

**IN THE INCOME TAX APPELLATE TRIBUNAL
"G" BENCH, MUMBAI**

**SHRI VIKRAM SINGH YADAV, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No.4133/MUM/2024
(Assessment Year:2012-2013)**

Yashvardhan Gokuldas Binani

1502, Dhavalgiri CHS Ltd. Off. A. K. Marg,
Papnas Wadi, Nana Chowk, Mumbai – 400 036
Maharashtra.
[PAN:AOCPB3025N]

..... **Appellant**

Vs

Income Tax Officer 17(3(5), Mumbai

Room No.131, 1st Floor, Kautilya Bhavan,
Bandra Kurla Complex,
Bandra (East), Mumbai – 400050.
Maharashtra.

..... **Respondent**

Appearance

For the Appellant/Assessee : Shri Kirit Sanghvi
For the Respondent/Department : Shri Bhangepatil Pushkaraj Ramesh

Date

Conclusion of hearing : 17.03.2025
Pronouncement of order : 30.05.2025

ORDER

Per Rahul Chaudhary, Judicial Member:

1. The present appeal preferred by the Assessee is directed against the order, dated 19/06/2024, passed by the National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as 'the **CIT(A)**'] under Section 250 of the Income Tax Act, 1961 [hereinafter referred to as 'the **Act**'] whereby the Ld. CIT(A) had disposed off the appeal against the Intimation Order, dated 18/12/2019, passed under Section 144 read with Section 147 of the Act for the Assessment Year 2012-2013.
2. The Assessee has raised following grounds of appeal :

"1. *The Learned NFAC erred on facts and in law in passing the*

impugned order.

2. *The Learned NFAC erred on facts and in law in not appreciating the nature of the transactions and confirming the addition made by the AO under section 2(22)(e) of the Act.*
3. *The Learned NFAC failed in appreciating that considering the nature of transactions, section 2(22)(e) of the Act was not applicable to the case."*
3. The relevant facts in brief are that the Assessee filed original return of income on 20/07/2012 declaring income of INR.23,750/-. Subsequent, the Assessing Officer received specific information that a closely-held company M/s Decon Mercantile Pvt. Ltd. had extended a loan/advance of INR.1,33,05,699/- to another closely held company M/s Francis Klein & Co. (Bombay) Pvt. Ltd., during Financial Year 2011-2012. The lender company (i.e. Decon Mercantile) had accumulated profits of INR.1,60,12,093/- at the relevant time. The Assessee held significant shareholding in both the aforesaid companies (a) 16.34% in Decon Mercantile and (b) 21.47% in Francis Klein & Co. Therefore, the provisions related to deemed dividend contained in Section 2(22)(e) of the Act were attracted. Thus, the Assessing Officer had reasons to believe that income in the nature of deemed dividend had escaped assessment and therefore, notice under Section 148 of the Act was issued to the Assessee on 28/03/2019. The Assessee failed to respond to the said notice and as a result, a show-cause notice was issued to the Assessee. Again the Assessee failed to comply with the said notice. Finally, ex-parte best judgment assessment was framed on the Assessee under Section 144 read with Section 147 of the Act on 18/12/2019. The loan amount of INR.1,33,05,699/- was assessed as deemed dividend in the hands of the Assessee, being common shareholder, under Section 2(22)(e) of the Act.
4. Being aggrieved, the Assessee preferred appeal before the CIT(A). In appeal memorandum in Form 35 and the written submissions

filed, the Assessee contended that adequate opportunity of being heard was denied to the Assessee and that the transaction was a regular commercial transaction not attracting the provisions contained in Section 2(22)(e) of the Act. The CIT(A), vide order dated 19/06/2024, dismissed the appeal preferred by the Assessee.

5. Being aggrieved, the Assessee has preferred the present appeal before the Tribunal on the grounds reproduced in paragraph 2 above.
6. During the course of hearing the Learned Authorized Representative for the Assessee, inter-alia, submitted that the addition made on account of deemed dividend under Section 2(22)(e) of the Act cannot be sustained since the transaction under consideration were undertaken in the ordinary course of business. In this regard, reliance was also placed in the judgment of Hon'ble High Court of Allahabad in the case of Kishori Lal Agrawal Vs. Commissioner of Income Tax, dated 17/04/2014, Circular No. 19 of 2017 issued by the Central Board of Direct Taxes, dated 12/06/2017 and the documents forming as part of the paper-book consisting of 201 pages. It was also contended that the funds were not received by the Assessee, and therefore, the same could not be taxed in his hands. Since adequate opportunity of being heard was not granted to the Assessee, proper representation could not be made before the Assessing Officer and the CIT(A).
7. In response it was submitted by the Learned Departmental Representative that the claims/contentions of the Assessee was factually unfounded. The records showed that the Assessing Officer had issued notices under Section 148, Section 142(1) and a show-cause notice which were not complied with by the Assessee. It was submitted that the Assessee was the author of his own predicament. Even at the appellate stage, the several notices were sent to the

Assessee in January, October, November 2022 and a final show-cause in March 2024 seeking details, which again met with no response or with only with a piecemeal response. The Assessee failed to produce the loan ledgers, bank statements or any agreement to prove that the advance was part of ordinary business dealings.

8. In rejoinder, it was submitted on behalf of the Assessee that the all the relevant documents and details have already been placed before the Tribunal as part of the paper-book to support the contention of the Assessee.
9. We have given thoughtful consideration to the submissions advanced by both the sides as recorded hereinabove. On perusal of the orders passed by the authorities below, we find that the submission made by the Assessee that the relevant transactions were undertaken during the ordinary course of business has not been tested on account of failure of the Assessee to produced relevant documents/details. At the same time we note that Circular No.19 of 2017, dated 17/06/2017, gives instances where trade advances/commercial transactions were held by the Courts to fall outside the ambit of the provisions contained in Section 2(22)(e) of the Act. During the course of hearing the Learned Authorized Representative for the Assessee had pleaded for an opportunity to make out a case on merits by placing reliance upon the documents forming part of Paper-Book. However, since the same documents were not placed before CIT(A), we deem it appropriate to restore the issue back to the file of CIT(A) with the directions to adjudicate the same afresh after taking into consideration the documents/details to be furnished by the Assessee. Accordingly, the Order, dated 19/06/2024, passed by the CIT(A) is set aside with the directions to adjudicate the appeal afresh after granting the Assessee a reasonable opportunity of being heard. The Assessee directed to co-

operate in the appellate proceedings and forthwith file details, documents & submission in support of its claims/contentions before the CIT(A). The CIT(A) would consider the same as per law. It is, however, clarified that in case the Assessee fails to enter appearance and/or fails to file details/documents/submission in response to notice of hearing issued by the CIT(A), the CIT(A) shall be at liberty to decide the issues on merits on the basis of material on record. Since, we have not adjudicated the issues raised on merits, all the rights and contentions of both the sides are left open. In terms of the aforesaid, the Ground No.1 to 3 raised by the Assessee are treated as allowed for statistical purposes.

10. In result, the appeal preferred by the Assessee is treated as allowed for statistical purposes.

Order pronounced on 30.05.2025.

Sd/-
(Vikram Singh Yadav)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 30.05.2025
Milan,LDC

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त/ The CIT
4. प्रधान आयकर आयुक्त / Pr.CIT
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण , मुंबई / DR,
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai