

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**Hyderabad ‘ B ‘ Bench, Hyderabad**  
*(Through Video Conferencing)*  
**Before Shri S.S. Godara, Judicial Member**  
**AND**  
**Shri Inturi Rama Rao, Accountant Member**

ITA No.1869/Hyd/2018		
Assessment Year: 2013-14		
M/s. ASIP Private Limited, Plot No.473, Road No.87, Jubile Hills, Hyderabad – 500 033. PAN : AAFCA4682E	Vs.	The Deputy Commissioner of Income Tax, Circle 1 (1), Hyderabad.
(Appellant)		(Respondent)
Assessee by:	Shri A. Srinivas. AR	
Revenue by:	Shri Rohit Mujumdar for Srikanth – DR.	
Date of hearing:	20/09/2021	
Date of pronouncement:	24/09/2021	

**ORDER**

**PER BENCH :**

This assessee’s appeal for AY.2013-14 arises from the CIT(A)-1, Hyderabad’s order dated 22.06.2018 passed in case No.0067/CIT(A)-1/Hyd/2016-17/2018-19 involving proceedings u/s. 143(3) of the Income Tax Act, 1961 [in short, ‘the Act’].

2. Coming to the assessee’s sole substantive grievance that both the learned lower authorities have erred in law and on facts in making section 2(22)(e) deemed dividend addition of Rs.1,44,22,000/-, we note that the CIT(A)’s detailed discussion to this effect reads as under :

"5.3 The submissions of the appellant and the assessment order have been carefully considered. The appellant has taken interest free loan from its related company where it is substantially related in shareholding. The Assessing Officer has raised the issue of deemed dividend in this case. The Assessing Officer found that appellant received Rs.1,44,22,000/- from M/s. Anandsheel Hydraulics Pvt Ltd and should have been termed as Dividend. The appellant has raised the issue that the appellant is not a registered shareholder but holding share. This itself, clarifies the issue that the appellant company is having common shareholding with the M/s. Anandsheel Hydraulics Pvt Limited. **More important that the shareholders Sri V.S. Rajesh Reddy and Sri V.S. Anand Reddy are promoters of both the companies, i.e., M/s. Anandsheel Hydraulics Pvt Ltd and M/s. ASIP Private Limited (Appellant company).** Hence, the Assessing Officer is correctly invoked the provisions of Section 2(2)( e) where the appellant is not-paying interest and has majority shares.

It is pertinent point out, the judicial judgment in the case of M/s.Bhaumik Colour Pvt Ltd and M/s. Ankitech Private Limited. The issue whether deemed dividend is taxable in the hands of the concern in which the shareholders of the lender company has substantial interest or in the hands of such common shareholder has been a matter of debate before the courts. The Special Bench of the Mumbai Tribunal in the case of M/s.Bhaumik Colour (P) Ltd held that in the absence of indication in Section 2(22)(e) of the Act to extend the legal fiction to a case of loan or advance to a non-fiction to a case of loan or advance to a non-shareholder, loan or advance cannot be taxed as deemed dividend in the hands of such non-shareholder. The decision of the Special Bench has been affirmed by the Bombay High Court in the case of Universal Medicare (P) Ltd and the Delhi High Court in the case of M/s. Ankitech Private limited. However, the Supreme Court put at rest this controversy in the case of M/s. Ankitech Private Limited and held that deemed dividend is not taxable in the hands of a loan recipient concern, if such concern is not a shareholder of the lender company. It is taxable in the hands of common shareholders having substantial interest in both the entries. The Supreme Court decision has provided clarity on the issue. In light of the above, the addition made by the Assessing Officer is upheld. I feel the Assessing Officer is correct in invoking Section 2(22)(e)."

3. We have given our thoughtful consideration to rival pleadings against and in support of the impugned deemed dividend addition and find no reason to express our agreement with either one of them in entirety. We are informed during the course of hearing that hon'ble apex court itself has referred the instant issue of applicability of the impugned deeming fiction in a case involving common shareholders in National Travel Services Vs. CIT (2018)

401 ITR 154 (SC) thereby doubting the correctness of CIT Vs. Ankitech Pvt. Ltd and CIT Vs. Madhur Housing and Development Company (2018) 401 ITR 152 (SC). There is further no quarrel between the parties that the foregoing hon'ble larger bench is yet to decide the instant issue. We therefore deem it appropriate to restore the assessee's sole substantive grievance raised in instant appeal back to the Assessing Officer for his fresh adjudication on merits after awaiting for the hon'ble apex court's larger bench's decision followed by three effective opportunities of hearing.

4. This assessee's appeal is allowed for statistical purposes in above terms.

Order pronounced in the Open Court on 24<sup>th</sup> September,2021.

<b>Sd/-</b> <b>(INTURI RAMA RAO)</b> <b>ACCOUNTANT MEMBER</b>	<b>Sd/-</b> <b>(S.S. GODARA)</b> <b>JUDICIAL MEMBER</b>
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Hyderabad, dated 24<sup>th</sup> September, 2021.

***TYNN / sps***

Copy to:

S.No	Addresses
1	M/s. ASIP Private Limited, Plot No.473, Road No.87, Jubile Hills, Hyderabad – 500 033.
2	The Deputy Commissioner of Income Tax, Circle – 1(1), Hyderabad.
3	The CIT(A)-1, Hyderabad.
4	The Pr.CIT(1), Hyderabad.
5	DR, ITAT Hyderabad Benches
6	Guard File.

*By Order*