

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F" DELHI**

**BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER
&
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

I.T.A. No.1368/DEL/2019
Assessment Year 2011-12

Rohit Jainendra Jain, S-518, Greater Kailash, Part-I, New Delhi.	Vs.	ACIT, Central Circle-5, New Delhi.
TAN/PAN: AAMPJ3039N		
(Appellant)		(Respondent)

Appellant by:	None		
Respondent by:	Shri S.M. Singh, Sr.DR		
Date of hearing:	17	11	2022
Date of pronouncement:	25	11	2022

ORDER

PER PRADIP KUMAR KEDIA, A.M.:

The captioned appeal has been filed by the Assessee against the order of the Commissioner of Income Tax (Appeals)-XXIV, New Delhi ['CIT(A)' in short] dated 17.12.2018 arising from the assessment order dated 28.03.2014 passed by the Assessing Officer (AO) under Section 143(3) of the Income Tax Act, 1961 (the Act) concerning AY 2010-11.

2. The assessee in the instant appeal has challenged the action of the CIT(A) in confirming the penalty of Rs.3,22,773/- on additions of Rs.13,64,574/- on account of deemed dividend under Section 2(22)(e) of the Act. The Assessing Officer alleged that assessee has obtained loans/advances in violation of Section

2(22)(e) of the Act and accordingly the loans/advances amount of Rs.13,64,574/- was deemed to be taxable income in the hands of the shareholder-assessee. The additions were made in the quantum proceedings and the penalty was imposed under Section 271(1)(c) of the Act on such additions. The CIT(A) confirmed the penalty imposed by the Assessing Officer.

3. When the matter was called for hearing, none appeared for the assessee. It is seen that several opportunities were given in the past which remained unavailed. Accordingly, the matter was proceeded *ex-parte*.

4. The simple question that arises for consideration is whether penalty can be imposed by invoking Section 271(1)(c) of the Act on loans and advances taken by the assessee and regarded as deemed dividend chargeable to tax by virtue of Section 2(22)(e) of the Act.

5. The Section 2(22)(e) of the Act creates legal fiction whereby loans/advances received by an assessee are deemed as taxable income in the hands of the recipient assessee in certain circumstances as specified therein. In view of Section 2(22)(e) of the Act, loans/advances amount under consideration artificially partake the character of dividend and brought to tax as deemed dividend. Needless to say, the aforesaid provisions of Section 2(22)(e) has brought a deeming and unnatural concept of treating the repayable loans/advances as taxable income in the hands of the borrower in complete departure with usage of trade and also operation of ordinary provisions. Admittedly, the relevant facts concerning the issue were also made available to the Assessing Officer. Thus, no concealment of any 'particulars' of any fact *per*

se can be reckoned. The assessee has simultaneously claimed that the aforesaid advances have been received in the course of ordinary business and thus not susceptible to provision of Section 2(22)(e) of the Act. Mere rejection of the explanation of the assessee cannot be ground to invoke penalty in every case. Thus, while the provisions of Section 2(22)(e) have been applied, the issue is not entirely free of any debate. As noted, Section 2(22)(e) of the Act is only a deeming provision of law and is not the substantive provision. Such deeming fiction seeks to displace the meaning of loans/advances as commonly understood and attempts to treat it as taxable income. The fiction is thus in the league of extra-ordinary and an ordinary taxpayer may not necessarily understand the complexity of such fictional provision. Thus, in the absence of any perceptible *mala fide*, the Assessing Officer in our view was not justified in invoking the provisions of Section 271(1)(c) of the Act. We thus see no merit in the action of the Revenue for imposing penalty. The order of the CIT(A) is thus set aside and the Assessing Officer is directed to delete the penalty.

6. In the result, the appeal of the assessee is allowed ex-parte.

Order pronounced in the open Court on 25/11/2022.

Sd/-

**[CHALLA NAGENDRA PRASAD]
JUDICIAL MEMBER**

DATED: /11/2022

prabhat

Sd/-

**[PRADIP KUMAR KEDIA]
ACCOUNTANT MEMBER**