

**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. No.189/Asr/2018
Assessment Years: 2014-15**

M/s G.G. Continental Trades Pvt. Ltd. Amrik Singh Road, Bathinda. [PAN: -AAECG3090P] (Appellant)	Vs.	Dy. CIT-Cirdcle-1, Bathinda. (Respondent)
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**I.T.A. No.513/Asr/2019
Assessment Years: 2016-17**

M/s G.G. Oil & Fats Pvt. Ltd. Shop No.1, Aggarsain Nagar Amrik Singh Road, Bathinda. [PAN:-AADCG8857H] (Appellant)	Vs.	Dy. CIT-Cirdcle-1, Bathinda. (Respondent)
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Appellant by	S/Sh. Sudhir Sehgal, P.N. Arora, P.K. Singla, Advs.
Respondent by	Sh. Prashant Singh, Sr. DR

Date of Hearing	21.06.2023
Date of Pronouncement	11.07.2023

ORDER

Per:Anikesh Banerjee, JM:

Both the instant appeals of the assessee's company were filed against the order of the Ld. Commissioner of Income Tax (Appeals), Bathinda, [in brevity the 'CIT (A)'] order passed u/s 250 (6) of the Income Tax Act 1961, [in brevity 'the Act'] for A.Ys. 2014-15 & 2016-17. The impugned order was emanated from the order of the Ld. Dy. Commissioner of Income Tax, Circle-1, Bathinda, [in brevity 'the AO'], order passed u/s 143(3) of the Act.

2. At the outset, both appeals are under the same factual backdrop and have a common issue. Both the appeals are taken together, heard together, and disposed of together. **ITA No. 189/Asr/2018** is taken as lead case.

ITA No. 189/Asr/2018

3. The assessee has taken the following grounds:

"1. On the facts & in the circumstances of the case and in law, the Ld. Commissioner of Income Tax (Appeals) has erred in upholding the assessment, framed by the Ld. Assessing Officer without considering the objections filed by the assessee appellant that the amount received & paid back and vice-versa are current account transactions and are only in the nature of providing business expediency as both the assessee's are

working in the same line of the business and the amount remained continuously fluctuating during the year as also in the past. Therefore, order passed u/s 250 is unjustified and the same be quashed.

2. That the appellant craves leave to add or amend any grounds of appeal before the appeal is finally heard or disposed of.”

4. Brief fact of the case is that the assessee is a Private Limited Company engaged in the trading of Edible Oils. The assessee is in the same line of business from the past many years. The assessee has a strategic investment in one of the group concerns namely M/s Gurdas Agro Pvt Ltd. (hereinafter referred to as ‘GAPL’) in which the assessee held 17.20% shareholding. The assessee has been regularly receiving and providing the funds to the GAPL as per their business requirements and as a result. The latter is charging interest on the same. Therefore, the said transaction of receiving and repayment of the funds is purely for the purposes of business for which the latter is charging interest on the same.

4.1 The case of the assessee was selected for scrutiny and the ld. AO was of the view that, as the assessee held 17.20% shareholding in the above said Company, thus, the amount received by the assessee from GAPL as an unsecured loan, is in the nature of deemed dividend u/s 2(22)(e).

4.2 Thus, the assessment order dated 20.12.2016 was passed by the Ld. AO making an addition of Rs.32,83,186/- u/s 2(22)(e) of the Act after giving benefit of the amount of accumulated profits already adjusted for the purpose of making addition amounting to Rs.1,17,17,142 in another case of the group concern of the assessee namely M/s GG Oils & Fats Pvt Ltd.

4.3 The assessee filed an appeal before the ld. CIT(A). However, the grounds of assessee were dismissed, and the addition was upheld. Being aggrieved the assessee filed appeal before us.

Facts during the assessment proceedings

5. The ld. AR, Mr. Sudhir Sehgal, Advocate vehemently argued and placed that the assessee has regularly been receiving the funds during the year and in the previous years as and when required by the assessee-company and has been paying the funds to the GAPL as and when required by the said company as per their business

requirements. As the credit balance in the books of accounts of the assessee was for a more period of time. The assessee was liable to pay interest on the same to GAPL and the same expense has been accordingly incurred by the assessee for the year under consideration and such expenditure of interest as debited to profit and loss account has been allowed by the Id. AO as bonafide business expense.

5.1. The assessee filed the copy of account of GAPL in its books of account and vice versa for the AY 2014-15 evidencing the above which are enclosed in the **APB, pages 26 to 32 and 33 to 49**. As the accumulated profits as on 31.03.2014 was Rs.1,50,00,328, and that the deemed dividend in the case of another group concern of the assessee namely M/s GG Oils and Fats Pvt Ltd. was already adjusted to the extent of Rs.1,17,17,142, thus, the Ld. AO calculated the amount of deemed dividend amounting to Rs.3283186 i.e. Rs.1,50,00,328- Rs.1,17,17,142.

6. The Id. AR, Mr. Sudhir Sehgal, Advocate further argued and placed that the assessee has a regular business transaction with GAPL. The assessee obtains funds from GAPL as per its own business requirements and the same is advance or repaid to the Company GAPL as per the said Company's requirement. Further, there being many occasions where there are debit/credit balances between these

two companies and the amount has been received/lent on account of business expediency.

6.1. Both the assessee are in the same line of business and they are engaged in the business of making transactions of high sea sales and at the time of purchase of edible oil, the amount is required by one company and other for the purpose of giving the margin money and for which, the funds are required and later on maturity of letter of credit as well and which are taken by both the group companies from each other at various intervals of time. If this transaction is not entered into on account of non-providing of margin money, it will result into loss to the company and, thus, the amount is required for the purposes of business and the same is advanced for the purpose of business only and none of the funds are withdrawn by the shareholders for the purpose of personal use. This is undisputed finding as borne out from the order of the Id. AO and the Id. CIT (A) and there is no finding that any shareholder has withdrawn the funds for their own personal use.

6.2. Therefore, the funds have been received and paid as per the business requirements of the assessee as well as GAPL and against which the Company

GAPL has duly recovered interest @12% from the assessee Company which is as per the market rate of interest and the assessee has clearly paid the interest as per market rates @ 12% p.a. at **page 39 of the APB** and the other assessee-company has earned an interest of Rs. 24,10,606/- as per **page 32 of the APB** and the same is undisputed and, thus, it was a business transaction. Form No. 26AS is enclosed in the case of assessee company. Therefore, as the assessee has been paying interest at the prevailing market rate of interest then no unnecessary or undue benefit has been given either and, there is no finding of the revenue.

6.3. The ld. AR argued that the funds has been obtained for the business exigencies, then the provisions of Section 2(22)(e) are not applicable and, thus, the addition made in the case of the assessee deserves to be deleted.

The ld. AR respectfully relied on the catena of judgment. The ld AR respectfully relied of order of Hon'ble **High Court of Punjab & Haryana** in the case of **CIT vs. Suraj Dev Dada 46 taxmann.com 402/ 367 ITR 78 (P &H)**. Wherein it has been held that.

“10. From the above, it emerges that CIT(A) and the Tribunal had concurrently recorded that the assessee had running account with the

company - M/s Dada Motors Pvt. Limited and had been advancing money to it. It was further observed that the provisions of Section 2(22)(e) of the Act were not attracted in the present case as this provision was inserted to stop the misuse by the assessee by taking the funds out of the company by way of loan advances instead of dividends and thereby avoid tax. In the present case, the assessee had in fact advanced money to the Company and there was credit for only 55 days for which provisions of Section 2(22)(e) of the Act could not be invoked. These findings were not shown to be erroneous or perverse in any manner.”

6.4. In the case of **Pradip Kumar Malhotra v. Commissioner of Income-tax, West Bengal, [2011] 15 taxmann.com 66 (Calcutta)**

“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 shareholder but to protect the business interest of the company.

12. The view we propose to take finds support from the two decisions, one of the Bombay High Court and the other of the Delhi High Court relied upon by Mr. Khaitan as indicated earlier.

13. We, therefore, find that the authorities below erred in law in treating the advance given by the Company to the assessee by way of compensation to the assessee for keeping his property as mortgage on behalf of the company to reap the benefit of loan as deemed dividend within the meaning of Section 2(22) (e) of the Act.

14. We, consequently, set aside the order of the Tribunal below by directing the Assessing Officer not to treat the advance of Rs. 20,75,000/- as a deemed dividend.”

In the above judgment, it has been held that if there is consideration, which is beneficial, to the company, received from the shareholder, then it is out of the scope of deemed dividend. In the present case, the company has received

interest to the tune of Rs. 24, 10,606/- as per page 32 of the Paper Book and, thus, this judgment is squarely applicable.

6.5. Respectfully the reliance was placed on the judgment of the Hon'ble **High Court of Punjab & Haryana** in the case of **CIT Vs. Amrik Singh, [2015] 56 taxmann.com 460 (Punjab & Haryana)** in which, it has been held as under: -

"5. After setting out the nature of Section 2(22)(e) of the Act, the Tribunal proceeded to examine the factual matrix of the case and held that as a tangible business expediency has been established between the assessee and company, Section 2(22)(e) of the Act cannot be invoked. A relevant extract from the order passed by the Income Tax Appellate Tribunal would be appropriate.

"Thus, we are of the considered opinion that these advances were received by the assessee in the normal course of business as a matter of fact of business expediency in which provisions of Section 2(22) (e) are not applicable. As per the ratio relied before us, even if the business of the lender company is not that of money lending, the amount advanced by it to its shareholders, otherwise in the course of business etc. would go out of the purview of Section 2(22)(e) of the Act. The decision of Hon'ble Delhi High Court rendered in the case of CIT v. Shri Raj Kumar in ITA No. 1130/2007, it has been held that the word 'advance' which appears in the company of the word 'loan' for the provisions of Section 2(22)(e), could only mean such advance

which carried with it an obligation of repayment. Likewise, the Hon'ble Mumbai High court in the case of Nagindass. M. Kapadia, similar view has been taken. The Hon'ble jurisdictional Bench of ITAT Chandigarh in the case of DCIT v. Lakra Brothers reported in 106 TTJ 250, it has been held that the advance given during the ordinary course of business for business expediency could not be covered under the provisions of Section 2(22)(e) of the Act.

From the above narrated facts, the business expediency is amply proved on record. It is also a fact that the agreement has not been reported or doubted by the AO, but the AO has taken his view because the assessee's concern was not pursuing the business of money lending. The sister-concern has taken over the entire business of the assessee when the assessee failed to fulfil the terms of the agreement. Thus, the amount of advance received by the assessee, under this agreement is a normal business requirement and nothing else. As we have already discussed, the fixed assets of the assessee concern have increased substantially during the relevant period."

6. A perusal of the facts and the above extract reveals that the revenue failed to adduce any evidence to prove that the transaction between the assessee and the company was a mere smoke screen to cover a surreptitious payment of money to a shareholder. M/s Nexo Products (India) received certain export orders but was not in a position to execute the orders as its manufacturing facility was situated in a remote area and was beset with labour problems and erratic supply of electricity. The Company, therefore, entered into an agreement, dated

1.8.2007 with the assessee to install plant and machinery at his premises to enable the assessee to do job work for the company, at 10% below the prevailing market rate. The Assessing Officer did not doubt this agreement or these facts. The assessee having proved a tangible business expediency between the assessee and the company, the question of invoking Section 2(22)(e) of the Act does not arise. The Income Tax Appellate Tribunal has after considering these facts rightly held that as the assessee has proved business expediency the advance is not covered by Section 2(22) (e) of the Act. We find no reason whether in law or in fact to interfere with these findings of facts, which are neither perverse nor arbitrary. The question of law is, therefore, answered against the revenue and the appeal is dismissed.”

7. The ld AR invited our attention on the assessee's **Judgement set-II**, at pages 116 to 117 related **CBDT Circular No. 19/2017**, dated **12.06.2017** and it has been stated in the paragraph 2.1(i) of the circular that the amount advanced for business transaction did not fall within the definition of deemed dividend u/s 2 (22) (e) and in para 2.4, it has been

held that where the assessee proved the business expediency , the advance was not covered in section 2 (22) (e).

8. Further the reliance is being placed on the judgment of **ITAT, Delhi Bench** in the case of **Saamag Developers Vs ACIT, reported in 90 taxmann.com 20 (Delhi Trib.)**, in which, it has been held as under:-

“Section 2(22) of the Income-tax Act, 1961 - Deemed dividend (Loans or advances to shareholders) - Assessment year 2008-09 - Whether where Commissioner(Appeals) made addition to assessee's income under section 2(22)(e) in respect of amounts received from various group companies, in view of fact that transaction between group concerns were current and inter banking accounts containing both types of entries i.e. giving and taking amount, same could not be considered as loans and advances as contemplated under section 2(22)(e) and no additions could be made as deemed dividend under section 2(22)(e) – Held”

9. Then after relying upon on various judgments specially of the M/S **Bagmane Construction PvtLtd. Vs ACIT-CC-2(3)/ Bangalore, ITA 446/Bang/2010 date of pronouncement dated 20/06/2011.** The relevant part from paragraph 7.5 is extracted as below: -

“Thus, it is obvious that the fiction created in section 2(22)(e) only refersto pure advances or loans. Any amount paid on account of genuine businesstransaction between the entities falls outside the ambit of section 2(22)(e).As a result of globalization during the recent past, various giantinfrastructure projects have sprung up and many are in the pipeline. Multi-various activities are involved in promoting these giant projects. All theseactivities collectively strive to complete the projects. Each activity isdistinct in character. For each activity, different kinds of commercialagreements and technical agreements are required. The financial structureof every activity differs. The risk and reward involved in every activity alsodiffers. In order to meet such complex constraints, the flagshipcompany/the promoter may create various distinct entities being special utility vehicles (SUV) to deal in each of these activities independently. Thepromoter along with these SUV jointly works to complete the over-allproject. In such situation, funds being the bloodline for all these entitiesflow from one entity to the other. Such transfer of funds arising out ofcommercial expediency may not

be in the nature of advances or loan in all circumstances.”

10. The ld. AR further placed that in GG Oil & Fats Pvt. Ltd. In **ITA No.508/Asr/2017**, date of order 05.07.2019. the Coordinate Bench of Amritsar has passed an order against the assessee and not followed the binding judgement of Jurisdictional High Court in the case of Sh. Suraj Dada and has misdirected himself in relying upon the judgment of TarulataShyam.

10.1. The ld. AR further placed that the assessee's case, though, the CIT(A) has dismissed the appeal for the impugned year but for next Assessment. Year i.e. for A.Y. 2015-16, he has deleted the addition following the judgment in the case of Suraj Dev Dada, reported in 367 ITR 78 and there is no appeal by the department against that order and copy of that order of CIT(A) has been placed at **APB pages 47 to 51**. Thus, on the basis of consistency also, addition is liable to be deleted besides the judgment of Jurisdictional High Court in the case of Suraj Dev Dada and of Kolkata High Court and Other judgments as cited above. For the purpose of consistency, the following judgments are being respectfully relied which are as follows: -

a. **CIT Vs/ DalmiaDadri Cement Ltd. (1970) 77 ITR 410 (P&H)**

“Held also, that though as a general rule the principle of res judicata is not applicable to decisions of income tax authorities and an assessment for a particular year is final and conclusive between the parties only in relation to the assessment for that year and the decisions given in an assessment for an earlier year are not binding either on the assessee or the department in a subsequent year, this rule is subject to limitations, for there should be finality and certainty in all litigations including litigation arising out of the Income Tax Act and an earlier decision on the same question cannot be reopened.”

b. **Berger Paints India Ltd. Vs CIT(2004) 266 ITR 99 (SC)**

“If the Revenue has not challenged the correctness of the law laid down by the High Court and has accepted it in the case of one assessee, then it is not open to the Revenue to challenge its correctness in the case of other assesses, without just cause”.

Here in the present case in assessee’s own case, the view has been taken by CIT(A) and ITAT since the Department accepted the plea of the assessee.

c. **DCIT V/s United Vanaspati Ltd. (2005) 275 ITR 124 (AT) (TM)**

“It is also true that the principles of res judicata do not apply to income tax proceedings but equally important, is the rule of consistency, which has been held to be applicable in tax proceedings. If the facts and circumstances of the earlier year are similar, the same view should ordinarily be followed in the subsequent years.”

d. **RadhasoamiSatsang Vs CIT (1992) 193 ITR 321 (SC)**

“Strictly speaking, res judicata does not apply to income tax proceedings. Though, each assessment year being a unit, what was decided in one year might not apply in the following year; where a fundamental aspect permeating through the different assessment years has been found as a fact one way or the other and parties have allowed that position to be sustained by not challenging the order, it would not be at all appropriate to allow the position to be changed in a subsequent year”.

e. **CIT V/s Arthur Andersen & Co.(2009) 318 ITR 229 (Bom)**

“Held, dismissing the appeal, that admittedly for the Assessment Year 1997-1998 the Assessing Officer had allowed deduction under the very head, except to the extent of 20 per cent, which was set aside in

appeal. Having not challenged the order for the Assessment Year 1997-1998 and not shown any valid cause for reconsideration, the Revenue was precluded from raising the issue in the present appeal.”

(Emphasis supplied)

**f. Commissioner of Income Tax V/s Leader Valves Ltd. (2007) 295
ITR 273 (P&H)**

“Held, that keeping in view the principle of consistency, the Revenue could not be permitted to raise an issue in isolation only for one year in the case of one assessee, while accepting the findings on the same issue in the case of other assesses and for other years in the case of assessee.”

(Emphasis supplied)

11. The ld. AR during the hearing invited our attention in **APB page 26 to 43** related to the running current a/c of both the companies and also the copy of the audit report with financial statement, **APB pages 1 to 25**. The ld. AR further placed that the interest was charged amount of Rs.24,10,606/- on which the TDS

was deducted, and the Certificate was also duly annexed with APB. The entire amount was transacted by both the companies for business exigencies.

12. The ld. DR vehemently argued and fully relied on the order of the ld. CIT(A) and also placed that the issue was not covered by the order of ITAT Amritsar Bench, in the assessee's own case in **ITA No. 508/Asr/2017, date of order 05.07.2019**. The ld. DR further relied on the cases **Smt. Tarulata Shyam v. CIT (1977) 108 ITR 345(SC)&Ms. P Sarada v. CIT reported in 229 ITR 444 (SC)**

12.1 The ld. DR invited our attention in appeal order para 3.2 which is extracted as below:

“3.2 I have carefully considered the submissions of the appellant and find that Sub-clause (e) of section 2(22) brings into its ambit as “dividend” any payment by way of advance or loan by a closely held company to a shareholder, being a person who is the beneficial owner of shares and having more than 10% of the voting power, to the extent to which the company possesses accumulated profits. The basic principle on which this provision hinges is that only loans and advances can be deemed to be dividend and that, too, only to the extent that the lender company possesses accumulated profits. In other

words, what requires determination is whether the payment is a loan or advance and that whether at the time of giving of such loan or advance, there were accumulated profits.

In the case of the appellant, it is apparent that the appellant is liable to be taxed on the loans and advances received from M/s GurdasAgro Private Limited, as dividend, on account of the legal fiction created by the provisions of section 2(22)(e) of the Act. It is an admitted and undisputed fact that the appellant company was shareholder of M/s GurdasAgro Private Limited during the year under consideration and received loan. In the Tax Audit Report in Form No. 3CD [column 31a & 31b] also, there is an ad idem disclosure of acceptance & repayment of loan from and to M/s GurdasAgro Private Limited. Similar disclosure has been made in the Balance Sheet and the Tax Audit Report of M/s GurdasAgro Private Limited. The fact of loan taken by the appellant company, thus, stands established from its own financial statements as well as the statutory Tax Audit Report as also the financial statements and the statutory Tax Audit Report of the lender company. Thus, plea taken by the appellant at the appellate stage that the transactions of loans and advance was in the nature of current account for the purposes of business is fallacious. The receipt of loan/advance as reflected in the Ledger account does not either expressly or

by necessary implication reflect a “payment” of money towards a pre-existing liability or by way of discharge of an existing obligation or any sale/ purchase transactions. Neither the financial statements show any business transactions between the lender and borrower nor has the appellant company been able to demonstrate that the receipt of payment was on account of any trading transaction.

Repayment or adjustment of loan or advance also does not affect the applicability of section 2(22)(e). The liability to tax gets attached to any amount taken as a loan or advance by a shareholder from a closely held company at the moment the loan is borrowed, and it is immaterial whether the loan is repaid before the end of the accounting year or not. This proposition is strengthened by the decisions of the Hon’ble Supreme Court on this issue in the cases of Tarulata Shyam [1977] 108ITR 345 & Miss P. Sarada [1998] 229 ITR 444, 448.

So far as the accumulated profits of M/s GurdasAgro Private Limited is concerned, it is seen that as at the close of the Financial Year i.e. 31/03/2014, the reserves and surplus including the profits for the year stands at Rs. 1,50,00,328/-. The AO has chosen to work out the prorata accumulated profits

for the Financial Year 2013-14 till 06/11/2013 [Rs. 1,17,17,142/-], when maximum balance of advances was outstanding in the case of another group company namely G.G. Oils & Fats Pvt.Ltd.. The balance accumulated profits of Rs.32,83,186/- [Rs. 1,50,00,328 (-) Rs. 1,17,17,142/-] has been considered as “deefnd dividend” in the hands of the appellant and I find that this is, in fact, more than a reasonable view of the matter on the art of the AO.

In view of the aforesaid, the action of the AO in treating the loans and advances received by the appellant company as ‘deemed dividend’ within the meaning of section 2(22)(e) of the Act is upheld. In the result, the appeal is dismissed. It is ordered accordingly.”

12.2 The Id. DR also relied on the order of assessee’s own case which is in favour of the revenue bearing ITA No. **508/Asr/2017, date of order 05.07.2019.**

page nos. 33 to 35. The relevant para is duly extracted as below:

“The nature of transactions, purely financial in nature, has been found to be receipt and payment of money, i.e., a ‘loan’ by definition, a term judicially well expounded. This aspect, denoting a primary fact, is in fact admitted. The genuineness of a loan or advance, i.e., creates an actual liability - an absence

of which would attract s. 68, is not in issue. However, that the loan/advance represents an actual liability of the shareholder, which may have been repaid since, which could even be in the relevant year itself, did not find favour with the Apex Court in view of the clear, unambiguous language of the provision; it further noting that the object of the provision had a rational nexus with income, so that the provision, which it agreed was harsh, was within the legislative competence of the Parliament and, therefore, had to be given effect to. Parallel in this context stands drawn by us with section 68 of the Act. The argument of the sum not representing 'real income', though not specifically advanced before us, is implicit in the argument advanced with reference to the genuineness of the loan/ advance, and therefore considered. The same would not carry the assessee's case further, as would even otherwise be apparent from the host of decisions by the Apex Court. As explained in Poona Electric Supply Co Ltd. v. CIT [1965] 57 ITR 521 (SC), the concept of 'real income' is subject to the provisions of the Act. The loan or advance being both ways would not carry any special significance in the context of the provision inasmuch as both qualify, independently, to be a loan or advance, which in the present case is with interest, further, establishing, if it was required, the payments to be purely financial transactions, i.e.,

loan/advance(s) simpliciter, squarely covered within the ambit of the provision, which seeks to place restriction on payments to a substantial shareholder by a company in which public is not substantially interested - nothing more and nothing less. In fact, loan/advance by one to another would only be if the funds are for the time being surplus with the lending company and, thus, independent of a subsequent loan, if any, to the borrower company. Further, it would arise only where, though available, the money is, at the same time, required by the borrowing company, so that there is no certainty under such an arrangement, both with regard with the quantum and time of the source of funds for such an arrangement to be regarded as viable or a dependable one, or to contend of the loan being temporary. No business purpose has been shown or otherwise stated, so that the contention in its respect is a bald one. The period of retention has again been found to be not relevant. The aspect of set off of subsequent credits (receipts), i.e., subsequent to repayment of the earlier receipt, advanced in Tarulata Shyam (supra), though not answered by the Apex Court, being hypothetical (refer pg. 358 of the Reports), also do not arise in the instant case as the Revenue has brought only the peak credit during the year to tax. It may be noted that inasmuch as each payment qualifying as a loan or advance falls

within the ambit of the provision, and its subsequent repayment held as of no consequence, the entire payment to (receipt by) the shareholder (company) would stand to be regarded as 'dividend'. In fact, a plea as to only the peak credit being regarded as dividend was raised, though not accepted, in P.K. Badiani (supra) (refer pg. 380), a decision which subsequently found approval in Mukundray K. Shah (supra). That is, the Revenue has, in regarding only the peak amount advanced as the qualifying amount, acted as reasonable as it could under the circumstances, i.e., given the settled law in the matter, the payment being regarded as dividend only under its artificial definition, as explained, per an irrebuttable presumption, statutorily provided. The question of the genuineness of the loan or advance, is, for the same reason, of no significance. The decisions cited are, besides being without reference to binding judicial precedents, distinguishable on facts. Further, being not a regular dividend, declared and paid by company, the same does not fall to be covered u/s. 10(34) and, thus, is not excepted u/s. 56. The same has, accordingly, been rightly brought to tax u/s. 2(24)(ii) r/w ss. 2(22)(e) and 56 of the Act by the Revenue, whose action is upheld. The assessee, in this view of the matter, fails. We decide accordingly."

13. We heard the rival submission and relied on the documents available in the record. The transaction between assessee and the GAPL is quite a business exigency and the assessee deducted TDS on the interest on the balance amount of the current account. We respectfully relied on the order of the **Pradeep Kumar Malhotra (supra)** and **Amrik Singh, (supra)**. The Id.AR also relied on the **CBDT Circular No. 19/2017 dated 12.06.2017** as per this Circular the CBDT relied on the order of the **CIT vs. Amrik Singh, Punjab & Haryana High Court** where the amount was transacted for business exigencies and the advance was not covered by section 2(22)(e) of the Act.

13.1. The revenue respectfully relied on the case **Smt. Tarulata Shyam v. CIT(supra)&Ms. P Sarada v. CIT(supra)**. In the case of Ms P. Sarada, the issue before the highest judiciary of the land was that whether, the withdrawals made by the assessee from Universal Radiators Private Limited totalling Rs. 93,027 can be assessed in the hands of the assessee under section 2(22)(e) of the Act for the year 1973-74 ? After due consideration of the facts of the case, the Hon'ble Apex Court was pleased to rule that, Held— *“The withdrawals made by the appellant from the company amounted to grant of loan or advance by the company to the shareholder.*

The legal fiction came into play as soon as the monies were paid by the company to the appellant. The assessee must be deemed to have received dividends on the dates on which she withdrew the aforesaid amounts of money from the company. The loan or advance taken from the company may have been ultimately repaid or adjusted, but that will not alter the fact that the assessee, in the eye of law, had received dividend from the company during the relevant accounting period.”

With highest regards, we would like to point out that the issue before the Hon’ble Apex Court was on the different footing which has no relevance to the issue on hand on the very ground that the assessee had not received any loan or advance for its own benefit, but, the funds were provided for the execution specific purpose on behalf of GAPL. Thus, in our considered view, the case law cited by the authorities below is distinguishable. With due respects, we would like to make it clear that none of the three conditions prescribed by the Hon’ble Court are applicable to the case on hand, namely,

(i) no payments were made to the assessee by way of advance or loan by GAPL, but funds were allocated for execution of work assigned to the assessee on its behalf;

(ii) no payments were made on its behalf; and

(iii) payments made were not for anybody's individual benefit.

The payments in question were provided due to business exigencies and the funds so provided for the sole benefit of company and not to individual benefit of a shareholder and, therefore, the question of applicability of the provisions of Section 2(22)(e) of the Act doesn't arise.

13.2. The reliance was placed in order of **Mrs Tarulata Shyam** (supra) the question for applicability section 2(22)(e) of the Act (corresponding to section 2(6A)(e) of the Indian Income-tax Act, 1922) the nature of business exigency was not considered. It is distinguishable from other point that in the case Mrs Tarulata Shyam the beneficiary was individual, and no business exigency was formed. In the impugned appeal the transaction was made between two companies.

We are, therefore, of the considered view that the case laws relied on by the authorities has no relevance to the present issue.

13.2 The Id. DR respectfully relied on the order of the jurisdictional tribunal in assessee's own case bearing ITA No.508/Asr/2017 (supra), where the issue related to business exigency was not covered and relied on the order of **Poona Electric Supply Co. Ltd. Vs. CIT 57 ITR 521 (SC)** the concept of the real income is ascertained. We fully relied on the order on ITAT-Bangalore Bench in the case of **M/S Bagmane Construction Pvt Ltd**(supra). The section 2(22)(e) is deeming provision. A plain reading of the provisions reveals that the provisions of section 2(22)(e) of the Act will be attracted in a situation where the company, in which the assessee was the registered shareholder, advances loans and advances to the other companies in which the assessee was holding the substantial interest and the assessee get some benefit out of such loans and advances. In the case on hand, the Id. DR was not able to submit any clear-cut finding that there was any benefit accrued to the assessee out of the loans and advances given by the company namely GAPL, the company as discussed above. The assessee at the end of fiscal year deducted TDS on interest as calculated on entire transaction with GAPL. It is also pertinent to note that, same contention was also raised by the assessee before

the AO during the assessment proceedings as well as before us which was not disputed either by the AO or by the Id. DR.

13.3. A receipt which cannot be liable for tax, unless there are specific provisions to tax the same. Certain transaction is covered by deeming provision & have been brought in the statute under deeming provision. Same section 2(22)(e), deeming provision has been brought in the statute to cover up transaction. The benefit is not individual but solely on business exigency. The **deeming provision** is always under the control of **express provision**. It is pertinent to observe that the benefit of expressed provision is covered in deeming provision or not. Considering the factual matrix, the assessee did not get any direct benefit of the payment made by GAPL and the amount was returned back to party. We respectfully relied on the order of jurisdictional High Court in the case of **Suraj Dev Dada**(supra). Only it is the benefit of business exigency. Accordingly, in our humble understanding, the principles laid down by the ITAT-Amritsar Bench in the assessee's own case, ITA No. **508/Asr/2017** (supra) is not applicable in the given facts and circumstances. In our considered view we set aside the order of the Id. CIT(A) and the grounds of the appeal of the assessee are allowed.

14. As noted at the beginning of this order, the facts and issue in both these appeals are common. So, our observations qua in **ITA No.189/Asr/2018**is, mutatis mutandis, equally applicable to **ITA No.513/Asr/2019** also.

15. In the result, the appeals of the assessee bearing **ITA No. 189/Asr/2018& ITA 513/Asr/2019** are allowed.

Order pronounced in the open court on 11.07.2023

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