IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH, 'B': NEW DELHI

BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER

AND

SHRI BRAJESH KUMAR SINGH, ACCOUNTANT MEMBER

ITA Nos.1808/Del/2023 And 2983, 2984 And 2985/DEL/2015
[Assessment Years: 2004-05, 2005-06, 2006-07 And 2007-08]

Shri Chetan Seth, Plot No.14, LCS, Sector-B-1, Vasant Kunj, New Delhi-110070	Vs	Income Tax Officer, Ward-15(3), New Delhi
PAN-AOLPS2992A		
Appellant		Respondent

Appellant by	Shri Arun Kishore, CA & Shri Alok Suri, CA
Respondent by	Shri Rajesh Kumar Dhanesta, Sr. (DR)

Date of Hearing	**28.03.2025**
Date of Pronouncement	**25.06.2025**

ORDER

PER BRAJESH KUMAR SINGH, AM,

These four appeals filed by the assessee are directed against the order of Ld. Commissioner of Income Tax (Appeals)-7, Delhi, dated 24.02.2015 for AY 2004-05, 27.02.2015 for AY 2005-06, 2006-07 and 2007-08 respectively arising out of assessment orders passed u/s 147/144 of the Income Tax Act, 1961 (hereinafter referred to 'the Act') dated 31.10.2011 for all the above assessment years, respectively. Since, the issues are common and connected, hence, these appeals were heard together and are disposed of by this common order.

2. First, we shall take up the ITA No.1808/Del/2023 pertaining to AY 2004-05.

2.1. This appeal is delayed by 2947 days. In this regard, the assessee filed a condonation application dated 09.06.2023 as well as an affidavit dated 09.06.2023. In the case of the assessee, addition under Section 2(22)(e) of the Act was made in the hands of the assessee i.e. Shri Chetan Seth, in respective Assessment Years 2004-05, 2005-06, 2006-07 and 2007-08 except for the variation in the amounts. The said additions were confirmed by the Ld. CIT(A) for all the above Assessment Years. The assessee filed appeal for Assessment Year 2005-06, 2006-07 and 2007-08 in time before the ITAT, Delhi Benches, Delhi being ITA No.2983 To 2985/Del/2015 as referred above. It is submitted in the condonation petition and in the affidavit that the case was handled by a previous counsel who had filed the appeals for AYs 2005-06, 2006-07 and 2007-08 in time, but on the change of counsel, it was noticed that there was neither hearing fixed for Assessment Year 2004-05 by the Tribunal nor the assessee was able to find any copy of appeal if any filed. In the condonation petition it is submitted that on the said discovery, it transpired that the previous counsel could not file the quantum appeal for Assessment Year 2004-05 before the Tribunal may be on account of inadvertence or omission on the part of the office staff of the previous counsel. According to the assessee, it was his *bona fide* belief that all quantum appeals for all the four years have been filed by his previous counsel. It was submitted that under these circumstances, it was prevented by reasonable cause and for the fault/omission/negligence on the part of the previous counsel the assessee should not be penalized and

the appeal now filed be accepted and the delay in filing the appeal may be condoned. The condonation application and the affidavit filed by the assessee are reproduced as under:

Date: 09.06.2023

The Hon'ble Members
Income Tax Appellate Tribunal
Bench "G"
Lok Nayak Bhawan, Khan Market,
New Delhi

Sub: Petition for Condonation of Delay in filing of appeal in the case of Chetan Seth PAN: AOLPS2992A, AY 2004-05 against the order of ITO Ward – 15 (3) New Delhi

Hon'ble Sir,

1. In this case, the filing of appeal is late by 8 years 1 month and 16 days from the due date of filing. Since, the Appellant was prevented by a reasonable cause in not being able to file the appeal earlier than on 09.06.2023, it is humbly prayed that the inordinate delay may please be condoned and this quantum appeal be accepted for adjudication along with other three appeals on similar issues for AY 2005-06 to 2007-08.

2. In this case, addition u/s 2(22)(e) of the Income Tax Act (the Act) was made in the case of Raas Intratech Pvt. Ltd. (Raas) for AY 2006-07 initially for Rs. 12,60,98,097/- which was later rectified to Rs. 6,25,87,356/-, since the balance amount was taxable in earlier years since received in AY 2004-05 and 2005-06.

3. Appeal against the addition u/s 2(22) (e) was unsuccessfully represented **by the previous Counsel.** CIT (Appeal) – 7 vide order dated 31.03.2010, in the case of Raas Intratech Pvt. Ltd. directed that the addition u/s 2 (22) (e) is not taxable in the hands of the recipient company but it is assessable u/s 2 (22) (e) in the hands of common shareholder of two companies Mr. Chetan Seth holding more than 20% shares in each company.

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4. In pursuance of the above directions of CIT (Appeals) 7 in the case of Raas, four assessments of the Appellant were reopened u/s 148 for reassessment from AY 2004-05 to 2007-08 and additions in all amounting to Rs. 18,94,69,803/- were made u/s 2 (22) (e), which were confirmed by CIT (Appeal) – 7 in February 2015 in all four cases.

5. All four following appeals of the Appellant were represented by the **same previous counsel,** who had represented the appeals of Raas**:**

AY	CIT (A) Order		Addition u/s 2(22)(e)	Appeal Filed with ITAT on	ITAT Appeal No.	ITAT Bench No.
	Appeal No.	Order Date				
2004-05	421/14-15	24.02.2015	39,000,000	NIL	NIL	NIL
2005-06	423/14-15	27.02.2015	35,519,249	13.05.2015	2983/DEL-2015	G
2006-07	422/14-15	27.02.2015	62,587,356	13.05.2015	2984/DEL-2015	G
2007-08	417/14-15	27.02.2015	52,363,198	13.05.2015	2985/DEL-2015	G
			189,469,803			

6. Appeal against penalties levied u/s 271 (1) (c) of the Act for the above additions were successfully represented by the **same previous counsel** before CIT (Appeals). Departmental appeals against the deletion of penalties were dismissed.

7. Appeals against additions u/s 2 (22) (e) for the three years 2005-06 to 2007-08 were also being represented till last year by the **same previous counsel.**It was neither observed by the **previous counsel** nor by the Appellant that the appeal against the CIT (Appeals) – 7 Order dated 24.02.2015 for AY 2004-05 was not filed before Hon'ble ITAT.

8. It was only on the change of counsel, it was noticed that there was neither hearing fixed for AY 2004-05 by the Hon'ble tribunal nor the Appellant was able to find any copy of appeal, if any filed.

9. When information in respect of filing of appeal for AY 2004-05 was not available, the Appellant examined his files with the Assessing Officer, who was not able to confirm filing of quantum appeal for AY 2004-05 but he had record of appeal filed against the penalty orders.

10. The Appellant thereafter perused the records of the Hon'ble Tribunal, but no record of appeal for AY 2004-05 could be traced.

Under such circumstances, the Appellant approached the **previous counsel** for confirmation of non-filing of quantum appeal before ITAT for AY 2004-05 but could not get any satisfactory answer or copies of appeal if any filed for AY 2004-05.

It was under these circumstances that the Appellant was prevented by a reasonable cause, in believing that his tax appeals were being well looked after by **previous counsel** and all necessary actions were being taken in time.

However, now it transpires that the previous counsel could not file quantum appeal for AY 2004-05 before ITAT, may be on account of inadvertence or omission on the part of their office staff. Under these circumstances, whereby the Appellant had full faith and belief on his previous counsel, he could not foresee that there was such a glaring error of which he had no full and complete information, till this appeal is being filed.

It is therefore prayed that in the interest of justice, when the Appellant was under a bon-a-fide belief that all quantum appeals for four years have been filed by his previous counsel who had been regularly looking after his tax matters, the Appellant was not at fault. For fault / omission / negligence on the part of his previous counsel, he should not be penalized and the appeal now filed be accepted, delay in filing of appeal be condoned. In support of above submissions, I am enclosing an Affidavit confirming the above facts.

Your kind cooperation and sympathetic approach is solicited for dispensing justice.

Thanking you
Yours faithfully

Chetan Seth
Appellant

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Affidavit

Affidavit of Chetan Seth S/o Sh. S. K. Seth R/o. A-2, Greater Kailash Enclave I, New Delhi -110048 on solemn affirmation.

I solemnly affirm and declare as under:

1. That all my Income Tax cases relating to unwarranted additions u/s 2 (22) (e) made first in the case of my company Raas Intratech Pvt. Ltd. and then in my individual cases for four years from AY 2004-05 to AY 2007-08 were interested to my previous counsel, who were handling these matters very vigorously up to the CIT (Appeals) – 7.

2. That when CIT (Appeals) decided the deemed additions u/s 2 (22) (e) against me in four years from AY 2004-05 to 2007-08, the filing of appeal was interested to my previous counsel who had argued the matter before the CIT (Appeals).

3. That my previous counsel also handled penalty appeals against the additions u/s 2 (22) (e) and got the penalties deleted from CIT (Appeals).

4. That I had full faith and confidence that my previous counsel has filed appeal before the Hon'ble Tribunal against the additions confirmed u/s 2 (22) (e) by CIT (Appeals) – 7 in February 2016 for all four years from AY 2004-05 to 2007-08.

5. That now I understand that my previous counsel had filed appeal with the Hon'ble ITAT only for three years from AY 2005-06 to AY 2007-08 and it appears that appeal for AY 2004-05 was omitted to be filed by their office.

6. That I was not aware of such omission on the part of my previous counsel. I have thus now filed appeal for AY 2004-05 before Hon'ble ITAT with a Petition of Condonation of Delay, since I was not at fault in depending upon my previous counsel.

Deponent

Verification

That the contents of above Affidavit are true and correct to the best of my information and belief and no material facts are withheld.

Declared at New Delhi on this 9th day of June 2023

NOTARY ANSHU SINGH ADVOCATE Regd. No. UP 25 GOVT. OF INDIA

Deponent

ATTESTED
NOTARY PUBLIC
DELHI (INDIA
0 9 JUN 2023

2.2. The Ld. CIT DR opposed the condonation application filed by the assessee.

2.3. We have considered the condonation application and the affidavit dated 09.06.2023 filed by the assessee and the facts mentioned therein. After careful consideration, we find the explanation of the assessee for the delay in filing of the appeal for AY 2004-05 to be reasonable and *bona fide.* We, therefore, condone the delay of 2947 days and admit this appeal for hearing.

3. Grounds of appeal raised by the assessee in ITA No.1808/Del/2023 for AY 2004-05 are as under:-

> *"1.1. That the CIT (A) erred on facts and in law in not holding that the assessment order passed by the assessing officer under section 147/144 of the Income-tax Act, 1961 ('the Act') to be beyond jurisdiction, bad in law, opposed to facts and suffers from the vice of arbitrariness.*
>
> *1.2 That each grounds of appeal is without prejudice to the other.*
>
> *2. That the CIT(A) erred on facts and in law in confirming the assessment made u/s 147 / 144 on the basis of invalid approval of Additional Commissioner u/s 151.*
>
> *3. That the CIT(A) erred on facts and in law in confirming the assessment made u/s 147 / 144 by assuming that the optic had given a loan to a shareholder as confirmed under para 9.10 part 7 of the Appellate Order on Page No. 27. The dismissal of appeal on wrong foundation is void-ab-initio.*
>
> *4 That the CIT(A) erred on facts and in law in not appreciating that proceedings under section 147 of the Act, were initiated without formation of reasonable belief regarding escapement of income, which is sine-qua-non for assumption of valid jurisdiction.*
>
> *5.1 That the CIT(A) erred on facts and in law in not appreciating that proceedings under section 147 of the Act, having being initiated solely on the dictates/direction of higher authorities, without independent application of mind by the assessing officer, is illegal and bad in law*

5.2 That the CIT(A) erred on facts and in law in not appreciating that the assessing officer had simply relied upon the appellant order passed by the CIT(A) in the case of Raas Infratech Pvt. Ltd. (hereinafter referred to as "Raas") for assessment year 2004-05, without independently examining the nature of the transaction and also the applicability of provisions of section 2(22)(e) of the Act.

6. That the CIT(A) erred on facts and in law in upholding the assessment completed under section 147/144 of the Act at an income of Rs. 3,91,25,658/- as against income of Rs.1,25,658/- returned by the appellant.

7.1 That the CIT(A) erred on facts and in law in affirming the action of the assessing officer in invoking the provision of section 144 of the Act.

7.2 That the CIT(A) erred on facts and in law in confirming addition of Rs.3,90,00,000 in the hand appellant under section 2(22)(e) of the Act.

8. That the CIT(A) erred on facts and in law in treating the entire amount paid by Optic Electronic India (P) Limited ("Optic") to Raas as deemed dividend in the hands of the appellant, rather than restricting the addition to the amount proportionate to the shareholding of the appellant in Optic as held by CIT(A) during AY 2006-07.

9. That the CIT(A) erred on facts and in law in confirming levy of interest under sections 234A/234B/234D and withdrawal of interest under section 244A of the Act.

4. Additional grounds of appeal raised by the assessee are as under:-

1. <u>Mechanical Sanction u/s 151(1) of Addl. Commissioner Range - 15:</u>

i) That the learned CIT(A) and Ld. AO have erred in law and on facts by making and upholding the re-assessment, without subjective sanction by the Addl. Commissioner, Range - 15.

ii) That the sanction u/s 151(1) is a mechanical sanction without looking into the details of amounts to be added u/s 2(22)(e).

iii) That the sanction of higher authority has been given sanction by writing,

> *"In view of the reasons mentioned above, I am satisfied that the income is escaped re-assessment for AY 2004-05 and therefore action u/s 147 of the IT Act 1961 is required*

to be taken in this case. Issue notice u/s 148 of the IT Act 1961 is hereby approved, as it is a fit case"

iv) That there is no application of mind by the higher authority. Incorrect figure of Rs. 3,90,00,000/- has been blindly adopted which is inclusive of opening balance of Rs. 2,49,53,760/- and others ineligible items.

v) That the sanction accorded without application of mind is an invalid sanction and the re-assessment so made be annulled.

2. <u>No valid Service of Notice on the appellant:</u>

i) That the CIT(A) and Ld. AO have erred in law and on facts by upholding and making the re-assessment, when no notice was sent to the appellant at his correct address.

ii) That all notices were sent to a wrong address, whereas appellant's correct address is 1, Basant Lok, Vasant Vihar, New Delhi as per documents attached. Computation of income, ITR acknowledgment dated 01.11.2004 order u/s 143(1) of 2006.

iii) That there was no service of notice on the appellant, resulting in his inability to represent his case.

iv) That the re-assessment made without valid service of notices on the appellant be annulled.

3. <u>No objective satisfaction and no application of mind before issue of notice u/s 148:</u>

i) That the Ld. CIT(A) and Ld. AO have erred in law and on facts by confirming and re-opening the assessment, without objective Reason To Believe that income had escaped assessment. Ld. AO has blindly relied upon the directions in order of CIT(A) - 18 in the case of Raas Intratech Pvt. Ltd. without independent application of mind

ii) That the Ld. AO on one hand relying blindly upon the directions of CIT(A) - 18, confirms that he has reason to believe that income of Rs. 3,90,00,000/- had escaped assessment. On the other hand, Ld. AO opines that the order of CIT(A) - 18 is erroneous and the income is taxable on the hands of Raas Intratech only. There is no valid reason to believe before re-opening of assessment, by the same Assessing Officer, giving two contradictory opinions, which are not inconformity with Section 148 of the Act.

iii) That the proceedings re-opened without application of mind, without verification of facts and figures and without arriving at firm reason to belief is an illegal re-opening of assessment. The assessment so made be annulled.

4. <u>Re-assessment made by non-jurisdictional AO:</u>

That Ld. CIT(A) and Ld. AO have erred in law and on facts by upholding and making re-assessment under a wrong jurisdiction. Re-assessment so made and all consequent orders be annulled.

5. Re-assessment made without valid transfer of jurisdiction:

i) That Ld. CIT(A) and Ld. AO have erred in law and on facts by upholding and making assessment without acquiring valid jurisdiction by ITO Ward - 15(3) by means of order u/s 127 of the Act for transfer of jurisdiction from Ward - 15(1) to Ward - 15(3).

ii) That the assessment so made and all consequent orders be annulled.

6. Current account wrongly classified as loan or advance:

That the Ld. CIT(A) and Ld. AO have erred in law and on facts by upholding and making addition u/s 2(22)(e) for current account maintained between Optic Electronics Pvt. Ltd. and Raas Intratech Pvt. Ltd., as per standard business practices. It is not a loan or advance account. No addition towards deemed dividend is to be made for credits in the current account. The addition of Rs.3,90,00,000/- erroneously made be deleted.

7. Incorrect interpretation of Section 2(22)(e) and erroneous inclusions as loan

i) That the Ld. CIT(A) and Ld. AO have erred in law and on facts by treating credits towards reimbursements in the account of Optic Electronics India Pvt. Ltd., in the books of Raas Intratech Pvt. Ltd. as a loan or advance received.

ii) That the addition of Rs. 3,90,00,000/- erroneously made towards deemed dividend by including opening credit balance of Rs. 2,49,53,760/- (Please refer Pg. 2 of Paper Book) is erroneous interpretation of Section 2(22)(e) and the same be deleted, net addition be reduced to the same extent, without prejudice to other grounds.

8. Judicial indiscipline, Directions of CIT(A) Order (AY 2007-08) not followed:

i) That the Ld. CIT(A) and Ld. AO have erred in law and on facts by making and confirming the addition of Rs.23,90,00,000/- in the hands of the appellant, based on the directions of CIT(A)-XVIII order dated 09.03.2011 for AY 2007-08 in the case of Raas Intratech Pvt. Ltd., directing to tax the deemed dividend in the hands of two shareholders of lending company, namely Ambi Investment and Finance Pvt. Ltd. and Mr. Chetan Seth, in proportion to their inter-se shareholding in the lending company (Please refer para 7.6 Pg. 30 of the said order).

ii) That the judicial indiscipline be reversed, and 28.67% of the alleged deemed dividend be only assessed in the hands of the appellant, Mr. Chetan Seth, without prejudice to other grounds.

9. Addition on erroneous interpretation of Section 2(22)(e):

i. That the Ld. CIT(A) and Ld. AO have erred in law and on facts by confirming and making addition of Rs. 3,90,00,000/- under Section 2(22)(e), without appreciating that the amount paid by Optic Electronics India Pvt. Ltd. to Raas Intratech Pvt. Ltd. was not for the benefit of the appellant.

ii. That in terms of Section 2(22)(e), the addition, if any, can be made only in the hands of recipient of loan or advance, as per CBDT circular no. 495 dated 22.09.1987.

iii. That if CBDT circulars and guidelines are not binding on the Courts, CBDT guidelines and circulars are binding on the Assessing Officer and he was duty bound to make the assessment in accordance with CBDT Circular in terms of Section 119 of the IT Act by taxing dividend in the hands of the recipient of loan. Illegal addition contrary to CBDT guidelines be deleted.

iv. That the appellant had neither received any payment from such company nor any payment was made on his behalf or for the individual benefit of the appellant, no dividend u/s 2(22)(e) is taxable in the hands of the appellant.

10. Failure to Issue Notice under Section 129 on Change of Incumbent

i) That the Ld. CIT(A) and Ld. AO have erred in law and on facts by confirming and making the re-assessment, without issue of notice under Section 129 of the Income Tax Act, 1961 on change of incumbent.

ii) That the notice under Section 148 dated 28.03.2011 was issued by ITO Mr. M.R. Aggarwal, while all subsequent proceedings were conducted by ITO Mr. Pradeep Dutta, without intimating the change of incumbent, to the appellant, in terms of Section 129 of the Act.

iii) That the re-assessment made is not in conformity with the provisions of the Income Tax Act, and the same be annulled.

5. We have perused the additional grounds of appeal. On its perusal, we observe that the same are purely legal in nature. We further note that all the facts relevant for adjudication of the aforesaid additional grounds are already on record. Hence, in view of the decision of the Hon'ble

Supreme Court in the case of NTPC Limited vs CIT 229 ITR 383(SC), the additional grounds filed by the assessee are hereby admitted and taken up for adjudication.

6. Brief facts of the case:- The assessee Shri Chetan Seth is common shareholder in two private limited companies being M/s RAAS Intratech Pvt. Ltd. (hereinafter referred to 'RAAS') and in Optic Electronic (I) Pvt. Ltd. (hereinafter referred to 'OEIPL'). During the year under consideration, the assessee owned 54.2% share of M/s RAAS and 28.67% shares of M/s OEIPL. During the course of assessment proceedings in the case of M/s RASS for AY 2006-07, the loan/advance of Rs.12,60,98,087/- taken by M/s RASS from M/s OEIPL, was added in the hands of M/s RASS being deemed dividend u/s 2(22)(e) of the Act vide order u/s 143(3) of the Act dated 28.11.2008. Later on during the course of rectification proceedings, it was found that out of Rs. 12,60,98,087/- an amount of Rs.6,25,87,356/- pertained to AY 2006-07 and the balance amount pertained to earlier years. Accordingly, vide order u/s 154/155/143(3) of the Act dated 26.06.2009, the addition made was restricted to Rs.6,25,87,356/- in the case of M/s RASS. Meanwhile, M/s RASS preferred an appeal before the Ld. CIT(A), who vide order dated 31.03.2010 in Appeal No. 57/08-09 though upheld the action of the AO in treating the amount of Rs.6,25,87,356/- as deemed dividend u/s 2(22)(e) of the Act but directed the AO to make the addition in the hands of Shri Chetan Seth, being the common director of both these companies.

6.1. In view of the above mentioned facts, the Assessing Officer of the present assessee Shri Chetan Seth issued notice u/s 148 of the IT Act

1961, on 28-03-2011 for reopening the assessment proceedings of the assessment year 2004-05. The Assessing Officer issued notice u/s 143(2) of the Act on 07.10.2011 and again on 19.10.2011 According to the facts stated in the assessment order, on 20-10-2011, one Mr. M.K. Mishra appeared on behalf of the assessee and show cause notice offering final opportunity to the assessee along with reasons recorded for reopening the assessment proceedings and statutory notice u/s 142(1) were personally served on Mr. M.K. Mishra on 20-10-2011. According to the Assessing Officer, a copy of these documents were also despatched by Speed Post to the address of the assessee but none appeared on 24.10.2011, the scheduled date of hearing. According to the Assessing Officer, as the assessee failed to respond to the statutory notices issued from time to time, passed the order u/s 147 read with section 144 of the I.T. Act, 1961 on 31.10.2011 observing that it was apparent that the assessee has nothing to say on the matter and that he had accepted the fact that Rs.3,90,00,000/- received by M/s Rass Intratech Pvt. Ltd. from M/s Optic Electronics Pvt. Ltd. is liable to be taxed in his hands (Shri Chetan Seth) as deemed dividend u/s 2(22)(e) of the Act. Accordingly, the Assessing Officer taxed an amount of Rs.3,90,00,000/- as deemed income u/s 2(22)(e) of the Act in the hands of the assessee Shri Chetan Seth.

7. Against the said assessment order, the assessee preferred an appeal before the ld. CIT(A). The ld. CIT(A) vide her order dated 24.02.2015 in appeal no.421/2014-15 dismissed the appeal of the assessee.

8. Against the order of the Ld. CIT(A), the assessee is in appeal before us.

9. The ld. AR referred to the submissions made before the Ld. CIT(A) and also to the written submission filed for AY 2004-05 placed at page no.26 to 42 of the paper book and relied upon the same.

10. The Ld. CIT-DR relied upon the orders of the authorities below.

11. We have considered the rival submissions and perused the materials available on record. Ground nos. 1.1, 1.2,, 2.1, 4, 5.1 and 7.1 of the main grounds of appeal and the ground nos. 1, 2, 3, 4, 5 and 10 of the additional grounds of appeal filed by the assessee are on the issues of jurisdiction and the legal validity of the assessment order passed by the Assessing Officer under Section 147/144 of the Act. The same have been carefully considered but not found to be acceptable.

12. The assessee in ground no.1.1, 1.2, 2, 4, 5.1 and 7.1 and in Ground nos.1 and 3 of the additional ground has challenged the reopening of the assessment u/s 148 of the Act on the ground that approval granted by the Addl. CIT was in a mechanical manner and that there was no objective satisfaction and no application of mind by the Assessing Officer before the issue of notice u/s 148 of the Act. Further, it also challenged the passing of the assessment order u/s 144 of the Act and the legal validity of the order. In this regard, the reasons recorded by the Assessing Officer for reopening the assessment vide notes dated 28.03.2011 are reproduced as under:-

Form for recording the reasons for initiating proceedings u/s 147 and for obtaining the approval of the Addl. CIT/CIT/CBDT

1. Name and address of the assessee	:	Shri Chetan Seth , Plot No.14, LSC Sec.B-1, Vasant Kunh, N. Delhi
2. PAN	:	AQLPS2992A
3. Status	:	INDIVIDUAL
4. Ward/Circle	:	Ward 15(3), New Delhi
5. Asstt. Year in respect of which it is proposed to issue notice u/s 148	:	2004-05
6. The quantum of income which has escaped assessment	:	Rs.3,90,00,000/-
7. Whether the assessment is proposed to be made for the first time	:	yes
8. If answer to item 7 is negative, state (a) Income originally assessed	:	N.A.
(b) Whether it is a case of under assessment, at lower rate, assessment which has been made the subject of excessive relief or allowing excess loss/depreciation	:	N.A.
9. Whether the provision of section 150(1) are applicable? If the reply is in affirmative, the relevant facts may be stated. Against item no.11 and 8 may also be brought out that the provisions of section 150(2) would not stand in the way of initiating proceeding u/s 147.	:	No

10. Reasons for the belief that income has escaped assessment

The assessee had filed return declaring income of Rs.1,25,660/- on 01.11.2004. The income declared comprises of salary and loss from business.

During the course of assessment proceedings in the case of M/s Rass Intratech Pvt. Ltd. for AY 2006-07, it was observed that the said company had taken loan/advance of Rs.12,60,98,087/- from M/s Optic Electronics (I) Pvt. Ltd., which was added in the hands of M/s Rass Intratech Pvt. Ltd. being deemed dividend u/s 2(22)(e) of the Act. Later on during the course of rectification proceedings, it was found that out of Rs.12,60,98,087/- an amount of Rs.6,25,87,356/- pertained to AY 2006-07 and the balance amount pertains to earlier years. Accordingly, vide order u/s 154/155/143(3) of the Act dated 26.06.2009, the addition made was restricted to Rs.6,25,87,356/-. Meanwhile, the assessee preferred an appeal before the ld. CIT(A), who vide order dated 31.03.2010, though upheld the action of the AO in treating the amount of Rs.6,25,87,356/- as deemed dividend u/s 2(22)(e) of the Act but has directed to make the addition in the hands of Shri Chetan Seth, being the common director of both these companies and having the majority of the shareholding therein i.e. 54.2% and 28% of shares of M/s Rass Intratech P. Ltd and M/s Optic Electronic (India) P. Ltd respectively. The ld. CIT(A) has relied upon the decision of the Hon'ble Delhi High Court in the case of CIT v. Raj Kumar (2009) 181 Taxman 155; The Hon'ble ITAT Mumbai Bench 'E' (Special Bench) in the case of ACIT v. M/s Bhaumik Colour (P) Ltd. (2009) 27 SOT 270 and Hon'ble Apex Court in the case of C. P. Sarathy Mudallar (1972) 83 ITR 170 and Rameshwarlal Sanwarmal v. CIT (1980) 122 ITR 113 Taxman (AP).

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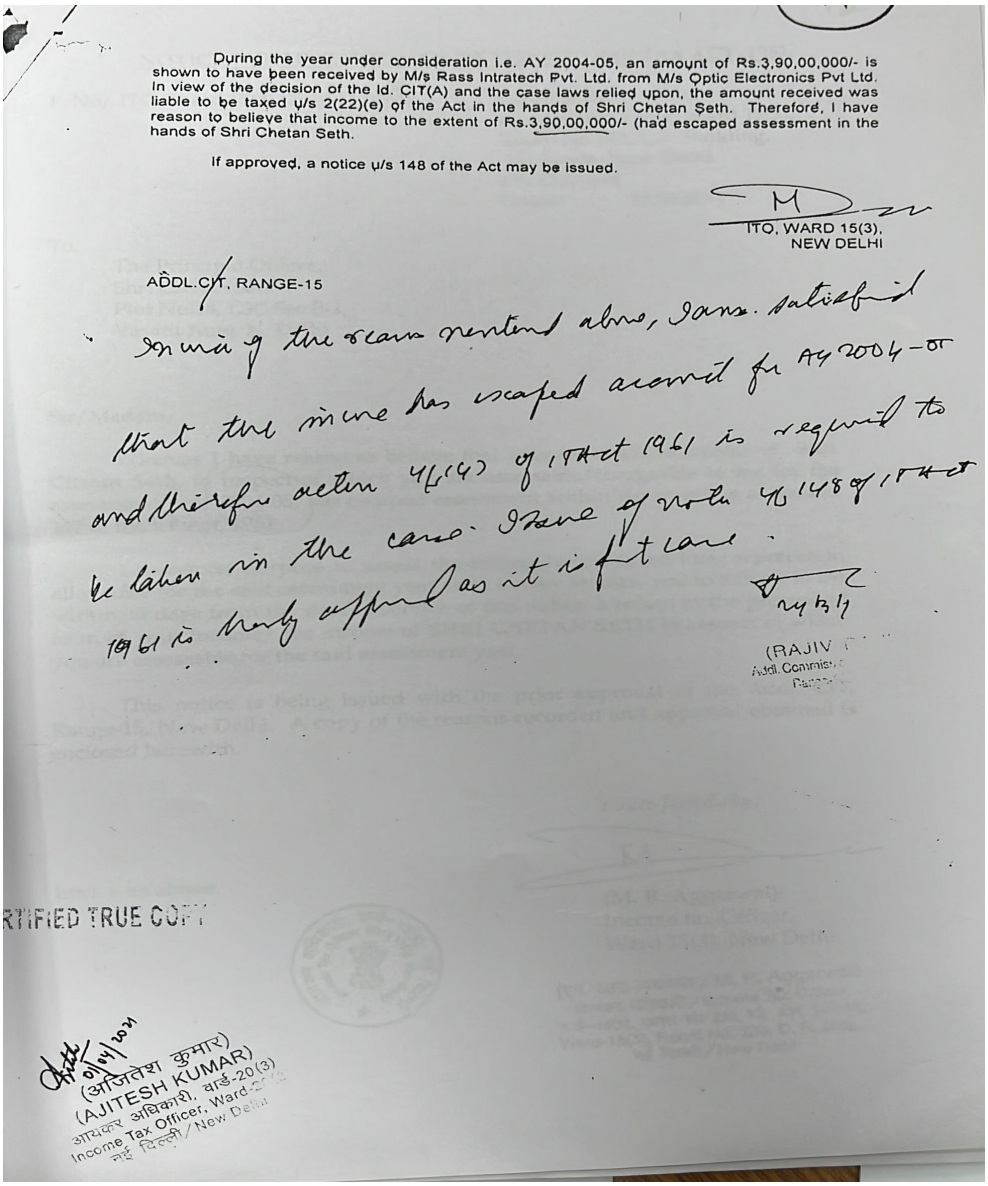
04/2021
(अजितेश कुमार)
TESH KUMAR)



During the year under consideration i.e. AY 2004-05, an amount of Rs.3,90,00,000/- is shown to have been received by M/s Rass Intratech Pvt. Ltd. from M/s Optic Electronics Pvt Ltd. In view of the decision of the ld. CIT(A) and the case laws relied upon, the amount received was liable to be taxed u/s 2(22)(e) of the Act in the hands of Shri Chetan Seth. Therefore, I have reason to believe that income to the extent of Rs.3,90,00,000/- had escaped assessment in the hands of Shri Chetan Seth.

If approved, a notice u/s 148 of the Act may be issued.

ITO, WARD 15(3),
NEW DELHI

ADDL.CIT, RANGE-15

In view of the reasons recorded above, I am satisfied that the income has escaped assessment for AY 2004-05 and therefore action u/s 147 of IT Act 1961 is required to be taken in the case. Issue of notice u/s 148 of IT Act 1961 is hereby approved as it is fit case.

(RAJIV
Addl. Commis
Range

CERTIFIED TRUE COPY

(अजितेश कुमार)
(AJITESH KUMAR)
आयकर अधिकारी, वार्ड-20(3)
Income Tax Officer, Ward-20(3)
नई दिल्ली/New Delhi

12.1. The said reopening vide ground numbers as stated above and the legal validity of the assessment order was also challenged by the assessee before the ld. CIT(A), as per the grounds of appeal filed before the ld. CIT(A), who as per elaborate discussion in para no.6 to 6.10. had rejected the above contentions of the assessee. The said discussion of the Ld. CIT(A) in para no.6 to 6.10 is reproduced as under:-

> *6. Ground No. 1 is in respect of passing of order u/s 147/144.*

6.1. The appellant has stated that the order passed by the AO u/s 147/144 is without jurisdiction and void. The appellant filed his return of income for the A. Y. 2004-05 declaring income of Rs.1,25,658/-. The return was processed u/s 143(1) and subsequently taken up for reassessment proceedings. The reassessment proceedings were initiated subsequent to the decision of the Ld. CIT(A) in the case of M/s RAAS Ltd. for the year 2006-07. The relevant portion of the order of the Ld. CIT(A) is as under:

> *"If the history and purpose with which the said provision was brought on to the statute book is kept in mind, it is clear that sub-section (e) of section 2(22) which is pari materia with clause (e) of section 2(6A) of the Indian Income-tax Act, 1922, plainly seeks to bring within the tax net accumulated profit 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."*
>
> *10.1. As discussed in para 9.3 above. I am of the firm view that as per the provisions of the statute and judicial pronouncements, the amount of Rs.6,25,87,356/- in this case is to be brought to tax as deemed dividend u/s 2(22)(e) of the Act. However, moving further, the question arises as to in whose hands it should be taxed. In this connection, apart from the view expressed by the Hon'ble Delhi High Court in CIT vs. Raj Kumar (supra) Colour (P) Ltd. (2009) 27 SOT 270 the Hon'ble ITAT Mumbai Bench E' (Special Bench) decided the following questions with regard to taxability of deemed dividend u/s 2(22)(e) of the Act as under:*
>
> > *"i) Whether deemed dividend can be assessed only in hands of a person who is shareholder of the lender company and not in hands of a person other than a shareholder - Held, yes.*
> >
> > *ii) Whether expression 'shareholders referred to in section 2(22)(e) refers to both registered shareholder and beneficial shareholder and, thus, if a person is a registered shareholder but not beneficial shareholder then provisions of section 2(22)(e) would not be apply and similarly if a person is a beneficial shareholder but a registered*

shareholder then also provisions of section 2(22)(e) would not apply - Held, yes.

iii) Whether deeming provision of section 2(22)(e) as it applies to case of loans or advances by a company to a concern in which its shareholder has substantial interest, is based on presumption that loan or advances would ultimately be made available to shareholders of company giving loan or advances, and, therefore, intention of Legislature is to tax dividend only in hands of shareholders and not in hands of concern - Held, yes."

Further, I find that in arriving at the above decision, the Hon'ble Special Bench of the ITAT has relied on the decision of Hon'ble Rajasthan High Court in the case of CIT vs. Hotel Hill Top (2009) 213ITR 116 wherein it was held that deemed dividend cannot be brought to tax in the hands of the non-shareholder. It was held by the Hon'ble court that "The liability of tax, shareholders, and not in the hands of the firm. " Further, the Apex Court in the case of C. P. Sarathy Mudaliar (1972) 83 ITR 170 considering the provisions of section 2(6A) of the I. T. Act, 1922, which was synonymous to section 2(22)(e) of the current Act, held that shareholder in the context of deemed dividend referred to only registered shareholder. The above view was also confirmed by the Apex Court in the case of Rameshwarlal Sanwarmal vs. CIT (1980) 122 ITR 1/3 Taxman 1 (AP).

10.2. Therefore, respectfully following the ratio of the above judgements on the issue, the impugned addition of Rs.6,25,87,356/- made by the AO in the hands of the appellant company cannot be legally sustained as the amount can be brought to tax only in the hands of the shareholder of the lender company, i.e. Shri Chetan Seth and not in hands of the appellant company which is not a shareholder of the lender company.

10.3. Considering the above, in the course of the appellate proceeding, vide letter dated 17.03.2010 a notice under Explanation 3 of section 153 of the Act was issued by the undersigned to Shri Chetan Seth, Managing Director of the appellant company to show cause why the said amount of Rs.6,25,87,356/- should not be added in his

> *personal hands instead of the hands of the appellant company for AY 2006-07. In response to the same, Shri Seth after filing adjournment applications dated 23.03.2010 and 29.03.2010, has finally filed a reply vide Id. AR's letter dated 30.03.2010. However, on perusal of the said reply, I find that the Id. AR has only reiterated their contention regarding non-taxability of the above amount as deemed dividend u/s 2(22)(e), on the ground that the same was an advance for property, which has already been rejected by me as per detailed discussion in earlier parts of this order. There is no reply to the question as to why the said amount should not be added in the hands of Shri Seth. In view of the above, the aforesaid addition in the hands of the appellant company stands deleted and the AO is directed to add the said amount of Rs.6,25,87,356/- as deemed dividend u/s 2(22)(e) in the hands of Shri Chetan Seth."*

6.2. The Ld. CIT(A) had stated that Rs.6,25,87,356/- had been shown as unsecured loan by M/s Raas Intratech Ltd. from M/s Optic Electronics India (P) Ltd. It was only after detailed discussion that the Ld. CIT(A) had stated that the amount was an unsecured loan. The Ld. CIT(A) had quoted the case of CIT vs. Raj Kumar in which the Hon'ble Delhi High Court had observed as under:

> *"If the history and purpose with which the said provision was brought on to the statute book is kept in mind, it is clear that sub-section (e) of section 2(22) which is pari materia with clause (e) of section 2(6A) of the Indian Income-tax Act, 1922, plainly seeks to bring within the tax net accumulated profit 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 share holders, money in the form of an advance or loan."*

6.3. After detailed discussion, the Ld. CIT(A) had directed that addition on account of deemed dividend u/s 2(22)(e) should be made in the hands of Chetan Seth, the appellant who was a shareholder. On the basis of this finding, the case of the appellant was reopened.

6.4. During the relevant A. Y. 2004-05 a total amount of Rs.3,90,00,000/- was given as unsecured loan by M/s Optic Electronics India (P) Ltd. to M/s Raas Infratech Shri Chetan Seth, the appellant was a common shareholder of bath the concerns holding 54.2% shares in the appellant company and 28% share in M/s Optic Electronics India (P) Ltd.

6.5. In my view the conclusions drawn by the CIT(A) in A. Y. 2006-07 were sufficient reason for the AO who issued the notice u/s 148 in the case of the appellant for A. Y. 2004-05. The AO it is assumed must have been satisfied and on this basis must have formed his own belief. There is no indication that the AO was not satisfied and was not in favour of reopening the case of the appellant.

6.6. The Ld. CIT(A) had discussed the matter in great depth in A. Y. 2006-07 and had then stated that the loan was required to be added as deemed dividend u/s 2(22)(e) in the hands of the appellant. The CIT(A) had acted in the interest of revenue and had he not come to this conclusion a substantial income would have remained untaxed.

6.7. The appellant has stated that the order u/s 148/143(3) is illegal and without jurisdiction. However, there were sufficient reasons for the AO to believe that income had escaped assessment and proceedings were initiated after recording reasons. A re-assessment is valid if there is prime facie reason to believe that income had escaped assessment. Information was received by the AO and reasons were recorded that there was escapement of income. The following case laws reaffirm this contention:-

a. Ratnachudamani S. Utnal vs. ITO (2004) 269 ITR 212 (karn.)

b. ITO & Others v Shree Sajrang Commercial Co. (Pvt.) Ltd. (2004) 269 ITR 338 (Cal.)

6.8. So far as the legality for assuming jurisdiction u/s 147 is concerned there should be a reason to believe that income chargeable to tax has escaped assessment. Thus where there is information, after the assessment is made or even where time for filing return has passed, reassessment is unavoidable if the AO acts on the information. After the amendment of section 147 w. e. f. 01.04.1989, the scope of section 147 has been considerably widened. After the amendment, the only requirement under the section is that AO must have reason to believe that any income chargeable to tax has escaped assessment for any assessment year. The AO is not required to conclusively prove escapement of income at the stage of issue of notice u/s 148. This aspect was considered by Hon'ble

Supreme Court in the case of Raymond Woollen Mills Ltd (1999) 236 ITR 34. The Hon'ble Supreme Court held as under:

> *"In this case, we do not have to give a final decision as to whether there is suppression of material fuels by the assessee or not. We have only to see whether there was prima facie some material on the basis of which the Department could reopen the case. The sufficient or correctness of the material is not a thing to he considered at this stage. We are of the view that the court cannot strike down the reopening of the-case in the facts of this case. It will be open to the assessee to prove that the assumption of facts made in the notice was erroneous. The assessee may also prove that no new facts came to the knowledge of the Income-tax Officer after completion of the assessment proceeding. We are not expressing any opinion on the merits of the case. The questions of fact and law are left open to be investigated and decided by the assessing authority. The appellant will be entitled to take all the points before the assessing authority. The appeals are dismissed. There will be no order as to costs."*

6.9. The issue was again examined by the apex court in the case of Assistant Commissioner of Income tax v Rajesh Jhaveri Stock Brokers (P.) Ltd (2007) 161 TAXMAN 316 (SC) wherein it was held as under:

> *"16. Section 147 authorises and permits the AO to assess or reassess income chargeable to tax if he has reason to believe that income for any assessment year has escaped assessment. The word "reason" in the phrase "reason to believe" would mean cause or justification. If the AO has cause or justification to know or suppose that income had escaped assessment, it can be said to have reason to believe that an income had escaped assessment. The expression cannot be read to mean that the AO should have finally ascertained the fact by legal evidence or conclusion. The function of the AO is to administer the statute with solicitude for the public exchequer with an inbuilt idea of fairness to taxpayers. As observed by the Supreme Court in Central Provinces Manganese Ore Co. Ltd. v. Il O [1991] 191 ITR 662, for initiation of action under section 147(a) (as the provision stood at the relevant time) fulfilment of the two requisite conditions in that regard is essential At that stage, the final outcome of the proceeding is not relevant. In other words, at the initiation stage, what is required is 'reason to believe", but not the established fact of escapement of income. A t the stage of issue of notice, the only question is whether there was relevant material on which a reasonable person could have formed a requisite belief. Whether the materials would conclusively*

prove the escapement is not the concern at that stage. This is so because the formation of belief by the AO is within the realm of subjective satisfaction ITO v. Selected Dalurband Coal Co. (P) Ltd. [1996] 217 ITR 597 (SC); Raymond Woollen Mills Ltd. vs. ITO [1999] 236 ITR 34 (SC).

17. The scope and effect of section 147 as substituted with effect from 1-4-1989, as also sections 148 to 152 are substantially different from the provisions as they stood prior to such substitution. Under the old provisions of section 147, separate clauses (a) and (b) laid down the circumstances under which income escaping assessment for the past assessment years could be assessed or reassessed. To confer jurisdiction under section 147(a) two conditions were required to be satisfied firstly the AO must have reason to believe that income profits or gains chargeable to income tax have escaped assessment, and secondly he must also have reason to believe that such escapement has occurred by reason of either (i) omission or failure on the part of the assessee to disclose fully or truly all material facts necessary for his assessment of that year. Both these conditions were conditions precedent to be satisfied before the AO could have jurisdiction to issue notice under section 148 read with section 147(a). But under the substituted section 147 existence of only the first condition suffices. In other words if the AO for whatever reason has reason to believe that income has escaped assessment it confers jurisdiction to reopen the assessment. It is however to be noted that both the conditions must be fulfilled if the case falls within the ambit of the proviso to section 147. The case at hand is covered by the main provision and not the proviso.

18. So long as the ingredients of section 147 are fulfilled, the AO is free to initiate proceeding under section 147 and failure to take steps under section 143(3) will not render the AO powerless to initiate reassessment proceedings even when intimation under section 143(1) had been issued."

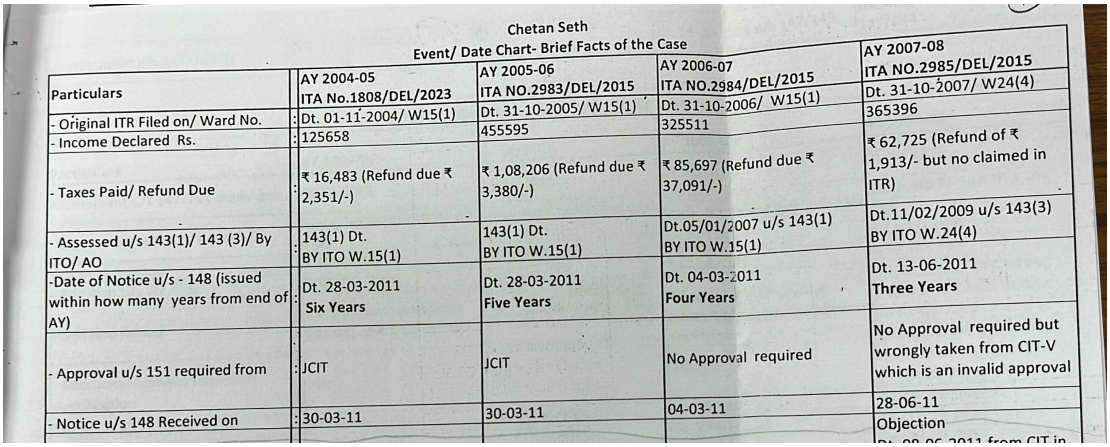
6.10. The Apex Courts in the judgments mentioned above have clearly held that formation of belief by the AO is within the realm of subjective satisfaction and it is not necessary for the AO to conclusively prove the escapement of income before initiating proceedings u/s 147. Therefore, it is held that the AO had reasons to believe that income had escapement assessment and he was within his competence to invoke the powers contained in section 147 to initiate reassessment of the income of the appellant. The ground of appeal is therefore ruled against the appellant."

12.2. We agree with the above findings of the ld. CIT(A) in dismissing the legal grounds raised by the assessee before the Ld. CIT(A). Further, from the perusal of the reasons recorded by the Assessing Officer and the findings of the ld. CIT(A)-XVIII, New Delhi, vide order dated 31.03.2010 in Appeal No.57/08-09 in case of M/s RAAS, where the ld. CIT(A) directed that the loan of Rs.6,25,87,356/- was to be taxed in the hands of the shareholder of the lender company i.e. M/s OEIPL, it is seen that the Assessing Officer had applied his mind independently after perusing the order of the Ld. CIT(A) and the case laws relied upon by the ld. CIT(A) and after examining the relevance of the same to the facts of the case and thereafter taking the necessary approval of the Addl. CIT had reopened the assessment. Further, the Addl. CIT has also recorded his approval in a manner which cannot be said that it has been done in a mechanical manner. The said recording by the Addl. CIT is reproduced as under:-

> *"In view of the reasons mentioned above, I am satisfied that the income has escaped assessment for AY 2004-05 and therefore action u/s 147 of the I.T. Act is required to be taken in the case. Issue of notice u/s 148 of I.T. Act, 1961 is hereby approved as it is fit case."*

12.3. Further, the Assessing Officer has cited the instances of the non-compliances by the assessee during the assessment proceedings as discussed above in Para no.6.1 and 13.1. of this order and therefore no fault can be found in the action of the Assessing Officer in passing the order u/s 148 of the Act. Therefore, in view of the above discussion, the grounds nos. 1.1, 1.2, 2, 4, 5.1 and 7.1 and in Ground nos.1 and 3 of the additional ground as mentioned in para no.12 of this order is rejected.

13. Further, in additional ground no.2 of the appeal the assessee submits that there was no valid service of notice on the assessee on the ground that the notices were issued at the address plot no.14, LCS Sector-B-1, Vasant Kunj, New Delhi-110070, whereas the assessee's correct address was 1, Basant Lok, Vasant Vihar, New Delhi. The same has been carefully considered but not found acceptable in view of the fact that the notice u/s 148 of the Act dated 28.03.2011 is stated to have been received by the assessee on 30.03.2011 as per the 'Event Date Chart with Brief Fact of the Case of each year' placed at page no.1 and 2 of the combined paper book for all the assessment years, which is reproduced as under:-



Chetan Seth

Event/ Date Chart- Brief Facts of the Case

Particulars	AY 2004-05 ITA No.1808/DEL/2023	AY 2005-06 ITA NO.2983/DEL/2015	AY 2006-07 ITA NO.2984/DEL/2015	AY 2007-08 ITA NO.2985/DEL/2015
- Original ITR Filed on/ Ward No.	Dt. 01-11-2004/ W15(1)	Dt. 31-10-2005/ W15(1)	Dt. 31-10-2006/ W15(1)	Dt. 31-10-2007/ W24(4)
- Income Declared Rs.	125658	455595	325511	365396
- Taxes Paid/ Refund Due	₹ 16,483 (Refund due ₹ 2,351/-)	₹ 1,08,206 (Refund due ₹ 3,380/-)	₹ 85,697 (Refund due ₹ 37,091/-)	₹ 62,725 (Refund of ₹ 1,913/- but no claimed in ITR)
- Assessed u/s 143(1)/ 143 (3)/ By ITO/ AO	143(1) Dt. BY ITO W.15(1)	143(1) Dt. BY ITO W.15(1)	Dt.05/01/2007 u/s 143(1) BY ITO W.15(1)	Dt.11/02/2009 u/s 143(3) BY ITO W.24(4)
-Date of Notice u/s - 148 (issued within how many years from end of AY)	Dt. 28-03-2011 **Six Years**	Dt. 28-03-2011 **Five Years**	Dt. 04-03-2011 **Four Years**	Dt. 13-06-2011 **Three Years**
- Approval u/s 151 required from	JCIT	JCIT	No Approval required	No Approval required but wrongly taken from CIT-V which is an invalid approval
- Notice u/s 148 Received on	30-03-11	30-03-11	04-03-11	28-06-11
				Objection Dt. 08.06.2011 from CIT in

13.1. Moreover, as noted in the assessment order, on 20.10.2011 one Mr. MK Mishra appeared on behalf of the assessee and show-cause notice offering final opportunity to the assessee along with reasons recorded for reopening of reassessment proceedings and statutory notice u/s 142(1) of the Act were personally served on Mr. M.K. Mishra on 20.10.2011 and the same was also despatched by Speed Post to the address of the assessee. The assessee in its submissions has not denied that Shri M.K. Mishra was not his authorized person and has also not denied having not received the

said notice u/s 142(1) of the Act despatched through speed-post. Therefore, this contention of the assessee is also rejected and ground no.2 of the appeal is dismissed.

14. In ground no.3 and more particularly in ground no.3 (ii) of the additional grounds of appeal submits that the Assessing Officer has challenged the directions of the ld. CIT(A)-XVIII, New Delhi in order dated 31.03.2010, in the case of M/s RAAS Ltd. for AY 2006-07, where he directed that the deemed dividend should be taxed in the hands of Shri Chetan Seth and not in the hands of M/s RAAS but at the same time reopened the assessment in the case of Shri Chetan Seth to tax the said dividend thereby having two contradictory opinions, which are not in conformity with section 148 of the Act. The said ground of the appeal is reproduced as under:-

> *3. <u>No objective satisfaction and no application of mind before issue of notice u/s 148:</u>*
>
> *i) That the Ld. CIT(A) and Ld. AO have erred in law and on facts by confirming and re-opening the assessment, without objective Reason 10 Believe that income had escaped assessment. Ld. AO has blindly relied upon the directions in order of CIT(A) - 18 in the case of Raas Intratech Pvt. Ltd. without independent application of mind*
>
> *ii) That the Ld. AO on one hand relying blindly upon the directions of CIT(A) - 18, confirms that he has reason to believe that income of Rs. 3,90,00,000/- had escaped assessment. On the other hand, Ld. AO opines that the order of CIT(A) - 18 is erroneous and the income is taxable on the hands of Raas Intratech only. There is no valid reason to believe before re-opening of assessment, by the same Assessing Officer, giving two contradictory opinions, which are not inconformity with Section 148 of the Act.*
>
> *iii) That the proceedings re-opened without application of mind, without verification of facts and figures and without*

arriving at firm reason to belief is an illegal re-opening of assessment. The assessment so made be annulled.

14.1. We have perused the above ground of the appeal carefully but the same is not acceptable. The taxability of the deemed dividend in the case of the assessee as to whether the same will be taxable in the hands of the shareholder of the entity receiving the said loan or the entity receiving the said loan was a subject matter of appeal by the assessee i.e. M/s RAAS before the ld. CIT(A), where the Assessing Officer for AY 2006-07 had taxed the loan (amounting to Rs.12,69,98,087/- in the hands of M/s RAAS. As discussed above, the ld. CIT(A)-XVIII, New Delhi vide his order dated31.03.2010 in Appeal No.57/08-09 had directed that the said amount will be taxed as deemed dividend u/s 2(22)(e) of the Act in the hands of the shareholder i.e. Shri Chetan Seth, the present assessee. The Assessing Officer challenging the above finding of the ld. CIT(A) in the case of M/s RAAS upon approval by the competent authority filed an appeal before the Tribunal, Delhi, vide ITA No.3151/Del/2011 and 2415/Del/2011 for AY 2006-07 and 2007-08 respectively. But as on date of the reopening of the assessment, the above order dated 31.03.2010, the ld. CIT(A) for AY 2006-07 in the case of M/s RAAS did exist, which was a valid order as per law as on the said date and the same was an information before the Assessing Officer. He, therefore, after analyzing the facts and the decision of the ld. CIT(A) reopened the assessment in the case, which is as per law in the given facts of the case. Therefore, the additional ground no.3 of the appeal of the assessee is dismissed.

15. Ground no.4 of the additional grounds of appeal is regarding the reassessment made by non-jurisdictional Assessing Officer. The Ld. AR

made a statement before the BAR that this ground was not pressed. Hence, this ground of the appeal is dismissed as not pressed.

16. Ground no.5 of the additional grounds of appeal is again related ground no.4 of the appeal, wherein, it is submitted that reassessment made by ITO, Ward-15(3), New Delhi, without valid transfer of jurisdiction of its case from ITO, Ward-15(1), New Delhi, where the assessee had filed its return of income being its jurisdiction, was bad in law and all the consequent assessment orders be annulled. In view of the fact that ground no.4 of the appeal has not been pressed by the assessee, this ground of the appeal is also dismissed.

17. Ground no.10 of the appeal, is against the failure of the Assessing Officer to issue notice u/s 129 on change of incumbent. The said ground of the appeal is reproduced as under:-

> *10. Failure to Issue Notice under Section 129 on Change of Incumbent*
>
> *i) That the Ld. CIT(A) and Ld. AO have erred in law and on facts by confirming and making the re-assessment, without issue of notice under Section 129 of the Income Tax Act, 1961 on change of incumbent.*
>
> *ii) That the notice under Section 148 dated 28.03.2011 was issued by ITO Mr. M.R. Aggarwal, while all subsequent proceedings were conducted by ITO Mr. Pradeep Dutta, without intimating the change of incumbent, to the appellant, in terms of Section 129 of the Act.*
>
> *iii) That the re-assessment made is not in conformity with the provisions of the Income Tax Act, and the same be annulled.*

17.1. In this regard, section 129 of the Act is reproduced ass as under:-

> ***Change of incumbent of an office.***
> ***129.*** *Whenever in respect of any proceeding under this Act an income-tax authority ceases to exercise jurisdiction and is*

succeeded by another who has and exercises jurisdiction, the income-tax authority so succeeding may continue the proceeding from the stage at which the proceeding was left by his predecessor :

***Provided** that the assessee concerned may demand that before the proceeding is so continued the previous proceeding or any part thereof be reopened or that before any order of assessment is passed against him, he be reheard.*

17.2. The assessee has nowhere brought on record that he demanded that he be reheard before the proceeding is so continued by the new officer after the earlier officer ceased to exercise his jurisdiction over him. Therefore, this ground of appeal is dismissed.

18. In view of the above facts, the above legal grounds of appeal questioning the validity of jurisdiction, the reopening of the assessment and the legal validity of the assessment order passed u/s 144/147 of the Act dated 31.10.2011 are rejected.

19. The other grounds of appeal being ground nos. 3, 5.2, 6,7.2 and 8 of the original grounds of appeal and ground nos. 6, 7, 8 and 9 of the additional grounds of appeal are of the merits of the addition of Rs.3,90,00,000/- u/s 2(22)(e) of the Act in the hands of the assessee.

20. The ld. AR referred to the written submissions filed before us (placed at page no.26-42 of the paper book) and relied upon the same. The ld. Sr. DR relied upon the orders of the authorities below and the order of the Tribunal dated 10.12.2018 in ITA No. 3123/Del/2010 and 3815/Del/2011 (assessee's appeal) and ITA No.3151/Del/2011 and ITA No.2415/Del/2011 (Department's appeal) for Assessment Years 2006-07 and 2007-08, (placed at pages 252 to 262 of the assessee's paper book) which rejected the plea of

the assessee and held that the Ld. CIT(A)-XVIII, New Delhi in his order dated 31.03.2010 in Appeal No. 57/08-09 and order dated 09.03.2011 in Appeal No.221/09-10 had given a correct finding on the issue that the amount of advance loan given by the lender i.e. from M/s OEIPL during Assessment Year 2006-07 to the appellant company i.e. M/s. RAAS will be chargeable to tax as deemed dividend income under Section 2(22)(e) of the Act in the hands of the shareholders.

21. We have considered the rival submissions and the materials available on record. As stated above, the genesis of reopening of the assessment in the present case in the case of the assessee is the directions of the Ld. CIT(A)-XVIII, New Delhi in Appeal No. 57/08-09 for Assessment Year 2006-07 in the case of M/s. RAAS (wherein the assessee holds 54.2% shares). In the said appeal, the Ld. CIT(A) held that the interest free amount of loan of Rs.6,25,87,356/- received by the assessee company i.e. M/s. RAAS from M/s OEIPL during Assessment Year 2006-07 represents unsecured loans and rejected the contention of the assessee that the above amount represented advance of property as claimed by the assessee in the written submission filed by the assessee before the Ld. CIT(A). The relevant extract of the submission made by the assessee regarding his claim that the amount of Rs.6,25,87,350/- represented advance for property in the order of the Ld. CIT(A) is reproduced as under:-

> *"The brief background facts giving rise to the present appeal are as follows:*
>
> *The appellant had, as on 31" March 2006, an outstanding balance of Rs. 12,60.98.087 payable to one M/s Optic Electronic (India) Pvt. Ltd. The said amount included an amount of Rs.9,54,50.000 received by the appellant, in the normal course of its business,*

from the said company, i.e. M/s Optic Electronic (India) Pvt. Ltd. as advance consideration for purchase, development and sale of certain office properties to the said company after development. In the impugned assessment order, the assessing officer, without judiciously appreciating the nature and the quantum of the amount received during the year, assessed the entire outstanding balance of Rs. 12,60,98,087/- as deemed dividend under Section 2(22)(e) of the Act.

The aforesaid action of the assessing officer is patently erroneous for the reasons elaborated hereunder:

The appellant, as stated above, had received total advance of Rs.9,54,50,000 from M/S. Optic Electronic (India) Pvt. Ltd. for purchase, development and sale of certain office properties after development. It is, in this regard, respectfully submitted that the said advance was received by the appellant in the course of its business, pursuant to a Memorandum of Understanding ("the Memorandum") dated 27.09.2004 entered into between the appellant and M/s Optic Electronic (India) Pvt. Ltd.

It is respectfully submitted that in accordance with the Memorandum, the appellant was required to acquire property bearing Plot No.14 in Block No.B-1, Vasant Kunj, admeasuring 281.14 sq mtr. in Local Shopping Centre located in Sector B Pocket 1 ("the Property") from the then owners of the said property. The Memorandum further stated that the appellant was required to develop the said property into an office premises and transfer such property lo Ms Optic Electronic: (India) Pvt. Ltd for an agreed consideration of Rs. 13.5Crores. Under Clause 2.2 of the Memorandum, M/s Optic Electronic India Pvt. Ltd was required to provide, from time to time, advance consideration for such acquisition and development, which advance would be adjusted towards the agreed consideration at the time of transfer of the property by the appellant to M/s. Optic Electronic India Pvt. Ltd,

Clause 2.2 of the Memorandum reads as under.

**The First Party shall provide, from time to time, to the Second Party advance consideration for the acquisition and development of the Property into an office premises. The said advance consideration shall, at the time of transfer of the Property by the Second Party to the First Party, be adjusted towards sale consideration in respect of the Property."*

A copy of the Memorandum of Understanding dated 27.09.2004 is placed at pages 35 to 38 in the paper book.

It is therefore respectfully submitted that out of total outstanding balance of Rs. 12,60,98,087/-, a sum of Rs. 9,54,50,000 was in respect of the moneys received by the appellant from M/s Optic

Electronic pursuant to the said Memorandum, in the ordinary course of business.

The assessing officer, it is respectfully submitted, failed to appreciate that since the above transaction was a business transaction, the same could not be regarded as deemed dividend within the meaning of Section 2(22)(e) of the Act."

21.1 Further, the Ld. CIT(A) in the said appeal also held that as per the provisions of section 2(22) (e) of the Act, this amount could not be added in the hands of the recipient company i.e. M/s. RAAS and it was to be added in the hands of the assessee Shri Chetan Seth as deemed income under Section 2(22)(e) of the Act. The Ld. CIT(A) before giving the said finding, had issued notice dated 17.03.2010 under Explanation 3 of section 153 of the Act to Shri Chetan Shah, Managing Director of M/s. RAAS to show-cause why the amount of Rs.6,25,87,356/- should not be added in his personal hands. The Ld. CIT(A) noted that Shri Seth after filing adjournment application dated 23.03.2010 and 29.03.2010 finally filed a reply vide AR's letter dated 30.03.2010. On its perusal, the Ld. CIT(A) noted that Shri Chetan Seth only reiterated the contentions regarding non-taxability of the above amount as dividend income under Section 2(22)(e) of the Act on the ground that the same was an advance for a property which the Ld. CIT(A) noted that the same has already been rejected by him as per detailed discussion in earlier part of his order.

21.2. Aggrieved with the above findings of the Ld. CIT(A) in the case of M/s RAAS i.e. in rejecting the plea of the assessee that the above amount was not taxable as dividend income under Section 2(22)(e) of the Act on the ground that the same was an advance for a property and secondly his directions to tax the said amount in the hands of the assessee

Shri Chetan Seth, the assessee (M/s RAAS) filed an appeal before the Tribunal. The Co-ordinate Bench of the Tribunal vide its order dated 10.12.2018 in ITA No. 3123/Del/2010 and 3815/Del/2011 (assessee's appeal) and ITA No.3151/Del/2011 and ITA No.2415/Del/2011 (Department's appeal) for Assessment Years 2006-07 and 2007-08 rejected the plea of the assessee and held that the Ld. CIT(A)-XVIII, New Delhi in his order dated 31.03.2010 in Appeal No. 57/08-09 for AY 2006-07 and order dated 09.03.2011 in Appeal No.221/09-10 for AY 2007-08 had given a correct finding on the issue that the amount of advance loan given by the lender i.e. from M/s OEIPL during Assessment Year 2006-07 to the appellant company i.e. M/s. RAAS will be chargeable to tax as deemed dividend income under Section 2(22)(e) of the Act in the hands of the shareholders and not in the hands of M/s RAAS receiving the said loan. The relevant grounds of appeal filed by M/s. RAAS Raas Infratech Pvt. Ltd. and the relevant extracts of the order of the learned Tribunal in para no. 14, 17 to 21 are reproduced as under:

> *3. The assessee has raised the following grounds of appeal in ITA No. 3123/Del/2010 for the Assessment Year 2006-07:-*
>
> *"1. That the Commissioner of Income-tax (Appeals) ("CIT(A)") erred on facts and in law in upholding the finding of the assessing officer that advances received by the appellant from M/s. Optic Electronic India Private Limited ("OEIPL") were liable to tax as "deemed dividend" under Section 2(22)(e) of the Income-tax Act, 1961 ("the Act").*
>
> *1.1 That the CIT(A) erred on facts and in law in failing to appreciate that the provisions of Section 2(22)(e) of the Act were not attracted since the aforesaid amounts were received by the appellant as business advance towards construction and sale of property to OEIPL.*
>
> *1.2 That the CIT(A) erred on facts and in law in leveling various false and baseless allegations against the*

appellant in sub-paras (i) to (xii) of para 9 of the impugned order , including that the submission that the advances received by the appellant were towards construction and sale of property to OEIPL as an after-thought.

1.3 That the CIT(A) erred on facts and in law in failing to appreciate the various clauses of the Memorandum of Understanding, pursuant to which the moneys were advanced by OEIPL to the appellant for construction and sale of property to OEIPL, in correct and objective perspective.

2. That the CIT(A) exceeded his jurisdiction vested in law in issuing directions to tax the aforesaid amounts in the hands of Mr Chetan Seth on the ground that Mr Chetan Seth is a common shareholder of both the appellant and OEIPL.

2.1 That the CIT(A) erred on facts and in law in issuing direction with respect to Mr Chetan Seth, is a common shareholder of both the appellant and OEIPL."

4. *The assessee has raised the following grounds of appeal in ITA No. 3815/Del/2011 for the Assessment Year 2007-08:-*

"1. That the Commissioner of Income-tax (Appeals) ("the CIT(A)") erred on facts and in law in upholding the finding of the assessing officer that moneys totaling to Rs.5,23,63,198 received by the appellant from Optic Electronic India Private Limited ("OEIPL") were liable to tax as "deemed dividend" under Section 2(22)(e) of the Income-tax Act, 1961 ("the Act").

2. That the CIT(A) erred on facts and in law in not appreciating that the provisions of Section 2(22)(e) of the Act were not attracted since out of the aforesaid, moneys totaling to Rs.2.40 crores were received by the appellant as business advance towards construction and sale of property to OEIPL.

3. That the CIT(A) erred on facts and in law in not appreciating that the provisions of Section 2(22)(e) of the Act were not attracted since out of the aforesaid, moneys totaling to Rs.2.94 crores were received by the appellant as share application money for allotment of share of the appellant company to OEIPL.

3.1 That the CIT(A) erred on facts and in law in alleging that the submission that the appellant had received share application money from OEIPL was an after¬thought,

without appreciating that (a) the shares had actually been allotted to OEIPL on 01.10.2009, i.e. much prior to date of the assessment order, and (b) the factum of allotment stood established by contemporaneous statutory forms and other documents which constituted part of records of the Registrar of Companies.

3.2 That the CIT(A) erred on facts and in law in not considering the annual returns and statutory forms filed by the appellant with the Registrar of Companies on the mere technical ground that the appellant did not file application under Rule 46A of the Income-tax Rules, 1962 for admission of additional evidence, without appreciating that (a) the said evidences had been filed pursuant to enquiries made by the CIT(A), (b) the requirement of filing application under Rule 46A is a mere procedural requirement, (c) the CIT(A) made no adverse comments about the genuineness of the aforesaid additional evidences.

Without prejudice

4. That the CIT(A) exceeded his jurisdiction in issuing directions to tax the aforesaid amounts in the hands of M/s Ambi Finance and Investment (P) Ltd and Mr Chetan Seth on the ground that the said parties were common shareholders of both the appellant and OEIPL.

4.1 That the CIT(A) erred on facts and in law in issuing direction with respect to M/s Ambi Finance and Investment (P) Ltd and Mr Chetan Seth, who were not assessees in appeal before the CIT(A).

4.2 That the CIT(A), in any case, erred on facts and in law in directing that deemed dividend was required to be taxed in the hands of M/s Ambi Finance and Investment (P) Ltd and Mr Chetan Seth, proportionately in the ratio of their inter se shareholding in the payer company."

xxxxxxxxxx

Relevant extract of the findings of the Tribunal

"14. Now we come to the appeal of the assessee for assessment year 2006 – 07 in ITA number 3123/del/2010 and ITA number 3815/del/2011 for assessment year 2007 – 08. The assessee is aggrieved with ground number 1 of the appeal and has challenged the extraneous findings of the learned Commissioner of income tax appeals holding that the amount under consideration was liable to tax as deemed dividend under section 2 (22) (e) of the act and in directing the

addition to be made in the hands of Mr Chetan sheth. Assessee is also aggrieved that the above amount lent by the lender in the business advance and therefore same cannot be considered for the purpose of taxability as deemed dividend.

xxxxxxx

17. We have carefully considered the rival contentions and find that the learned Commissioner of income tax appeal has given a correct finding on the issue that the amount of loan given by the lender to the appellant company is chargeable to tax in the hands of the shareholders. The proper opportunity was also given by the Commissioner of income tax appeals to the shareholder. The shareholder did not comment that this amount is not chargeable to tax in his hands, but has only stated that the above amount given by the lender to the appellant is only a business advance and therefore provisions of deemed dividend does not apply to the facts of the case. On careful analysis of the order of the learned Commissioner of income tax appeals, he has merely directed the learned assessing officer to add the said amount as deemed dividend under section 2 (22) (e) in the hands of the shareholder. No infirmity is found in the order of the learned Commissioner of income tax appeals in holding so after giving proper opportunity of hearing to the shareholder also. We also draw support from the decision of the honourable Delhi High Court dated 14/08/2018 in case of Mr Ramesh Chandra vs ACIT and Mr Sanjay Chandra vs ACIT in WPC 5684 and 5717 of 2017 where identical issue was decided and it was held that as per the express mandate of the 3rd explanation to section 153 (3) of the act unequivocally postulates that any adverse order has to be proceeded by adequate opportunity of hearing to the concerned party. In the case before us, the same opportunity has been given by the learned Commissioner of income tax appeals to the shareholder. Learned Commissioner of income tax appeals vide para number 9.2 of his order for assessment year 2006 – 07 has given the detailed finding giving 12 reasons that why the above amount is an unsecured loan but, not business advance given by the lender to the appellant company. Those reasons given by the learned CIT – A, cannot be expunged or deleted from the order in case of the appellant as no infirmity is pointed out., They are also challenged by the ground number 1.1, 1.2 and 1.3 of the appeal of the assessee for assessment year 2006 -07 and ground number 2, 3 and its sub grounds on this issue. No arguments were advanced before us. Hence, we dismiss those grounds of appeal filed by the assessee. In view of the above facts, we cannot expunge those portions of the order of the learned Commissioner of income tax appeals which has held that the impugned loan given by the lender to the appellant company

is not a business advance but unsecured loan. The shareholder we have all the rights as provided by the law to agitate any issue before the revenue authorities.

18. Accordingly, for A Y 2006 – 07 we dismiss ground number 1 and all its sub grounds holding that the advances received by the appellant from the lender is liable to tax as deemed dividend in the hands of the shareholder as it is not a business advance. We also dismiss ground number 2 of the appeal, where the learned Commissioner of income tax appeals has correctly held that the aforesaid amount is chargeable to tax in the hands of the shareholder after giving proper opportunity to the shareholder and the learned Commissioner appeals when deleting the addition in the hands of the assessee was duty-bound to say, in whose hands the deemed dividend is chargeable to tax. Accordingly, ground number 2 of the appeal is also dismissed.

19. For assessment year 2007 – 08 The ground number 1 to 4 are also dismissed for the reasons given by us. While deciding the appeal of the assessee for assessment year 2006 – 07.

20. In view of this, we dismiss the appeal of the assessee for assessment year 2006 – 07 and 2007 – 08 with above observations.

21. In the result appeal of the assessee for assessment year 2006 – 07 in ITA number 3123/del/2010 and for assessment year 2007 – 08 in ITA number 3815/del/2011 are dismissed."

21.3. Thus, it is seen that the Co-ordinate Bench of the Tribunal in the aforesaid case upheld the finding of the Ld. CIT(A)-XVIII, New Delhi, in Appeal nos.57/08-09 and 221/09-10, vide order dated 31.03.2010 and 09.03.2011 respectively in the case of M/s RAAS vs ITO, Ward-15(3), New Delhi that the advances /loan received by the appellant (M/s RAAS) from the lender (M/s OEIPL) was liable to be taxed as deemed dividend in the hands of the shareholder as it was not a business advance. In the written submission as referred above, (as placed at pages 26-42 of the paper book) the assessee has not made any comments about the above directions of the

Co-ordinate Bench in the aforesaid case, wherein, the Tribunal directed that the loan amount received by M/s RAAS from M/s OEIPL will be taxable in the hands of the shareholder. As noted above, Shri Chetan Seth is one of the shareholders of M/s OEIPL, which had given loan to M/s RAAS (where again Shri Chetan Seth is a shareholder). Therefore, respectfully following the order of the Tribunal, we uphold the action of the Assessing Officer in treating the amount received by way of advance/loan by M/s. Raas Infratech Pvt. Ltd. from M/s. Optic Electronics India Pvt. Ltd. as deemed income under Section 2(22)(e) of the Act in the hands of the assessee i.e. Shri Chetan Seth. Ground nos. 3, 5.2, 6, 7.2 of the original grounds of appeal and ground no.6 of the additional ground of appeal are dismissed subject to the taxability of the correct amount of deemed dividend as discussed below.

21.4. In this regard, the assessee in ground no.7(ii) of the additional ground of appeal has stated that the addition of Rs. 3,90,00,000/- has been erroneously made towards deemed dividend by including opening credit balance of Rs. 2,49,53,760/-. The said ground is reproduced as under:-

> *"That the addition of Rs.3,90,00,000/- erroneously made towards deemed dividend by including opening credit balance of Rs. 2,49,53,760/- (Please refer Pg. 2 of Paper Book) is erroneous interpretation of Section 2(22)(e) and the same be deleted, net addition be reduced to the same extent, without prejudice to other grounds."*

21.5. The above contention of the assessee is acceptable in principle. In this regard, the assessee has filed a chart of 'calculation of taxable dividend

u/s 2(22)(e) in proportion of Share Holding of Shri Chetan Seth in M/s Optic Electronic India (P.) Ltd., which is reproduced as under:-

Taxable Dividend U/s 2(22)(e) in Proportion of Share Holding of Chetan Seth in Optic Electronic Inda (P) Ltd

AY	Addition made by AO	Proportionate Addition @28.679%	Actual Loan/ Advance	Proportionate Addition @28.679% should be
2004-05	3,90,00,000	1,11,84,810	1,37,82,741	39,52,752
2005-06	3,55,19,249	1,01,86,565	3,57,00,137	1,02,38,442
2006-07	6,25,87,356	1,79,49,428	5,81,14,106	1,66,66,544
2007-08	5,23,63,198	1,50,17,242	5,38,30,562	1,54,38,067
Total	18,94,69,803	5,43,38,045	16,14,27,546	4,62,95,805

21.6. The Assessing Officer is directed to verify the said claim of the assessee and to tax only the amount of advance/loan received during the year u/s 2(22)(e) of the Act in the hands of the assessee i.e. Shri Chetan Seth subject to the discussion/qualification made in respect of ground no.8 of the additional ground of appeal. The said additional ground no.8 of the appeal is reproduced as under:

> *8. <u>Judicial indiscipline, Directions of CIT(A) Order (AY 2007-08) not followed:</u>*
>
> *i) That the Ld. CIT(A) and Ld. AO have erred in law and on facts by making and confirming the addition of Rs.23,90,00,000/- in the hands of the appellant, based on the directions of CIT(A)-XVIII order dated 09.03.2011 for AY 2007-08 in the case of Raas Intratech Pvt. Ltd., directing to tax the deemed dividend in the hands of two shareholders of lending company, namely Ambi Investment and Finance Pvt. Ltd. and Mr. Chetan Seth, in proportion to their inter-se shareholding in the lending company (Please refer para 7.6 Pg. 30 of the said order).*
>
> *ii) That the judicial indiscipline be reversed, and 28.67% of the alleged deemed dividend be only assessed in the hands of the appellant, Mr. Chetan Seth, without prejudice to other grounds.*

21.7. As discussed above, the assessee Shri Chetan Seth during the year had 28.67% shareholding of OEIPL, which has advanced the loan to M/s RAAS in which the assessee has 54.2% shareholding. This issue came up in the appeal filed by the assessee (M/s RAAS) before the Ld. CIT(A)-XVIII, New Delhi, for AY 2007-08 in Appeal No.221/09-10 on the issue of taxability of deemed dividend in respect of advance/loan amount of Rs.5,23,63,198/- received during that year. The ld. CIT(A) agreed with the contention of the assessee and vide an order dated 09.03.2011 held that the addition of Rs.5,23,63,195/- should be added as deemed dividend u/s 2(22)(e) of the Act in the hands of Shri Chetan Seth and M/s Ambi Finance & Investment (P.) Ltd. proportionately in the ratio of their *inter se* shareholding in the payer company i.e. M/s OEIPL as M/s Ambi. Finance & Investment (P) Ltd. was also a shareholder of M/s OEIPL during AY 2007-08 The relevant discussion by the Ld. CIT(A) in para no.7.5 to 7.6 of the said order is reproduced as under:-

> *7.5 The next question arises as to the ratio in which the said amount is required to be added in the hands of the above two shareholders. In fact, the said question was raised by the AO in the remand report for the immediately preceding assessment year (A.Y 2006-07) in the case of the appellant. The relevant portion of the order dated 31.03.2010 passed by me in the immediately preceding assessment year dealing with this issue is reproduced as under:*
>
> *In this regard, the AO, ITO Ward 15(3) vide letter dated 07.12.2009 has submitted as under.-*
>
> *Kindly refer to the remand report and my subsequent presence before your goodself during the appellate proceeding. In this regard, I have to submit as under:*
>
> *From the analysis of deeming provisions of section 2(22)(e) of the Act, it is clear & unambiguous that the recipient of the loan/advance shall be taxed and not the shareholders.*

As shareholders having substantial interest can be more than one person, whereas recipient will be a single entity. In such situation, it will difficult to determine as to what percentage of the deemed dividend is to be taxed in which shareholder's hand. The legislation has not provided any mechanism/ method to determine the said percentage. This shows that legislation has not intended to tax the deemed dividend in the hands of the shareholders, when the loan/advance is received by a concern. As such the entity in whose hands dividends are required to be taxed is the concern who has received the loan/advance.

In the case of DCIT v. M/s Nikko Technologies (1) Pvt. Ltd., ITA no. 4077 MUM/2002 order dated 30.02.2005, it was held that the loan or advance was taxable in the hands of the concern receiving the loan as deemed div Therefore, it is kindly submitted that it be taxed in the hands of the recipient of loan." However, the above argument of the AO is not valid in view of the clear position of law as enshrined to section 2(22)(e) and also the judicial pronouncements discussed above. The confusion pointed out by the AO in the case of more than one common/eligible shareholders, can possibly be resolved by adding the amount of deemed dividend in the hands of the eligible shareholders in the same ratio as per the ratio of their shareholding in the payer company. In any case, such purported procedural confusions cannot come in the way of compliance with the substantive provisions of law as contained in the statute and upheld by clear Judicial pronouncements as discussed above. Be that as it may, there is no such confusion in the instant case before us. Since, as per details on record Shri Chetan Seth is the only eligible shareholder having the required shareholding as specified in section 2(22)(e) read with Explanation 3(b) thereof."

7.6. In view of the aforesaid discussion, and the peculiarity of the situation of more than one common shareholder having the requisite number of shares in both the companies, I am of the opinion that logically the impugned amount of Rs. 5,23,63,195/- should be added as deemed dividend u/s 2(22)(e) of the Act in the hands of Shri Chetan Seth and the M.s Ambi Finance & Investment (P) Ltd. proportionately in the ratio of their interest shareholding in the payer company, i.e. Optic Electronic. The AO is directed to take necessary action, accordingly, this ground of appeal is disposed of as above.

21.8. We agree with the above view of the Ld. CIT(A) and the Assessing Officer is directed to tax the correct amount of advance/loan after verification as directed above in respect of ground no.7(ii) to the extent of

the shareholding of Shri Chetan Seth in the payer company i.e. M/s OEIPL. Ground no.8 is partly allowed.

22. Ground no.9 of the appeal is against the confirmation of levy of interest u/s 234A, 234B and 234D and withdrawal of interest u/s 244A of the Act. The above issue was dealt by the ld. CIT(A) and dismissed by observing in para no.10, which is reproduced as under:-

> *"10. In ground no. 2.2, the appellant has without prejudice challenged that the AO has failed to appreciate that deemed divided, if any, was not taxable in the hands of the appellant. The Id. AR has not elaborated on this ground in his submissions made during the instant appellate proceeding. It is not out of place to mention that at the assessment stage the Id. AR had taken the plea that since the provision of section 2(22)(e) are applicable to "any payment made" and not to "any payment received", the impugned amount should not be added in the hands of the appellant company. The above plea of the assessee was rejected by the AO as per detailed discussion in the assessment order. On examination of the matter, I am also of the view that considering the statutory provisions of section 2(22)(e), the impugned amount cannot be added in the hands of the payer company. It would be appropriate to mention here that the legislative intent behind the section 2(22)(e) which is akin to section 2(6A)(e) of the Income-tax Act, 1922 is to plug the loophole of closely held privately limited companies passing off their accumulated profits to their shareholders in the guise of loans instead of declaring dividend, as such dividend would be taxable in the hands of the recipient shareholders. This view is also judicially upheld by the Hon'ble Delhi High Court in the recent case of CIT v. Raj Kumar (2009) 181 Taxmann 155, where the Hon'ble Court held-as under:*
>
> *"If the history and purpose with which the said provision was brought on to the statute book is kept in mind, it is clear that sub-clause (e) of section 2(22) which is pari material with clause (e) of section 2(6A) of the Indian income-tax Act, 1922, 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."*

22.1 We have carefully perused the above matter and we are of the view that there is no infirmity in the above direction of the ld. CIT(A) and therefore the same is upheld. However, charging of interest is consequential in nature and the Assessing Officer will charge interest as per law. Ground no.9 of the appeal is partly allowed.

23. In the result, the appeal of the assessee for AY 2004-05 is partly allowed.

24. Grounds and additional ground of appeal raised in ITA No.2983 to 2985/Del/2015 for Assessment Years 2005-06 to 2007-08 are similar to grounds and additional grounds raised in ITA No.1808/Del/2023 for AY 2004-05 decided by us in earlier part of this order. Therefore, our above decision would apply *mutatis-mutandis* to these appeals also. Accordingly, these appeals of the assessee are also partly allowed

25. Finally, all the appeals of the assessee are partly allowed.

Order pronounced in the open court on 25th June, 2025

Sd/-	**Sd/-**
[SATBEER SINGH GODARA]	**[BRAJESH KUMAR SINGH]**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Dated 25.06.2025.

Shekhar

Copy forwarded to:

1. Appellant
2. Respondent

3. PCIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi