

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A": NEW DELHI
BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No. 284/Del/2021
(Assessment Year: 2016-17)

ACIT, Circle-61(1), New Delhi (Appellant) PAN: AGMPJ6714D	Vs.	Sh. Adiish Jain, K-4/20, Model Town-II, Delhi-110009 (Respondent)
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Assessee by :	Shri Satish Aggrawal, CA
Revenue by:	Shri Kanv Bali, Sr. DR

Date of Hearing	01/11/2023
Date of pronouncement	12/01/2024

O R D E R

PER M. BALAGANESH, A. M.:

1. The appeal in ITA No. 284/Del/2021 for AY 2016-17, arises out of the order of the Commissioner of Income Tax (Appeals)-33, Delhi [hereinafter referred to as 'ld. CIT(A)', in short] in Appeal No. 10324/18-19/773/19-20 dated 21.09.2020 against the order of assessment passed u/s 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 21.12.2018 by the Assessing Officer, ACIT, Circle-63(1), New Delhi (hereinafter referred to as 'ld. AO').

2. The revenue has raised the following grounds of appeal :-

"1 The Ld. CIT(A) has erred in deleting the addition of Rs. 5,67,72,393/- and has not appreciated the fact that till 27.11.2015 no sale or purchase transactions occurred between the two parties, Mis J.P. Engineers and M/s SMW Metal Pvt Ltd, however, there was huge amount of financial transactions held between the two parties. Further, the Lat. CIT(A) has not appreciated the fact that the credit entries to M/s J.P. Engineers received from SMW Metals were almost settled even before initiation of any commercial transaction. This clearly establishes that such transaction are not in nature of trade advances but deemed dividend in the hands of assessee u/s 2(22)(e) of the Act."

3. The only issue to be decided in this appeal is as to whether the Id CIT(A) was justified in deleting the addition made on account of deemed dividend u/s 2(22)(e) of the Act in the facts and circumstances of the instant case.

4. We have heard the rival submissions and perused the material available on record. The assessee is an individual and apart from being a partner of M/s. JP Engineers having 50% share thereon, he is also a shareholder in SMW Metal Pvt. Ltd having 22.08% voting power thereon. During the year under consideration, M/s. SMW Metal Pvt. Ltd had advanced some monies to M/s. JP Engineers. The Id AO sought to treat the amount advanced by M/s. SMW Metals Pvt. Ltd to M/s. JP Engineers as deemed dividend in the hands of the assessee herein as the assessee was having more than 10% share in both the entities and having substantial interest thereon and that according to Id AO, the monies advanced by a concern in which the assessee has substantial interest had advanced monies in the nature of loan and advances to the other concern i.e. M/s. JP Engineers in which the assessee is substantially interested, would squarely fall within the ambit of definition of section 2(22)(e) of the Act. The Id AO also observed that M/s. SMW Metal Pvt. Ltd has accumulated profits to the tune of Rs. 9,68,26,731.68. For this purpose, the Id AO analysed the ledger account of M/s. SMW Metal Pvt Ltd and M/s. JP Engineers. The Id AO observed that though there are trading transactions in respect of sales/purchases that had occurred between the parties only from 27.11.2015 and in earlier year. Accordingly, the Id AO concluded that up to 26.11.2015 the transactions carried out between M/s. SMW Metal Pvt. Ltd and M/s. JP Engineers are only in the nature of loan and advances transaction warranting invocation of provisions of section 2(22)(e) of the Act. Accordingly, the Id AO held that the CBDT Circular No. 19/2017 dated 12.06.2017 relied upon by the assessee could be made applicable only from 27.11.2015 onwards and not earlier.

