

**IN THE INCOME TAX APPELLATE TRIBUNAL  
AMRITSAR BENCH, AMRITSAR.**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER  
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

**I.T.A. Nos. 8 &9/Asr/2022  
Assessment Years: 2012-13 to 2013-14**

Sh. Ashok Kumar Narula, Guruharsahai, Ferozpur. [PAN: ACWPN5307K] <b>(Appellant)</b>	<b>Vs.</b>	ACIT, CC, Amritsar  <b>(Respondent)</b>
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**I.T.A. Nos. 10&11/Asr/2022  
Assessment Years: 2012-13 to 2013-14**

Sh. Ravi Narula [PAN: AAVPK3042K] Guruharsahai, Ferozpur. <b>(Appellant)</b>	<b>Vs.</b>	ACIT, CC, Amritsar  <b>(Respondent)</b>
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<b>Appellant by</b>	<b>Sh. Ashray Sarna, CA</b>
<b>Respondent by</b>	<b>Sh.Radhey Shyam Jaiswal, Sr. DR</b>

<b>Date of Hearing</b>	<b>11.05.2023</b>
<b>Date of Pronouncement</b>	<b>15.05.2023</b>

**ORDER**

**Per: Bench:**

A bunch of appeal was filed against the order of the Id. Commissioner of Income-tax (Appeals) -5, Ludhiana, [in brevity CIT(A)], order passed u/s. 250(6) of the Income Tax Act 1961 (in brevity the Act), for assessment year 2012-13 and 2013-14. The impugned orders were emanated from the order of the Id. Assistant Commissioner of Income-tax, Central Circle, Amritsar (in brevity AO) order passed u/s. 147 r.w.s. 143(3) of the Act.

2. In the outset all the appeals have under same factual background and have a common issue. For the sake of brevity all the appeals are heard together for adjudication. With the consent of both the parties, **ITA No. 11/ASR/2022** for assessment year 2013-14 is taken as lead case.

3. The brief fact of the case is that both the assesseees are director of M/s. Narula Foods Pvt. Ltd. For the impugned assessment order, the company had paid the loan to M/s. Narula Towers, a partnership firm, where both the assesseees are partners. The transfer of amount as loan from the company to partnership firm contravening the section 2(22)(e) of the Act. The assessee has substantial interest in the partnership firm and holding more than 10% share in the Company. The Id. AO treated the amount to Rs. 12,60,250/- as deemed dividend for assessment year 2013-14 & added back with the total income of the assessee. Aggrieved assessee filed an appeal before CIT(A). The assessee has

taken ground that the assessee's personal assets was pledged/mortgaged/hypothecated as security related to this company, M/s. Narula Foods Pvt. Ltd. Due to business exigencies & commercial expediency the amount of loan was invested in the partnership firm by virtue of personal guarantee and collateral security for the benefit of the company. So, the entire addition should be taken as gratuitous advance as directed in section 2(22)(e) of the Act. The assessee claimed that the transaction is fully related to commercial expediency. The assessee prayed for deletion of addition u/s. 2(22)(e) of the Act. But the assessee remained unsuccessful. Being dissatisfied, the assessee filed an appeal before us.

4. The Id. AR for assessee argued that transaction between the company and partnership firm is purely a business exigency and done for the Commercial expediency. The assets of the directors are pledged as security in bank for the company. Currently the company bankrupted, and bank have issued e-auction for realisation of the property of company and the assets of directors. The Id. AR placed a notice for E-auction- Publication of Bank of India dated 08.11.2019 as proof that the asset of the assessee is also in auction for the bankruptcy company.

4.1 The AR invited our attention in appeal order page no.5. The relevant paragraph is extracted as below:

*“Sir, the Ld. Assessing Officer ignoring the submission of assessee framed assessment by making an addition of 21,92,500/- being 50% of Rs.43,85,000/- in the hand of assessee. In this regard it is stated that it is a fact that investment was made by M/s. Narula Foods Pvt. Ltd in M/s. Narula Tower but the same was done for commercial expediency. Further, it is submitted that **this was a purely business activity as the company M/s. Narula Foods Pvt. L:td. Has also availed secured loan against which directors of the company have mortgage/pledged/hypothecated their property.** Otherwise, the business of the company would effected and become standstill. **The amount was withdrawn by the assessee from the company only to meet short term requirement of M/s. Narula Towers. By virtue of offering personalguarantee and collateral security for the benefit of the company.** Assessee permitted his property to be mortgaged to the bank for enabling the company to take the benefit of loan and in spite of request of the assessee, the company is unable to release the property from the mortgage and now the situation comes for auction of properties. Assessee has not taken any undue advantage of funds of the company. Funds were wholly and exclusively being utilised for the expansion of business of M/s. Narula Tower which is business transaction and advance so made by M/s. Narula Foods Pvt. Ltd. Is only to protect the business interest of the company and not for*

*personal use of shareholders. In support of this we are enclosing herewith copy of E-auction notice published by Bank of India in newspaper. Now, for the commercial expediency the directors withdrawn an amount and invested the same is another concerned is not covered u/s. 2(22)(e) of the Act. This is purely a business transaction for commercial business expediency and the facts of the present case is squarely covered by the Jurisdictional Bench ITAT, Amritsar in the case of **Sh Shital Kumar Vij vs. ACIT ITA no. 406/Asr/2009**, where it is held as under:*

*7. In order to attract the provisions of section 2(22)(e), the important consideration is that there should be loan/advance by a company to its shareholder. Every amount paid must make the company a creditor of the shareholder of that amount. At the same time, it is to be borne in mind that every payment by a company to its shareholders may not be loan/advance. In the present case, the amount was withdrawn by the assessee from the company only to meet her short term cash requirements. By virtue of offering personal guarantee and collateral security for the benefit of the company, the liquidity position of the assessee had gone down. In the strict sense if it is to be construed the amount forwarded by the company to the assessee was not in the shape of advances or loans. The arrangement between the assessee and the company was merely for the sake of convenience arising out of business expediency. In the facts and circumstances of the case, it is not appropriate to hold that the amount withdrawn by the assessee*

*partake the character of deemed dividend under the provisions of section 2(22)(e) of the Act.”*

4.2. The Id. AR placed that the issue was agitated before the Id. CIT(A). The Id. AR in argument respectfully relied on the order of the **Hon’ble High Court of Calcutta** in the case of **Pardip Kumar Malhotra Vs. CIT 338 ITR 538 (CAL)**. The relevant paragraphs are extracted as below: -

*“10. After hearing the learned Counsel for the parties and after going through the aforesaid provisions of the Act, we are of the opinion that the phrase "by way of advance or loan" appearing in sub-clause (e) must be construed to mean those advances or loans which a share holder enjoys for simply on account of 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; but if such loan or advance is given to such share holder as a consequence of any further consideration which is beneficial to the company received from such a share holder, in such case, such advance or loan cannot be said to a deemed dividend within the meaning of the Act. Thus, for gratuitous loan or advance given by a company to those classes of share holders would come within the purview of Section 2(22) but not to the cases where the loan or advance is given in return to an advantage conferred upon the company by such share holder.*

*11. In the case before us, the assessee permitted his property to be mortgaged to the bank for enabling the company to take the benefit of loan and in spite of request of the assessee, the company is unable to release the property from the mortgage. In such a situation, for retaining the benefit of loan availed from Vijaya Bank if decision is taken to give advance to the assessee such decision*

*is not to give gratuitous advance to its share holder but to protect the business interest of the company.”*

5. The Id. DR vehemently argued and fully relied on the order of the Revenue Authorities.

6. We heard the rival submissions and considered the documents available on the record. The assessee permitted to pledge / hypothecation of his assets in relation to business of the company. Due to exigencies of the funds and for commercial expediency, the director had withdrawn an amount and invested the same in another concern which is not contravening the provision u/s. 2(22)(e). All the loans or advances are not under the purview of section 2(22)(e). The loans and advance should be in gratuitous in nature for application of section 2(22)(e) of the Act. Considering the four corners of the fact, it is clear that the assets of the directors are fully involved in the business of the company and for commercial exigencies. The clear thread of business transaction is showing in the entire transaction. We respectfully relied on the order of the Hon'ble High Court of Calcutta in the case of **Pardip Kumar Malhotra, Supra**, and the order of the coordinate bench in the case of **Shital Kumar Vij Vs. ACIT ITA no. 406/Asr/2009**. In our considered view, the transaction is not contravening the section 2(22)(e). It is directed to delete the addition amount of Rs. 12,60,250/-.

7. The bench has noticed that the issues raised by the assessee in the above appeals are equally similar on set of facts and grounds. Therefore, it is not imperative to repeat the facts and various grounds raised by the assessee. Hence, the bench feels that the decision taken by us in ITA No. **11/Asr/2022** for the Assessment Year 2013-14 shall apply *mutatis mutandis* in the above listed appeals.

8. In the result, the appeal of the assessee ITA nos. **8/ASR/2022, 9/ASR/2022, 10/ASR/2022 and 11/ASR/2022** are allowed.

**Order pronounced in the open court on 15.05.2023**

**Sd/-**

**(Dr. M. L. Meena)**  
**Accountant Member**

**Sd/-**

**(ANIKESH BANERJEE)**  
**Judicial Member**

**AKV**

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy  
By Order