

आयकरअपीलीयअधिकरण, 'बी' न्यायपीठ, चेन्नई  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
'B' BENCH, CHENNAI

श्रीमहावीर सिंह, उपाध्यक्षएवंश्री मनोज कुमार अग्रवाल, लेखा सदस्यके समक्ष  
**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND**  
**SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER**

आयकरअपीलसं./ITA No.: **2160/CHNY/2017**  
निर्धारण वर्ष/Assessment Year: 2000 - 01

**The Reliance Motor Company**  
**Pvt. Ltd.,**  
761, Anna Salai,  
Chennai – 600 002.

**The ACIT,**  
v. Corporate Circle 3(1),  
Chennai

**PAN: AAAC 1230A**

(अपीलार्थी/Appellant) (प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/Appellant by : Shri R. Vijayaraghavan, Advocate  
प्रत्यर्थीकीओरसे/Respondent by : Shri Varuvoor Sreedhar, Addl. CIT

सुनवाई की तारीख/Date of Hearing : 06.06.2022

घोषणा की तारीख/Date of Pronouncement : 15.06.2022

**आदेश / O R D E R**

**PER MAHAVIR SINGH, VP:**

This appeal by the assessee is arising out of the order of Commissioner of Income Tax (Appeals)-13, Chennai in ITA No.713/CIT(A)-13/AY 2000-01, order dated 30.06.2017. The assessment was framed by the ACIT, Company Circle, Chennai for

the assessment year 2000-01 u/s.143(3) r.w.s. 147 of the Income Tax Act, 1961 (hereinafter the 'Act') vide order dated 28.02.2005.

2. The first issue in this appeal of assessee remains for adjudication is the ground raised regarding addition made by AO on deemed dividend by invoking the provisions of section 2(22)(e) of the Act. For this, assessee has raised the following grounds :-

- i. The L'd CIT(A) erred in holding that the provisions of section 2(22)(e) of the Income Tax Act, 1961 are applicable to the sum of money received by the Appellant from the M.Ct.M Corporation Private Limited.
- ii. The L'd CIT(A) failed to appreciate that none of the shareholders who beneficially hold more than 10% of the shares carrying voting rights in lending company beneficially hold more than 20% of shares carrying voting rights in the assessee company.
- iii. The L'd CIT(A) erred in holding that what is to be considered for the purpose of section 2(22)(e) is the voting power. The L'd CIT(A) ought to have found that both the section 2(22)(e) and section 2(32) uses the beneficial ownership test only.
- iv. The L'd CIT(A) ought to have appreciated that the amount of Rs. 71,00,000 was received by the Appellant towards the allotment of shares to M.Ct.M Corporation Private Limited and the shares have been allotted against the money received.
- v. Without prejudice to above clauses stated in Ground 3, even where provisions of section 2(22)(e) are applicable to the transaction, the L'd CIT(A) ought to have found that the same would be taxable only in the hands of the shareholders and not the receiving company.

3. Brief facts are that the assessee company filed its return of income by filing audit report in Form No.3CD u/s.44AB of the Act. This return was processed u/s.143(1) of the Act and thereafter notice u/s.147 r.w.s. 148 of the Act was issued. The reasons recorded for reopening of assessment was that the assessee company has received a loan of Rs.71 lakhs from M.Ct.M Corporation P Ltd. As the assessee company's shareholders who are having substantial interest are having 10% voting power in the above said company, the loan is to be treated as deemed dividend in the hands of the assessee company as per the provisions of section 2(22)(e) of the Act. The assessee during the course of assessment proceedings stated that the provisions of section 2(22)(e) of the Act would not apply to loan amount of Rs.71 lakhs received from M.Ct.M Corporation P Ltd, as none of the shareholders who beneficially hold substantial interest holds also more than 10% in the lending company i.e., M.Ct.M Corporation P Ltd. The assessee filed complete details before AO in support of the claim of the shareholders who hold more than 10% beneficial interest in the lending company do not beneficially hold substantial interest and since none of the shareholders who own more than 10% beneficial interest in the lending company holds substantial interest beneficially in the assessee, the provisions of section 2(22)(e) of the

Act are not applicable in this case. The AO considered the reply of assessee and finally invoking the provisions of section 2(22)(e) of the Act treated this loan of Rs.71 lakhs as deemed dividend in the hands of the assessee and added to the returned income of the assessee. Aggrieved, assessee preferred appeal before CIT(A).

4. The CIT(A) after considering the submissions of the assessee confirmed the action of AO by noting as under:-

The decision of Supreme Court in the case of Navnith Lal C Jaweri Vs. K.K. Sen (1965) 56 ITR 198, 207-8(SC) makes the intention of the legislature clear. If the assessee's interpretation is adopted even though a person may hold 80% of voting power in the company by way of holding shares in his individual name/wife's name/HUF name/firm's name still he can escape from the provision of Sec.2(22)(e). Therefore, I am of the opinion that the shares held by HUF /firm/joint holding wherein the assessee is a beneficial owner is required to be clubbed with shares held by him in his individual name for the purpose of voting rights as the firm, HUF cannot vote and these are not recognized entities under the Companies Act. Thus, loan received by assessee company of Rs.71,00,000/- from M/s. M.Ct.M. Corporation Pvt. Ltd. in which the assessee has substantial interest and M/s. M.Ct.M. Corporation Pvt. Ltd. has accumulated profit of Rs.40 crore and more. Therefore, the loan received by the assessee company of Rs.71,00,000/- is held as deemed dividend u/s. 2(22)(e) of the Act. The action of the AO on this issue is therefore confirmed and the ground of appeal on this issue is dismissed.

Aggrieved, assessee came in appeal before the Tribunal.

5. Before us, the Id.counsel argued that none of the shareholders who beneficially hold more than 10% of the shares carrying voting rights in lending company beneficially hold more than 20% of shares carrying voting rights in the assessee company. The Id.counsel stated that both the sections 2(22)(e) & 2(32) of the Act uses the beneficial ownership tests only. None of the shareholders who beneficially hold more than 10% shares carrying voting rights in the lending company. The assessee before us and even the same before the AO and CIT(A) filed details of share holding pattern as under:-

As on 01<sup>st</sup> April 1999

Name of the Shareholder	No. of Shares	Percentage held
M Ct Muthiah	2,500	50%
Kamala Muthiah	2,500	50%
TOTAL	5,000	100%

As on 31<sup>st</sup> March 2000

Name of the Shareholder	No. of Shares	Percentage held
M Ct Muthiah	60,500	51%
Kamala Muthiah	17,500	15%
Arti Meenakshi	15,300	13%
Nandini Valli	15,300	13%
Art Meenkashi Trust	5,000	4%
Nandini Valli Trust	5,000	4%
TOTAL	1,18,600	100%

The Id.counsel for the assessee also stated that this issue is now settled by the decision of Hon'ble Supreme Court in the case of CIT

vs. Madhur Housing and Development Company, (2017) 100 CCH 46 ISCC, wherein the judgment of Hon'ble Delhi High Court in the case of CIT vs. Ankitech (P) Ltd., (2012) 340 ITR 14 affirmed. He narrated that the Hon'ble Delhi High Court has concluded that, it is the definition of dividend which is enlarged by the deeming provision of section 2(22)(e) and not that of 'shareholder' and therefore a concern which is given loan or advance by a company cannot be treated as shareholder/member of the latter simply because a shareholder of the lender company holding voting power of 10% or more therein has substantial interest in such concern and such loan or advance cannot be treated as deemed dividend u/s.2(22)(e) of the Act at the hands of the concern. According to Hon'ble High Court 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. Hon'ble High Court observed that most of the arguments of the learned counsels for the Revenue would stand answered, once we look into the matter from this perspective. 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. Precisely, for this very reason, the Courts have held that if the amounts advanced are for business transactions between the parties, such payment would not fall within the deeming dividend under Section 2(22)(e) of the Act. Insofar as reliance upon Circular No. 495 dated 22.09.1997 issued by CBDT is concerned, such observations are not binding on the Courts. Once it is found that such loan or advance cannot be treated as deemed dividend at the hands of such a concern which is not a shareholder,

and that is the correct legal position, such a circular would be of no avail. The definition of shareholder is not enlarged by any fiction.

6. In view of the above, we are of the view that this issue is covered by the decision of Hon'ble Supreme Court wherein it is held that as per provisions of section 2(22)(e) of the Act, the concern like the assessee which has received loan from M.Ct.M Corporation P Ltd., which is giving loan or advance is not a shareholder or member of the receiver company. Therefore, under no circumstances the assessee could be treated as shareholder, member receiving dividend. Hence, the assessment of this loan received by assessee cannot be treated as deemed dividend u/s.2(22)(e) of the Act. Hence, we delete the addition and allow this issue of assessee's appeal.

7. The next issue in this appeal of assessee is as regards to the order of CIT(A) confirming the action of AO in disallowing VRS payment claimed. For this, assessee has raised following two grounds:-

- vi. The L'd CIT(A) erred in adding back a sum of Rs.76,55,667 towards VRS payments. He must have found that the sum was already added back by the Appellant in computing the loss of Rs.47,24,790.

- vii. The L'd CIT(A) erred in holding that VRS payments made by the assessee to its employees in connection with Voluntary Retirement Scheme is in the nature of Capital expenditure.

8. At the outset, the Id.counsel for the assessee stated that the AO while framing assessment added a sum of Rs.76,55,667/- being amount written off in the books of accounts of the assessee on account of Voluntary Retirement compensation paid in earlier years. The Id.counsel before us stated that this amount was added back by the AO notwithstanding the fact that the assessee itself disallowed the same in computing the taxable income for assessment year 2000-01. The Id.counsel for the assessee before us filed computation of total income and drew our attention to the relevant addition of VRS payment amortized in the books amounting to Rs.76,55,667/-. When this paper was referred to Id. Senior DR, he only requested that the same can be verified by the AO and the matter can be remanded back. For this, the Id.counsel for the assessee agreed.

9. After hearing both the sides, we remand this matter back to the file of the AO who will verify the fact that the assessee himself disallowed in the computation of income or not and accordingly, will

decide the same. This issue of assessee's appeal is set aside and allowed for statistical purposes.

10. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 15<sup>th</sup> June, 2022 at Chennai.

Sd/-

(मनोज कुमार अग्रवाल)

**(MANOJ KUMAR AGGARWAL)**

लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-

(महावीर सिंह)

**(MAHAVIR SINGH)**

उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,

दिनांक/Dated, the 15<sup>th</sup> June, 2022

**RSR**

आदेशकीप्रतिलिपिअग्रेषित/Copy to:

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|------------------------|--------------------------|-----------------------------|
| 1. अपीलार्थी/Appellant | 2. प्रत्यर्थी/Respondent | 3. आयकरआयुक्त (अपील)/CIT(A) |
| 4. आयकरआयुक्त /CIT     | 5. विभागीयप्रतिनिधि/DR   | 6. गार्डफाईल/GF.            |