

IN THE INCOME TAX APPELLATE TRIBUNAL
“DB” BENCH, AGRA

**BEFORE HON’BLE SHRI SATBEER SINGH GODARA, JM AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM**

आयकरअपील सं. / ITA No.137/Agr/2024
(निर्धारणवर्ष / Assessment Year: 2014-15)

DCIT (Central Circle) Agra.	बनाम/ Vs.	Mohammad Ashraf Qureshi 18/129-A, Malko Street Tajganj, Agra.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. AABPQ-1133-F		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Sh. Deependra Mohan, CA – Ld. AR
प्रत्यर्थीकीओरसे/ Respondent by	:	Sh. Shailender Shrivastava – Ld. Sr. DR

सुनवाईकीतारीख/ Date of Hearing	:	18-02-2025
घोषणाकीतारीख / Date of Pronouncement	:	22.04.2025

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by revenue for Assessment Year (AY) 2014-15 arises out of the order of learned Commissioner of Income Tax (Appeals), Kanpur [CIT(A)] dated 09-02-2024 in the matter of an assessment framed by Ld. AO on *best judgment* basis u/s 144 r.w.s. 147 of the Act on 30-03-2022. Having heard rival submissions and upon perusal of case records, the appeal is disposed-off as under.

2. The assessee filed returned income of Rs.45.99 Lacs on 13-11-2015. The case was reopened to invoke the provisions of Sec. 2(22)(e) and accordingly, notice u/s 148 was issued to the assessee on 31-03-2021. In the assessment order, Ld. AO noted that the assessee received amount of Rs.5 Crores on 01-10-2013 from M/s HMA Food Exports Private Ltd. (HFEPL) in which the assessee was a shareholder to the

extent of 14.15% & 16% as on 31-03-2013 & 31-03-2014 respectively. M/s HFEPL was having accumulated profits of Rs.8.20 Crores. Accordingly, Ld. AO added the amount of Rs.5 Crores on *best judgment* basis in the hands of the assessee invoking the provisions of Sec. 2(22)(e).

3. During appellate proceedings, the assessee assailed the validity of assessment proceedings on various grounds and also contested impugned addition on merits. The legal grounds were dismissed. However, the issue on merits, was decided by Ld. CIT(A) in assessee's favor on following findings: -

7.7 In the grounds of appeal no. (viii) to (xi), the appellant has challenged addition of Rs. 5 crores u/s 2(22)(e) of IT Act by considering the same as deemed dividend. The appellant submits that the said amount was given for the business purpose. He further submits that this amount was partly on account of repayment of unsecured loan taken by the company from the appellant.

From the facts of the case it has been found that the appellant i.e. Mohammad Ashraf Qureshi was having a joint ownership in land at Khasra number 293, 295, 297 at Mauja Kuberpur, Agra-Kanpur National Highway, Agra, which has total area of 20,790 square metres. This land was a family owned land in the name of all the brothers and parents, wherein the name of the appellant Sh. Mohd. Ashraf Qureshi is also mentioned. This land was leased to the company M/s. HMA Food Export Pvt Ltd. and this company got cash credit facility from Canara Bank by mortgaging this land and the consent was given by the owners including the appellant. Vide Sanction Memorandum dated 27.08.2013, limit of 14.5 crores was extended to M/s. HMA Food Export Pvt Ltd. by Canara bank on the basis of collateral security of this piece of land which stood in the joint name of the appellant also, further this sanction was renewed on 20.05.2014. The appellant had also given his personal guarantee towards the said loan taken from the bank by the company.

The claim of the appellant is that this was a joint piece of land along with all the family members and as the assessee wanted some money for buying equity shares in another group company namely M/s. Federal Agro Pvt Ltd., so that the business of M/s. HMA Food Export Pvt Ltd. may be further expanded as Federal Agro Pvt Ltd. was having a slaughterhouse at Chandigarh. Thus for augmenting the capacity of the unit and the group, the acquisition of M/s Federal Agro Pvt Ltd. was of prime and strategic importance to HMA group.

The appellant Sh. Mohd. Ashraf Qureshi wanted the company M/s. HMA Food Export Pvt Ltd. to release his collateral security in the form of land and building and also his personal guarantee, so that he could raise funds to get the shares of Federal Agro Pvt Ltd., but since the land was in joint name along with all the other family members and if the company had released this land then the bank would not have extended to the company the limits and would have jeopardized the company's

business. Hence as a short term measure on current account basis amount of Rs. 5 crore was given to Sh. Mond Ashrat Quresh which within a couple months, he returned back to the company.

It has been found that when M/s. Federal Agro Pvt Ltd. became a group concern, then all the slaughtering which was done by M/s. Federal Agro Pvt Ltd. was supplied to HMA group and ultimately HMA group started using Federal Agro's plant on leasehold basis which is continuing till date. The acquisition of shares by the appellant in Federal Agro Pvt Ltd. for which this amount was received from HMA Food Export Pvt Ltd. was of utmost and strategic importance and was a commercial transaction.

From these facts it is clear that this amount which was given to the appellant did not tantamount to being a loan or advance, so as to be covered under section 2(22)(e) as deemed dividend as this was purely a commercial transaction.

7.8 In this regard in CIT vs. N.S. Narendra 129 taxmann.com 335 (Karnataka), Hon'ble Karnataka High Court held that as per Section 2(22)(e), the phrase 'by way of the advance of loan' must be construed to mean those advances or loans which a shareholder enjoys for simply on account of being a person who is the beneficial owner of shares. If such loan or advance is given to such shareholder as a consequence of any further consideration which is beneficial to the company received from such a shareholder, such advance or loan cannot be said to be a deemed dividend. Thus, the gratuitous loan or advance given by a company to those classes of shareholders would come within the purview of section 2(22). However, the loan or advance given in return for an advantage conferred upon the company by such a shareholder could not be categorized as deemed dividend.

7.9 In case of Pradip Kumar Malhotra vs. CIT (2011) 338 ITR 538 (Cal.), the Hon'ble Kolkata High Court held 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. In this case also 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 was unable to release the property from the mortgage. In such a situation, Hon'ble Court held that for retaining the benefit of loan availed from Vijaya Bank, if decision had been taken to give advance to the assessee, such decision was not to give gratuitous advance to its share holder but to protect the business interest of the company.

7.10 In case of CIT vs. Creative Dyeing and Printing Pvt Ltd. (2009) 318 ITR 476, Hon'ble Delhi High Court decided the issue on same lines and when Revenue went in appeal before Hon'ble Supreme Court, the Special Leave Petition (Civil) No.18197 of 2010 was dismissed.

Further in case of CIT vs. Nagin Das M. Kapadia (1989) 177 ITR 393 Hon'ble Bombay High Court decided the issue in favor of the appellant.

Similar decisions have also been delivered in following cases:

- (i) Jamuna Vernekar v. Dy. CIT (2021) 129 taxmann.com 380 (Kar.)
- (ii) Bagmane Constructions (P.) Ltd. v. CIT [2015] 57 taxmann.com 120 (Kar.)
- (iii) CIT v. Ambassador Travels (P.) Ltd. [2009] 318 ITR 376 (Delhi)

7.11 In this regard, the CBDT vide Circular No. 19 of 2017, dated 12.06.2017 has observed that some Courts in the recent past have held that trade advances in the nature of commercial transactions would not fall within the ambit of the provisions of section 2(22)(e) of the Act and in view of the same, the trade advances, which are in the nature of commercial transactions would not fall within the ambit of the word "advance" in section 2(22)(e) of the Act.

7.12 Looking to the facts of the case, it is observed that the advance of Rs.5,00,00,000/- given to the appellant by M/s. HMA Food Export Pvt Ltd. was purely a commercial transaction since the appellant had given his bank guarantee and collateral property as security for securing bank loans for M/s. HMA Food Export Pvt Ltd. hence. this company had given the amount for short term basis which was paid back during the year itself by the appellant Further the amount received from M/s. HMA Food Export Pvt Ltd. was utilized by the appellant for purchase of shares of another group concern M/s. Federal Agro Pvt Ltd. through which the business of HMA Group further grew. Hence, this transaction is purely a commercial transaction and cannot be treated as deemed dividend in the hands of the appellant. Hence addition of Rs. 5 crore is hereby deleted and relief is allowed to the appellant. All the grounds of appeal are adjudicated accordingly.

Aggrieved as aforesaid, the revenue is in further appeal before us.

4. From the adjudication of Ld. CIT(A), it could be ascertained that the assessee was successful in establishing the fact that impugned advance was purely a commercial transaction since the assessee had given bank guarantee and joint property as security for securing bank loans for HFEPL, who, in turn, advanced this amount for short-term basis which was paid back during the year itself by the assessee. Further, the advances so received by the assessee were utilized by the assessee for purchase of shares of another group concern through which the business of HFEPL group further grow. These facts remain uncontroverted before us. Therefore, as rightly held by Ld. CIT(A), this transaction was purely a commercial transaction and it could not, therefore, be treated as deemed dividend in the hands of the assessee. The case laws as cited by Ld.

CIT(A) duly supports the view as taken in the impugned order. Hence, no interference is required in the impugned order.

4. The appeal stand dismissed.

Order pronounced u/r 34(4) of Income Tax (Appellate Tribunal) Rules, 1963.

Sd/-
(SATBEER SINGH GODARA)
न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखक सदस्य / ACCOUNTANT MEMBER

Dated: 22.04.2025

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

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF

ASSISTANT REGISTRAR

ITAT AGRA