

**IN THE INCOME TAX APPELLATE TRIBUNAL
“G” BENCH, MUMBAI****BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER &
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER****ITA No. 709/Mum/2022
(A.Y.2014-15)**

Yogesh Mehra 201, Hare Krishna Building, Presidency Society, North South Road No. 8, JVPD, Vile Parle, (West), Mumbai – 400049	Vs.	PCIT-2 Room No. 1920, Air India Building, Mumbai - 400021
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAAPM6139N		
Appellant	..	Respondent

Appellant by :	Nishita Mandalagwala
Respondent by :	Heman Kumar Chimanlal Leuva

Date of Hearing	29.09.2022
Date of Pronouncement	23.12.2022

आदेश / O R D E R**Per Amarjit Singh (AM):**

The present appeal filed by the assessee is directed against the order u/s 263 of the Act passed by the ld. PCIT(Central)-2, dated 29.03.2022 for A.Y. 2014-15. The assessee has raised the following grounds before us:

- “1. On the facts and in the circumstances of the appellant's case and in law the Ld. Pr. CIT erred in invoking the provisions of section 263 of the Income

Tax Act, 1961 (the Act) which is illegal, bad- in-law or otherwise void for want of jurisdiction.

2. *On the facts and in the circumstances of the appellant's case and in law the Ld. Pr. CIT erred in setting aside the Assessment Order passed by the AO u/s 143(3) r.w.s. 147 by invoking the provisions of section 263 of the Act.*
3. *On the facts and in the circumstances of the appellant's case, and in law the Ld PCIT erred to hold that the AO while passing the assessment order u/s 143(3) rws. 147 has considered only the closing balances appearing in the books of sister concerns in the name of WWIL.*
4. *On the facts and in the circumstances of the appellant's case, and in law the Ld. PCIT erred to hold that even the opening credit balances appearing in the name of WWIL in the books of sister concerns has to be considered for the purpose of computing deemed dividend u/s 2(22)(c) of the Act disregarding the various decisions.*
5. *On the facts and in the circumstances of the appellant's case, and in law the Ld. PCIT erred to hold that total of closing credit side of the accounts of Rs. 102,01,44,144/- in the accounts of WWIL in the books of Vish Wind Infrastructure LLP is to be considered as loans or advance for the purpose of section 2(22)(e) despite the fact that Vish Wind Infrastructure LLP has never become a debtor of WWII during the previous year relevant to the AY 2014-15*
6. *The appellant craves leave to add to alter, amend and/or delete all or any of the foregoing grounds of appeal.”*

2. Fact in brief is that a search and seizure action u/s 132 of the Act was carried out on 14.03.2013 at various premises in the case of M/s Enercon India Limited group (now known as Wind World India Pvt. Ld.) and the companies and entities controlled managed by assessee Shri Yogesh Mehra. The assessee has filed application before the settlement commission u/s 245C of the Act on 05.12.2014 for assessment year 2007-08 to A.Y. 2014-15. The application of the assessee filed before the settlement commission was rejected u/s 245D(4) of the Act on 29.06.2016. As per computation income filed before the Income Tax settlement commission assessee has shown total income of Rs.1,94,62,640/-. Since the assessee had failed to file the return of

income for AY 2014-15 and assessee's application was rejected by the Income Tax Settlement Commission, therefore notice u/s 148 of the Act was issued that income declared in the computation of income has escaped. In response the assessee filed return of income on 25.03.2019 declaring total income at Rs.1,94,62,640/-. During the course of assessment on perusal of the detail filed the A.O noticed that assessee was a registered and beneficial owner of more than 10% shares of M/s Wind World India Limited (referred as WWIL). The Assessing Officer observed that WWIL has advanced aggregate amount of Rs.46,65,820/- during the year under consideration to the following sister concern of WWIL.

<i>Sr. No.</i>	<i>Name of the Assessee</i>	<i>Amount (in Rs.)</i>
1.	<i>M/s Wind World Farms (Kerala) Private Limited</i>	0
2.	<i>M/s Wind World Farms (Tamil Nadu) Private Limited</i>	
3.	<i>M/s Wind World Farms (Gujarat) Private Limited</i>	234600
4.	<i>M/s Wind World Farms (Maharashtra) Private Limited</i>	132087
5.	<i>M/s Wind World Hindustan Infrastructure Private Limited</i>	0
6.	<i>M/s Wind World Farms (Uttar Pradesh) Private Limited</i>	50000
7.	<i>M/s Wind World Farms (Cauvery) Private Limited</i>	182087
8.	<i>M/s Wind World Farms (Gadag) Private Limited</i>	0
9.	<i>M/s Wind World Farms (Samana) Private Limited</i>	0
10.	<i>M/s Vish Wind Infrastructure Limited</i>	4067046
11.	<i>M/s Vaayu Renewable Energy (Krishna) Private Limited</i>	0
12.	<i>M/s Vaayu Renewable Energy (Saraswati) Private Limited</i>	0
	<i>Total</i>	<i>Rs.46,65,820/-</i>

The A.O also noticed that there was aggregate amount of Rs.8,89,26,62,900/- reflected as Reserve & Surplus in the Notes forming part of the Financial Statements as on 31.03.2014 of WWIL. The A.O observed that in the case of the assessee provision of Sec. 2(22)(e) are attracted. As per provisions of Section 2(22)(e) of the act any loan or deposit given by a company to a shareholder who is holding not less than 10% 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 such loan or deposit is deemed to be dividend from the accumulated profit of the company. Therefore vide order u/s 143(3) r.w.s 147 of the Act dated 28.12.2019, considered the aggregate amount of Rs.46,65,820/- as deemed dividend u/s 2(22)(e) of the Act in the case of the assessee and added to the total income.

3. Subsequently, the Id. Pr.CIT on examination of assessment record observed that the A.O while making addition u/s 2(22)(e) of the Act had taken closing balance of loan and advances given by 'WWIL' to its sister concern during the assessment year 2014-15 of Rs.46,65,820/- as against total credit amount given to its sister concern during F.Y. 2013-14. The Id. Pr.CIT was of the view that A.O instead of taking the total of sums advanced to sister concern had only taken closing balance for determining the quantum of deemed dividend u/s 2(22)(e) of the Act. The Id. Pr.CIT has given the detail of such amount as under:

<i>Sr. No.</i>	<i>Name of the sister concern</i>	<i>Amount in closing balance</i>	<i>Total sum advanced during the year 2013-14 as per the ledger account</i>
1.	<i>M/s Wind World Farms (Kerala) Private Limited</i>	<i>0</i>	<i>32,000</i>
2.	<i>M/s Wind World Farms (Tamil Nadu) Private Limited</i>	<i>0</i>	<i>1,37,500</i>
3.	<i>M/s Wind World Farms (Gujarat) Private Limited</i>	<i>2,34,600</i>	<i>2,34,600</i>
4.	<i>M/s Wind World Farms</i>	<i>1,32,087</i>	<i>1,32,087</i>

	<i>(Maharashtra) Private Limited</i>		
5.	<i>M/s Wind World Hindustan Infrastructure Private Limited</i>	0	17,12,150
6.	<i>M/s Wind World Farms (Uttar Pradesh) Private Limited</i>	50,000	50,000
7.	<i>M/s Wind World Farms (Cauvery) Private Limited</i>	1,82,087	1,82,087
8.	<i>M/s Wind World Farms (Gadag) Private Limited</i>	0	1,73,548
9.	<i>M/s Wind World Farms (Samana) Private Limited</i>	0	1,88,445
10.	<i>M/s Vish Wind Infrastructure LLP</i>	40,67,046	102,01,44,144
11.	<i>M/s Vaayu Renewable Energy (Krishna) Private Limited</i>	0	0
12.	<i>M/s Vaayu Renewable Energy (Saraswati) Private Limited</i>	0	1,82,449
	<i>Total</i>	46,65,820	102,31,69,010

The Id. Pr.CIT stated that for determining the quantum of deemed dividend u/s 2(22)(e) of the Act the loan and advances given at a particular point of time is to be seen and not the closing balance. Therefore, the Pr.CIT held that order passed u/s 143(3) r.w.s 147 of the Act is erroneous insofar as it is prejudicial to the interest of revenue within the meaning of Sec. 263 of the Act.

4. During the course of appellate proceedings before us the Id. Counsel contended that WWIL was engaged in the business of manufacturing Wind Turbine Generator and for this purpose WWIL is required to allot land to the prospective buyers for installation of Wind Turbine Generators. She further submitted that there was restriction by different state government for acquisition of land in the name of single entity/company, therefore, in order to overcome the restriction imposed by various states government for acquisition of land 'WWIL' has incorporated various entities for the purpose of acquiring land in the various states. Therefore, the transaction between WWIL and the sister concern were purely business transaction, therefore she vehemently

contended that business transaction between two entities cannot be treated as deemed dividend u/s 2(22)(e) of the Act. She has also referred the various pages of paper book filed during the course of appellate proceedings before us i.e detail and document furnished before the A.O and the ld. Pr.CIT during the course of assessment and 263 proceedings. She has also referred page no. 9 of the paper book comprising copy of ledger account of WWIL showing advances made on various dates to the sister concern for the purpose of business and she has also referred the ledger account maintained by the sister concerns showing loan advances received from the WWIL and utilization of the same for the purpose of purchasing lands for the business purpose of WWIL as discussed. She has also referred decisions of coordinate benches of ITAT, Ahmedabad, in the case of the assessee itself on the identical issue and similar facts decided in favour of the assessee holding that trade advances made to sister concern as supra were in the nature of commercial transaction which did not fall within the ambit of loan advances within the meaning of Sec. 2(22)(e) of the Act.

On the other hand the ld. D.R has referred para 10 of the order of Pr.CIT and contended that assessee has not established that advances were made for the purpose of business of the assessee.

5. Heard both the sides and perused the material on record. Without reiterating the facts as elaborated supra in this order, the ld. Pr.CIT was of the view that the assessee was ultimate beneficiary of the money of 'WWIL' used for the purchase of land by the various sister concerns in their own names. However, it is undisputed fact that WWIL was engaged in the business of manufacturing Wind Turbine Generators and for this purpose 'WWIL' was required to allot land to the prospective buyers for

installation of Wind Turbine Generator. Because of restriction by various state government for acquisition of land in the name of single company the 'WWIL' has acquired land in the name of its sister concern in the various states for the business purpose of installation of Wind Turbine Generators. In addition to the above facts the assessee has also brought to the notice of the ld. Pr.CIT that during the F.Y. relevant to assessment year 2014-15 in respect of two sister concern Vayu Renewal Energy (Krishna) and Vayu Renewal Energy (Saraswati) that no advance were given by WWIL to these concern as the advances were given in earlier years which were squared up by transferring land to WWIL by these two concerns during the year under consideration. The assessee has also mentioned in its submission that in respect of 4 entities there was no inflow of funds and only general entries were made. The assessee has also referred CBDT circular no. 19/2017 dated 12.06.2017 stating that trade advances cannot be considered as deemed dividend which is settled view on section 2(22)(e) of the Act. The Board had recognized that trade advances cannot be considered as loan or advances within the ambit of Section 2(22)(e) in view of the decision of Hon'ble Delhi High Court in the case of CIT vs. Craline Dying and Printing Ltd. and the decision of Hon'ble Punjab and Hariyana High Court in the case of CIT vs. Amrik Singh as well as the decision of Hon'ble Allahabad High Court in the case of CIT Vs. Atul Engineering Udyog that trade advances cannot be considered as loan or advance within the ambit of Sec. 2(22)(e) of the Act. We have also perused the paper book wherein at page no. 9 to 12 the assessee has placed the copy of ledger accounts of 'WWIL' in the books of Vish Wind Infrastructure LLP showing various payment and also entries of land, construction of sub-station and lease rent transactions and transaction of foundation and civil work etc. At page

no. 12 the assessee has placed a copy of ledger account of 'WWIL' in the books of Vayu Renewal Energy (Saraswati) showing detail of land credited to the 'WWIL' during the year under consideration and the amount received from the 'WWIL'. The assessee has also placed copies of ledger account of 'WWIL' in the books of various other sister concerns from page 50 to 77 demonstrating utilization of amount received for the purpose of business for acquiring of lands at various places in the name of sister concern because of restriction imposed by different state governments for acquisition of land in a single company and the transactions in these ledger accounts also show amount was spent for construction of sub-substation, payment of registration charges and stamp duty for various land purchased etc. In the ledger the nature of transactions were explained with details of civil and Industrial construction carried out for Wind World along with place of location of the contract work, place of land purchased etc. Further, various sister concern have also credited account of WWIL with various lease rent received from various locations pertaining to Wind Mast Lease Rent. In the ledger account it is also noticed that in the narration the detail of construction of sub-stations were also mentioned at different places. Assessee has substantiated with the aforesaid material placed on record that loan and advances were advanced by the WWIL for acquisition of land for constructing infrastructure related to the business of manufacturing Wind Turbine Generator which establish that transactions between WWIL and the sister concern were pertained to its business.

We have perused the decision of the ITAT Mumbai in the case of the assessee itself on similar facts and identical issues vide Shri Yogesh Mehra Vs. DCIT, Central 3(1) vide ITA No. 4006 & 4008/Mum/2019

dated 27.07.2021 wherein held that the WWIL has to buy land in the name of related entries/companies and it is only for that purpose the loans were advanced to the related companies, therefore, the money was advanced out of business and commercial consideration and therefore not covered by the provision of Sec. 2(22)(e) of the Act. The relevant operating part of the decision is reproduced as under:

“12. The facts qua the loans and advances given by M/s. Wind World India Ltd. have already been discussed in the ground no 1 and are not being repeated here. After hearing the rival parties and perusing the material on records, we find that even on merits, the assessee has a very strong case in his favour. We note that these loans and advances were given out of commercial considerations and expediency. The Wind Word (India) Ltd. is engaged in the business of installing wind Mills and sales thereof. In order to install the windmills it needs land. The Wind Word (India) Ltd. purchases land in the name of these related companies in order to overcome the land ceiling conditions imposed by Land Ceiling Act in vogue in various States. For the said purpose, The Wind Word (India) Ltd. advances loans to these companies and thereafter the necessary adjustments are made upon purchase of land. We note that the Wind Word (India) Ltd. has to buy land in the name of related entities/companies and it is only that purpose the loans were advanced to the related companies. In our opinion the money was advanced out of business and commercial consideration and therefore not covered by the provisions of section 2(22)(e) of the Act. The case of the assessee is supported by the following decisions namely (i) Chandrashekhar Maruti vs. ACIT ITA No.5410/Mum/2012 47 CCH 0783, 183 TTJ 0459, (ii). Ackruti City Ltd. vs. DCIT [ITA No. 4869/Mum/2009(iii)CIT vs. Suraj Dev Dada [(2014) 46 taxmann.com 402 (Punjab & Haryana)]. In the case of Chandrasekhar Maruti vs. ACIT (supra) the coordinate bench of the Tribunal has held that where there is a running account between the two sister concerns wherein there is a continuous exchange of transactions and the account was squared up during the year, no part of the said amounts could be treated as being attributed to the shareholders. We find that in the case of the assessee, the facts are exactly same as the funds were transferred to various entities inter se out of commercial expediency in order to purchase land in the name of these entities in various states in view of the Land Ceiling Act in vogue in those states. As the installation of windmills and sales thereof is the business of the assessee and the necessary adjustments are made after purchase of land by these entities and therefore the advancing of loans is out of business and commercial consideration. Similarly, in the case of Akruti City Ltd. vs. DCIT (supra) the identical issue was decided in favour of the assessee by holding that financial transactions out of business expediency between two sister concerns can not be called as loans or advances for the purpose of invoking section 2(22)(e) of the Act. The same view as held by the Hon’ble High Court of Punjab & Haryana in the case of CIT vs. Suraj Dev Dada (supra) wherein it has been held that it will be a travesty of law to apply the provision of section 2(22)(e) of the Act where the assessee had running account

with the company with whom the assessee advanced money to the company as and when required for the purpose of business and also in real sense the assessee has not derived any benefit from the funds of the company. The issue is also clarified by CBDT in its circular No.19/2017 dated 12.06.2017 wherein it has been clarified that trade advances in the nature of commercial transactions would not fall within the ambit of words "loans/advances within the meaning of section 2(22)(e) of the Act. Considering the facts and circumstances of the case in the light of various decisions as discussed above, we are of the considered view that the money advanced is used for the purpose of business of the former and therefore can not a loan/deposit to be treated as deemed dividend. Accordingly, we are not in agreement with the conclusion drawn by the Ld. CIT(A) on this issue. Thus we are inclined to set aside the order of Ld. CIT(A) and direct the AO to delete the addition."

It is noticed that in the case of the assessee identical issue on similar facts was recurring issue which had been adjudicated in favour of the assessee by the ITAT Mumbai for various assessment years vide ITA No. 4007/Mum/2019 ITA No. 1003/Mum/2020 after following the decision of ITAT Mumbai for the A.Y. 2007-08 & 2009-10 bearing ITA No. 4006 & 4008/Mum/2019 decided on 22.07.2021 as discussed supra in this order. We have observe that Ld. Pr.CIT has not controverted the relevant supporting material as discussed placed in the paper book establishing that loans and advances were given out of commercial considerations and expediency. The ld. Pr.CIT also could not controvert this undisputed fact that Wind World India Ltd. was engaged in the business of installing Wind Mills and in order to install the wind mills land was purchased in the name of various related companies in order to overcome the land ceiling conditions imposed by Land Ceiling Act in various states. The case of the assessee is supported by the decisions of the ITAT Mumbai in the case of the assessee as referred supra and various other judicial decisions which are discussed in the finding of the decision of ITAT Mumbai vide ITA No. 4006 & 4008/Mum/2019 as elaborated supra in this order. Therefore, we consider that decision of ld. Pr.CIT to treat the order u/s 143(3) r.w.s 147 of the Act dated 29.12.2019 as erroneous

insofar as it is prejudicial to the interest of revenue is not justified. Therefore, we set aside the order of the Pr.CIT passed u/s 263 of the Act dated 29.03.2022 and allow the appeal of the assessee.

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

Order pronounced in the open court on 23.12.2022

Sd/-

Sd/-

(Pavan Kumar Gadale)
Judicial Member

(Amarjit Singh)
Accountant Member

Place: Mumbai

Date 23.12.2022

Rohit: PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,
Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench, Mumbai.