

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "A" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
MS. KAVITHA RAJAGOPAL (JUDICIAL MEMBER)**

**ITA No. 4519/MUM/2013
Assessment Year: 2006-07**

Ajay S. Dhumal,
229/230, Arun Chambers, 2nd floor,
Tardeo,
Mumbai-400034.

PAN NO. AACPD 7035 Q
Appellant

ITO-26(2)(4),
Mumbai.

Vs.

Respondent

Assessee by : Mr. Piyush Chaturvedi
Revenue by : Mr. Ram Krishn Kedia, Sr. DR

Date of Hearing : 08/05/2025
Date of pronouncement : 19/05/2025

ORDER

PER OM PRAKASH KANT, AM

This appeal by the assessee is directed against order dated 13.03.2013 passed by the Ld. Commissioner of Income-tax (Appeals) – 28, Mumbai [in short ‘the Ld. CIT(A)’] for assessment year 2006-07, raising following grounds:

“1. The Id. Commissioner of Income Tax, Appeals 28, Mumbai, erred in law and on facts while confirming the addition of Rs. 16,00,000/- u/s 2(22)(e).



2. *The Id. Commissioner of Income Tax, Appeals-28, Mumbai, erred in law and on facts on not appreciating the facts and circumstances of the case before confirming the addition of Rs. 16,00,000/- u/s 2(22)(e).*

3. *The Id. Commissioner of Income Tax, Appeals-28, Mumbai, erred in law and on facts in not considering the ratio of Hon. Supreme Court of India in the case of Reliance Petro Products Private Ltd vs Commissioner of Income Tax, Ahmedabad.*

4. *The Appellant therefore prays that the addition of Rs. 16,00,000/- made u/s 2(22)(e) of the act by the assessing officer and confirmed by the Id. CIT (Appeals) may please be deleted.*

5. *The appellant craves leave to add, amend, alter and or delete any of the grounds of appeal as advised from time to time."*

2. At the outset, the Ld. Counsel for the assessee submitted that ground No. 3 of the appeal was not arising from facts of the case and was raised inadvertently, hence same was not pressed. Accordingly, the ground no. 3 of the appeal is dismissed as infructuous.

3. Briefly stated facts of the case are that the assessee is an individual whose primary source of income is salary, earned in the capacity of Director in various companies. For the assessment year under consideration, the assessee filed his return of income on 22.09.2006, declaring total income of Rs. 62,000/-. The return was processed under section 143(1) of the Income-tax Act, 1961 (hereinafter referred to as "the Act"). Subsequently, based on information received from the ITO, Ward-5(1)-3, Mumbai, it came to light that M/s Darshan Impex Pvt. Ltd. had received a



loans/advances of Rs. 16.00 lakhs from another company namely M/s KP Power Pvt. Ltd. and assessee was a substantial shareholder in both the companies. As such, the amount received was liable to be treated as *deemed dividend* under section 2(22)(e) of the Act in the hands of the assessee, but this was not disclosed in the original return of income. The Assessing Officer (AO), having recorded reasons to believe that income had escaped assessment, issued a notice under section 148 of the Act.

3.1 In response, the assessee filed a return of income, following which statutory notices were issued and reassessment proceedings were initiated. During the reassessment, it was observed that for the Assessment Year 2006–07, M/s Darshan Impex Pvt. Ltd. had received a loan/advance of Rs. 16,00,000/- from M/s KP Power Pvt. Ltd. The AO noted that the assessee, Mr. Ajay S. Dhumal, was holding 50% equity in Darshan Impex Pvt. Ltd. and also had substantial interest in KP Power Pvt. Ltd. Accordingly, he concluded that the said loan was liable to be taxed as deemed dividend under section 2(22)(e) in the hands of Mr. Dhumal. The assessee contested this conclusion on two grounds:

Incorrect shareholding information:

3.2 It was submitted that the return of income of M/s Darshan Impex Pvt. Ltd. for AY 2006–07 erroneously reflected that Mr. Dhumal held 50% shareholding due to a clerical error by the



Chartered Accountant's office. In reality, the assessee's shareholding was only 9% as on 31.03.2006. To support this contention, the assessee furnished copies of annual returns of M/s Darshan Impex Pvt. Ltd. filed under the Companies Act, 1956, for FYs 2004-05, 2005-06, and 2006-07. These returns consistently showed that Mr. Dhumal never held more than 9% of the equity during the relevant period. However, the AO rejected this explanation on the ground that these annual returns were filed only after the reopening of assessment and issuance of a show-cause notice, and hence were treated as an afterthought.

Nature of Transaction – Inter-Corporate Deposit:

3.3 It was further submitted that the alleged loan was in fact an inter-corporate deposit made in the ordinary course of business. The amount received by M/s Darshan Impex Pvt. Ltd. from M/s KP Power Pvt. Ltd. was used to purchase fully convertible debentures/bonds of M/s King Prawns Ltd. from IDBI Bank. This contention was also rejected by the AO, who proceeded to treat the entire amount of Rs. 16,00,000/- as deemed dividend under section 2(22)(e) of the Act in the hands of Mr. Ajay S. Dhumal.

4. On further appeal, the Ld. CIT(A) also rejected the contention of the assessee of holding 9% shareholding in Darshan Impex Pvt. Ltd. The relevant finding of the Ld. CIT(A) is reproduced as under:



“5. I have considered the facts of the case. There is no doubt that as per return of income filed in case of M/s Darshan Impex Private Ltd. for assessment year 2006-07, the assessee is holding 50% share in the equity capital of the company. Similarly, the assessee is holding shares in case of M/s K.P. Power Pvt. Ltd. The assessee claimed that the figures of share holding in the return was incorrect and he was holding only 9% of the share capital. However, the facts remains that even with the ROC, the assessee did not disclosed his share holding pattern on 18.11.2011 and only on this date the assessee has filed some kind of return it was ROC from assessment year 2003-04 onwards. Accordingly, the above returns filed with the assessee is an afterthought and probably done with the view to escape provisions to section 2(22)(c) of the Income Tax Act, as assessment proceedings in this case was already in advance stage. There is no other proof with the assessee to show that his share holding was only 9% during the relevant period and not 50% as disclosed by him in the return of income. This return has been signed and verified by the assessee and therefore, authenticity of the same cannot be doubted. The assessee cannot claim now, by fling a belated return before the ROC that his share holding was only 9%. Accordingly, I hold that by taking a loan of Rs. 16,00,000/-, the assessee being majority shareholder was clearly in default of the provision of the section 2(22)(c). I accordingly, conform the addition of Rs.16,00,000/- made by the AO in the hands of the assessee and reject grounds of appeal of the assessee.”

5. Before us, the Ld. Counsel for the assessee filed two Paper Books containing pages 1 to 50 and 1 to 92 respectively.

5.1 The Learned Counsel for the assessee, in support of the grounds raised, advanced a twofold argument. Firstly, it was contended that the assessee held only 9% of the shares in M/s Darshan Impex Pvt. Ltd., contrary to the allegation that he held a 50% shareholding. The Ld. Counsel reiterated the submissions made before the lower authorities and stated that the mention of 50% shareholding in the return of income of M/s Darshan Impex Pvt. Ltd. was an inadvertent clerical error committed by the staff of the Chartered Accountant who prepared the return. In support of this contention, the Ld. Counsel referred to the annual returns filed



under the Companies Act, 1956, which reflected the number of shares held by the assessee. Attention was drawn to page 4 of the Paper Book, which contains details of the shareholding pattern of M/s Darshan Impex Pvt. Ltd. for the periods 1999–2000 and 2004–2007, confirming that the assessee never held more than 9% of the equity shares during the relevant period. For ready reference, details of said shareholding as reported by the assessee, is extracted as under:

M/s Darshan Impex Pvt Ltd

LIST OF SHARE HOLDERS ON INCORPORATION						
SrNo	Name of shareholder	Type of Share	No of shares held	Nominal value of shares	Amount (Rs)	%of Holding
1	Sunil D. Jaithwar	Equity	100	10	1,000	50
2	Anupama Jaithwar	Equity	100	10	1,000	50
Total			200		2,000	100
LIST OF SHARE HOLDERS AS ON 1999 To 2000						
SrNo	Name of shareholder	Type of Share	No of shares held	Nominal value of shares	Amount (Rs)	% of Holding
1	Narayandas Badyani	Equity	1,300	10	13,000	13
2	navinchandra Patel	Equity	1,300	10	13,000	13
3	N.B.H.Kulkarni	Equity	1,300	10	13,000	13
4	Satish Rao Deshmukh	Equity	1800	10	18,000	18
5	Surekha Dhumal	Equity	3000	10	30,000	30
6	Ila Anand Rao Patel	Equity	1,300	10	13,000	13



Total			10,000		10,00,000	100
LIST OF SHARE HOLDERS AS ON 2004 to 2007						
SrNo	Name of shareholder	Type of Share	No of shares held	Nominal value of shares	Amount (Rs)	% of Holding
1	Surekha Dhumal	Equity	8,100	10	81,000	81%
2	Satish Rao Deshmukh	Equity	1,000	10	10,000	10%
3	Ajay Shankarrao Dhumal	Equity	900	10	9,000	9%
Total			10,000		1,00,000	100%

5.2 The Ld. Counsel accordingly submitted that assessee held only 9% shareholding during the year under consideration, therefore, he was not liable for treating said loan/advance of Rs.16,00,000/- as deemed dividend in his hands.

