IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI "A" BENCH: NEW DELHI

BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT
&
SHRI AMITABH SHUKLA, ACCOUNTANT MEMBER

ITA No.3560/Del/2016
[Assessment Year : 2010-11]

DCIT Central Circle-29 New Delhi	vs	M/s. Gen X Commodities (P) Ltd., FA-45, Shivaji Enclave New Delhi-110027 ***PAN-AAACA2303H***
APPELLANT		**RESPONDENT**
Revenue by		Shri Jitender Singh, CIT DR
Assessee by		Shri Ved Jain, Adv. & Shri Ayush Garg, CA
Date of Hearing		26.06.2025
Date of Pronouncement		25.07.2025

ORDER

PER MAHAVIR SINGH, VP :

The captioned appeal has been filed by the Revenue against the order of the First Appellate order dated 30.03.2016 passed by Commissioner of Income Tax (A)-30, New Delhi ["CIT(A)"] u/s 250(6) of the Income Tax Act, 1961 pertaining to assessment year 2010-11.

2. The Revenue has raised following grounds of appeal:-

a) "On the facts and in the circumstances of the case, the Ld. CIT(A) had erred in law and on facts in deleting additions made on account of client code modifications(CCM).

b) On the facts and in the circumstances of the case, the Ld. CIT(A) had erred in law and on facts in holding that the CCM done by assessee company is within permissible limit and ignoring the fact that the CCM done by the sister concern M/s Futurz Next Services Ltd. though which profit of the assessee company was reduced by Rs. 8.82 crore is done through back office.

c) On the facts and in the circumstances of the case, the Ld. CIT(A) had erred in law and on facts in holding that the CCM done by assessee company is within permissible criteria, thus, ignoring the fact that the CCM was done in the code of certain entities only and the modified client code were not similar to the original client code, the values of client code was significant and other conditions laid down by stock exchanges.

d) On the facts and in the circumstances of the case, the Ld. CIT(A) had erred in law and on facts in directing the AO to delete disallowance made u/s 14A.

e) On the facts and in the circumstances of the case, the Ld. CIT(A) had erred in law and on facts by deleting the addition of Rs. 60,40,87,544/- made on account of deemed dividend u/s 2(22)(e) of the Act.

f) On the facts and in the circumstances of the case, the Ld. CIT(A) had erred in law and on facts in holding that all the transactions with JCPL are business transaction, thus, ignoring the fact that assessee company is a client of JCPL and it was obliged to pay only the profit earned by the assessee company.

g) On the facts and in the circumstances of the case, the Ld. CIT(A) had erred in law and on facts by deleting the addition of Rs. 2,88,90,000/- was made on account of loss on sales of shares.

h) On the facts and in the circumstances of the case, the Ld. CIT(A) had erred in law and on facts in not appreciating that the purchase of shares of group company and sale thereof to the another group company is just a colourable device to create artificial loss.

i) That the order of the CIT(A) is erroneous and is not tenable on facts and in law."

3. Ground No.(a), (b) & (c) of the Revenue's appeal concerns additions on account of Client Code Modification ("CCM").

4. The assessee is engaged in the business of trading of commodities. The assessee is a client of its group company M/s. J.P. Capital Services Ltd. ("JSPL") and Futurz Nest Services Ltd. in respect of transaction in NSE and commodities. The AO observed that client codes have been modified in the back office by Futurz Next Services Ltd. The AO thus for the reasons mentioned in the assessment order, made an addition of INR 7,65,00,355/- on account of client code modification.

5. Aggrieved, the assessee preferred appeal before the CIT(A). The CIT(A) reversed the addition made by the AO. The relevant operative para is reproduced hereunder:-

8.4. "I have carefully considered assessment order, written submission, case laws relied upon and oral arguments of Ld. AR. The objections/arguments of the appellant, are discussed as under:-

(i) It has been stated by the A.O. in the assessment order, that the client code modifications, are carried out by the group companies of assessee, to which assessee is also a client and client code modifications are done in client code of assessee.

(ii) It has been further analyzed by the A.O., that whole process of CCM done by the group concerns of assessee, does not seem to be genuine. The A.O. has also held that the copy of File Transfer Protocol (FTP), was not made available in the assessment proceedings and therefore, there may be entries not as per the guidelines of the SEBI. In this way, A.O. concluded that an amount of Rs. Rs.

7,65,00,355/-, is the net effect of profit/loss shifted from the code of assessee company to the other client codes and vice versa.

(iii) During appellate proceedings, appellant has submitted that, this addition cannot be made in the account of assessee, as assessee is not a member to the exchange and cannot execute client code modifications. Further, the appellant also submitted that in case of group concerns (Jaypee Capital services Ltd., Future Next Services Ltd.), the CCM is modification change of client codes, after execution of trades. This facility is provided by the Stock Exchange/ Commodity Exchange, in order to rectify any error or wrong data entry done by the staff of broker company, at the time of punching orders. Further, it is submitted that these CCM, is subjected to certain guidelines provided by the SEBI, with regard to the execution of entries, genuinely punched wrong and not as a routine. The observations of the Special Auditor regarding huge number of CCM transactions, are grossly incorrect, being misused to shift the profit /loss from one client to another. However, in appellate proceedings, it has been submitted CCM transactions, have been recorded in case of group concerns less than 1%, and no penal action has been taken by the exchange in this regard, meaning thereby there is no violation of rules and regulations prescribed in this regard by the Exchange.

(iv) Further, appellant also submitted that these entries have been entered into normal course of business. These entries are duly recorded in the books of accounts and also forming part of the transactions reported to the exchange. No adverse inference has been drawn about these entries by the exchange and SEBI. In fact, even the information about these CCM, was obtained by the A.O. from the exchange. During assessment proceedings, the group concerns has given detailed explanation in this regard to the A.O. In the explanations, it has been clarified that these errors are part of the normal course business activities and permissible even as per the Circular issued by National securities Clearing Corporation Ltd. in circular NSCCL/SEC/2004/0464, dated 31.5.2004, where error upto 1% of the total numb transactions, is permissible, without any fine. The circular is, reproduced as under:

"NATIONAL SECURITIES CLEARING CORPORATION LIMITED

Download Ref.No. NSE/CMPT/5128 May 31, 2004

Circular No. NSCCL/SEC/2004/0464

To

All Members,

Sub:- Penalty for client code modification.

In pursuance of the Bye laws and Regulations of NSCCL and in partial modification to circulars no. NSE/CMPT/4041 dated March 27, 2003 and NSE/CMPT/4991 dtd. April 16, 2004, it is hereby notified that the penalty structure for client code modification in the capital market (Cash Segment) is being revised. The new penalty structure is as follows:-

Percentage (%) of client codes changed to total orders (matched) on a daily basis	*Fine*

Less than or equal to 1%	*Nil*
Greater than 1% but less than or equal to 5%	*Fine of Rs.500/- lump sum per day*
Greater than 5% but less than or equal to 10%	*Fine of Rs. 1,000/-lump sum per day*
Greater than 10%	*Fine of Rs. 10,000/-lump sum per day*

The above shall be effective from trade date June 01, 2004

Yours faithfully,

For National Securities Clearing Corporation Ltd.

Jaya Chatterjee

Manager"

Therefore, it is submitted by the appellant that in their case, these errors are less than 1% of the total number of transactions entered into and the entries relating to CCM and have been accepted by both the parties. The A.O. has not brought any evidence to support the allegation apart from suspicion on the basis of SEBI guidelines. Hence, it is submitted by the appellant that there is no justification for drawing any adverse inference on this account, without bringing any specific anomaly with regard to genuineness of the transactions and no fine has been imposed by concerned authorities, in respect of CCM.

(v) It is further submitted by the appellant that the entries, which are being alleged, where profit/losses arising from the alleged transactions by the A.O., are all being assessed to tax and such profit/losses, are included in total income declared in each of such case, which has been charged at the maximum marginal rate. Therefore, it is submitted that, there cannot be any allegation of intention to avoid taxes by shifting profit to loss by manipulating entries. The same A.O. has assessed all these entities in assessment proceedings u/s 153A/143(3) and no corresponding adjustments, have been made in the income of such entities.

From the above, following facts emerge:-

➢ *Appellant is not a member to exchange and cannot execute CCM.*

➢ *The transactions on account of CCM done by group concerns, are genuine,*

➢ *The volume of CCM occurred, are within the permissible limit allowed by the SEBI, and*

➢ *The Exchange / SEBI, has not found any violation of rules and regulations relating to CCM, and the CCM transactions are falling within the prescribed limit.*

In view of the above, I agree with the arguments of the appellant and the CCM transactions, are genuine. Accordingly, I hold that the A.O. was not justified in making addition on the above basis. Therefore, the addition of Rs. 7,65,00,355/- made by the A.O., is deleted.

Accordingly, ground no. 12 and 13, are hereby allowed."

6. Aggrieved by the relief granted by the CIT(A), the Revenue is in appeal before this Tribunal.

7. When the matter was called for hearing, the Ld.CIT DR for the Revenue relied upon the assessment order.

8. The Ld. Counsel for the assessee on the other hand, submitted that the issue is squarely covered by the order of the Co-ordinate Bench of ITAT in group company namely Jaypee Financial Services Ltd. for AY 2011-12 in ITA No.4266/Del/2016 order dated 03.12.2019 where identical issue have come up. The Ld. Counsel also submitted that the reasonings in the assessment order in the present case is verbative and exactly the same as was in above case of J.P. Financial Services Ltd. as evident from the assessment roder in that case placed in Paper Book. The Ld. Counsel for the assessee next submitted that the issue is also covered by the order of ITAT dated 29.01.2021 in the case of group company Jaypee Capital Services Ltd. for AY 2011-12 & 2012-13 in ITA No.3558 & 3559/Del/2016 order dated 21.09.2021.

9. The Co-ordinate Bench of Tribunal in the case of group company Jaypee Financial Services Ltd. for AY 2011-12 in ITA No.4266/Del/2016 order dated 03.12.2019, as strongly emphasized has referred on behalf of the assessee, has dealt with the issue as under:-

> *10. "We have considered the rival arguments made by both the sides, perused the orders of the AD and the CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find the AO in the instant case made addition of ₹ 1.90.71.392/-on account of CCM on the ground that in the case of member(broker) group of companies of the assessee, it is held that the CCM is by and large not for the genuine reasons and for extraneous consideration and that the assessee has suppressed its income to the extent of ₹ 1,90,71,392/-. We find the Ld. CIT(A) deleted the addition made by the AO on the ground that the assessee is not a member of any exchange and cannot execute CCM. Further the transactions on account of CCM done by group concerns are genuine and the volume of CCM occurred are within permissible limit allowed by SEBI. It is also the observations of the CIT(A) that the exchange or SEBI has not found any violation of rules and regulations relating to CCM and the CCM transactions are falling within the prescribed limit. It is the submission of the Ld. DR that it is not a genuine mistake and the transactions are not genuine. Further the CCM was done by the assessee through its sister concern Mis. Futurz Next Services Limited through which the profit of the assessee company was reduced by 1.90 crores.*
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> *According to the Ld. DR the CCM is akin to penny stock. It is the submission of the Ld. Counsel for the assessee that the transactions entered into by the assessee are not found to be false or untrue and although SEBI is the regulator no action has been taken by SEBI holding that the transactions are not genuine. Further no adverse material has been found by the search party during the course of search and the revenue even have not*

gone to the broker who has done the CCM. It is also his argument that it is not known as to whom the account has shifted.

11. We find some force in the argument of the Ld. Counsel for the assessee. We find force in the argument of the Ld. Counsel for the assessee that client code modification is the internal matter of the broker and assessee has no control over it. The AO in the instant case has not spelt out as to on which scrips the assessee has shifted the profit. We find the AO nowhere in the assessment order has mentioned of any statement of broker of the assessee regarding the admission of any client code modification. We find in the instant case the addition has been made by the AO despite assertions by the assessee that it was not a registered broker on the stock exchange.

There is also nothing on record to suggest that the CCM was done at the behest of the assessee. Further, there is no addition or adverse view taken in the case of the other person with whose accounts presumption is being made that transaction has been shifted.

Admittedly there is nothing on record that the revenue has gone to the broker to find out as to who is the beneficiary of the CCM.

Further the transactions have not been held to be non genuine. So far as the argument of the Ld. DR that the Client Code Modification is akin to penny stock is concerned, we do not find any merit in the said arguments. In case of the penny stocks shares are purchases at a very low price and were sold immediately after one However, in case of CCM there is no such purchase at low price and sale at high price and it is on account of year at astroriomically high price just to claim the benefit of deduction uls. 10 (38) or as the case may be some punching error which has been rectified subsequently. We therefore do not find any merit in the argument of the Ld. DR that CCM is akin to penny stock.

12. We find an identical issue had come up before the Mumbai Bench of the Tribunal in the case of M/s. DCIT Vs. Comet Investment (P) Ltd. vide ITA No. 5802/Mumbai/2017 order dated 13.05.2019. We find the Tribunal dismissed the appeal filed by the revenue by observing as under :-

> *7. After having heard the counsels for both the parties at length and after having gone through the facts of the present case, we find from the records that the assessee is not a registered broker on the Stock Exchange. Only the registered brokers can modify Client code (CCM) of their own clients. Therefore in such circumstances, the allegations of assessee having done or restored to CCM is apparently not correct. The AO has not brought on record that even the instructions for CCM was ever given by the assessee.*
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> *Hence, in these circumstances, the assessee can't be held responsible for CCM if any done at the end of the broker. The AO except for the fact of receiving information from the DIT (I & CI), has not considered the other aspects of the transaction to be considered as the transactions of the assessee The other relevant aspect i.e. receipt and /or payments of monies, the time gap between the actual transactions on the stock exchange and the modification of the client code numbers of such transactions by the office of the registered share and stock broker, non-prohibition of client code modification by either the stock exchange or SEBI. In the order of assessment, the AO has stated the complete details of the Modus Operandi of creation of fictitious profit and/or losses with a malafide intention of escaping taxes. However, the AO has neither proved nor lead any evidence in case of any single transaction, which he has added to the income of*

the assessee, being of the type whose Modus Operandi is similar to the nature where he alleges to be added to the income of the assessee.

8. It is common knowledge that any transaction either relating to shares or derivatives to be considered as completed and taxable/deductible in the hands of any assessee should compulsorily have the following ingredients i.e.

i) A valid transaction must have been executed on the Stock Exchange.

ii) The customer of the registered share broker should confirm & agree that the transaction entered into by the broker belongs to him.

iii) The payment Ibr purchases and/or receipt of sale proceeds should have happened between the Bank Accounts of the broker & his customer.

iv) The above transaction must have been accounted for in the hooks of account of the registered broker as well as his customer.

v) The eventual profit/loss on the transactions executed on the Stock Exchange & exchange of monies having happened as well as getting accounted in the respective books of account would eventually result into taxable profit and/or loss in the hands of such customers of the registered broker.

9. Whereas, the AO in the present case has mechanically added amounts as income of assessee without verifying & furnishing evidences on record that all the above steps have actually happened in the case of all the transactions which he has added as assessee's income. In our view, by no stretch of imagination can any AO consider a transaction on the Stock Exchange as income of a person other than the one who has either actually received monies in his bank account (in case of profit) and/or paid any monies from his bank account (in case of losses).

10. For the above proposition, we rely upon the decision in the case of M/s. Sambhavanath Investment v. ACIT LT.A. No.3109/Mum/2011 AY 2006-2007 dated 19/12/2013 (Mum.) (Trib), ACIT v Kunvarji Finance (P) Ltd (2015) 61 Tακmann.com 52(Ahd.) (Trib.) wherein it was held that CCM within 1% is absolutely normal. Accordingly the addition was deleted. In the facts of the present case also, CCM is within 1%, ITO vs. Pat Commodity Services P. Ltd. ITA Nos. 3498 and 3499/Mum/2012 dt. 7th Aug, 2015 (Mum.)(Trib.), DCIT v Sunil J Anandpara ITA No. 3132/MUM/2015 Assessment Year: 2010-11 Bench | dated 15/9/2017 (Mum.) (Trib.) and ITO vs. Mis M.N. Shares & Stock Brokers Pvt. Ltd. IT No. 5399/M/2017, AN. 2009-10 Bench-SMC.

11. Even nothing has been placed on record by the AO to demonstrate that any proceedings were ever initiated against the assessee by the SEBI or any stock exchange. It was also clarified by the Ld. AR that the broker, through whom the assessee carried on share transactions, were also not imposed any penalty. No corelation between the assessee on the one hand and the other parties on the other hand has been brought on record to co-relate that the parties to whom the alleged profits or loss is supposed to have been diverted to reduce the taxable income of the assessee, has been brought on record to show that there was any collusion with each other and were known to each, so that one party diverted its profit or loss to the other parties.

Even nothing has been brought on record to suggest that the said losses were purchased and the party were given cheque or cash payment in view of such favours.

According to us, such co-relation was necessary to fasten any liability upon the assessee.

12. No new facts or contrary judgments have been brought on record before us in order to controvert or rebut the findings so recorded by Ld CIT. Therefore, there are no reasons for us to interfere into or deviate from the findings so recorded by the Ld. CIT. Hence, we are of the considered view that the findings so recorded by the Ld. CIT are judicious and are well reasoned. Resultantly, these grounds raised by the assessee stands dismissed."

13. We find the Ahmedabad Bench of the Tribunal in the case of ACIT Vs. Kunvarji Finance (P) Ltd. reported 401 ITR (T) 64 has held as under :-

> *8. "We have carefully considered the arguments of both the sides and perused the material placed before us. The Assessing Officer believed the client code modification to be malafide because in his opinion the client code modification was for unusually high number of cases. Therefore, first thing to be decided is whether there was the client code modification for unusually high number of cases. The Commodity Exchange i.e. MCX vide circular No.MCX/T&S/032/2007 dated 22.01.2007, issued guidelines with regard to the client code modification, which reads as under-*

Circular no. MCX/T&S/032/2007 January 22, 2007

Client Code Modifications

In terms of provisions of the Rules, Bye-Laws and Business Rules of the Exchange, the Members of the Exchange are notified as under.

Forward Markets Commission (FMC) vide its letter no. 6/3/2006/MKT-II (VOL III) dated December 20 2006 and January 5, 2007 has directed as under:

a. The facility of client code modifications intra-day are allowed.

b. The members are also allowed to change their client codes between 500p.m. to 5:15 pm, in case of the contracts traded till 5:00p.m. and between 11:30p.m. to 11:45pm. for the contracts traded fill 11:30p.m. on all the trading days from Mondays to Fridays and on Saturdays the same shall be allowed between 2:00p.m. to 2:15 p.m.

c. However, on the days when trading in commodities takes place till 11:55 p.m. the client code modification will be allowed only upto 12:00 p.m.

d. At all times. Proprietary trades shall not be allowed to be modified as client trades and client trades shall not be allowed to be modified as proprietary trades.

e. In order to ensure that client codes are entered with alertness and care, a penalty on the client code changes made on a daily basis shall be imposed as under:

S.No.	*Percentage of Client Code changed to total orders (matched) on a daily basis*	*Penalty(Rs.)*
1.	*Less than o equal to 1%*	*Nil*
2.	*Greater than 1% but less than or equal to 5%*	*500*
3.	*Greater than 5% but less than or equal to10%*	*1000*
4.	*Greater than 10%*	*10000*

f. It is clarified that the facility of client code modification is allowed as an interim measure only upto March 31, 2007 and after this date the said facility will be completely stopped.

With reference to point C. as referred above, Members may please note that the client code modifications will be allowed only upto 11:55 p.m, in international referenceable commodities (ie commodities traded upto 11:55 p.m.)

Members are requested to take note of the FMC directives and ensure strict compliance."

