

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'F', NEW DELHI**

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No.2723/Del/2023
Assessment Year: 2015-16

Pawa International Pvt. Ltd. M-102, Greater Kailash Part-I, New Delhi-110048 PAN No.AAACP6108P	Vs.	ACIT Circle-19 (2) New Delhi
(APPELLANT)		(RESPONDENT)

Appellant by	Dr. Rakesh Gupta, Advocate Sh. Somil Agarwal, Advocate
Respondent by	Sh. Vivek Vardhan, Sr DR

Date of hearing:	04/12/2023
Date of Pronouncement:	04/12/2023

ORDER

PER N. K. BILLAIYA, AM:

This appeal by the assessee is preferred against the order dated 13.09.2023 by NFAC, Delhi.

2. The sum and substance of the grievance of the assessee is that the CIT(A) erred in confirming the addition of Rs.53808475/- on account of deemed dividend u/s.2 (22)(e) of the Act by ignoring the fact that the assessee company is not a share holder.

3. Briefly stated the facts of the case are that the return of income filed on 27.10.2015 was selected for scrutiny through CASS and accordingly statutory notices were issued and served upon the assessee.

4. While scrutinizing the return the AO considered the following :-

Name of share holder	Assessee Company		Designer Apartments		Pawa Infrastructure		Pawa Knowledge city		Shiela Hotels	
	31/10/14	31/10/15	31/03/14	31/03/15	31/10/14	31/10/15	31/10/14	31/10/15	31/10/14	31/10/15
Satish Kumar Pahwah	29.90%	29.90%	46.52%	46.52%	50.00%	50.00%	50.00%	50.00%	41.30%	41.30%
SheeIP Awha	23.45%	23.45%	53.45%	53.45%	50.00%	50.00%	50.00%	50.00%	40.00%	40.00%

Name of company	Accumulated profits		Security against Rent	Dividend u/s. 2 (22) (e) (lowest of the three)
	31/03/2014	31/03/2015		
Designer Apartments	7,30,56,067	7,29,98,176	2,74,00,000	2,74,00,000
Pawa Infrastructure	8,82,18,258	9,85,93,853	65,00,000	65,00,000
Pawa Knowledge City	6,53,963	6,08,475	70,00,000	6,08,475
Shiela Hotels	2,12,16,444	2,11,47,811	1,93,00,000	1,93,00,000
Total				5,38,08,475

5. The AO was of the firm belief that all companies providing fund are closely held companies, therefore, loan shall be treated

as dividend to the extent of accumulated profits and invoking the provisions of section 2(22)(e) of the Act, the AO made the addition of Rs.53808475/-.

6. Assessee carried the matter before the CIT(A) but without any success.

7. Before us the Counsel for the assessee vehemently stated that the assessee is not even a share holder in the impugned company, therefore, there is no question of invoking the provisions of section 2 (22)(e) of the Act.

8. The DR placed strong reliance on the orders of the authorities below.

9. We have carefully considered the orders of the authorities below. On perusal of the chart explaining the share holding pattern as exhibited elsewhere it can be seen that the assessee is not a share holder in the impugned company. The Hon'ble Jurisdictional High Court of Delhi in the case of Ankitech Private Limited 340 ITR 14 has clearly held that legal fiction created u/s. 2 (22)(e) enlarges definition of dividend only and legal fiction is not to be extended further for broadening concept of share holders. This has been affirmed by the Hon'ble Supreme Court in the case of Madhur Housing and Development Company 401 ITR 152.

10. Respectfully following the ratio laid down by the Hon'ble High Court and the Hon'ble Supreme court (supra) we direct the AO to delete the impugned addition. The appeal of the assessee is accordingly allowed.

11. Decision announced in the open court on 04.12.2023.

Sd/-
(ASTHA CHANDRA)
JUDICIAL MEMBER

NEHA

Date:- .12.2023

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-
(N. K. BILLAIYA)
ACCOUNTANT MEMBER

ASSISTANT REGISTRAR
ITAT NEW DELHI