5.3 The second and alternative argument advanced by the Learned Counsel for the assessee was that the amount of Rs. 16,00,000/- provided by M/s KP Power Pvt. Ltd. to M/s Darshan Impex Pvt. Ltd. was given out of business expediency. It was submitted that M/s King Prawns Pvt. Ltd., a company in which the assessee held substantial interest, had issued debentures to IDBI Ltd. However, the company was unable to redeem the said debentures. In order to facilitate the redemption, M/s Darshan Impex Pvt. Ltd. agreed to purchase the debentures from IDBI but lacked the necessary funds. To support this transaction, M/s KP Power Pvt. Ltd. extended a



sum of Rs. 16,00,000/- to M/s Darshan Impex Pvt. Ltd., out of which Rs. 15,00,000/- was utilized for purchasing the debentures from IDBI Bank. The Ld. Counsel argued that the said payment, to the extent of Rs. 15,00,000/-, was made for commercial/business expediency. Further, the Ld. Counsel brought on record an additional fact to substantiate the claim of business interest. It was submitted that land had been allotted by the Government of Maharashtra to M/s King Prawns Pvt. Ltd. (later converted into a limited company) for the purpose of prawn and salt production. On the unused portion of the said land, M/s KP Power Pvt. Ltd. had installed windmills after obtaining requisite approvals from the Land Revenue Department and other relevant authorities of the Maharashtra Government. Additionally, M/s KP Power Pvt. Ltd. had invested a sum of Rs. 1 crore in M/s King Prawns Pvt. Ltd. by way of preference shares as on 31.03.2006. In this context, the Ld. Counsel argued that M/s KP Power Pvt. Ltd. had a significant business interest in M/s King Prawns Pvt. Ltd. and, to protect that interest, it provided financial assistance to M/s Darshan Impex Pvt. Ltd. for the purpose of acquiring the debentures from IDBI in a one-time settlement (OTS) arrangement to bail out M/s King Prawns Pvt. Ltd. The payment of Rs. 15,00,000/- not only served to protect the business interest of M/s KP Power Pvt. Ltd. but also safeguarded its substantial investment of Rs. 96,00,000/- as of 31.03.2006, especially in light of potential coercive recovery actions by IDBI. The Ld. Counsel also submitted additional evidence,



including a copy of the agreement between the State of Maharashtra and M/s King Prawns Pvt. Ltd., and permissions from the Land Revenue Department and other concerned authorities allowing the use of land for installation of windmills. It was requested that, in the interest of justice, these documents be admitted as additional evidence and that the matter be remanded to the file of the Assessing Officer to consider the assessee's claim of business expediency in the payment of Rs. 15,00,000/- to M/s Darshan Impex Pvt. Ltd.

6. On the other hand, the Learned Departmental Representative (Ld. DR) relied upon the findings of the lower authorities and submitted that, with respect to the assessee's shareholding, no credible evidence had been furnished to substantiate the claim that the assessee held only 9% of shares in M/s Darshan Impex Pvt. Ltd. The only documents produced were annual returns filed under the Companies Act, 1956 for the period 2004-05 to 2006-07 with the Registrar of Companies. However, these returns were filed belatedly, and notably, only after the issuance of the show-cause notice in connection with the reassessment proceedings on the issue of deemed dividend. The Ld. DR contended that, due to their timing, these documents were unreliable and potentially susceptible to manipulation. The Ld. DR further argued that the shareholding pattern submitted by the assessee indicated that the shares of M/s Darshan Impex Pvt. Ltd. were acquired from other shareholders.



Accordingly, it was incumbent upon the assessee to substantiate the manner of acquisition by producing documentation showing how the shares were purchased from the previous promoters, including proof of payments made through banking channels by each individual purchaser. In the absence of such supporting evidence, the shareholding of 50% as reflected in the return of income of M/s Darshan Impex Pvt. Ltd.—a return which was verified and signed by the Director—should be accepted as true and correct. With regard to the assessee's alternative plea of business expediency, the Ld. DR submitted that no valid justification had been provided for routing the transaction through M/s Darshan Impex Pvt. Ltd. He asserted that the alleged transaction between M/s KP Power Pvt. Ltd. and M/s Darshan Impex Pvt. Ltd. lacked any established nexus with business expediency. Therefore, the payment could not be regarded as an advance made for commercial or business purposes. Additionally, the Ld. DR emphasized that at the time of the transaction, M/s King Prawns Pvt. Ltd. was a closely held company in which the assessee held substantial interest. Hence, the entire transaction involving the loan or advance ultimately benefited the assessee in his individual capacity. Consequently, the amount was correctly treated as *deemed dividend* under section 2(22)(e) of the Act, taxable in the hands of the assessee.



7. We have heard the rival submissions advanced by the learned counsel for the respective parties and have carefully perused the material placed on record. The controversy arising in the present appeal pertains to the applicability of Section 2(22)(e) of the Income Tax Act, 1961. This provision, being a legal fiction, deems certain types of payments as 'dividend' subject to the satisfaction of conditions enumerated therein.

7.1. Section 2(22)(e) of the Act, in essence, stipulates that any payment by a company, not being a company in which the public are substantially interested, made after 31st May 1987 by way of loan or advance—

(i) to a shareholder, 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 percent of the voting power in such company;

(ii) or to any concern in which such shareholder is a member or a partner and in which he has a substantial interest;

(iii) or any payment made by such company on behalf, or for the individual benefit, of any such shareholder—

shall be treated as 'deemed dividend' to the extent of the accumulated profits of the company.



7.2 The second proviso below Section 2(22)(f), carves out an exception to section 2(22)(e) of the Act. It provides that 'dividend' shall not include any advance or loan made to a shareholder or to the said concern by a company in the ordinary course of its business, where the lending of money constitutes a substantial part of the business of the company.

7.3 Explanation 3 to Section 2(22) further clarifies the meaning of the expressions 'concern' and 'substantial interest' in a concern other than a company. It reads as under:

"(a) 'concern' means a Hindu undivided family, or a firm or an association of persons or a body of individuals or a company;
(b) A person shall be deemed to have a substantial interest in a concern, other than a company, if he is, at any time during the previous year, beneficially entitled to not less than twenty percent of the income of such concern."

7.4 The expression 'substantial interest in a company' is defined under Section 2(32) of the Act as follows:

"A person who has a substantial interest in the company, in relation to a company, means 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, carrying not less than twenty percent of the voting power.”

7.5 The Hon’ble Bombay High Court in *Duttaprasad Kamat v. ACIT* [(2023) 153 taxmann.com 702 (Bom.)] has categorically held that, for the purposes of Section 2(22)(e), the shareholder must be a **registered** shareholder. The relevant observations of the Court are as under:

"76. The principles laid down by the Supreme Court in C.P. Sarathy Mudaliar, Howrah Trading Co. Ltd. and Shakuntala cases that under the scheme of the Companies Act, the expressions 'member', 'shareholder' and 'holder of a share', which are used interchangeably, should be interpreted consistently when applied under the Income-tax Act. Applying this interpretation to clause (e) of section 2(22), we are of the considered view that the 'beneficial owner of shares', 'shareholder' and 'member' referred to therein must be a registered shareholder or a registered beneficial owner whose name appears in the register of members/shareholders under Section 150 or in the register of beneficial owners under Section 152A of the Companies Act, 1956."

7.6 In light of the statutory framework and judicial precedents referred above, the conditions precedent for invoking Section 2(22)(e) may be summarised thus:



(i) The company making the payment must be a **closely held company**, i.e., not one in which the public are substantially interested;

(ii) The payment must be made by way of **loan or advance** during the relevant year to any of the following:

- (a) A **registered shareholder** holding not less than **10% of the voting power** in the payer company;
- (b) A **concern (other than a company)** in which such shareholder has a **substantial interest**, i.e., at least **20% of the income** of the concern;
- (c) A **company** in which such shareholder holds not less than **20% of the voting power**;

(iii) The payer company must possess **accumulated profits** on the date of such payment and the payment must be made out of such profits;

(iv) The payment must **not be in the ordinary course of business** of the company, and the **lending of money** must not be a **substantial part of the company's business**.

7.7 The Hon'ble Bombay High Court in the case of Duttaprasas Kamat vs Vs ACIT(supra) has further noted provisions of Companies Act, 1956 specifying the term beneficial owner and requirement of maintaining register under the provisions of Companies Act, 1956,



and observed that the **register of members** is the authoritative source for determining membership and rights under the Companies Act, 1956.

7.8 In back ground of above legal position, we examine the facts of the instant case. In the case before us, during the year under consideration, a loan or advance of Rs. 16.00 lakhs has been given by M/s KP Power pvt Ltd, which is a closely held company, to another concern namely M/s Darshan Impex Pvt. Ltd. The AO has held that Mr Ajay S Dhumal i.e. the assessee is a beneficial owner of more than 10% shares having voting right in M/s KP Power pvt Ltd and also having substantial interest in M/s Darshan Impex Pvt. Ltd as he was holding 50% shares of M/s Darshan Impex Pvt. Ltd during relevant period of receipt of loan/advance, therefore, the assessee was liable for treating said loan/advance as deemed dividend in his hand, whereas according the assessee, during relevant period he was not having substantial interest in M/s Darshan Impex Pvt. Ltd i.e. he was holding only 9% shares in M/s Darshan Impex Pvt. Ltd. The existence of accumulated profits in the books of M/s KP Power Pvt. Ltd. is not in dispute. The holding more than 10% voting rights in M/s KP Powers p ltd by the assessee is also in not in dispute. The limited controversy relates to the two conditions envisaged under Section 2(22)(e) of the Act. **Firstly**, whether the assessee, Shri Ajay S. Dhumal, held **substantial interest in M/s Darshan Impex Pvt. Ltd.** (i.e.



*beneficial owner of shares, not being shares entitled to fixed rate of dividend, whether with or without a right to participate in profit , carrying not less than 20% of voting power) , and **secondly**, whether the payment of Rs. 16,00,000/- by M/s KP Power Pvt. Ltd. to M/s Darshan Impex Pvt. Ltd. was **in the nature of a loan or advance in ordinary course of business of money lending of M/s KP Powers P ltd.***

7.9 Regarding the first condition of substantial interest of assessee in M/s Darshan Impex Pvt. Ltd, the Assessing Officer had relied on the return of income filed by M/s Darshan Impex Pvt. Ltd., wherein the assessee has been shown holding 50% of the shareholding having voting right and the remaining 50% has been held by his wife, Smt. Sulekha S. Dhumal. The said return of income was duly verified and signed by the Director of the company. In the opinion of the Assessing Officer, such disclosure is binding and reliable. The assessee, on the other hand, contended that the disclosure of 50% shareholding in the income-tax return was an inadvertent clerical error committed by the staff of the Chartered Accountant who prepared the return. It was argued that the actual shareholding of the assessee was only 900 shares out of 10,000, constituting 9% beneficial ownership of shares carrying voting power, and thus below the threshold of 20% shareholding prescribed for substantial interest in a company. To support this assertion, the assessee placed reliance on the annual returns filed with the Registrar of



Companies for the financial years 2004–05 to 2006–07, where his shareholding was recorded at 9%.

7.10 We find, however, that the annual returns relied upon by the assessee were filed only subsequent to the issuance of the show-cause notice under the reassessment proceedings. The timing of such filings, coupled with their self-serving character—particularly in view of the fact that control of the company was at the relevant time vested in the assessee and his family—casts a serious doubt on their evidentiary probity. The core issue, therefore, is to ascertain which of the returns filed by M/s Darshan Impex Private Limited truly reflects the correct factual matrix. Returns under both the Income Tax Act and the Companies Act have admittedly been filed after due verification by authorised officers of the company. In such circumstances, where the returns stand formally attested and are ostensibly in compliance with the statutory regime, it becomes necessary to go beyond their mere form and examine the foundational documents that informed the declarations made therein—especially with regard to the shareholding structure of the company.

7.11 From the material placed before us, covering the period from 1990 to 2007, it emerges that prior to the acquisition of the company by the assessee's family members, the controlling interest lay with a separate and distinct group. It is only from the financial year 2004 onwards that the assessee group is seen to have acquired



a majority stake in the company. This factual assertion remains undisputed. It follows, therefore, that such acquisition must have been accompanied by consideration, presumably routed through banking channels, to the outgoing shareholders. The truthfulness of these transactions—and the legal consequences arising there from—must necessarily be evaluated against the touchstone of contemporaneous documentary evidence. During the course of hearing, we specifically called upon the learned counsel for the assessee to furnish evidence of payments made through banking channels for the acquisition of equity shares by the assessee group, as reflected in the chart at page 4 of the Paper Book. The learned counsel, however, expressed his inability to produce such evidence, attributing the same to the passage of time. Furthermore, neither the original share certificates nor the statutory share transfer registers, as required to be maintained under the Companies Act, 1956—documents which would have constituted contemporaneous and cogent proof—have been brought on record.

7.12 In the absence of such material documentary evidence, and having regard to the declaration in the income tax return—duly signed and verified—reflecting a 50% shareholding, we are unable to accept the assessee's contention that his interest in M/s Darshan Impex Private Limited was below the statutory threshold of 20% voting power so as to fall outside the ambit of "substantial interest" under the relevant provisions of the Income Tax Act.



Ordinarily, this matter could have been remanded to the file of the Assessing Officer for further verification. However, in view of the assessee's unequivocal denial of the ability to furnish the requisite information, we are of the considered opinion that such a remand would be an exercise in futility and would not serve any meaningful purpose.

8. Turning to the alternative submission of the assessee, it is contended that **firstly**, the payment of Rs. 16,00,000/- by M/s KP Power Pvt. Ltd. to M/s Darshan Impex Pvt. Ltd. was made in the ordinary course of business, and thus does not fall within the mischief of Section 2(22)(e). **Secondly**, it was explained that said amount of Rs. 16.00 lakhs represents inter-corporate deposit (ICD) and thus not in the nature of loan or advance provisions of section 2(22)(e) were not applicable.

8.1 It is explained by the assessee that M/s King Prawns Ltd.—a company in which M/s KP Power Pvt. Ltd. had invested substantially—was unable to redeem certain debentures issued to IDBI Bank. M/s Darshan Impex Pvt. Ltd. agreed to acquire the debentures from IDBI, and M/s KP Power Pvt. Ltd. extended the said amount to facilitate this acquisition, in order to protect its existing investment. To substantiate the plea of business expediency, the assessee filed additional documentary evidence before us, including a copy of the agreement between M/s King Prawns Ltd. and the State of Maharashtra, as well as approvals



from the Land Revenue Department for installation of windmills. Although these documents are filed for the first time before this Tribunal, having regard to the interest of justice and in order to adjudicate the matter comprehensively, we admitted the same as additional evidence.

8.2 We note that the assessee has himself accepted that out of Rs. 16,00,000/-, only Rs. 15,00,000/- pertains to the alleged business transaction and the remaining Rs. 1,00,000/- constitutes a loan/advance . Thus, to the extent of Rs. 1,00,000/- the assessee has also admitted that it was a loan or advance falling in the category of deemed dividend.

8.3 As far remaining Rs. 15.00 lakhs is concerned, first, we have to examine whether it falls under exception provided in second proviso below section 2(22)(e)/(f) of the Act, which has been reproduced above. That said proviso exclude *any advance or loan made to shareholder or the said concern by a company in the ordinary course of its business, where the lending of money is a substantial part of business of the company*. Thus, this proviso exclude the loan or advance by a company, which is engaged substantially in money lending and loan or advance extended by such company to a share holder or concern in ordinary course of its business of money lending, from the definition of deemed dividend. In the case of **CIT Vs Jayany H Modi reported in [2015] 58 taxmann.com 366 (Bombay)** it was observed that Company who



advanced loan, earned interest income to the tune of Rs. 9,16,088/- , which constituted about 70% of its total business income amounting to Rs. 13,04,088/- and the maximum amount of loan advanced by the company during the year under consideration was to the tune of Rs. 95,45,000/-, which constituted 32% of the total funds available with the said company. In these circumstances, the Hon'ble Bombay High Court upheld the conclusion of the Tribunal that that the lending of money was a substantial part of the business of M/s. JMC Securities Pvt. Ltd. and addition made by the assessing officer and sustained by the Commissioner was held to not valid and legal, particularly in the background facts.

8.4 In the instant case the assessee has explained above that amount of Rs. 16.00 lakhs was advanced by M/s KP Powers P ltd to M/s Darshan Impex Pvt. Ltd for redeeming /buying debentures of M/s King Prawans p Ltd from IDBI. Evidently, neither M/s KP Powers P ltd is engaged in business of money lending nor the loan/advance has been given in ordinary course of business. Thus, the assessee did not fulfill the requirement of law for get rid of the definition of deemed dividend. The additional evidence filed by the assessee also nowhere indicate that the advance was in the ordinary course of business of the lender company. The granting of permission by the state government for installing wind mills on the land allotted to M/s King Prawans p ltd was much prior to the transaction of loan/advance to Darshan Impex P ltd and was not in



the ordinary course of business of power generation, whereas it is stated to be for securing the investment in M/s King prawns p ltd.

8.5 The Hon'ble Kerala High Court in the case of **Thomas Philip Vs Interim Board of Settlement reorted in [2025] 174 taxmann.com 109 (Kerala)** held that except for one year, the petitioner had not been able to prove that the said advances/loan were given in the ordinary course of business and therefore, unless the petitioner could prove by leading cogent and credible evidence before the settlement Commission that the loan he obtained was for business purposes, the said loan amount is to be treated as a deemed dividend in the hands of the petitioner.

8.6 We further note the Hon'ble Delhi High Court in the case of **Pr. CIT v. Dwarka Prasad Aggarwal [2022] 140 taxmann.com 32 (Delhi)** held that trade advances which were in nature of commercial transactions would not fall within ambit of word 'advance' in section 2(22)(e) – Further SLP filed by the Revenue against this decision has also been dismissed as reported in [2024] 161 taxmann.com 813 (SC). But in the instant case before us the assessee failed to explain that said advance was in the nature of trade advance by M/s KP Powers p Ltd to M/s Darshan Impex P ltd.

8.7 Further, the ld Counsel argued alternatively that the amount advances by M/s KP Powers p Ltd to M/s Darshan Impex P ltd. was in the nature of inter-corporate deposit (ICD) and hence it was out



of ambit of loan or advances. In this regard, we may like to gainfully refer the finding of Coordinate Bench in the case of **DCIT vs Dhariya Constructions P ltd in ITA No. 1440/Pune/2015**, where the Tribunal has distinguished the Loan/advance and the ICD. The Tribunal held that while providing Deposit, the company has to follow the provisions of Company Act, 1956 and an element of voluntariness from lender to the recipient is necessary. The relevant finding of the Tribunal is reproduced as under:

4.1 *There are judicial pronouncements to distinguish deposit from loan. Loans are given at the request of borrower against interest payment. Per contra, deposits are given out of excess fund voluntarily on the proposal of the lender with interest.*

4.2 *In the present case, the assessee has not placed on record any document or agreement inviting the deposit. Leave alone such invitation, the assessee sister concern is whole depositor and the same is described as „Inter Corporate Deposit“ in the books of the assessee. There is no document placed before us for deciphering the real intention of the depositor or to find out whether it was deposit or loan and therefore, on the facts of the present case, there is requirement of taking adverse inference against the assessee.*

4.3 *From perusal of the ledger account of the depositor i.e. M/s. Dhariya Infrastructure Development Pvt. Ltd., it is noticed that the same appears to be running loan account rather than ICD account. There is no depositing documentation, no terms and conditions, no details about the interest, no details of maturity periods and no board resolution of the company for accepting the deposits were placed on record. Hence, it is not possible to infer that the depositor has given the money on his volition in the form of deposit out of his excess fund normally.*



4.4 Further, for the purpose of treating the amount as “Inter Corporate Deposit”, there has to be availability of funds with the lender which is not out of the borrowed funds. In fact, under the Companies Act, 1956, rules were framed which requires that before deposits are accepted, there should be advertisement for accepting the deposit. We are reproducing herewith Rule 58A of the Companies Act, 1956:

“58A Deposits not to be invited without issuing an advertisement. (1) The Central Government may, in consultation with the Reserve Bank of India, prescribe the limits up to which, the manner in which and the conditions subject to which deposits may be invited or accepted by a company either from the public or from its members. (2) No company shall invite, or allow any other person to invite or cause to be invited on its behalf, any deposit unless- (a) such deposit is invited or is caused to be invited in accordance with the rules made under sub-section (1), and (b) an advertisement, including therein a statement showing the financial position of the company, has been issued by the company in such form and in such manner as may be prescribed.”

4.5 In our opinion, though there is distinction between “Inter Corporate Deposits” and loan/advances, but for that purpose, the assessee was required to substantiate that the amount received by the assessee was in the form of “Inter Corporate Deposits”. As mentioned herein above, the assessee was failed to bring on record any documentary evidences except oral submission that the amount received by it was in the form of “Inter Corporate Deposit”. No evidence towards the nature of amount received by the assessee was brought on record or laid before the Ld. CIT(Appels) or before us. No confirmations on “Inter Corporate Deposit” or Balance Sheet treating the amount of “Inter Corporate Deposit” were filed before us. Further, no terms and conditions were brought to our notice disclosing the nature of the amount received by the assessee company.

8.8 Further, the Tribunal(supra) observed as under:



4.7 If we examine the issue from another angle, to find out whether the amount given by the assessee was in fact in the nature of loan/advances and was "Inter Corporate Deposit". It is essential for the amount given as "Inter Corporate Deposits", there should be voluntariness emanating from the lender to give the amount to the assessee and not from assessee. In this case, there being common Managing Director, amount was being transferred as and when there was requirement of fund by the assessee from the account of M/s. Dhariya Infrastructure Development Pvt. Ltd. and thereafter returned back by the assessee to the lender. Hence the element of voluntariness is missing in the conduct of parties.

4.8 In view of the above, we are of the opinion that the amount was in the nature of loan/advances only. Merely by mentioning in the ledger account, it was "Inter Corporate Deposit", the nature and colour of transaction would not changed to "Inter Corporate Deposit", as it continues to be loan/advances. Hence required to be taxed for the purposes of deemed dividend. We may rely upon the Jurisdictional High Court in the *Durga Prasad Mandelia v. Registrar of Companies* [1987] 61 Comp. Cas. 479 (Bom., has noticed the distinction between deposits and loans in the context of section 370 of the Companies Act. The Court held as under :

"There can be no controversy that in a transaction of a deposit of money or a loan, a relationship of a debtor and creditor must come into existence. The terms "deposit" and "loan" may not be mutually exclusive, but nonetheless in each case what must be considered is the intention of the parties and the circumstances . In the present case, barring the assertion of the respondent that the moneys advanced by the company to the Associated Cement Companies Ltd. constitute a loan and offend section 370 of the Companies Act, there is nothing else to show that these moneys have been advanced as a "loan". In the context of the statutory provisions, the word "loan" may be used in the sense of a "loan" not amounting to a deposit. The word "loan" in section 370 must now be construed as dealing



with loans not amounting to deposits, because, otherwise, if deposit of moneys with corporate bodies were to be treated as loans, then deposits with scheduled banks would also fall within the ambit of section 370 of the Companies Act. Therefore, moneys given by the company to the other bodies corporate is a loan within the meaning of section 370 of the Companies Act must be negated. Therefore, the petitioners would well be entitled to the relief."

8.9 In distinguishing between a *loan* and a *deposit*, it is imperative to appreciate their essential legal characteristics. While both transactions involve the transfer of money and create a debtor-creditor relationship, the underlying intent and legal consequences diverge significantly. A **loan** is primarily a transaction initiated by the borrower, where the lender advances money for use by the borrower, typically with the expectation of repayment along with interest. The liability to repay a loan arises immediately upon disbursement, and such liability does not depend on any subsequent demand being made by the lender. In other words, once the loan is given, the obligation to repay is activated and enforceable as per the agreed terms, whether or not the lender makes a formal demand. In contrast, a **deposit** is generally initiated by the depositor, who entrusts money with the recipient — often for safekeeping, investment, or as a prerequisite for availing certain services. The obligation to repay the deposit does not arise immediately upon receipt of the money. Rather, it becomes due only upon the occurrence of a specified event or the expiry of a stipulated term. Until such time, the depositor does not have an immediate right to



demand repayment, and the recipient is not under an immediate obligation to return the amount. This distinction is crucial, as it underscores that while a loan implies an **immediate and absolute obligation** to repay, a deposit entails a **contingent obligation** which becomes enforceable only upon the satisfaction of agreed conditions.

8.10 We find that in instant case before us the assessee has not filed any evidence to support that transaction was in the nature of ICD. The assessee has not referred to notes to the account of the lender Company or documentations between parties, which could indicate that the amount in question was ICD. If the amount was in the nature of ICD, then the assessee should have made provision of interest on the same but no such detail of interest expenses on the said amount and any tax deducted on source (TDS) on said interest has been provided. Also no details repayment of said ICD along with interest has been provided.

8.11 The assessee has not explained why the payment was routed through M/s Darshan Impex Pvt. Ltd. instead of being made directly to M/s King Prawns Ltd. This raises questions about the bonafides and necessity of the transaction. In our opinion, the advance was mainly for the purpose benefitting the assessee by way of securing investment of assessee in M/s King Prawans P ltd.



Accordingly, the assessee is not covered by the exceptions to deeming provisions of deemed dividend. The grounds of appeal of the assessee are dismissed.

9. In the result, the appeal filed by the assessee is dismissed.

Order pronounced by way of display of result on notice board under Rule 34(4) of the ITAT Rules, 1963 on 19/05/2025.

**Sd/-
(KAVITHA RAJGOPAL)
JUDICIAL MEMBER**

**Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER**

Mumbai;
Dated: 19/05/2025
Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,
(Assistant Registrar)
ITAT, Mumbai