From the above, it is evident that client code modification is permitted intraday, i.e. on the same day. As per Commodity Exchange, if client code modification is upto 1% of the total orders, there is no penalty and if it is greater than 1% but less than 5%, the penalty is 500/-, If it is greater than 5% but less than 10%, penalty is 1000/- and if it is greater than 10%, then penalty is 10,000/-. From the above, the only inference that can be drawn is that as per MCX, the client code modification upto 1% is absolutely normal and therefore, the broker is permitted to modify the client code upto 1% without paying any penalty. Even client code modification upto 5% is not considered unusually high because that is also permitted with the token penalty of 500/-. In the context of the circular issued by Commodity Exchange, let us examine whether the client code modification done by the broker i.e. KCBPL is unusually high. At page No. 16 on paragraph No.4.3, the CIT(A) has given the number of transactions entered into by the assessee for the period 2004-05 to 2007-08 and the number of client code modification and percentage thereof. We have also reproduced the same at paragraph No.6 of our order. From the said details, it is evident that the client code modification was done in four years 36,161 times. As an absolute figure, the client code modification may look very high, but if we look it at in terms of total transactions, it is only 0.94%. The total number of trade transactions is 38.58 lacs and the client code modification is only 36.161. Therefore, the client code modification is less than 1% of the total trading transactions. As per circular of Commodity Exchange, client code modification upto 1% is quite normal and is permitted without any penalty.

That the Assessing Officer has not given any reason on what basis he presumed the client code modifications to be unusually high. In the light of the MCX circular, we are of the opinion that the client code modification was quite nominal and not unusually high as alleged by the Assessing Officer.

9. The Assessing Officer held the client code modifications to be malafide with the intention to transfer the profit to other person by modifying the client code so as to avoid the payment of tax. From the circular of the Commodity Exchange, it is evident that client code modification is permitted on the same day. Therefore, we are unable to find out any justification for the allegation of the Assessing Officer that the client code modification was with the malafide intention. When the client code was modified on the same day, there cannot be any malafide intention. Had client modification done after the transactions period when the price of the commodity has already changed, then perhaps there could have been some basis to presume that client code modification is intentional. However, when the client code modification is done on the same day, in our opinion, there was no basis or justification to hold the same to be malafide.

10. Moreover, the Id. Assessing Officer has computed the notional profit/loss till the transactions period and not till the period by which the client code modification took place. Even if the view of the Revenue is accepted that the client code modification was with malafide intention, then the profit or loss accrued till the client code modification

can be considered in the case of the assessee but by no stretch of imagination the profit/loss arising after the client code modification can be considered in the hands Of the assessee.

11. The Id. CIT(A) in paragraph 4.13 of his order has also recorded the findings that "all transactions at the Commodities Exchanges have been duly accounted in the books of account maintained by the concerned parties. Such profits/loss has been duly accounted whenever the transactions have been closed. Thus, whatever profits have been generated or accounting of actual trade, have been offered and brought to the charge of tax in the cases of concerned assessees." These findings of fact recorded by the Id. CIT(A) has not been controverted by the Revenue at the time of hearing before us. When the transaction has been duly accounted for and the profit/loss has accrued to the concerned parties in whose names transactions have been closed, there cannot be any basis or justification for considering those profit/loss in the case of the assessee on the basis of mere presumption or suspicion. It is not the case of the Revenue that such alleged profit has actually been received by the assessee. In view of the totality of the above facts, we do not find any justification to interfere with the order of the CIT(A) in this regard and the same is sustained; and Ground Nos. 1 and 3 of the Revenue's appeal are rejected.

14. The various other decisions relied on by the Ld. Counsel for the assessee also supports his case that no addition can be made by the AO where CCM is done by the broker.

15. Since in the instant case it is an admitted fact that the assessee is not a member of any exchange and cannot execute CCM and the transactions on account of CCM done by the group concerns are not found to be false or untrue and since SEBI or the stock exchange has not taken any action treating the transactions to be non genuine and volume of CCM occurred are within the permissible limit allowed by the SEBI, therefore, in view of the discussions above and relying on the decisions cited (supra) we are of the considered opinion that there is no perversity in the order of the CIT(A) deleting the addition.

Accordingly the same is upheld and the grounds raised by the revenue are dismissed."

10. As stated on behalf of the assessee, the issue is squarely covered by the order of the ITAT dated 21.09.2021 in the case of group company J.P. Capital Services Ltd. for AY 2011-12 and 2012-13 in ITA Nos.3558 & 3559/Del/2016 are reads as under:-

5. "So far as Ground Numbers. (a), (b) and (c) are concerned, the same relate to the order of the Ld. CIT(A) in deleting the addition made by the A.O. on account of Client Code Modification ["CCM"]. The Learned Counsel for the Assessee submitted that the issue stands covered in favour of the assessee by the decision of the Tribunal in the case of Group Company Jaypee Financial Services Ltd., for the A.Y. 2011-2012 vide ITA.No.4266/Del./2016 order dated 03.12.2019 wherein an identical issue had come up.

Referring to Para-15 of the order of the Tribunal, he submitted that the Tribunal has decided the issue in favour of the assessee. Referring to page-2, para-6 of the assessment order, he submitted that the present case is also exactly the same as in the case of Jaypee Financial Services Ltd.. He accordingly submitted that the Grounds of Appeal Numbers. (a), (b) and (c) being covered in favour of the assessee, the order of the Ld. CIT(A) be upheld and the grounds raised by the Revenue should be dismissed.

6. The Ld. D.R. on the other hand heavily relied on the order of the A.O.

7. We have heard the rival arguments made by both the sides, perused the orders of the A.O. and Ld. CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us by both the sides. We find the A.O. in the instant case made an addition of Rs.11,97,21,030/- on account of CCM and also made further addition of Rs.92,016/- being commission earned for providing accommodation entry to the persons out of the Group. We find the Ld. CIT(A) deleted the addition, the reasons of which have already been reproduced in the preceding paragraph. We find an identical issue had come up before the Tribunal in the case of Group Company namely Jaypee Financial Services Ltd. We find the Tribunal vide ITA.No.4266/Del./2016 order dated 03.12.2019 had decided the identical issue and upheld the order of Ld. CIT(A) in deleting the addition made by the A.O. by observing as under :