5. The Id AR before us filed a tabulation on the basis of working of deemed dividend by the Id AO and the anomalies thereon as under:-

Date	Transfer from JP to SMW Cr	Transfer from SMW to JP Dr	Balance	Deemed Dividend computed by the AO by aggregating debits balances and ignoring credit balances	Remarks	Amount due to JP by SMW
28-Apr-15	-	46,00,000	46,00,000	46,00,000		-
30-Apr-15	-	2,00,00,000	2,46,00,000	2,00,00,000		-
27-May-15	40,00,000	-	2,06,00,000	-		-
28-May-15	-	22,00,000	2,28,00,000	22,00,000	Maximum balance due is Rs. 2,46,00,000, AO again added Rs. 22,00,000	-
29-May-15	1,00,00,000	-	1,28,00,000	-		-
29-May-15	1,00,00,000	-	28,00,000	-		-
29-May-15	1,00,00,000	-	(72,00,000)	-		-
29-May-15	1,00,00,000	-	(1,72,00,000)	-		-
29-May-15	1,00,00,000	-	(2,72,00,000)	-		-
29-May-15	2,11,30,658	-	(4,83,30,658)	-		-
29-May-15	-	3,50,00,000	(1,33,30,658)	-		-
29-May-15	-	3,50,00,000	2,16,69,342	2,16,69,342	Maximum balance due is Rs. 2,46,00,000, AO again added Rs. 2,16,69,342	-
03-Jun-15	20,00,000	-	1,96,69,342	-		-
04-Jun-15	30,00,000	-	1,66,69,342	-		-
04-Jun-15	-	50,000	1,67,19,342	50,000		-
04-Jun-15	-	50,000	1,67,69,342	50,000		-
05-Jun-15	1,10,00,000	-	57,69,342	-		-
11-Jun-15	1,07,00,000	-	(49,30,658)	-		49,30,658
12-Jun-15	-	43,00,000	(6,30,658)	-		-
15-Jun-15	65,00,000	-	(71,30,658)	-		65,00,000
24-Jun-15	7,00,000	-	(78,30,658)	-		7,00,000
28-Jun-15	7,00,00,000	-	(7,78,30,658)	-		7,00,00,000

Date	Transfer from JP to SMW Cr	Transfer from SMW to JP Dr	Balance	Deemed Dividend computed by the AO by aggregating debits balances and ignoring credit balances	Remarks	Amount due to JP by SMW
02-Jul-15	50,00,000		(8,28,30,658)			50,00,000
03-Jul-15	1,00,00,000		(9,28,30,658)			1,00,00,000
04-Jul-15	1,00,00,000		(10,28,30,658)			1,00,00,000
07-Jul-15		20,00,000	(10,08,30,658)			
10-Jul-15		74,793	(10,07,55,865)			
13-Jul-15	10,00,000		(10,17,55,865)			10,00,000
15-Jul-15	15,00,000		(10,32,55,865)			15,00,000
15-Jul-15		14,00,000	(10,18,55,865)			-
16-Jul-15	3,00,000		(10,21,55,865)			3,00,000
16-Jul-15	1,00,000		(10,22,55,865)			1,00,000
21-Jul-15	35,724		(10,22,91,589)			35,724
24-Jul-15	13,00,000		(10,35,91,589)			13,00,000
25-Jul-15	13,00,000		(10,48,91,589)			13,00,000

27-Jul-15	5,000		(10,48,96,589)			5,000
28-Jul-15		35,724	(10,48,60,865)			-
31-Jul-15	35,00,000		(10,83,60,865)			35,00,000
31-Jul-15	7,00,000		(10,90,60,865)			7,00,000
05-Aug-15		40,00,000	(10,50,60,865)			-
08-Aug-15	9,00,000		(10,59,60,865)			9,00,000
03-Sep-15	43,00,000		(11,02,60,865)			43,00,000
08-Sep-15	21,00,000		(11,23,60,865)			21,00,000
10-Sep-15	4,00,000		(11,27,60,865)			4,00,000
15-Sep-15	1,90,00,000		(13,17,60,865)			1,90,00,000
16-Sep-15		27,397	(13,17,33,468)			-
23-Sep-15		1,00,00,000	(12,17,33,468)			-
24-Sep-15	39,00,000		(12,56,33,468)			39,00,000

Date	Transfer from JP to SMW Cr	Transfer from SMW to JP Dr	Balance	Deemed Dividend computed by the AO by aggregating debits balances and ignoring credit	Remarks	Amount due to JP by SMW
28-Sep-15		2,74,00,000	(9,82,33,468)			-
03-Oct-15		85,00,000	(8,97,33,468)			-
08-Oct-15	28,00,000		(9,25,33,468)			28,00,000
13-Oct-15		1,10,00,000	(8,15,33,468)			-
15-Oct-15		1,56,00,000	(6,59,33,468)			-
17-Oct-15		39,00,000	(6,20,33,468)			-
19-Oct-15		14,00,000	(6,06,33,468)			-
21-Oct-15		40,00,000	(5,66,33,468)			-
26-Oct-15		1,25,00,000	(4,41,33,468)			-
27-Oct-15		22,00,000	(4,19,33,468)			-
28-Oct-15		1,90,00,000	(2,29,33,468)			-
31-Oct-15	25,007		(2,29,58,475)			25,007
02-Nov-15		52,00,000	(1,77,58,475)			-
03-Nov-15		66,00,000	(1,11,58,475)			-
05-Nov-15		2,00,000	(1,09,58,475)			-
05-Nov-15		63,60,000	(45,98,475)			-
06-Nov-15		30,00,000	(15,98,475)			-
06-Nov-15		2,00,000	(13,98,475)			-
07-Nov-15		31,00,000	17,01,525	17,01,525	Maximum balance due is Rs. 2,46,00,000, AO again added Rs. 17,01,525	-
09-Nov-15		20,00,000	37,01,525	20,00,000	Maximum balance due is Rs. 2,46,00,000, AO again added Rs. 20,00,000	-

12-Nov-15	1,80,00,000		(1,42,98,475)			1,42,98,475
13-Nov-15	1,01,00,000		(2,43,98,475)			1,01,00,000

Date	Transfer from JP to SMW Cr	Transfer from SMW to JP Dr	Balance	Deemed Dividend computed by the AO by aggregating debits balances and ignoring credit	Remarks	Amount due to JP by SMW
16-Nov-15		10,00,000	(2,33,98,475)			-
17-Nov-15		5,00,000	(2,28,98,475)			-
17-Nov-15		1,12,00,000	(1,16,98,475)			-
20-Nov-15		74,00,000	(42,98,475)			-
23-Nov-15		50,00,000	7,01,525	7,01,525		-
26-Nov-15		35,00,000	42,01,525	35,00,000		-
26-Nov-15		3,00,000	45,01,525	3,00,000		-
27-Nov-15	3,00,000		42,01,525			-
	27,55,96,389	27,97,97,914		5,67,72,392		17,46,94,864

6. Accordingly, a sum of Rs. 5,67,72,393/- was added by the Id AO as deemed dividend in the assessment.

7. Before the Id CIT(A), the assessee submitted that the transaction between M/s. JP Engineers and M/s. SMW Metal Pvt Ltd were of commercial nature and done in the normal course of business and they are not in the nature of loans and advances. It was specifically pointed out that M/s. JP Engineers had made sales of Rs. 15.60 crores M/s. SMW Metal Pvt. Ltd and had made purchase of Rs. 5.51 crores from M/s. SMW Metal Pvt. Ltd during the year under consideration after 27.11.2015 and they had a running current account. It was also submitted that M/s. SMW Metal Pvt. Ltd had not only granted advances to M/s. JP Engineers but had also received advances from M./s. JP Engineers on mutually reciprocal basis in the ordinary course of business. The assessee submitted that since both M/s. SMW Metal Pvt. Ltd and M/s. JP Engineers are engaged in the business of aluminum products, the financial transactions between them could only be construed as commercial transactions in the ordinary course of business. The assessee also submitted that

the transactions between two entities during the immediately preceding year i.e. 2015-16 in the following table are as follows:-

S.No.	Particulars	Amount	Amount
1.	Opening balance as on 01.04.2014	-	102,576,246
2.	Purchase from J P Engineers		10,426,365
3.	bales to JP Engineers	13,721,031	
4.	Payment made to JP Engineers	395,756,943	
5.	Payment received from JP Engineers		296,273,315
6.	Debit through transfer entries	2,297,952	
7.	Credit through transfer entries		2,500,000
	Total	411,775,926	411,775,926

8. The Id CIT(A) took note of the aforesaid transactions that had happened between two entities during 2015-16 and observed that both the entities had business transactions between the two entities and had been engaging itself in commercial transactions apart from having trading transactions. Hence, he concluded that the transactions that had happened between 01.04.2015 to 27.11.2015 cannot be looked into in isolation. With these observations, the Id CIT(A) deleted the addition made on account of deemed dividend u/s 2(22)(e) of the Act.

9. At the outset, we find that the transactions between two entities M/s. SMW Metal Pvt. Ltd and M/s. JP Engineers were on continuous basis and were prevailing in earlier years also. It is not in dispute that both the entities are engaged in the business of trading of aluminum products. It is not in dispute that there were sale /purchase transaction between the two entities from 27.11.2015 onwards. Considering the commercial transaction between two entities in the earlier years and also during the year under consideration up to 27.11.2015, we find that monies received by M/s. JP Engineers from M/s. SMW Metal Pvt. Ltd need to be construed only as advance received for supply of goods by M/s. JP Engineers to M/s. SMW Metal Pvt. Ltd in the ordinary course of business. Further, we find that the Id AO had summed up the aggregate of advance made by M/s. SMW Metal Pvt. Ltd to M/s. JP Engineers Pvt. Ltd ignoring the amount received from M/s. J P Engineers

which resulted on many occasions when M/s. SMW Metal P Ltd becoming creditor of M/s. JP Engineers while determining the amount of deemed dividend. Factually, both the entities were advancing monies to each other on mutually reciprocal basis as has been done in the ordinary course of their business. Hence, the transaction is more in the nature of current account and running account between the two entities. Further, the transactions carried out between two entities had benefited both the entities. The issue in dispute is also covered by the decision of the Hon'ble Jurisdictional High Court in the case of CIT Vs. Creative Dyeing and Printing Pvt. Ld reported in 318 ITR 476 wherein it was held as under:-

"9. In the present case the Tribunal on considering decisions in various cases held as under:

" From the ratio laid down in above cases and on the basis of judicial interpretation of words, „Loans“ or „Advances“, it can be held that section 2(22)(e) can be applied to „Loans“ or „Advances“ simplicitor and not to those transactions carried out in course of business as such. In the course of carrying on business transaction between a company and a stockholder, the company may be required to give advance in mutual interest. There is no legal bar in having such transaction. What is to be ascertained is what is the purpose of such advance. If the amount is given as advance simplicitor or as such per se without any further obligation behind receiving such advances, may be treated as „deemed dividend“, but if it is otherwise, the amount given cannot be branded as „advances“ within the meaning of deemed dividend under section 2(22)(e). Just as per clause (ii) of section 2(22)(e), dividend is not to include advance or loan made by a company in the ordinary course of business where the lending of money is a substantial part of the business of the company advance in the ordinary course of carrying on business cannot be considered as „dividend“ within the meaning of section 2(22)(c). By granting advance if the business purpose of the company is served and which is not the sum, which it otherwise would have distributed as dividend, cannot be brought within the deeming provision of treating such „Advance“ as deemed dividend"

10. We agree with the aforesaid observations. The finding of facts, arrived at by the Tribunal in the present case is that the transaction in question was a ITA 250/2009 Page 7 business transaction and which transaction would have benefited both the assessee company and M/s. Pee Empro Exports Pvt. Ltd. In fact, as stated above, the counsel for the appellant has conceded that the amount is in fact not a loan but only an advance because the amount paid to the assessee company would be adjusted against the entitlement of moneys of the assessee company payable by M/s. Pee Empro Exports Pvt. Ltd. in the subsequent years.

11. The counsel for the appellant has very strenuously urged that neither the Tribunal nor the judgment of this Court in Rajkumar's case(supra) deals with that

part of the definition of deemed dividend under Section 2(22)(e) which states that deemed dividend does not include an advance or loan made to a shareholder 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 [Section 2(22)(e)(ii)] i.e. there is no deemed dividend only if the lending of moneys is by a company which is engaged in the business of money lending. Dilating further the counsel for the appellant contended that since M/s. Pee Empro Exports Pvt. Ltd. is not into the business of lending of money, the payments made by it to the assessee company would therefore be covered by Section 2(22)(e)(ii) and consequently payments even for business transactions would be a deemed dividend. We do not agree. The Tribunal has dealt with this aspect as reproduced in para (9) above. The provision of Section 2(22)(e)(ii) is basically in the nature of an explanation. That cannot however, have bearing on interpretation of the main provision of Section 2(22)(e) and once it is held that ITA 250/2009 Page 8 the business transactions does not fall within Section 2(22)(e), we need not to go further to Section 2(22)(e)(ii). The provision of Section 2(22)(e)(ii) gives an example only of one of the situations where the loan/advance will not be treated as a deemed dividend, but that's all. The same cannot be expanded further to take away the basic meaning, intent and purport of the main part of Section 2(22)(e). We feel that this interpretation of ours is in accordance with the legislative intention of introducing Section 2(22)(e) and which has been extensively dealt with by this Court in the judgment in Raj Kumar's case (supra). This Court in Raj Kumar's case (supra) extensively referred to the report of the Taxation Enquiry Commission and the speech of the Finance Minister in the Budget while introducing the Finance Bill. Ultimately, this Court in the said judgment held as under:

" 10.3 A bare reading of the recommendations of the Commission and the Speech of the then Finance Minister would show that the purpose of insertion of clause (e) to section 2(6A) in the 1922 Act was to bring within the tax net monies paid by closely held companies to their principal shareholders in the guise of loans and advances to avoid payment of tax.

10.4 Therefore, if the said background is kept in mind, it is clear that sub-clause (e) of section 2(22) of the Act, which is pari material with clause (e) of section 2(6A) of the 1922 Act, plainly seeks to bring within the tax net accumulated profits which are distributed by closely held companies to its shareholders in the form of loans. The purpose being that persons who manage such closely held companies should not arrange their affairs in a manner that they assist the shareholders in avoiding the payment of taxes by having these companies pay or distribute, what would legitimately be dividend in the hands of the shareholders, money in the form of an advance or loan.

10.5 If this purpose is kept in mind then, in our view, the word „advance“ has to be read in conjunction with the word „loan“. Usually attributes of a loan are that it involves positive act of lending coupled with acceptance by the other side of the money as loan: it generally carries an interest and there is an obligation of repayment. On the other hand, in its widest meaning the term „advance“ may or may not include lending. The word „advance“ if not found in the company of or in conjunction with a word „loan“ may or may not include the obligation of repayment. If it does then it would be a loan. Thus, arises the conundrum as to what meaning one would attribute to the term „advance“. The rule of construction to our minds which answers this

conundrum is noscitur a sociis. The said rule has been explained both by the Privy Council in the of Angus Robertson v. George Day (1879) 5 AC 63 by observing "it is a legitimate rule of construction to construe words in an Act of Parliament with reference to words found in immediate connection with them" and our Supreme Court in the case of Rohit Pulp & Paper Mills Ltd. v. Collector of Central Excise, AIR 1991 SC 754 and State of Bombay v. Hospital Mazdoor Sabha AIR 1960 SC 610."

12. Therefore, we hold that the Tribunal was correct in holding that the amounts advanced for business transaction between the parties, namely, the assessee company and M/s. Pee Empro Exports Pvt. Ltd. was not such to fall within the definition of deemed dividend under Section 2(22)(e). The present appeal is therefore dismissed."

10. Further, when there is current account transaction between two entities, the transactions carried out by them would be outside the ambit of provisions of deemed dividend. This has been held by the Hon'ble Calcutta High Court in the case of Pradip Kumar Malhotra Vs. CIT reported in 338 ITR 538 (Cal).

11. In view of the aforesaid observations and respectfully following the judicial precedent hereinabove, we do not find any infirmity in the order passed by the Id CIT(A) granting relief to the assessee. Accordingly, grounds raised by the revenue are dismissed.

12. In the result, the appeal of the revenue is dismissed.

Order pronounced in the open court on 12/01/2024.

Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER

-Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated: 12/01/2024
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi