessment, the AO has also considered the decision of jurisdictional High Court in the case of CIT vs. Ankitech Pvt. Ltd. Further, the AO has followed all legal requirements necessary for reopening of the assessment such as recording of reasons, obtaining of approval from the PCIT, supply of reasons to the assessee, disposal of the objections, etc., and, therefore, it cannot be said that the reopening is not in accordance with law.

14.1 So far as the merit of the case is concerned, he submitted that the ld.CIT(A) has given valid reasons while sustaining the addition made by the AO. He submitted that it is not a case of trade advance, but, a loan transaction between two group concerns where the assessee is having substantial shareholding in both the concerns. The balance sheet shows loans and advances and not ICD. Since the transactions are between two closely related parties and are not at armôs length, therefore, the arguments advanced by the ld. Counsel do not hold good. He accordingly submitted that the grounds raised by the assessee should be dismissed.

15. We have considered the rival arguments made by both the sides, perused the orders of the Assessing Officer and CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find, the AO, in the instant case, reopened the assessment of the assessee u/s 147 of the IT Act after recording the reasons which have been reproduced at page 2 of this order. We find, after receipt of notice u/s 148, the assessee filed a letter dated 30th April, 2014 received by the AO on 8th May, 2014 stating that the return already filed may be treated as the return in response to notice u/s 148 and has also asked for the reasons which were duly provided by the AO to the assessee. The assessee filed objections to such reopening which were disposed of by the AO by passing a speaking order. The AO, thereafter, proceeded to complete the assessment and rejecting the various explanations given by the assessee, made addition of Rs.18.75

crore u/s 2(22)(e) of the Act. We find the ld. CIT(A) upheld the order of the AO, the reasons of which are already reproduced in the preceding paragraphs.

16. It is the submission of the ld. Counsel that the initiation of reassessment proceedings are not in accordance with the law, since: (i) such reopening was done at the direction of the CIT(A), Jammu; (ii) the AO has not applied his mind and such reopening was on borrowed satisfaction; (iii) the PCIT had given his approval in a mechanical manner; (iv) there are factual inaccuracies in the reasons recorded; (v) the AO has not stated which facts are not disclosed in the reasons; (vi) the Revenue has not discharged the onus to prove the failure of the assessee; and (vii) such reopening has been made on the basis of reasons to suspect and not reasons to believe. It is also the argument of the ld. Counsel that provisions of section 2(22)(e) are not applicable to ICDs.

17. We do not find force in the above argument of the ld. Counsel. It is an admitted fact that a sum of Rs.18.75 crore was taken by M/s GI Power Corporation Ltd. from the group company M/s Joint Investment Pvt. Ltd. It is also an admitted fact that Shri Anil Nanda is having substantial shareholding in both these companies. We find, in the instant case, GI Power Corporation Ltd. had admitted before CIT(A) Jammu that it has received loan from M/s Joint Investment Pvt. Ltd. Therefore, the assessee cannot take two different stands i.e., before the CIT(A), Jammu that it has accepted loan from Joint Investment Pvt. Ltd. and before this Bench that it is ICD.

17.1 The Hon'ble Delhi High Court in the case of CIT vs. Ankitech Pvt. Ltd.,held that if the advance is by or to a concern in which the shareholder is substantially interested, then, the shareholder is deriving an indirect advantage or benefit through such concern. Therefore, the AO, in the instant case, in our opinion, has validly reopened the assessment after due application of mind to the information received from the higher authorities.

17.2 So far as the argument of the ld. Counsel that the reopening was made on the direction of the CIT(A), Jammu is concerned, the same, in our opinion, is not correct. The CIT, Jammu had sent the information to the concerned CIT, having jurisdiction over the assessee and the concerned CIT, thereafter has sent the same to the DCIT and, therefore, there is no direction by the CIT(A), Jammu to the AO for initiation of reassessment proceedings. For the sake of convenience, we reproduce para 1 of the assessment order which makes the things clear and which reads as under:-

> ñThe return of Income was filed on 30.07.2007 declaring total income of Rs 8,25,64,675/-. The assessment u/s 143(3) of the I.T. Act was completed on 30.10.2009 at total income of Rs.8,25,64,675/- i.e at the returned income. An information was received from CIT(A), Jammu, J&K vide letter bearing No. CIT(A)/J&K/JAMU/2013-14/3307 dated 20.03.2014 by Fax on 24.03.2014 to the CIT-XV, Delhi, which was sent to the DCIT-44(1), New Delhi and also from the ACIT, Circle-2, Jammu vide letter F.No: ACIT/Cir-2/JAMU/2013-14 dated 24.03.2014 by Fax dated 25.03.2014 to the DCIT, Circle-44(1), New Delhi, that in the case of M/s G.I. Power Corporation Ltd, it was found that M/s G.I. Power Corporation had taken a sum of Rs. 18.75 crore as unsecured loan from the group company M/s Joint Investment Pvt. Ltd, having a common share holding and Sh. Anil Nanda who has substantial interest in both the payer and the payee company holding 65.6 % of M/s Joint Investment Pvt. Ltd. and 27.90% shareholding of M/s G.I. Power Corporation Ltd as on 31.03.2007.ò

18. Even otherwise also the provisions of section 150 read as under:-

> **"150.** (1) Notwithstanding anything contained in section 149, the notice under section 148 may be issued at any time for the purpose of making an assessment or reassessment or recomputation in consequence of or to give effect to any finding or direction contained in an order passed by any authority in any proceeding under this Act by way of appeal, reference or revision or by a Court in any proceeding under any other law.
>
> (2) The provisions of sub-section (1) shall not apply in any case where any such assessment, reassessment or recomputation as is referred to in that sub-section relates to an assessment year in respect of which an assessment, reassessment or recomputation could not have been made at the time the order which was the subject-matter of the appeal, reference or revision, as the case may be, was made by reason of any other provision limiting the time within which any action for assessment, reassessment or recomputation may be taken.ò

18.1 Similarly, Explanation 2 to section 153 reads as under:-

> *"Explanation 2.*ð For the purposes of this section, where, by an order referred to in clause (*i*) of sub-section (6),ð
>
> (*a*) any income is excluded from the total income of the assessee for an assessment year, then, an assessment of such income for another assessment year shall, for the purposes of section 150 and this section, be deemed to be one made in consequence of or to give effect to any finding or direction contained in the said order; or
>
> (*b*) any income is excluded from the total income of one person and held to be the income of another person, then, an assessment of such income on such other person shall, for the purposes of section 150 and this section, be deemed to be one made in consequence of or to give effect to any finding or direction contained in the said order, if such other person was given an opportunity of being heard before the said order was passed.ò

18.2 A plain reading of the above provisions shows that notice u/s 148 may be issued at any time for the purpose of making an assessment or reassessment or recomputation in consequence of or to give effect to any finding or direction contained in an order passed by any authority in any proceeding under this Act by

way of appeal, reference or revision or by a Court in any proceeding under any other law.

18.3 Since the ld.CIT(A) while deciding the validity of the reassessment proceedings has thoroughly discussed all the aspects which the ld. Counsel has raised before the Tribunal, therefore, in absence of any distinguishing features brought before us against the order of the ld.CIT(A), we uphold the same and the reassessment proceedings initiated by the AO and upheld by the CIT(A) being in accordance with the law, the grounds raised by the assessee on this issue are dismissed.

19. Coming to the merit of the case, as stated earlier, the assessee, Shri Anil Nanda was holding substantial shareholding in both these companies, i.e., 65.6% share in M/s Joint Investment Pvt. Ltd. and 27.90% share in M/s GI Power Corporation Ltd. as on 31st July, 2007. We find, the amount of Rs.18.75 crore had been shown under the grouping unsecured loans by both these companies in their balance sheets. Further, while arguing the case of GI Power Corporation Ltd. before the CIT(A), Jammu, the said assessee itself had accepted that it had received loan from M/s Joint Investment Pvt. Ltd. Therefore, we do not find any force in the arguments of the ld. Counsel for the assessee that these are ICDs as per the resolutions and correspondences, etc., since the two concerns are closely related to each other and the transactions are not at armôs length. It is within their exclusive knowledge as to why they have treated the same as ICDs and argued before

CIT(A) Jammu in the case of GI Power Corporation Ltd., as loan. Therefore, the argument of the ld. Counsel that provisions of section 2(22)(e) are not applicable does not hold good. Further, the reliance on the CBDT Circular by the ld. Counsel is also not applicable since the said Circular relates to trade advance whereas in the instant case, it is deposit or loan and not a trade advance. Since the ld.CIT(A) while sustaining the addition has thoroughly discussed the issue and has passed a very reasoned order and has followed the decision of the Hon'ble Delhi High Court in the case of Ankitech Pvt. Ltd. (supra), therefore, we do not find any infirmity in the same. Accordingly, the order of the CIT(A) is upheld on merit of the case also.

20. In the result, the appeal filed by the assessee is dismissed.

The decision was pronounced in the open court on 18.08.2021.

Sd/-	Sd/-
(KULDIP SINGH) JUDICIAL MEMBER	(R.K. PANDA) ACCOUNTANT MEMBER

Dated: 18th August, 2021.

dk

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi