

आयकरअपीलीय अधिकरण, जयपुरन्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES,"B" JAIPUR

डा० एस. सीतालक्ष्मी,न्यायिक सदस्य एव श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकरअपील सं./ITA No. 238/JP/2022
निर्धारणवर्ष/Assessment Year :2012-13

Vijay Kumar Vijayvergiya B-228, Baldevpuri, Heeda Ki Mori, Jaipur, Ramganj Bazar, Jaipur.	बनाम VS.	DCIT, Circle-7, Jaipur.
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: AAQPV7905 F		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारिती की ओरसे/ Assesseeby : Shri Vedant Agarwal, Adv.
राजस्व की ओरसे/Revenue by: Ms. Runi Pal, Addl. CIT

सुनवाई की तारीख/Date of Hearing :04/10/2022
उदघोषणा की तारीख/Date of Pronouncement: 30/11/2022

आदेश/ORDER

PER: DR. S. SEETHALAKSHMI, J.M.

This appeal is filed by the assessee aggrieved from the order of the National Faceless Appeal Centre, Delhi, [herein after referred to as "NFAC"], CIT(A) for the assessment year 2012-13 dated 30.03.2022 which in turn arises from the order passed by the DCIT, Circle-07, Jaipur passed under Section 143(3) of the Income Tax Act, 1961 (in short 'the Act') dated 31.03.2015.

2. At the outset of hearing, the Bench observed that there is delay of 10 days in filing the appeal by the assessee for which the Id. AR of the assessee filed an application for condonation of delay with following prayers.

“In the aforementioned matter, it transpires that a delay of 09 days has been marked in filing of appeal in the instant case.

Ld. CIT(A) had passed the order against the Assessee on 30.03.2022 and received by assessee on 31-03-2022. Moreover, as per sub section (3) of Section 253 of the Income Tax Act, 1961 the Assessee was having 60 days time to file an appeal before the Hon'ble Income Tax Appellate Tribunal against the order of the Ld. CIT(A). It is hereby submitted that the Assessee filed an appeal through the online portal of the ITAT on 31.05.2022, which is within the said timeline. Therefore, the Assessee was of the opinion that he could file the copy prior to 30.06.2022 and the same would not be treated as barred by limitation. However, I humbly request to you to kindly condone the delay in the instant case.

Right after filing of such appeal, the Assessee received an e-mail from the e-filing team of Hon'ble ITAT Mumbai, where it was categorically mentioned that the Assessee can file a physical appeal before Hon'ble ITAT Jaipur on or before 30.06.2022. Copy of the e-mail is attached herewith and marked as Annexure-1.

Therefore, the Assessee was of the opinion that he could file the copy prior to 30.06.2022 and the same would not be treated as barred by limitation. However, I humbly request to you to kindly condone the delay in the instant case.”

3. During the course of hearing, the ld. DR fairly not objected to assessee's application for condonation of delay and prayed that Court may decide the issue as deem fit in the interest of justice.

4. We have heard the contention of the parties and perused the materials available on record. The prayer as mentioned above by the assessee for condonation of delay of 10 days has merit and we concur with the submission of the assessee. Thus the delay of 10 days in filing the appeal by the assessee is condoned in view of the decision of Hon'ble Supreme Court in the case of Collector, land Acquisition vs. Mst. Katiji and Others, 167 ITR 471 (SC) as the assessee is prevented by sufficient cause.

5. The assessee has marched this appeal on the following grounds of appeal:-

"1. On the facts and circumstances of the case Ld Lower Authorities grossly erred in making and confirming addition of Rs. 1,50,00,000/- under section 2(22)(e) of the Act in hands of assessee ignoring the fact that the transaction made with M/s Amit Colonizers Ltd was business transaction.

2. On the facts and circumstances of the case Ld Lower Authorities grossly erred in making and confirming addition of Rs. 83,96,410/- under section 56(2)(vii)(C) of the Act.

3. On the facts and circumstances of the case Ld Lower Authorities grossly erred in making and confirming addition of Rs. 6,75,000/- under section 69 of the act,

4. On the facts and circumstances of the case Ld Lower Authorities grossly erred in making and confirming addition of Rs. 30,87,700/- under section 68 of the Act."

6. The brief facts of the case are that the assessee is engaged in business of Real estate. The assessee e-filed its return of income on 22.10.2012 declaring total income of Rs. 15,62,770/-. The case was selected for scrutiny under CASS. A notice u/s 143(2) was issued in this case on 12.08.2013. The same was duly served upon the assessee on 27.08.2013. The assessment was completed u/s. 143(3) of the Act on 31.03.2015 determining the assessed income at Rs. 2,87,21,880/- against the returned income of Rs. 15,62,770/-.

7. Aggrieved from the order of the assessing officer, the assessee has preferred an appeal before the Id. CIT(A). The assessee not finding any favour from the first appellate authority on merits has preferred this second appeal before us on the grounds as raised and reiterated here in above.

Ground no. 1 relates to the addition made for an amount of Rs. 1,50,00,000/- as per provision of section 2(22)(e) of the Act.

8. Apropos to this ground the related fact is that the assessee Mr. Vijay Kumar Vijayvergiya, is the Managing Director of M/s Amit Colonizers Ltd. (M/s ACL). During the A.Y. 2012-13, assessee has shown salary income of Rs. 9,00,000/- from company and income from other sources of Rs. 7,16,809/- (interest from bank

11809/- and commission income of Rs. 7,05,000/-). During the period under consideration, assessee has made investment in the following two properties.

MR. VIJAY KUMRA VIJAYVERGIYA
Heeda Ki Mori, Jaipur
F. Y. 2011-12

ANNEXURE : I

DETAILS OF TOTAL INVESTMENT IN PROPERTY F. Y. 2011-12

S. No.	Particulars	Cost of plot	Registry Charges	Total Cost
1	Plot No. 302, Ghat Gate Bazar, Jaipur	18300000	654556	18954556
2	Plot No. 90, Shivaji Nagar, Civil Lines, Jaipur	14280000	440542	14720542
	Total			33675098

DETAILS OF SOURCE OF INVESTMENT IN PLOT NO.302

S. No.	Source of investment	Amount (₹)
1	Loan from PNS, Bapu Nagar, Jaipur	12200000
2	Fund received from Sita Ram Gupta	750000
3	Fund received from Arun Kumar Goyal HUF	1300000
4	Out of Funds received from Amit Colonizers Ltd. under MOU	4704556
	Total	18954556

DETAILS OF SOURCE OF INVESTMENT IN PLOT NO.90

S. No.	Source of investment	Amount (₹)
1	Loan from ICICI Bank	10000000
2	Out of Funds received from Amit Colonizers Ltd. under MOU	4720542
	Total	14720542

In the course of the assessment proceeding, assessee filed details of the sources of these investments. On the observation of the same, it has been gathered that

assessee has substantial shareholding of the company i.e. M/s Amit Colonizers Ltd. i.e.. as on 31.03.2012 - 63.63% shareholding and as on 31.03.2011 - 46.19% shareholding, in the above-mentioned company. It was also noted that the company M/s Amit Colonizers Ltd. is a limited company and it was having Reserve & Surplus, as on 31.03.2012 Rs. 2,59,05,745/- (as on 31.03.2011 - Rs. 1,79,81,817/-) and duly reflected in its balance sheet. From the Balance sheet of the company, as on 31.03.2012, it is noticed that the company has shown Rs. 1,66,45,521/- as "Long term loans & Advances" under the head non-current assets. On perusal of relevant details, furnished by the assessee, it has been noted that out of this amount of Rs. 1,66,45,521/-, an amount of Rs. 1.50 Crore, is given by the company to assessee as an "Loan & Advance", which is categorized in the Balance sheet as "Unsecured, Considered Good". All these facts suggest that a company, having substantial amount of Reserve & Surplus, has advanced its director having major shareholding, an amount of Rs. 1.50 Crore, as a Loan & Advance, which was considered as covered under the ambit of Sec. 2(22)(e), as such. On being confronted, the assessee has claimed that the company M/s Amit Colonizers Ltd. had advanced the amount of Rs. 1.50 Crore, as security deposit, against the land owned by him, which was to be used in a joint venture, towards, a proposed building construction (a residential apartment, as agreed upon in the relevant MOU dated. 04.08.2011). Assessee has also furnished copy of this MOU and his account in the books of company, which

shows the manner in which company has advanced Rs. 1.50 crore, to the assessee, under consideration. Based on these set of fact that the ld. AR, vide this office letter dated 09.02.2015, asked to show cause as to why this advanced of Rs. 1.50 crore received from company may not be treated as deemed dividend u/s 2(22)(e). As the substantial portion of amount received as an advance from M/s ACL has been admittedly invested by you in purchase of immovable properties. One of the properties is at 302, GhatgateBazar, Jaipur, which is the subject matter of above discussed MOU. Based on the facts of the case assessee was asked to show cause as to why the MOU entered into, with M/s ACL should not be treated as a sham document., which just prepared to give a colour of genuine transaction between the assessee and M/s. ACL, which actually was a clear cut loan amount, advanced to the assessee for making investment in his name. Therefore, the assessee was show caused as to why this amount of Rs. 1.50 Crore should not be treated as deemed dividend within the meaning as per section 2(22)(e) of the IT Act, 1961. The ld. AR of the assessee vide its letter dated 20.02.2015, submitted his point-wise reply stating that the assessee has received security deposit of 1,50,00,000/- in the regular course of business from the company under MOU development agreement for construction of flats and commercial shops on the property under his ownership. The Company has disclosed true character of the transaction under consideration by adding a new sub head as "Security Deposit" which further categorized whether it

is secured or unsecured and whether it is good or doubtful complying the provisions of the Companies Act, 2013. Major Head does not change the character of the financial transaction if the sub head otherwise speaks true one. We have already furnished the details of security deposits covering other security deposits also. Therefore, it is not justified to consider the security deposit as loans and advances simply on the basis that it has been disclosed under the head Long term loans and advances ignoring the disclosure requirement under the particulars sub head of the schedule III format prescribed under the Companies Act. Against this contention the ld. AO noted that the assessee's logic that merely by categorizing any transaction, as sub head loans and advances, does not partake its character as loan and advance, as the real intention and purpose of such transaction is relevant, in this regard his view is that just by disclosing any transaction as security deposit does not leads to the conclusion that this is the security deposit, as such. Actually, accounting treatment of any transaction is not a deciding factor to ascertain the true character of any transaction. It is always to be judged in the light of all the relevant set of facts and circumstantial evidences. The ld. AO therefore noted that the property, in question, for which MOU has been entered into, has been purchased by assessee through purchase deed dated 08.08.2011 and a reference of this deed is also mentioned on page No. 2 of this MOU. How it can be believed that the property which was purchased by assessee on 08.08.2011, can be the subject matter

of an MOU dated 04.08.2011 and how it can find place in that MOU dated 04.08.2011. Moreover, this MOU is neither registered nor notarized and even not witnessed. In this regard it is submitted by the assessee that they have already purchased the property through agreement dated 25.12.2010 entered into between him and various parties cumulatively called as seller. In pursuance to the said agreement the property was got registered on 08.08.2011 in the name of the assessee. We have already submitted the copy of such agreement at the time of our previous reply which has been remained to be considered, by you while issuing show cause notice. Now, we are again enclosing herewith copy of the said agreement for your ready reference. As per agreement the assessee has paid the seller 5,21,000/- as a part payment of the sale consideration. The balance payment of the sale consideration also made on 04.08.2011 as evident from the details of payment in the registry. On making whole payment of the sale consideration of the property, assessee got the possession of the property and the registry was scheduled to be registered on 08.08.2011 instead of 04.08.2011 due to some unavoidable reasons. The meeting of the board of directors of the company was held on 04.08.2011 to discuss the proposal of construction project on the property scheduled to be registered on 08.08.2011 in the name of the assessee. In this meeting it was resolved that the main business of the company is colonization and construction. It is better opportunity available to the company to expand its

business by accepting the proposal of the managing director unanimously, it was agreed that work of construction of residential flats and commercial shops on the said property should be taken up immediately on such verbal terms and conditions as mutually agreed upon between the company and assessee in the meeting of M/s. ACL. The terms and conditions as mutually decided in the board meeting shall be taken in writing through MOU at convenient time of both the parties. The certified copy of the said resolution was placed on record. Against the submission of the assessee, the Id. AO noted that MOU dated 04.08.2021 does not have any evidential value in its own, being unregistered, non-witness and signed by the same individual in both of the capacity, i.e. in first party as well as in second party. However, no minutes of this so called meeting, held on 04.08.2021, in order to discuss the proposal of director Mr. Vijay Kumar, provided by the Id. AR to support its submission made. Without any documentary evidence, the assessee is just trying a making a story to established that all the director of the board were agreed to enter in an MOU, which was on such “verbal terms and conditions as mutually agreed by the company” and the second party i.e. director and moreover the term and condition of MOU would have to be taken in writing on any other convenient day. All these unreasonable and un realistic facts as extended by the assessee, simply suggest that this is just eye wash and an afterthought to

circumvent the provision of section 2(22)(e). The ld. AO stated that the explanation given by the assessee is found not acceptable, for the following incremental facts-

1. No documentary evidence of such meeting held on 04/08/2011 has been provided.
2. No minutes of the above said meeting are also filed to support the story.
3. It is highly unbelievable that the term and condition of MOU had also not been decided in writing in the meeting itself and only mutual consent of all the directors of the board, on verbal term and condition of the MOU, was taken. In normal business affair, No company will agree to take such a huge step of releasing a huge amount of Rs. 1.5 crore, in favour of an individual, without any documentary agreement of term and conditions. Here, it is also pertinent to note that the so- called MOU is an internal arrangement, in between the interested and same party i.e. the assessee, who was playing dual role in the proposed joint venture, as one hand managing director of the company and on the other hand second party in individual capacity. Such arrangement is not free from the doubt about its genuinely, unless proved otherwise. In this case the assessee has failed to do so.
4. Moreover, the original copy of the resolution, passed on dated 08/08/2011 (but effective from 04/08/2011) highly relied upon by the assessee, was never produced before the undersigned, during the complete assessment

proceeding. Only a two pages typed material, dated 16/02/2015, referring the passing of resolution have been submitted. The first page is on the letter head of the company but not signed by any one. The second page which is having content of so called resolution passed, is on a plain paper and not on the letter head of the company. This second page is signed by Rajesh Kumar Vijayvergiya, director of the company, who is the close relative of the assessee. On first page, there is reference of Mr. Bhawani Singh Nayak one of the director of the company, who had given declaration that the assessee has purchased property at 302, Ghategate bazaar and the assessee wants to develop this plot with the company. Again there is reference of one Bhawani Singh Nayak declaring that this property will be registered on 08/08/2011 in the name of assessee. Surprisingly, no signatures of this Bhawani Singh Nayak are available on the so called "certified copy of resolution". The sign of Mr. Rajesh Kumar Vijayvergiya (family member of the assessee) is available on second paper i.e. not company's letter head. Thus it is evident that the so called MOU is full of error, inconsistency and improbabilities, as discussed above. In nutshell the so-called MOU is full of inconsistency, also lacking essential characteristics to make it a genuine in nature.

5. Most surprisingly, in the so called certified copy of resolution, nothing is mentioned about extending any security deposit to be given to the Assesses,

and not the arrangements of this so called security deposit to be given to assessee. This fact also proves that the so-called story of security deposit is an after thought to give a colour of routine business transaction, to bypass applicability of the Sec. 2(22)(e).

In view of all the observation made above it is evident that the all the arguments made by the assessee, in this regard, are nothing but an eye-wash and afterthought, just to circumvent the provision of Sec. 2(22)(e). The ld. AO also stated that in view of the above facts show cause as to why the MOU entered into with M/s ACL should not be treated as a sham document, which just prepared to give colour of genuine transaction. In this regard, the assessee submitted that the MOU has been taken in writing copy of ledger account of M/s. ACL Mall A/c stating in the books of the company as on 16.02.2015 and actual photograph of the site were placed on record of the ld. AO also submitted that it is immaterial whether the MOU is registered, notarized, witnessed or not. It is a document enforceable under the eyes of law and valid document and the same cannot be considered as sham document. The ld. AO referred the explanation of the assessee as it is patently wrong and untenable, because in the beginning of MOU. "मेमोरन्डमऑफअन्डरस्टैन्डिंगआजदिनांक 4 अगस्त 2011 इस्वीको". Thus this specific mention of date of an 04.08.11 in the MOU belies the above argument of the assessee, at the very outset, itself is not

tenable. Moreover, there is no reference, in the MOU, of any so-called board meeting held on 04/08/2011 or any resolution passed therein, as claimed. Even MOU is not signed by any of the director except that assessee himself in both the capacity i.e., director of the company and individual one. Therefore, reference of registration details of property, which was happened subsequently, on dated 08.08.2011. This peculiar aspect proves beyond doubt that the MOU is nothing but an afterthought and fabricated in nature, just to bypass the ambit of the Sec. 2(22)(e), when applicability of same was raised during the assessment proceeding. The ld. AO further noted that the assessee had taken substantial funds from the company, in which he is managing director for the purpose of purchase of this property and he does not want to show it as a loan or advance, to avoid the Sec. 2(22)(e) of the Act. Thus, he just tried to create a document to show this deposit of regular business transaction in nature and not loan and advances, as such. Being an in-house argument, it was totally open to the assessee to create any legal document, at any point of time (real time or ante-dated) in such a manner which suits to him/them, in all respects. It is also pertinent to note that the assessee was the only signatory of MOU, in both the capacities. It is also a factual matter that the property was purchased with the initial payment of Rs. 50 lacs received, on 04/08/2011. from the company. Subsequently out of total cost of the land the assessee paid for the property i.e. Rs. 1,83,00,000/ the company had advanced of Rs. 1,50,00,000/ which

amount to almost 81% of cost of the property. This proves that it was the company, which has facilitated the assessee to acquire the ownership rights of the property which was later on offered by him to the same company, in the joint venture with the company itself. Thus, the company has allowed him to have stake in a JV, for which the assessee has not contributed in any manner. This sort of favour is possible only in the in-house business affairs, not in a genuine financial deal. All the above discussion, makes it crystal clear that the so called MOU is nothing but a post-created document, much after the dates 04/08/2011 and 08/08/2011 (probably during the course of assessment proceeding when the issue came up for examination) and it is not a valid document in the eye of law for the detailed reasons discussed as above. It is therefore, held by the Id. AO that this MOU is a sham document deserves to be ignored, as such and based these facts the Id. AO asked the assessee as to why this amount of Rs. 1,50,00,000/- should not be treated as deemed dividend within the meaning as per section 2(22)(e) of the IT Act, 1961. In response the assessee submitted that section (2)(22)(e) of the Act refers to only any payment of any sum by way of advance or loan. It does not refer to or talk of a security deposit. In response Id. AO stated that the submission/ arguments of the assessee have been given thoughtful consideration but found not convincing for the following reasons that in a case of genuine security deposit, there must be one party with a clear title of holding of an asset against which he is demanding security

deposit. In our case, this is not so (the assessee was not owner of the asset as on 04/08/2011, against which he received amount of Rs. 50 lacs on 04/08/2011). Here the assessee is the M.D. of the company and giving security deposit to himself on behalf the company, in a deal, as if he has not faith in himself when he acts on behalf of a company, in which he is having major stakes. This peculiar situation itself suggests its absurdity of the assessee's claim. The security deposit story is also find sham and non-trustworthy as the so called MOU is signed by the same and only party i.e. the assessee himself, playing dual roles). He further observed that Security amount should be in a reasonable proportion of the value of the asset involved, say 20% or 25% thereof or like so. In our case, this is riot so (the value of the property was 1.84 crore and the security amount was 1.50 crore) where it constitutes the 80% of the value of the property. Thus, it amounts to financing a property than taking back against a security-deposit in a in-house business deal, which amounts to a total irrational approach and could not be accepted, in a given situation. Thus, the MOU and its conditions are prima facie not a genuine in nature, making it a fake document. The assessee also submitted that the company is exclusively engaged in the real estate business since its inception i.e. purchase and sale of property, colonization, construction, property development under development agreement, etc. It has provided security deposit in the regular course of its business under MOU for construction of flats and commercial shops on the

property whose ownership presently lies with the assessee. It is also important to note here that the payment of security deposit of 1,50,00,000/ has been made on different dates ranging from 04.08.2011 to 23.01.2012 to the assessee as per Clause No. 2 of the MOU. The assessee has received only 50,00,000/ on 04.08.2011 from the company against the total agreed amount of security deposit while he has made total payment of 1,61,00,000 against the property up to 04.08.2011. The details of payment against property have been mentioned in the registry which is reproduced here for ready reference:-

Date	Name of Seller	Amount
25.12.2010	Cumulatively in cash	21,000/-
27.12.2010	Mohd. Yusuf	2,50,000/-
27.12.2010	Mohd. Yusuf	2,50,000/-
04.08.2011	Rashidan Begum	37,00,000/-
04.08.2011	Mohd. Yusuf	33,89,500/-
04.08.2011	Rashidan Begum	33,00,000/-
04.08.2011	Modh. Arif	20,00,000/-
04.08.2011	Mohd. Yusuf	33,89,500/-
04.08.2011	Mohd. Harun	20,00,000/-
	Total	1,83,00,000/-

The above facts confirm that this is purely a business deal not for the benefit of the assessee but for the benefit of the company. Not agreeing the contention of the assessee, the ld. AO discussed the origin of rights over the property in question by the assessee or of company in which the assessee is managing director. The first agreement made on 25/12/2010 (the date on which property was booked by giving a token money of Rs. 21,000/- in cash as a signing amount) is the most relevant document for this purpose. This document says that the deal was finalized between the seller parties and the assessee in the capacity of director of M/s Amit Colonizers Ltd. The buyer's name is mentioned as M/s Amit Colonizers Ltd. through Director of Shri Vijay Kumar Vijayvergiya. This proves it beyond doubt that it was the company who made negotiation for purchase of property in question and who gave Rs. 21,000/- as an signing amount to the seller parties and the assessee was simply the executor on behalf of company. A simple glance of assessee's balance sheet as on 31.03.2011 make it crystal clear that if the above said advance of Rs. 21,000/- (two cheques for Rs. 5 lacs) against property booking in December, 2010 had been given by assessee only than why this advance is not appearing in his closing balance sheet on 31.03.2011. It makes clear that this token money was not advanced by assessee but by company only. This fact also suggest that it was well planned from very initial stage that company will develop the

project on this property. The second thing, that relevant is the management of funds and its proportion with regard to so called security deposit and the total cost of property and also cost of project. The company M/s ACL has given 1.50 crore as security deposit to the assessee in respect of a property which itself is of a total worth of Rs. 1.83 crore. It is highly disproportionate and more interestingly the funds of 1.22 crore have been arranged by the assessee from the bank on the basis of margin money of Rs. 50 lacs had received as a part payment of security deposit from the company. In other words, we can say that it was the company who arranged/facilitated to arrange the funds of Rs. 1.72 crore, out of total requirement of Rs.1.83 crore, for the assessee, who is managing director of the company itself. As can be seen from the details submitted by the assessee that funds of Rs. 1.50 crore were paid by company to the assessee. during the period from 04/08/2011 to 23/01/2012 (including equity share of Rs. 22,69,300/-) and the funds of Rs. 50 lacs had received on 04/08/2011 were paid to the seller parties at the time of registry of documents but the balance funds, which were paid by the company to the assessee, in due course of time, were utilized by the assessee in purchase of other property, at Plot no. 90, Shivaji Nagar, Civil Lines, Jaipur. This clearly proves that it was only the assessee who enjoyed the benefits from the money so received from the company M/s ACL., in the name of security deposit. He had taken funds from the company for initial payment of property and from the same,

he could be able to raise further funds as bank loan and became owner of property at 302, Ghat gate Bazar, Jaipur, for which he made joint venture MOU with the company to make a business cum residential complex in the profit sharing ratio of 50% 50% and from rest of the funds out of so called security deposit has helped him to become owner of one more property at Plot no. 90. Shivaji Nagar, Civil Lines, Jaipur. In this manner. the assessee derived most of the benefits from the transaction made with company M/s ACL. The assessee further submitted that the company is a public limited company in which there are more than 130 members from various sections of the society having about 48 % shareholding in the company and hence it is not covered by the provisions of section 2(22)(e) of the Act. We have already furnished the copy of Memorandum and Articles of Association of the company having its incorporation certificate and list of members for your kind perusal and record. The ld. AO did not agree with that Amit Colonized Pvt. Ltd. is not a company which covered under the definition of a company in which public are substantially interested, as provided by the Act. Based on these observations the ld. AO held that the transaction is well covered u/s 2(22)(e) and that the amount of Rs. 1.50 crore was the amount, given as advance to its director (the assessee), who is stake holder of more than 10% of its shares, is squarely covered under deemed dividend u/s 2(22)(e) of the IT Act and the

arguments of security deposit is nothing but a colourable device to circumvent the provisions of section 2(22)(e).

9. Against this addition the Id. CIT(A) holds a view that the whole transaction was designed by the managing director (assessee in this case) of the company to enrich himself through advance of money without declaring Dividend the provision of section 2(22)(e) of Income Tax Act 1961 (and its equivalent section in Income Tax act 1922) is brought into operation as anti abuse measure. The case laws which are relied upon by the appellant are different factually and are not applicable in this case. Various inconsistencies and errors in documents pointed out by the AO (also accepted by the assessee) clearly show that the financial transactions are colourable device with a motive to escape the rigour of Sec 2(22) (e). Hence, it is not a business transaction which can be kept outside the purview sec 2(22)(e) Therefore, the decision taken by the Ld. Assessing Officer by treating the amount as deemed dividend is affirmed and the ground of appeal is, hereby dismissed.

10. The Id. AR of the assessee filed a detailed Paper book containing the following relied upon the documents which reads as under:-

S.NO.	PARTICULARS	PAGE NO.
1.	Copy of MOU dated 04-08-2011.	1-7

2.	Copy of Sale deed dated 08-08-2011.	8-31
3.	Copy of sale agreement date 25-12-2010	32-40
4.	Copy of confirmation of Creditors.	41-44
5.	Copy of account of WIP ACL MALL GHATGATE BAZAR, along with ledger of sub accounts in the books of M/s Amit Colonizers Ltd	45-68
6.	Copy of Resolution dated 04-08-2011 passed in board meeting of M/s Amit Colonizers Ltd for MOU for property development.	69-70
7.	Copy of reply filed to ACIT, Circle-7 during assessment proceedings dated 31-10-2014.	71-73
8.	Copy of reply filed to ACIT, Circle-7 during assessment proceedings dated 19-01-2015.	74-76
9.	Copy of reply filed to ACIT, Circle-7 during assessment proceedings dated 28-01-2015.	77-78
10.	Copy of reply filed to ACIT, Circle-7 during assessment proceedings dated 09-02-2015.	79-82
11.	Copy of reply filed to ACIT, Circle-7 during assessment proceedings dated 20-02-2015.	83-92
12.	Copy of reply filed to ACIT, Circle-7 during assessment proceedings dated 10-03-2015.	93-97
13.	Copy of MOU dated 30-11-2011	98-100
14.	Copy of ITR along with Audited Balance Sheet, P & L account and 3CD of M/s Amit Colonizers Ltd for A.Y. 2012-13	101-136
15.	Copy of ITR along with computation of income, Capital account, Balance Sheet and source of income for plot no. 90 & 302 of Mr. Vijay Kumar vijayvergiya for A.Y. 2012-13	137-141
16.	Copy of profit and loss account along with details of expenditure for the period 01.04.2017 to 20.11.2017 for Hotel Vijay Palace	142-148
17.	Copy of FSSAI Certificate along with form ST-2 of Hotel Vijay Palace.	149-151
18.	Copy of Map along with Catalogue of Hotel Vijay Palace	152-157
19.	Copy of written submission filed with CIT(A)	158-165

Based on the above set of documents the Id. AR of the assessee of reiterated the submission made before the lower authority and submitted that the transaction between the company and the assessee is pure commercial transaction and thus it does not attract the provision of section 2(22)(e), as the company is public limited company where in public are substantially interested and this being the fact there is no restriction on transfer of shares of the company the provision of section 2(22)(e), will not apply. He has further submitted that the assessee has paid substantial amount of Rs. 1,61,00,000/- on 04.08.2011 and in fact company has paid only 50,00,000/- as on that against the security deposit part payment and the subsequent payment is made in accordance with that MOU. Not only that the assessee has entered into an agreement to sell of the said property in the year 2010 which is not considered the sham document then in that event based on that ownership document the company and the assessee entered into a commercial transaction cannot be considered as sham or within the meaning of section 2(22)(e) of the Act.

11. Per contra, the Id. DR heavily relied upon the findings of the Id. AO as well as of the CIT(A) which is very well on facts and in law. The Id. DR also filed a

copy of the judgment in relation to ground no. 1 the decision cited by the ld. DR are as under:-

- M/s Exotica Housing V. ITO (ITA No. 5188/Del/2019).
- DCIT Vs. Bsant Bansal (ITA No. 610/JP/2012).
- Sanjay Subhashchand Gupta vs. ACIT 141 taxmann.com 369 (Mumbai-Trib.)(2022)
- Vikram Krishna vs. PCIT 114 taxmann.com 197 (SC) (2020)
- PCIT vs. Glandder Ceramics Ltd. 127 taxmann.com 820 (Gujarat HC) (2021)

12. We have taken note of the findings giving for the judgments relied upon by the revenue and finds that all the judgments are related to a company were public was not substantially interested and also related as to whether the deemed dividend is to be taxed in the hands for the recipient company or the issuing company, therefore, the facts of these case and the case law relied upon are different on facts and are not applicable in ground No. 1 raised by the assessee. We have also persuaded the findings recorded by the ld. AO as well as the findings of the ld. CIT(A), the findings are in the nature of factual aspects. From the orders of the lower authorities bench noted that the assessee has already executed an agreement

to sale for the impugned property on 25.12.2010. When the registration of the property scheduled on 08.08.2011 the assessee has invested a sum of Rs. 1,61,00,000/- on this property. The company till 04.08.2011 given only advance of Rs. 50,00,000/- in accordance with the MOU though the property was scheduled to be registered in the name of the assessee on 08.08.2011. Thus, looking to these non-controverted fact placed on record we are of the considered view that the transaction entered by the assessee and M/s. ACL are commercial in nature and not in the nature of loans and advances. The assessee has financed this property with the bank based on these advance money will alone not attract the provision of section 2(22)(e) and the property was already subject to agreement to sale and thus the assessee has already entered into an agreement to sale for this property on 25.12.2010. Based on these set of facts the transaction cannot be considered as loan by the ACL to the assessee. We have also analyzed the contention of the ld. AR of the assessee that looking to the facts and circumstances of the case, the assessee is out of the preview of the provisions of Section 2(22)(2) of the Act r.w.s. 2(18) of the Act. Therefore, it is better to understand that the provisions of both these sections of the Act and the same is extracted herein below:-

“*Section 2(22)(e)* any payment by a company, **not being a company in which the public are substantially interested**, of any sum (whether as representing a part of the assets of the company or otherwise) made after the 31st day of May, 1987, by way of advance or loan to a shareholder, being a person who is the beneficial owner of shares (not being shares entitled to a fixed rate of dividend whether with or without a right to participate in profits) holding not less than ten per cent of the

voting power, or to any concern in which such shareholder is a member or a partner and in which he has a substantial interest (hereafter in this clause referred to as the said concern) or any payment by any such company on behalf, or for the individual benefit, of any such shareholder, to the extent to which the company in either case possesses accumulated profits;

but "dividend" does not include—

- (i) a distribution made in accordance with sub-clause (c) or sub-clause (d) in respect of any share issued for full cash consideration, where the holder of the share is not entitled in the event of liquidation to participate in the surplus assets ;
- (ia) a distribution made in accordance with sub-clause (c) or sub-clause (d) in so far as such distribution is attributable to the capitalised profits of the company representing bonus shares allotted to its equity shareholders after the 31st day of March, 1964, and before the 1st day of April, 1965;
- (ii) any advance or loan made to a shareholder or the said concern by a company in the ordinary course of its business, where the lending of money is a substantial part of the business of the company ;
- (iii) any dividend paid by a company which is set off by the company against the whole or any part of any sum previously paid by it and treated as a dividend within the meaning of sub-clause (e), to the extent to which it is so set off;
- (iv) any payment made by a company on purchase of its own shares from a shareholder in accordance with the provisions of section 77A^{14a} of the Companies Act, 1956 (1 of 1956);
- (v) any distribution of shares pursuant to a demerger by the resulting company to the shareholders of the demerged company (whether or not there is a reduction of capital in the demerged company).

Explanation 1.—The expression "accumulated profits", wherever it occurs in this clause, shall not include capital gains arising before the 1st day of April, 1946, or after the 31st day of March, 1948, and before the 1st day of April, 1956.

Explanation 2.—The expression "accumulated profits" in sub-clauses (a), (b), (d) and (e), shall include all profits of the company up to the date of distribution or payment referred to in those sub-clauses, and in sub-clause (c) shall include all profits of the company up to the date of liquidation, but shall not, where the liquidation is consequent on the compulsory acquisition of its undertaking by the Government or a corporation owned or controlled by the Government under any law for the time being in force, include any profits of the company prior to three successive previous years immediately preceding the previous year in which such acquisition took place.

Explanation 2A.—In the case of an amalgamated company, the accumulated profits, whether capitalised or not, or loss, as the case may be, shall be increased by the accumulated profits, whether capitalised or not, of the amalgamating company on the date of amalgamation.

Explanation 3.—For the purposes of this clause,—

- (a) "concern" means a Hindu undivided family, or a firm or an association of persons or a body of individuals or a company ;
- (b) 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 ;”

“Section 2(18) "**company in which the public are substantially interested**”—a company is said to be a company in which the public are substantially interested—

- (a) if it is a company owned by the Government or the Reserve Bank of India or in which not less than forty per cent of the shares are held (whether singly or taken together) by the Government or the Reserve Bank of India or a corporation owned by that bank ; or
- (aa) if it is a company which is registered under section 25 of the Companies Act, 1956 (1 of 1956)⁹ ; or
- (ab) if it is a company having no share capital and if, having regard to its objects, the nature and composition of its membership and other relevant considerations, it is declared by order of the Board to be a company in which the public are substantially interested :

Provided that such company shall be deemed to be a company in which the public are substantially interested only for such assessment year or assessment years (whether commencing before the 1st day of April, 1971, or on or after that date) as may be specified in the declaration ; or

- (ac) if it is a mutual benefit finance company, that is to say, a company which carries on, as its principal business, the business of acceptance of deposits from its members and which is declared by the Central Government under section 620A¹⁰ of the Companies Act, 1956 (1 of 1956), to be a *Nidhi* or Mutual Benefit Society ; or
- (ad) if it is a company, wherein shares (not being shares entitled to a fixed rate of dividend whether with or without a further right to participate in profits) carrying not less than fifty per cent of the voting power have been allotted unconditionally to, or acquired unconditionally by, and were throughout the relevant previous year beneficially held by, one or more co-operative societies ;
- (b) if it is a company which is not a private company as defined in the Companies Act, 1956 (1 of 1956)^{10a}, and the conditions specified either in item (A) or in item (B) are fulfilled, namely :—
 - (A) shares in the company (not being shares entitled to a fixed rate of dividend whether with or without a further right to participate in profits) were, as on the last day of the relevant previous year, listed in a recognised stock exchange in India in accordance with the Securities Contracts (Regulation) Act, 1956 (42 of 1956), and any rules made thereunder ;
 - (B) shares in the company (not being shares entitled to a fixed rate of dividend whether with or without a further right to participate in profits) carrying not

less than fifty per cent of the voting power have been allotted unconditionally to, or acquired unconditionally by, and were throughout the relevant previous year beneficially held by—

(a) the Government, or

(b) a corporation established by a Central, State or Provincial Act, or

(c) any company to which this clause applies or any subsidiary company of such company if the whole of the share capital of such subsidiary company has been held by the parent company or by its nominees throughout the previous year.

Explanation.—In its application to an Indian company whose business consists mainly in the construction of ships or in the manufacture or processing of goods or in mining or in the generation or distribution of electricity or any other form of power, item (B) shall have effect as if for the words "not less than fifty per cent", the words "not less than forty per cent" had been substituted ;

13. In respect of ground No. 1, in addition to the facts of the case the provision of section 2(22)(e) shall not apply but even otherwise on going through the provisions of above sections it is eventually clear that the assessee company is not a private limited company and the shares of the companies are not restricted for transfer, therefore, considering the decisions of the Hon'ble Jurisdictional High Court in case of CIT vs National Bearing Com Ltd. 208 ITR 872, while considering the identical issue has held as under:-

“ We have heard the arguments of both learned counsel. It has been submitted by Shri Bapna, on behalf of the Department, that simply because the Department has failed to file the reference in any particular year it may be for any reason then the order of the Income-tax Officer cannot be said to be binding as each year is a separate proceeding. We have considered this point. Under the income-tax law, though the principles of res judicata are not applicable and the assessee as well as the Department C is free to challenge the order in a different year, judicial propriety requires consistency. Without going much into the point since the matter is being examined on the merits we need not adjudicate or decide the issue on this ground alone. The provisions of section 2(18)(b)(B) are as under:

“ shares in the company (not being shares entitled to a fixed rate of dividend whether with or without a further right to participate in profits) carrying not less than fifty per cent. of the voting power have been allotted unconditionally to, or acquired unconditionally by, and were throughout the relevant previous year beneficially held by-

- (a) The Government, or
- (b) A corporation established by a Central, State or provincial Act,
- (c) any company to which this clause applies or any subsidiary F company of such company if the whole of the share capital of such subsidiary company has been held by the parent company or by its nominees throughout the previous year."

The company in which the public are substantially interested is a company where shares in the company carrying not less than 50 per cent. of the voting power have been allotted unconditionally to, or acquired unconditionally by and were throughout the relevant previous year beneficially held by any company to which this clause applies.

In the present case, shares of more than 50 per cent. of the voting H power have been allotted unconditionally to or acquired unconditionally by a company in which the public are substantially interested. The finding which has been given by the Tribunal in this regard is on the basis of the evidence on the record that the condition is satisfied. Regarding the second condition whether during the previous year the shares were freely transferable or not, the power of the directors not to transfer the shares was held of a general nature and it was observed that there is no evidence of the directors having acted in a manner refusing to transfer at any point of time any share, as no instance was found for refusal to transfer the shares and on the other hand, the assessee has submitted that there had been many transfers of shares in spite of this clause and, therefore, the Tribunal came to the conclusion that the affairs of the company or the shares carrying more than 50 per cent. of its voting power were at no time during the relevant previous year controlled or held by five or less persons. It was observed that it is common ground that more than 50 per cent. of the shares of the assessee company were held by other C public limited companies and the assessee-company must be treated as company in which the public are substantially interested. Regarding the allegation that the assessee-company acted in concert with other companies of the Birla group, it was observed that no material on record has been placed to come to that conclusion.

The finding which has been recorded by the Tribunal is basically of the facts and it has not been pointed out as to how they are perverse. No evidence has been pointed out which has not been considered by the Tribunal nor has any question been framed regarding the perversity of any finding of fact.

In *Shree Krishna Agency Ltd. v. CIT* [1971] 82 ITR 372 (SC), question with regard to the interpretation of article 37 of the articles of association of the assessee which provided "the directors may at any time in their absolute and uncontrolled discretion and without assigning any reason decline to register any proposed transfer of shares was considered by the apex court to find as to whether the assessee-company could be regarded as one in which the public were substantially interested within the meaning of the Explanation to section 23A(1) of the Indian Income-tax Act, 1922. It was held that in

the absence of evidence to show that the directors had been exercising their power under article 37 freely and virtually eliminated the element of free transferability of the shares as provided in the articles of the company and in the absence of restriction in any other articles of the company interfering with the free transfer of shares by one shareholder to another, the mere existence of an article like article 37 would not affect the free transferability of the shares within the meaning of the Explanation to section 23A(1) of the Indian Income-tax Act, 1922. The assessee-company was, therefore, regarded as one in which the public were substantially interested. It was held that article 37 did not confer any uncontrolled or unrestricted discretion upon the directors to refuse to register the transfer of shares in a given case; in other words, the directors could not act arbitrarily or capriciously. The power conferred by such an article was of a fiduciary nature, which had to be exercised by the directors in the best interests of the company for preventing any undesirable person becoming a member, if that was likely to be prejudicial to the interests of the company; it was a power which had to be reasonably exercised for protecting the interests of the company. Free transferability of shares was a normal and common feature of limited companies and article 37 could not by itself be regarded as a restriction on the transfer of shares.

On the basis of the various findings which have been given by the Tribunal and on the plain reading of the provisions of section 2(18) of the Act, we are of the opinion that all the conditions are duly fulfilled and the provisions of section 104 are not attracted.

The Income-tax Appellate Tribunal was justified in coming to the conclusion that the provisions of section 104 are not attracted. The reference is accordingly answered in favour of the assessee and against the Revenue. No orders as to costs.”

14. Respectfully following the similar view of the jurisdictional High Court we are of the view that since, the provisions of Section 2(22)(e) is directly not applicable in this case, we do not concur with the view of the lower authorities and based on the set of facts it is clear that since, the security deposits received by the assessee from a company wherein the public are substantially interested even though not considered as commercial transaction then even based on the above findings the provisions of section 2(22)(e) is not applicable and therefore, we

vacated the addition made by the Assessing Officer and thus the ground No. 1 of the assessee is allowed.

15. As regards in ground No. 2, the ld. AO noted from the ledger account, copy of Mr. Vijay Kumar Vijayvergiya in the books of M/s Amit Colonizers Pvt. Ltd. It has been noticed that out of the total amount received of Rs. 1.50 crore, assessee has received Rs. 22,69,300/- in kind i.e. 2,26,930/- number of shares @ face value of Rs. 10/-. As assessee has received these shares from company M/s Amit Colonizers Pvt. Ltd. @ face value of Rs. 10/- in such situation, provisions of section 56(2) along with clause (vii) are clearly applicable. In view of the that position, it is worth to be noted here that M/s Amit Colonizers Pvt. Ltd. is an unlisted company (not listed in any recognized stock Exchange) therefore, the fair market value of the unlisted equity share of this company has to be determined in the manner as provided under rule 11UA of I.T. Rules, 1962. As the assessee has received shares of Amit Colonizers Pvt. Ltd. @ face value of Rs. 10/- whereas the fair market value of these shares as on 31.03.2012 comes @ 47/-. The difference in the face value and fair market value of the shares is (47-10) Rs. 37. The total number of shares, received by the assessee are 2,26,930. Accordingly, the difference in value of total number of shares comes to $226930 \times 37 = 83,96,410/-$. In view of the above, the ld. AR vide order sheet entry dated 27.02.2015 was asked to

show cause as to why the deemed consideration of Rs. 83,96,410/- received by assessee, over above of the face value of equity shares may not be taxed u/s 56(2)(vii)(C) of the Income Tax act, 1961.

16. Against this assessee contended that the provisions of section 56(2)(vii)(c) of the Act uses the wording “receives any property”. It means the intension of law is clear that there should be an existing property both in the hands of a person who gives it and a person who receives it. It is further supported by clause (d) of explanation given in the said section wherein the word property has been explained to mean as capital asset. It means any property which is a capital asset both in the hands of giver and receiver of it becomes the subject matter of the section 56(2)(vii)(c) of the Act. In the case of fresh allotment of equity shares (as is the case with the assessee, there is no such situation- the equity shares are not owned by the company. The moment, at which the allotment of equity shares is made, they come into existence and become the property of the allottee. Before the allotment of equity shares they do not stand in the nature of property and capital asset of the company in the eyes of law and, thus, not disclosed in monetary terms in the financial statements as part of the asset of the company. Any property which is not in existence cannot be said that it has been received. When nothing is received, deemed income will not arise. In the present case, there is neither a transfer in

favour of the assessee, nor is the issuer-company the owner of the equity shares. The section which requires "receives from any person or persons will not per se apply in the case of the assessee, as the company issuing the equity shares is not the owner of the equity shares. As allotment of equity shares is not a transfer of capital asset and the company issuing the equity shares is not the owner of the shares, the transaction could not be considered as a "receipt from any person or persons". Therefore, in the case of initial allotment of equity shares the provisions of section 56(2)(vii)(c) of the Act will not attract."But the ld. AO did not agree with the contention of the assessee stated that the assessee has just tried to misinterpret the phrases used, in the section i.e. "Receives any property" assessee's contention it means there should be an existing property both in the hands of a person who gives it and a person who receives, is not valid because it is not necessary that property has to be tangible in nature. Intangible assets may also be considered as property. In the instant case, what the company has done, is exercise of its rights to issue shares. It means the property which it possessed have now been transferred to the assessee. The contention of the assessee that it was not the property in the hands of giver, is a vague and misleading interpretation in view of above discussion and as interpreted by various judicial forums mentioned as above. Therefore, in the opinion of the ld. AO the right to issue shares is itself a property, well covered under the meaning of

property and the said transaction is clearly covered as Transfer of Property and the same was considered as income of the assessee accordingly.

17. Being aggrieved from the said addition made by the AO, the assessee preferred an appeal before the Id. CIT(A). The findings of the Id. CIT(A) on this issue is reproduced as under:-

“ Ground No. 2(a)

This ground relates to addition of Rs. 83,96,410/- under section 56(2)(vii)(c) of the Act. The appellant submitted that "the provision of section 56(2)(vii) are applicable on the receipt of any property, meaning thereby receipt of existing property and this provision is not applicable on the fresh allotment of Equity shares. Since, in this case the alleged shares were not in existence before the allotment of fresh shares and therefore, addition is bad in law".

The Ld. Assessing Officer has calculated the income from other sources u/s 56(2)(vii)(c) based on the fair market value of unquoted equity share as per rule 11UA . I find no infirmity in computation of the Ld. Assessing Officer. The argument of the appellant that the section 56(2)(vii)(c) is not applicable in case of newly issued shares has no legal ground.

The Ld. Assessing Officer has dealt with all the objection in details in assessment order. Therefore, this ground of appeal of the appellant is, hereby, dismissed.

18. Before us the Id. AR of the assessee reiterated the same that was made before the lower authorities and submitted that the allotment of shares are not considered as property and thus, the provision of section 56(2)(vii)(c) will not attract for that

the has relied upon the judgment of this bench in the case of Mr. Prakash Chand Sharma HUF in ITA no. 325/JP/2021 dated 06.04.2022.

19. Per contra on this issue the ld. DR submitted a report of the Assessing Officer on account of addition of Rs. 83,96,410/- made by the Assessing Officer U/s 56(2)(vii)(c) of the Act and the report of the Assessing Officer is reproduced here in below :-

“In this connection it is to submit that vide order u/s 143(3) dated 31.03.2015, the addition made by the AO u/s 56(2)(vii) amounting to Rs. 83,96,410/- was as per the provisions of law. In this regard the AO has given his detailed finding in the assessment order:

The Hon'ble ITAT in the judgment ITA No. 325/JP/2021 dated 06.04.2022 in the case of Mr. Prakash Chand Sharma HUF (PAN: AADHP4019H) vs. ITO, W-3(5), Jaipur has deleted the similar issue i.e. addition of Rs. 4.56,000 u/s 56(2)(vii)C of the IT Act.

It is learnt that the department has not accepted the decision of Hon'ble ITAT on merits. However, further appeal is not filed in this case due to the low tax effect as prescribed by the CBDT.

In this decision the Hon'ble ITAT has held that it is a case of transfer of rights in shares by one relative to another relative and therefore section 56(2)(vii)C would not get attracted.

As per the assessment order, the assessee has received share from his company M/s Amit Colonisers Pvt. Ltd. at the rate of face value of Rs. 10 per share. In such situation provisions of section 56(2)(vii)C are clearly applicable because of the fact that the share holder and company are not regarded as relatives.

As per the explanation of proviso to section 56(2) relative are defined as under:-

For the purposes of this clause "relative" means-

- (i) Spouse of the individual
- (ii) Brother or sister of the individual
- (iii) Brother or sister of the spouse of the individual.
- (iv) Brother or sister of either of the parents of the individual
- (v) Any lineal ascendant or descendant of the individual;
- (vi) Any lineal ascendant or descendant of the spouse of the individual
- (vii) Spouse of the person referred to in clause

The Hon'ble ITAT has further discussed the issue that whether it is fresh allotment of shares or existing allotment of shares. The Hon'ble ITAT has also discussed that whether tax to be paid by the share holder or the company.

As per the provisions of section 56(2)(vii)C there is no binding i.e. fresh allotment or existing allotment of shares. Further, the tax has to be paid by the share holder as per section 56(2)(vii)C. The provision of section 56(2)(vii) are as under:-

“56. (1) Income of every kind which is not to be excluded from the total income under this Act shall be chargeable to income-tax under the head Income from other sources if it is not chargeable to income-tax under any of the heads specified in section 14. items A to E.

(2) In particular, and without prejudice to the generality of the provisions of sub- section (1), the following incomes, shall be chargeable to income-tax under the head Income from other sources”

(c) any property other than immovable property-

(i) without consideration, the aggregate fair market value of which exceeds fifty thousand rupees the whole of the aggregate fair market value of such property;

(ii) for a consideration which is less than the aggregate fair market value of the property by an amount exceeding fifty thousand rupees, of the aggregate fair market value of such property as exceeds such consideration”

In view of the above, the AO has rightly made the addition u/s 56(2)(vii)C of the IT Act and the CIT(Appeals) has rightly confirmed the addition in this case.”

20. We have considered the rival contentions and submission placed on record by both the parties and have also considered the orders of the lower authorities. The bench noted that the assessee has received share in an allotment from the company M/s. Amit Colonisers Private Limited at the rate of face value of Rs. 10 per share. As the consideration, whereas the fair market value of these shares as on 31.03.2012 comes @ 47/-. The difference in the face value and fair market value of the shares is (47-10) Rs. 37. The total number of shares, received by the assessee are 2,26,930. Accordingly, the difference in value of total number of shares comes

to 226930*37= 83,96,410/-. In view of the above, the ld. AO made addition of Rs. 83,96,410/- u/s 56(2)(vii)(C) of the Income Tax act, 1961. The bench further noted that since there is no transfer of assets the provisions of Section 56(2)(vii)(c) of the IT Act is not applicable. This issuesis covered in favour of the assessee by the earlier decision of the Coordinate Bench of Jaipur benches. In this regard, our reference was drawn by the ld. AR of the assessee on a decision of the Coordinate Bench in ITA No. 325/JP/2021 dated 06.04.2022 for the A.Y. 2014-15 wherein the Coordinate Bench has held in para 12 and 13 which are reproduced as under:-

“12. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. We are of the considered view that in the present case the question arises:

A. whether Tax to be paid by the shareholders or the company?

In the present case since the explanation (e) of section 56(2)(vii) which provides that in case of HUF, any member thereof falls in the definition of relative, as the shares allotted to the assessee to the extent of 95.35% was from the interest of his relatives, the same ought not be subject to tax and the company since it is Private Limited company and holding the majority of shares by the relatives , where the assesee himself the karta is Director and member of HUF holding major shares in the company. The shares have been allotted on 31.03.2014 to the assessee instead of allotting shares to all the existing shareholders and thus even if it is assumed that the shareholders to whom shares were not allotted have given up their right of allotment

in shares to other shareholders, it is a case of transfer of right in shares by one relative to another relative and therefore also section 56(2)(vii)(c) would not get attracted.

B. whether there is a difference between allotment of shares and receipt of shares ?

We appreciate the view and argument placed by the Ld AR for assessee that the company has allotted the shares to an existing shareholder. This is not akin to receipt of shares in as much as there is a distinction between allotment of shares and receipt of shares. Receipt is the action of receiving something or the fact of its being received whereas allotment is defined as the portion or share of something. For receipt of share there should be shares in existence and a person holding such share transferring it to another person. As against this in case of allotment of shares, it comes into existence after it is allotted and there is no transfer of shares from one person to another person. Therefore allotment of shares cannot be equated with receipt of shares because in case of receipt of shares the property is already in existence whereas in case of allotment of shares the property comes into existence after it is allotted.

C. Whether assessee comes under the definition of Relative?

The definition of close relative given in the act under section 56(2)(vii)(c) of the act in Explanation is as under:

- (e) "relative" means,-
- (i) in case of an individual-
 - (A) spouse of the individual;

 - (B) brother or sister of the individual;
 - (C) brother or sister of the spouse of the individual;
 - (D) brother or sister of either of the parents of the individual;

- (E) any lineal ascendant or descendant of the individual;
- (F) any lineal ascendant or descendant of the spouse of the individual;
- (G) spouse of the person referred to in items (B) to (F); and
- (ii) in case of a Hindu undivided family, any member thereof;]

There is no dispute in the contention of the assessee is that all the shareholders are relatives and 95% of the shares have been within the relatives . The transaction between the close relatives is not taxable under the head 'income from other sources u/s 56(2) of the Act. We are of the opinion that the section 56(2)(vii)(c) has no application and the company is liable to be taxed . The opinion and well known facts that in a private limited company major percentage of shares are holded by the relatives only.

Whether it is fresh allotment of shares or existing allotment of shares?

The contentions of the Ld AR for the assessee is that the company has allotted the shares to an existing shareholder. Where the receipt of shares in as much as there is a distinction between allotment of shares and receipt of shares. Receipt is the action of receiving something or the fact of its being received whereas allotment is defined as the portion or share of something. For receipt of share there should be shares in existence and a person holding such share transferring it to another person. **There is no dispute that existing shareholders prior to fresh allotment was the assessee and his relatives and the provisions of section 56(2)(viii)(c)(ii) shall not apply in case of money or any property received from any close relative .In the present case it is fresh allotment of shares.**

13. We are of the opinion discussing the above issues and respectfully following the view taken by the Coordinate Bench of ITAT in case of ACIT vs. Venkanna

Choudhary [2020] 180 ITD 166 (Visakhapatnam-Trib.) dated 30-09-2019 facts and submissions are also identical to the facts and submissions and the relevant paras are as under:-

“10. We have heard both the sides and perused the material placed on record. In the instant case, the assessee has acquired fresh allotment of shares from M/s Sardar Projects (P) Ltd. The company has allotted the shares of 4,25,000 @ 10 each on 5th April, 2013 and 9,05,000 shares @ 10 each on 26th March, 2014. The net book value of the assets as on 5th April, 2013 was Rs. 1.35 crores. The company had issued 38,30,560 shares @ 10 each to the assessee and 28 others on 5th April, 2013. Similarly, on 26th March, 2014, the company had issued 46,53,700 shares @ 10 each to the assessee and 14 others. In the allotment, the assessee had been allotted 4,25,000 shares on 5th April, 2013 and 9,05,000 shares on 26th March, 2014. The FMV of each share was worked out by the AO at Rs. 676.55 as on 5th April, 2013 as against the book value of assets of Rs. 1,35,30,903. Similarly on 26th March, 2014, the AO had worked out the value of the same shares at Rs. 14.48 without any increase in the value of the assets from 5th April, 2013 to 26th March, 2014. The FMV of the shares has been worked out by the AO at Rs. 676.55 on 5th April, 2013 and Rs. 14.48 per shares on 26th March, 2014. If the share value as on 5th April, 2013 is to be adopted @ Rs. 676.55 the book value of the assets would be increase to astronomical figure of 260 crores for 38,50,560 which is nowhere near the actual value of assets. According to the learned Authorised Representative, the valuation date means, the date on which the property or consideration as the case may be received by the assessee. Thus, argued that for arriving FMV fresh allotment of shares also required to be included in the existing paid up share capital and to arrive at FMV of the shares by dividing the book value of the assets with paid up capital of the shares including fresh allotment. However, during the appeal hearing, learned Authorised Representative submitted that prior to 5th April, 2013 there were only two

shareholders in the company i.e., assessee and his brother Mr. Y. Ramesh Chandra, therefore argued that any excess consideration passed on by the assessee from his brother is exempt under s. 56(2)(viii)(c)(ii) of the Act and for this purpose, the assessee has relied on the decision in the case of Kumar Pappu Singh (supra). Therefore, argued that as on 5th April, 2013, s. 56(2)(viii)(c)(ii) has no application to the assessee's case. We consider the argument of the learned Authorised Representative and find that there are only two shareholders in the company i.e. assessee and his brother Mr. Y. Ramesh Chandra in company and both the shareholders are brothers as defined in the Act under the close relatives. The transaction made between close relatives are excluded for the purpose of deeming income under s. 56(2)(viii)(c)(ii) of that Act. This view is upheld by the decision of this Tribunal in the case of Kumar Pappu Singh (supra). For the sake of convenience and clarity, we extract the relevant part of the order this Tribunal in para 14 which reads as under:-

"14. The assessee has only applied for shares which were allotted by the company. The contention of the Revenue is that since there is no relation between the company and the assessee there is no case for invoking the explanation of relative to exempt the assessee from taxing the excess fair market value under the head 'Income from other sources'. Whereas, the contention of the assessee is that all the shareholders are relatives. The transaction between the close relatives is not taxable under the head 'Income from other sources' under s. 56(2) of the Act and hence, the s. 56(2)(vii)(c) has no application. We have gone through the provisions of 56(2)(vii)(c) and this provision was brought as an anti-abuse measure, seeks to tax the understatement of consideration as the income in the hands of the recipient (of the corresponding asset) as against the donor in the case of GT Act. The transactions between close the relatives are outside the scope of application of 56(2)(vii)(c). The legislature in its wisdom excluded the transaction of close relatives for the purpose of taxation under the income from other sources. Even

the gifts received from the close relatives under s. 56(2)(v) are outside the scope of 56(2). Though the shares are allotted to the assessee, the entire shareholding of the company is retained by the family and no share was allotted to the outsiders. In this case, though the assessee had received the excess shares, renouncement was from the close relatives and the assessee is at liberty to transfer the shares to other relatives or shareholders at any point of time without attracting the taxation under s. 56(2)(vii)(c). Therefore, surrender of the rights of the close relatives in favour of the another close relative is covered for exemption under s. 56(2)(vii)(c) of the Act. In the decision rendered by the Hon'ble Madras High Court in the case CIT vs. Kay Arr Enterprises &Ors. (2008) 215 CTR (Mad) 244 : (2008) 3 DTR (Mad) 205 : (2008) 299 ITR 348 (Mad) and in the decision of the Hon'ble Karnataka High Court in the case CIT vs. R. Nagaraja Rao (2013) 352 ITR 565 (Kar) : (2012) 207 Taxman 236 (Kar) it has been categorically held that 'where there are transactions involving family arrangement with respect to transfer of shares, the corporate veil of the company has to be lifted and inferred that there is no transfer of shares and accordingly capital gain tax is not exigible.' From the above it is apparent that even when there are transfer of shares physically, in the event of family arrangements, the Hon'ble High Courts have held that the entire transactions have to be viewed lifting the corporate veil and treat the transaction as if there is no transfer of shares and hence capital gain tax is not attracted. The transaction between the closer relatives should not be seen as introducing black money or evasion of the tax. Therefore, we are of the considered opinion that the transaction is within the family and close relatives and covered by the proviso to s. 56(2)(vii)(c) of the Act and there is no application of the said section for taxing the income under the head 'Income from other sources'. The Co-ordinate Bench of Tribunal Chennai in the case of Vani Estates (P) Ltd. vs. ITO 98 taxman.com 92 (Chennai) also taken the similar view in respect of excess share premium for

the transactions between the relatives which required to be taxed under s. 56(2)(vii)(b) of the Act."

11. In the instant case, there is no dispute that existing shareholders prior to fresh allotment was the assessee and his brother Mr. Y. Ramesh Chandra and whatever excess benefit was passed on to the assessee was out of the interest of share holding held by his brother Mr. Y. Ramesh Chandra, hence, the provisions of s. 56(2)(viii)(c)(ii) shall not apply in case of money or any property received from any close relative. The definition of relative as mentioned in proviso to Expln. (e) of s. 56(2)(vii) as under :

"(e) 'relative' means,—

(i) in case of an individual—

(A) spouse of the individual;

(B) brother or sister of the individual;

(C) brother or sister of the spouse of the individual;

(D) brother or sister of either of the parents of the individual;

(E) any lineal ascendant or descendant of the individual;

(F) any lineal ascendant or descendant of the spouse of the individual;

(G) spouse of the person referred to in items (B) to (F)."

12. There is no dispute that the assessee and other shareholders are close relatives, therefore the consideration received rather excess consideration passed on from the share of his brother is exempt from taxation under s. 56(2)(viii)(c)(ii) of the Act. Thus, we hold that the difference in FMV of the shares and the consideration paid by the assessee is squarely covered by the exemption clause provided under s. 56(2)(vii)

of the Act and case law relied on by the assessee in the case of Kumar Pappu Singh (supra) is squarely applicable in the assessee's case. The learned Departmental Representative argued that the shares were not only allotted to the assessee but also allotted to others and submitted that the case law of Kumar Pappu Singh has no application in this case. We are unable to accept the argument of the learned Departmental Representative, since, prior to the allotment of shares on 5th April, 2013 the shareholders are only the assessee and his brother. In the fresh allotment apart from the assessee some applicants were allotted the shares. Therefore whatever the shares allotted to the assessee was from the interest of his brother who is a close relative. Hence, to the extent of shares allotted to the assessee the same is covered by the decision of this Tribunal. Thus, we hold that there is no case for making any addition for allotment of shares allotted on 5th April, 2013. Accordingly, we set aside the orders of the authorities below on this issue and delete the addition made by the AO."

Taking into consideration the facts, circumstances of the case and also the decision in the case of ACIT vs. Venkanna Choudhary (Supra) we allow the appeal of the assessee and set aside the order of CIT(A) and addition confirmed by the CIT(A) is deleted.

In the result, the appeal of the assessee is allowed."

On being consistent on the view and as the ld. DR did not controvert the finding by drawing the contrary decision Ground No. 2 raised by the assessee is allowed.

21. The ground no. 3 is related to an addition of Rs. 6,75,000/- made in this regard the ld. AO observed that during the year under consideration the assessee

has purchased two properties and cost of purchase shown in the Balance sheet as on 31/03/2012 is as under-

a. 302, Ghat gate Bazar, Jaipur - Rs. 18954556/- (18300000 + 654556 stamp Duty Charges)

b. 90, Shivaji Nagar, Jaipur - Rs. 14720542/-(14280000+ 440542 stamp duty charges)

During the course of assessment proceeding, the assessee was asked to submit the copy of these purchase deeds. The assessee submitted the same. On perusal of these deeds it is noticed that photocopy of back side pages were not given by the assessee. Apparently, it noticed that the stamp duty expenses are at lower side. Therefore, vide letter dated 09/02/2015, the assessee was asked to furnish details of complete registry expenses and to explain the source of expenditure incurred in this regard.

Vide reply letter dated 20/02/2015, the assessee submitted that "the value of stamp papers of Rs. 3,50,000/- and Rs. 3,25,000/- in both the properties has left to be included in the books of account due to fault/ mistake of the accountant. The accountant understood the registry charges inclusive of stamp value due to which this mistake has incurred. We are enclosing herewith revised balance sheet as on 31/03/2012 incorporating the value of stamp papers.....,

Reply of the assessee has been considered. Admittedly stamp duty expenses of Rs. 6,75,000/- (3,50,000+ 3,25,000) have not been accounted for in the balance sheet submitted by the assessee. Now a revised balance sheet has been submitted alongwith reply dated 20/02/2015 in which value of these properties shown as under-

- a. 302, Ghat gate Bazar, Jaipur - Rs. 1,89,54,556/- (now revised value at Rs. 1,93,04,556)
- b. 90, Shivaji Nagar, Jaipur - Rs. 1,47,20,542/- (now revised value at Rs. 1,50,45,542)

Comparison of this revised balance sheet has been done with the earlier one. The assessee has appreciated the value of these two properties by the amount mentioned as above and the cash in hand has been reduced by the same amount. Earlier the cash balance shown was at Rs. 13,61,290/- and now it is shown at Rs. 6,86,290/-, reducing by Rs. 6,75,000/-. The explanation submitted by the assessee is nothing but a made up story only. The act of non submission of copy of purchase deed from back side pages was an effort to escape from the sight of the AO, but when asked particularly pin pointing the issue, there was no way to escape and the assessee had to admit that the value shown in the balance sheet is under stated by Rs. 6,75,000/- Now the option left with the assessee was manipulation in the

entries of balance sheet which he exercised. A person who is MD) of a company having good business volume is not expected to maintain is account books in this manner and also not expected to cover up the mistake by such manipulative practices. It is therefore held that the stamp duty expenses of Rs. 6,73,000/- have been made by the asses from his income from unexplained sources which the invested in purchase of aforesaid two properties And addition of Rs. 6,75,000/- is therefore made u/s 69 of the I.T. Act 1961.

22. Being aggrieved from the action of the assessing officer assessee has preferred an appeal before the ld. CIT(A) and the relevant finding of the ld. CIT(A) on this issue is reproduced here in below :

“2(b) This ground relates to addition of Rs.6,75,000/- under section 69 of the Act. The Ld. Assessing officer after going through the accounts of the appellant found that the stamp duty paid by the appellant was not reflected in his accounts. The appellant submitted that "it was the mistake of accountant and the amount was incurred out of cash balance available with the company. Since, the purchases were made on 31st March 2012 i.e. on the last date of Balance sheet, this bonafide mistake happen and this was later rectified".

It is find that the reply of the appellant is nothing but an afterthought .Where the books of accounts were maintained and balance sheet was drawn,no such omission are explainable. In view of the same, I agree with the findings of the Ld. Assessing Officer and this ground of appeal is, hereby, dismissed.

23. On this issue the Id. AR of the assessee submitted that it was the mistake of accountant and the amount was incurred out of cash balance available with the assessee. Since, the purchases were made on 31st March 2012 i.e. on the last date of Balance sheet, this bonafide mistake happen and this was later rectified and this mistake bonafide and the Id. AO has not disputed the fact that the as on that date of registry the assessee is not having the sufficient cash on hand. In the revised balance sheet, the assessee has rectified the genuine mistake which has not been disputed. Even the copy of the cash book was also submitted to prove the availability of cash. To substantiate this point the Id. AR of the assessee drawn our attention to the following finding of the Id. AO:-

“Comparison of this revised balance sheet has been done with the earlier one. The assessee has appreciated the value of these two properties by the amount mentioned as above and the cash in hand has been reduced by the same amount. Earlier the cash balance shown was at Rs. 13,61,290/- and now it is shown at Rs. 6,86,290/-, reducing by Rs. 6,75,000/-. The explanation submitted by the assessee is nothing but a made up story only. The act of non submission of copy of purchase deed from back side pages was an effort to escape from the sight of the AO, but when asked particularly pin pointing the issue, there was no way to escape and the assessee had to admit that the value shown in the balance sheet is under stated by Rs. 6,75,000/- Now the option left with the assessee was manipulation in the entries of balance sheet which he exercised. A person who is MD) of a company having good business volume is not expected to maintain account books in this manner and also not expected to cover up the mistake by such manipulative practices. It is therefore held that the stamp duty expenses of Rs. 6,73,000/- have been made by the asses from his income

from unexplained sources which the invested in purchase of aforesaid two properties And addition of Rs. 6,75,000/- is therefore made u/s 69 of the I.T. Act 1961.”

24. Per contra on this issue the ld. DR relied upon the order of the lower authorities and findings given in that orders and submitted that the assessee is MD of company and he has made such mistake is nothing but an afterthought and supported the addition made by the AO.

25. We have considered the rival contentions and submission placed on record by both the parties and have also considered the orders of the lower authorities. It is not disputed by the lower authority that the assessee is having sufficient cash balance of Rs. 13,61,290/- in the balance sheet already filed and placed on record this cash balance being not disputed the genuine error of not considering the cash paid for an amount of Rs. 6,75,000/- if reduced then also there exist a cash balance of Rs. 6,86,290/- this fact support the contention of the assessee that it is the genuine mistake of the accountant and the ld. DR did not controvert this availability of cash on hand with the assessee before and after recording the stamp duty expenses and in view of this non disputed fact we hold that the explanation given by the assessee is on account of the genuine error on the part of his accountant and same was disclosed before the assessing officer but the view of the

ld. AO is against the fact that the assessee is having sufficient cash balance and therefore, the addition made is not survived and we vacate the addition therefore the ground no. 3 raised by the assessee is allowed.

26. As regards ground No. 4, the assessee has challenged the confirmation of addition of Rs. 30,87,700/- made under section 68 of the Act. The ld. AO noted that the case credits of Rs. 29,50,000/-, credited during the year under consider in the books of the assessee are held non genuine and added to the total income of the assessee u/s 68 of the IT Act. For the same reason, the interest of Rs. 1,37,700/- credited to the creditors have also been added u/s 68 of the Act, meaning thereby total addition of Rs. 30,87,700/- was made by the ld. AO. For this relevant observation of the ld. AO is reproduced here in below ;

“ During the year under consideration, the assessee has taken unsecured loan from following cash creditors as under-

S. No.	Name of the creditors	Date on which loan taken	Amount	Interest paid, if any
1.	Padam Chand Jain	06.04.2021	3,00,000	41,250/-
2.	Sumit Modi	06.04.2021	6,00,000	75,000
3.	Sita Ram Gupta	03.08.2021	7,50,000	NIL
4.	Arun Kumar Rohit Goyal HUF	04.08.2021	13,00,000	21,450
			29,50,000	137700

The assessee was asked to submit confirmation from these cash creditors along with income-tax assessment particulars of these persons and their relevant bank statement. The assessee was also asked to establish the creditworthiness of these creditors and genuineness of these transactions. Vide reply furnished on 20/02/2015, the assessee submitted that-

"We have already submitted the copy of ledger account of Mr. Padam Chand Jain and Sumit Modi duly confirmed by them with our previous reply dated 09/02/2015. Now we are enclosing copy of ledger account of Shri Sita Ram Gupta and M/s Arun Kumar Rohit Goyal HUF duly confirmed by them for your kind perusal and record"

As the assessee failed to submit the specific requirements with regard to unsecured loans taken by him, the genuineness of these transactions could not be examined. The assessee has submitted confirmation only. Even in the confirmation of Shri Sita Ram Gupta (loan taken Rs. 7,50,000/-). PAN is not mentioned. Mere furnishing of confirmation does not prove the cash credits as genuine. The assessee has not furnished copy of relevant bank accounts, though specifically asked for. No other documentary evidences in support of entity and creditworthiness of these creditors have been furnished by the assessee. In these circumstances, the genuineness of these transactions of loan taken are not established and the cash credits remain unproved.

Therefore, the cash credits of Rs 29,50,000/-, credited during the year under consideration in the books of the assessee are held as non genuine and added to the total income of the assessee u/s 68 of the IT Act 1961. For the same reason, the interest of Rs. 1,37,700/ credited to these creditors have also been added u/s 68 of the Act, meaning there by total addition of Rs. 30,87,700/-."

27. Being aggrieved by the AO the assessee preferred an appeal before the ld. CIT(A) and the findings of the ld. CIT(A) on this issue is reproduced as under:-

"Ground No. 2(c)

This ground relates to addition of Rs.30,87,700/- under section 68 of the Act being the amount of Loan and Interest thereon for want of Bank A/c of the and entity and credit worthiness of creditors.

It is seen that the appellant had taken unsecured loan of Rs.29,50,000/-and claim interest of Rs.1,37,700/- on that amount. But the appellant failed to submit the details to prove the identity, genuineness and creditworthiness of the people. Details of this have been discussed by the assessing officer in his order. Further, no such document was produced before the undersigned to reverse the order of the AO.

Therefore, the addition made by the Ld. Assessing Officer is upheld and the ground of the appeal is hereby, dismissed.”

28. Against this addition made under section 68 of the Act the ld. AR of the assessee submitted that the assessee has filed the detailed confirmation of the loan creditor where in the transaction were duly confirmed by the parties. The payment has been received by an account payee cheque and the same is not disputed. The ld. AR further submitted that assessee has proved their onus cast upon them u/s. 68 by filling the confirmation and the related fact the money has been received by an account payee cheque from all the creditor and this is sufficient compliance made by the assessee. The contention of the ld. AO is cryptic and he has not specifically spell out the reason behind not accepting the confirmation and he has not made any independent enquiry after filling of confirmation by the assessee. Thus relying on

the judgment of the jurisdiction High Court delivered in the case of CIT Vs. Bhawani Oil Mills in DB ITA No. 107/2010 Rajasthan HC the ld. AR of the assessee submitted that the addition is required to be deleted.

29. Per contra, the ld. DR relied upon the orders of the lower authorities and submitted that the assessee has filed mere confirmation and not filed the copy of the ITR and copy of their bank statement and therefore he supported the order of the AO.

30. We have considered the rival contentions and submission placed on record by both the parties and have also considered the orders of the lower authorities. The bench noted that in the assessment proceeding the ld. AR of the assessee has filed all the four Loan creditor's confirmation and thereafter neither he has carried out further inquiry nor asked the assessee to submit any further details and considering the jurisdiction high court decision relied upon by the ld.AR of the assessee where in the court has held as under:

“ On perusal of the order passed by the ITAT, we find that mere non-appearance of eight other persons in response to the notice given of the Assessing officer, by itself cannot be a reason to discard their version particularly when one of them had appeared and admitted advancement of loan. Even if others have subsequently

filed their confirmations supported by their affidavits, it cannot be assumed that they would not have made same statements, if they had appeared in response to the notice issued by the Assessing officer. Assessing officer was required to have examined those confirmations and the contents of the affidavits on their merits treating as if they were statements given to him. Their version contained in the affidavits could not be treated as of a lesser importance than the statement given by one of the creditors i.e. Shri K.K. Sharma before the Assessing officer. Although, it is another matter that the Assessing officer would be entitled to evaluate reability of such version on its own merit.

Even otherwise, we find that quantum of amount of Rs.24,86,866/- found to have been borrowed from eight different creditors by way of 'unsecured loan' to the tune of Rs.3,25,000/- each from two creditors, Rs.3,00,000/- from one creditor, Rs.1,00,000/- each from four creditors and Rs.11,36,866/- from one creditor. Maximum amount that has been borrowed by assessee, was Rs.11,36,866/- from Shri K.K. Sharma, Director of the company. ITAT in paras 7 and 8 of its judgment, which is running into four pages, has in detailed discussion dealt with the confirmations given by those creditors and observed that there was no reason to doubt correctness of the claimed cash credit amounting to Rs.24,86,866/- taken from the above named creditors.

In our view, the matter therefore touches upon appreciation and evaluation of evidence and does not raise any question of law, muchless any substantial of law, so as to justify interference by this Court in the matter.

Appeal being devoid of merit is accordingly dismissed in limine.”

Respectfully following the ratio of the decision where in the assessee has filed the confirmation and thereafter he has not controverted these confirmation the addition cannot be made. In the result ground no. 4 raised by the assessee is allowed.

In the result appeal of the assessee is allowed.

Order pronounced in the open court on 30/11/2022

Sd/-

(राठोडकमलेशजयन्तभाई)
(RATHOD KAMLESH JAYANTBHAI)
लेखा सदस्य / Accountant Member

Sd/-

(डॉ.एस.सीतालक्ष्मी)
(Dr. S. Seethalakshmi)
न्यायिकसदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 30/11/2022

*Santosh

आदेश की प्रतिलिपिअग्रेषित / Copy of the order forwarded to:

1. The Appellant- Vijay Kumar Vijayvergiya, Jaipur
2. प्रत्यर्था / The Respondent- DCIT, Circle-7, Jaipur
3. आयकरआयुक्त / The Id CIT
4. आयकर आयुक्त(अपील) / The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकरअपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्डफाईल / Guard File (ITA No. 238/JP/2022)

आदेशानुसार / By order,

सहायकपंजीकार / Asstt. Registrar