> *"10. We have considered the rival arguments made by both the sides, perused the orders of the AO and the CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find the AO in the instant case made addition of Rs.1,90,71,392/- on account of CCM on the ground that in the case of member (broker) group of companies of the assessee, it is held that the CCM is by and large not for the genuine reasons and for extraneous consideration and that the assessee has suppressed its income to the extent of Rs.1,90,71,392/-. 76 ITA.No.3558 & 3559/Del./2016 M/s. Jaypee Capital Services Ltd., New Delhi. We find the Ld. CIT(A) deleted the addition made by the AO on the ground that the assessee is not a member of any exchange and cannot execute CCM. Further the transactions on account of CCM done by group concerns are genuine and the volume of CCM occurred are within permissible limit allowed by SEBI. It is also the observations of the CIT(A) that the exchange or SEBI has not found any violation of rules and regulations relating to CCM and the CCM transactions are falling within the prescribed limit. It is the submission of the Ld. DR that it is not a genuine mistake and the transactions are not genuine. Further the CCM was done by the assessee through its sister concern M/s. Futurz Next Services Limited through which the profit of the assessee company was reduced by Rs.1.90 crores. According to the Ld. DR the CCM is akin to penny stock. It is the submission of the Ld. Counsel for the assessee that the transactions entered into by the assessee are not found to be false or untrue and although SEBI is the regulator no action has been taken by SEBI holding that the transactions are not genuine. Further no adverse material has been found by the search party during the course of search and the revenue even have not gone to the broker who has done the CCM. It is also his argument that it is not known as to whom the account has shifted.*
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> *11. We find some force in the argument of the Ld. Counsel for the assessee. We find force in the argument of the Ld. Counsel for the assessee that client code modification is the internal matter of the broker and assessee has no control over it. The AO in the instant case has not spelt out as to on which scrips the assessee has shifted the profit. We find the AO nowhere in the assessment order has mentioned of any statement of broker of the assessee regarding the admission of any client code modification. We find in the instant case the addition has been made by the AO despite*

assertions by the assessee that it was not a registered broker on the stock exchange.

There is also nothing on record to suggest that the CCM was done at the behest of the assessee. Further, there is no addition or adverse view taken in the case of the other person with whose accounts presumption is being made that transaction has been shifted.

Admittedly there is nothing on record that the revenue has gone to the broker to find out as to who is the beneficiary of the CCM.

Further the transactions have not been held to be non genuine. So far as the argument of the Ld. DR that the Client Code Modification is akin to penny stock is concerned, we do not find any merit in the said arguments. In case of the penny stocks shares are purchases at a very low price and were sold immediately after one year at astronomically high price just to claim the benefit of deduction u/s. 10 (38) or as the case may be. However, in case of CCM there is no such purchase at low price and sale at high price and it is on account of some punching error which has been rectified subsequently. We, therefore, do not find any merit in the argument of the Ld. DR that CCM is akin to penny stock."

7.1. Since the facts of the present case are identical to the facts of the case decided by the Tribunal cited (supra), therefore, respectfully following the decision of the Tribunal in the case of the sister concern, we hold that there is no infirmity in the order of the Ld. CIT(A) in deleting the addition made on account of Client Code Modification and commission earned for such accommodation entry. Grounds of Appeal Numbers. (a), (b) and (c) are accordingly dismissed."

11. The issue is thus squarely covered and no longer *res integra.* In view of the decision of the Co-ordinate Bench in group companies, the conclusion drawn by the CIT(A) cannot be faulted. We thus see no error in the decision rendered by the CIT(A), hence, we uphold the same and accordingly, the Ground Nos.(a), (b) and (c) raised by the Revenue are dismissed.

12. Ground No.(d) concerns disallowance under s. 14A amounting to INR 1,76,48,396/-.

13. The CIT(A) while granting the relief to the assessee has dealt with the issue as under:-

9.3. "Findings: The findings are as under:-

9.4. I have carefully considered assessment order, written submission, case laws relied upon and oral arguments of Ld. AR. The objections/arguments of the appellant are discussed as under:-

(i) As per A.O., during the year under consideration, though, no dividend income has been earned, but the assessee has made the investment in JCSL amounting to Rs. 38,52,00,000/-. However, the A.O. was of the view that the assessee has not shown any expenditure against the income which might have been arised as a dividend income on such investment, which is a exempt income and accordingly, the A.O. invoked the provisions of section 14A and determined the disallowance u/r 8D at Rs. 1,76,48,396/-.

(ii) During the appellate proceedings, the appellant has stated that the investment in group company JCSL, was strategic investment and not made for earning the dividend income. The dividend income on this investment was NIL and therefore, the A.O. was wrong in invoking provision of section 14A. The appellant has also relied upon the Hon'ble Delhi High Court decision in the case of CIT vs. Holcim India P. Ltd. ITA no. 486/2014 and ITA no. 299/2014 dated 05.9.2014. The ratio laid down by this decision is that no disallowance can be made u/s 14A, if there is no exempt income earned during the year.

From the above, following facts emerge:-

- *During the year under consideration, no dividend income has been earned, which can be treated as exempt income, and*
- *A The investment made in its group concern, is on account of strategic investments and on which, no dividend income has been earned.*

In view of the above, I agree with the arguments of the appellant that no expenditure can be disallowed against NIL. exempt income and this view is also supported by the decision of the jurisdictional High Court of Delhi in the above case(supra). Accordingly, I hold that since no exempt income is earned during the year under consideration and therefore, the A.O. has erroneously invoked the provision of section 14A for making disallowance of alleged expenses of Rs. 1,76,48,396/- and alleged addition made by the A.O. cannot be sustained. In view of the these facts addition of Rs. 1,76,48,396/-, is deleted."

14. The CIT(A) has rendered the decision in favour of the assessee on the premise that in the absence of any exempt income earned during the year, no disallowance under s. 14A is permissible in law. The issue is stated to be covered by the order of the Co-ordinate Bench in assessee's own case in AY 2011-12 in ITA No.3561/Del/016 dated 27.07.2021 & for AY 2012-13 in ITA No.3562/Del/2016 dated 03.01.2023. The issue is also stated to be covered by the order of the ITAT in Jaypee Capital Services Ltd. in AY 2013-14 in ITA No.1384/Del/2017 order dated 17.01.2020. Following the consistent view expressed in assessee's own case and in group cases on the point, the disallowance made under s. 14A has rightly been reversed by the CIT(A). No interference with the view expressed by the CIT(A) is thus called for, hence, we uphold the same and dismiss the ground no. (d) raised by the Revenue.

15. Ground Nos.(e) & (f) raised by the Revenue concerns addition under s. 2(22)(e) towards deemed dividend amounting to INR 60,40,87,544/-.

16. The submissions made by the assessee before the CIT(A) reads as under:-

10.2 "During the appellate proceedings, Ld. A.R. has filed written submission vide letter 28.3.2016 and the relevant portion is reproduced as under:-

15.0 These grounds deal with the action of the Ld. A.O. in making the impugned addition of Rs.60,40,87,544/-, alleging that, advances in the nature of loan and advance is received from M/s Jaypee Capital Services Ltd. by M/S Gen X commodities Ltd. M/S Gen X commodities Ltd, have more than 10% shareholding in M/s Jaypee Capital Services Ltd. accordingly the Ld. A.O. by invoking the provisions of section 2(22)(e) of the Act made addition on account of deemed dividend.

15.1 The brief facts of the case are that a search and seizure action took place in the business premises of Jaypee Group in which the assessee is a substantial shareholder, consequent to which the case of the assessee came under the purview for the previous six assessment years and notices u/s 153A were issued in all the said six years.

15.2 Therefore, during the year under consideration the assessee was served with the notice u/s 1534 dated 05.08.2013 (copy enclosed at PB 48) and in response to the same the assessee filed his return of income on 02.09.2013. Further, the assessee was served with various notices u/s 143(2), 142(1) and questionnaires. The copies of the same are placed in the paper book.

15.3 The ld. Assessing Officer assessee, vide another notice was asked to provide the details of the loans and advances taken and given during the year. The assessee in response to the said questionnaire filed a reply wherein he has reproduced the replies filed by parties namely Jaypee Capital Services Ltd. and Futurz Next Services Pvt. Ltd. in their respective assessments should be considered here, Further to this, assessee also submitted a reply dated 30.30.2015.

15.4 Your Honour on going through the reply, it is very much clear that the amount which has been credited and debited in the account of the assessee in association with the said party is on the account of business transactions and transacted by the assessee being a client and shareholder of the company.

15.5 While drafting the assessment, the Ld.A.O. has basically confused himself with the two capacity of the assessee. i.e. the assessee is surely the shareholder in such companies but at the same point he is their client also. Consequently there are 2 types of transactions, one business transaction and other transactions which are done in the capacity of shareholder. But over here the Ld.A.O. has wrongly treated the business transactions as loans and advances for the purpose of sec.2(22)(e).

15.6 Your honor from the perusal of ledger account, you will also appreciate the very fact that, the account of assessee is a running account, that is on every day there are transactions of receipt and payment, Your honor you will also agree that a company is not going to grant advance or loan to assessee on every day basis and receive it back on same day or other hence such a frequency of transactions cannot be by any stretch of imagination be included in the purview of loan or advances, by simple common sense such transactions are to be termed as business transaction. In this regard, it is submitted that, there is no bar by any provision of Law, that a shareholder cannot be a client to the company and transact business. Hence before calling for any allegation the Ld.A.O. should

scrupulously examine the nature of transaction rather than sticking to his contention without any basis.

15.7 Your honor, the said parties are in the business of trading of shares, securities and commodities through the stock exchange. Now, the party operates for themselves and for the clients also. The said clients have to make an account with these parties and then these parties after allocating the respective client codes to them transacts in their name. Here, the assessee is nothing but a client to the two companies and thus have earned an income from the share trading which has been credited in his account and wrongly predicted as deemed dividend by the ld. Assessing officer.

15.8 Your honor, the transactions carried out between the assessee and the above parties reflects running transactions of debit and credit throughout the year which candidly enumerates that such transactions are on account of regular business transactions only. The Ld. A.O. has only relied upon the Special Audit report of the Special Auditors, given in respect of the above parties. However the assessee has particularly submitted that the Special Auditors while preparing the report have considered only the bank payment and receipt entries and calculated the amount of deemed dividend. The Special Auditors have not considered the associated share trading transactions of sales and purchases, which are linked with the said payments and receipts. This fact is further corroborated from the fact that the payment made also includes the margin money which is required for trading in the capital market as well as in the commodities market, as per the requirements of the Stock Exchange Rules. However, the A.O. completely disregarding the same and by relying upon the report of the Special Auditors applied the provisions of Sec.2(22)(e) such an act of A.O. is untenable and contrary to the facts of the case.

15.9 Your honor, It is a settled law that the payments made against the business transactions are outside the purview of section 2(22)(e) of the Act. This fact was also explained to the Ld. A.O. during the assessment proceedings. However the A.O. without applying his mind applied the provisions of Sec. 2(22)(e).

15.10 In this regard reliance is placed on following judicial precedents, which differentiates business transactions from loans and advance as per provisions of section 2(22)(e):

> *15.10.1 In a very recent judgment of Ishwar Chand Jindal vs. ACIT, [2015] 61 taxmann.com 428 (Delhi - Trib.), Delhi Tribunal held that:*
>
> *"23..... The main contention raised by the appellant before us is that these are current account transactions between group companies and therefore, do not constitute deemed dividend under s. 2(22)(e) of the Act We find that identical issue had been considered by the Tribunal in the case of Pawan Kumar Bansal (supra) whereby following the decision of the Hon'ble High Court in the case of Ambassador Travels (supra), it has been held as under:*
>
> *"4. We have heard the rival submissions of both the parties and have gone through the material available on record. We find that the first issue is squarely covered in favour of assessee as in the case of Anil Bansal in ITA No. 2574 (supra) under similar facts and circumstances, the Hon'ble Tribunal has considered similar transactions as current account*

transactions and has not as deemed dividend. The relevant findings are contained in paras 6 and 7 of this order which are reproduced for the sake of convenience.

'6. We have carefully considered the arguments of both the sides and perused the material placed before us. The copy of the assessee's account in the books of M/s Daisy Motors (P) Ltd. is placed at pp. 19 and 20 of the assessee's paper book. For ready reference, the same is annexed herewith as Annex. 1. From a perusal of the above account, it is seen that there was opening credit balance, then debit balance occurred due to certain payments made by M/s Daisy Motors (P) Ltd. to the assessee in the month of April and July. Thereafter, from July, 2005 to 22nd March, 2006, there was a credit balance and again on 30th March, 2006, there was a debit balance. If we further analyze the accounts, we find that the maximum debit balance of the account of the assessee was only Rs. 2,08,212 while the maximum credit balance was more than Rs. 2 crores. That the debit balance of Rs. 2 lakhs was only for a period of ten days ie. from 23rd July, to 8th Aug., 2006 while the credit balance of more than a crore remains for more than two months and credit balance of more than Rs. 20 lakhs remains for more than six months. From the copy of that, it is evident that the assessee also made purchase of ten vehicles. Thus, the account is clearly in the nature of a running current account and merely because for a few days there was a debit balance of Rs. 2,08,212, it cannot be said that such debit balance was either loan or advance by M/s Daisy Motors (P.) Ltd. to the assessee. On these facts, the ion of Hon'ble jurisdictional High Court in the case of Ambassador Travels (P) Ltd. (supra), wherein their Lordships held as under, would be squarely applicable:

5. We are of the view that the order passed by the Tribunal does not suffer from any error of law. It is quite clear that the assessee was a travel agency and the above two concerns that it had dealings with, that is M/s Holiday Resort (P) Ltd. and M/s, Ambassador Tours (1) (P) Ltd, were also in the tourism business. The assessee was involved in the booking of resorts for the customers of these companies and entered into normal business transactions as a part of its day-to-day business activities. The financial transactions cannot in any circumstances be treated as loans or advances received by the assessee from these two concerns:

Similar view was also taken by their Lordships in the case of Creative Dyeing & Printing. (P) Ltd. (supra). Respectfully following the above decisions of Hon'ble jurisdictional High Court and applying the ratio of the above decisions to the facts of the assessee's case, we hold that the debit balance of Rs. 2,08,212 cannot be treated to be deemed dividend under s. 2(22) (e) of the Act. Accordingly, the addition made by the A.O. is deleted and ground No. 2 of the assessee's appeal is allowed."

24. It is seen that here too, the learned CIT(A) has not disputed that as per the aforesaid account, Rs. 4,27,16,756 and Rs. 86,80,000 credited on 10th Oct., 2006 and Ist April, 2006 are reversal entries and thus, if such entries are executed (sic-excluded) there was an opening balance of Rs. 5,13,96,756 payable by MIL to MSL. Thereafter, there were further payments made from 14th Aug., 2006 of Rs. 1,25,50,000 to 28th Oct., 2006 whereby balance increased from Rs. 5,13,96,756 to Rs. 6,03,96,756.

Subsequently, there were repayments made by MIL to MSL other than the figure of Rs. 54,98,908 being advance given from 3rd Sept., 2007 to 30th March, 2007 (sic). It is thus evident that there are mutual transactions between two group companies and the account being the two companies is current account transaction. It is thus held that once the transactions between two companies are current account transactions which are entered in the ordinary course of business, the same cannot be classified as advance or loan under s. 2(22)(e) of the Act.

25. The Mumbai Bench of the Tribunal in the case of NH Securities Ltd. (supra) has held as under:

"37. In the light of the discussion made in paras above, it is to be seen that payments made by a company through a running account in discharge of its existing debts or against purchases or for availing services, such payments made in the ordinary course of business carried on by both the parties could not be treated as deemed dividend for the purpose of s. 2(22)(e). The deeming provisions of law contained in s. 2(22)(e) apply in such cases where the company pays to a related person an amount as advance or a loan as such and not in any other context. The law does not prohibit business transactions between related concerns, and, therefore, payments made in the ordinary course of business cannot be treated as loans and advances. Therefore, in the facts and circumstances of the case and in the light of the judicial pronouncements considered above, especially in the light of decision of the Bombay High Court in the case of Nagindas M. Kapadia (supra), we hold that payments made by a company in the course of carrying on of its regular business through a mutual, open and current account to a related party do not come under the purview of s. 2(22)(e) of the Act."

26. In the light of the aforesaid judgment, it is held that these are simple current account transactions between the two group companies which are business/commercial transactions which cannot be regarded as deemed dividend under s. 2(22)(e) of the Act and hence, addition made is deleted.

……..

15.16 Your honor, the A.O. in the instant case is grossly ignoring the facts which apparently establishes that these transaction are in the nature of business transaction and is sticking to his vague contention that these transaction are loans to shareholder. It's a very common sense question that a company will not advance a loan to its shareholder for a day or even receive back on the same day itself, moreover such a scenario is running throughout the year, hence by any stretch of imagination such transactions cannot be construed as loan and advance for the purpose of sec.2(22)(e).

Your honor, it is hereby submitted that, the A.O. has not gone through the case thoroughly as there is no diversion of funds, since there are regular receipt and payment transactions and in last no payable balance is outstanding in the account of assessee payable to the said companies. Hence there is no diversion of funds by the companies to the shareholder which would attract the provisions of sec. 2(22)(e). Your honor would also appreciate from the copy of accounts that, on different dates the running balance is either positive or negative. The negative balance indicates that the company has made payment to shareholder and the

same is receivable from it, where as positive balance indicates that company has received payment from shareholder and the same is recoverable from company, therefore there is no diversion of funds and hence these transactions are business transactions which are transacted regularly during the year.

Therefore, the Assessing Officers contention in treating the transaction amount as the loans and advances doesn't hold true and should be deleted.

15.17 Your honor, the assesse has submitted [refer pg. no. 18 para (vii)] that:

"(vii) There are various judicial pronouncements for the proposition that the fiscal laws should strictly construed and the true test is always language used"

Your honor would appreciate that, since the A.O. has nothing to defend his case therefore he resorted to such a contention. In this regard your attention is drawn to the fact, that it is true that proposition of law should be strictly followed and the true test is always language used. but all these things would come into play when the nature of transaction would fall under some section.

That is firstly the transaction should fall under a particular section then only the conditions of that section would be strictly followed. But in our case the transaction is apparently a regular business transaction. And if the contention of A.O. is accepted then each and every payment to shareholder would tantamount to deemed dividend u/s 2(22)(e), even the payment for re-imbursement of any expense incurred by the shareholder/director on the part of company would be deemed dividend. Certainly this is not the intendment of the Section, the section only wants to cover those transaction which are really in the nature of dividend and not each and every payment.

Hence the contention of A.O. is not at all tenable in law and should be set aside.

15.18 Further in this regard, it is respectfully submitted that the Ld. A.O. has only relied upon the Special Audit Reports of the companies, and has made the addition in the hands of the assessee only on the basis of the same, as the assessee holds more than 10% voting power in the said companies. It is submitted that the voting power is not the only criteria for the applicability of the provisions of section 2(22)(e) of the Act. The provisions of the said section would apply only upon the fulfillment of the following conditions:

i. The payment is made by a Company, which is a Company in which the public are not substantially interested

ii. The payment is by way of an advance or a loan

ii. The payment is made to a shareholder holding not less than 10% voting power

iv. To the extent to which the company possesses accumulated profits.

In order to make the provisions of sec.2(22)(e) constitutional all the aforesaid conditions should be present, if either of the condition is missing, the applicability of section will be in question.

Further to this, your honor's attention is invited to the order of CIT(A) dated 19.01.2016, in case of Gaurav Arora. The facts of both the case are exactly similar.

"Page 28: In view of the above, I hold that the transactions in client ledger accounts, are transactions entered in the ordinary course of business and are relating to sale/purchase of the share/currency/derivatives obly. Therefore, I further hold that that since these transactions are trading/business transactions, accordingly, provisions of Sec. 2(22)(e), do not apply to the facts of the case of

the appellant". Hence in light of above submission the addition made in the hands of assessee company is not tenable and bad in law."

Besides the above, the appellant has also relied upon the following case laws/decisions:-

- *CIT Vs. Arvind Kumar Jain, 2011 (9) TMI 363*
- *CIT Vs. Creative Dyeing & Printing (P.) Ltd., [2009] 184 TAXMAN 483 (DELHI), High Court of Delhi*
- *CIT vs. Ambassador Travels (P.) Ltd, [2008] 173 TAXMAN 407 (DELHI), High Court of Delhi*
- *Smt. Radha Daga Versus The Asst. Commissioner of Income Tax, 2014 (6) TMI 642, ITAT Chennai*
- *Mr. Purushottam Das Mimani Vs. DCIT, 2014 (12)TMI 801, ITAT Kolkata*
- *Commissioner of Income Tax, Agra Vs. Atul Engineering Udyog, Nunihai, Agra, 2014 (10) TMI 41, Allahabad High Court*
- *Assistant Commissioner of Income Tax, Central circle-1(4) Vs. Madras Madurai Properties (P) Ltd., 2010(11) TMI 141, Chennai – Tribunal*
- *Ms. Percy Peshotan Batlivala Vs. ITO, 2012(9) TMI 154, ITAT Delhi."*

17. While granting relief, the CIT(A) adjudicated the issue as under:-

10.3. Findings: The findings are as under:-

10.4 I have carefully considered the assessment order, written submissions, case laws relied upon and oral arguments of the Ld. AR.

The A.O. in the assessment order, has made an addition of Rs. 60,40,87,544/- u/s 2(22)(e), for the following reasons:

(i) The companies namely M/s Jaypee Capital Services Pvt. Ltd.(JCPL), and M/s Gen X Commodities Ltd.(GCL), are closely held companies. The assessee has substantial holding in JCPL. There are large number of transactions including payments by the JCPL to the assessee. Further, the group companies are also making the payments to each other regularly as per the ledger account submitted.

(ii) The ledger account submitted by the appellant, consists of large number of transactions in respect of shares transactions done by assessee, as client of JCPL, which are not covered u/s 2(22)(e) of the act. However, where there are cheque payments, the same has to be considered as loan/advance for the purpose of section 2(22)(e) of the act.

It is further held by the A.O. that the JCPL, have granted advances in the nature of loan to the assessee The payment received from the JCPL by assessee is to be treated as deemed dividend in the hands of the assessee.

The objections/arguments submitted by the appellant during the appellate proceedings are discussed as under:-

(i) The JCPL, is share/currency/derivatives brokers, with whom the appellant and the group concerns maintain client account, in which business transaction of sale and purchase of share/currency/derivatives have taken place during the year under consideration.

In the appellate proceedings, appellant has submitted that the accounts of the assessee and other concerns, in which he is substantially interested, with JCPL, are not in the nature of advance or loan. Therefore, it is claimed that these accounts relates to business transactions of share/currency/derivatives only,

which is evident from the copy of accounts filed in the assessment proceedings, as well as in the appellant proceedings.

(ii) It has been further submitted that the special auditor as well as the A.O., have extracted the alleged account and re-casted account without following any accounting norm. For the purpose of making the alleged addition by the A.O., the method adopted is discussed as under:

(a) The special auditor, while recasting the account, has picked up the figures of cheque received and paid by JCPL. After taking the figure of money received and money paid, the special auditor has worked out the peak balance of the same and treated it as deemed dividend in the hands of the appellant.

The A.O., while recasting the account, has picked up the figure of payments made by JCPL during the year and the negative balance appearing after the payments. Lower of the two figures i.e. amount paid by the company and the negative balance appearing after the payment, has been taken as the deemed dividend by the A.O. The A.O. has adopted pick and choose, whereby he picked up only the debit entries of the cheque payments, but has ignored the debit and credit side of the transactions relating to purchase and sale of share/currency/derivatives.

(b) Both the above alleged accounts extracted by the special auditor and A.O., did not take into consideration, the business transactions entered into by the appellant/concern with this company. This fact is evident from the amount of Rs. 60,40,87,544/-, computed by the A.O. in the case of JCPL on the basis of alleged re-casted copy of account, as against the actual copy of account maintained in the books of accounts of this company.

(c) It has been further submitted that the even alleged account prepared by the special auditor (in case of JCPL), which has not been followed by the A.O. and has prepared another account. The A.O. has taken alleged loan amount by adopting lesser of the payment made by JCPL to the appellant/concerns and net balance available on a particular date. Therefore, it is, submitted that even the alleged account prepared by the A.O., does not reflect the correct nature of the account, as same is prepared without following any accounting principles and ignoring the nature of each transaction. It is argued that the A.O. cannot ignore the nature of business transactions entered into by the assessee/group concerns with JCPL, which are relating to share/currency/derivatives and therefore, it is wrong on part of the A.O. to consider running account of business transactions as loans and advances, so as to consider the same as deemed dividend u/s2(22)(e) of the Act.

(iii) It is further submitted by the appellant that the ledger account maintained in the books of accounts of JCPL, copy of which was submitted before the A.O. as well as in the appellate proceedings, shows that the same is a running account of purchase/sale. The cheque payments & receipts are relating to transactions of share/currency/derivatives and there is no loan/advance transactions.

From the above, following facts emerge:

(a) The transactions of cheques received and paid from/to the broker company JCPL, are related to the business transactions of sale/purchase of share/currency/derivatives carried out during the year under consideration, which cannot be segregated. If the transactions of cheque received and paid are

taken out of the alleged client accounts, then there is no meaning of trading transactions. In the type of business transaction entered by the appellant with the broker company, the transfer of funds/money on both the sides, is part and parcel of the business done, otherwise it will not be possible to settle the accounts.

It is not possible to settle the trading transactions without transfer of the funds/money. Therefore, the method adopted by the special auditor in the audit report, which has not been considered and also the method adopted by the A.O. in assessment order, is not correct. The positive and the negative balances, emerging out of the said accounts, is the result of business activities, which cannot be considered as loans/advances, as to cover the same within the provisions of section 2(22)(e).

(b) The company JCPL is a registered stock, currency and derivative broker on NSE, BSE, USE and MCX Sx. The transactions entered by the said company with appellant and group concerns are related to its business only. The appellant and the group concerns, maintain client account with this company, where in large number of share/currency/derivatives trading transactions, has taken place in the year under consideration. These transactions are nowhere prohibited under any existing law and not covered u/s 2(22)(e) of the act.

(c) The transactions entered into are in the regular course of business and it is not a case where it has been alleged by the A.O. that transactions of sale/purchase of share/currency/derivatives, are not genuine. In fact, these purchase and sale transactions, have not even doubted by the special auditor in the audit report as well as by the A.O. in assessment order. The special auditor and A.O. has re-casted the ledger account by not considering the business transaction of sale/purchase of share/currency/derivatives, which is not correct, since deemed dividend cannot be computed by way of pick and choose of few transactions, rather an account has to be considered in its entirety.

The above view, is also supported by the ratio laid down in the decision by Jurisdictional High Court of Delhi in the case of CTT Vs. Creative Dyeing & Printing (P.) Ltd. [2009] 184 TAXMAN 483 (DELHI), as under:

11. The counsel for the appellant has very strenuously urged that neither the Tribunal nor the Judgment of this Court in Raj Kumar's case (supra) deals with that part of the definition of deemed dividend u/s 2(22)(e) which states that deemed dividend does not include an advance or loan made to a shareholder by a company in the ordinary course of its business where the lending of money is a substantial part of the business of the company [section 2(22)(e)(ii)] Le., there is no deemed dividend only if the lending of moneys is by a company which is engaged in the business of money lending Dilating further the counsel for the appellant contended that since M/s. Pee Empro Exports (P.) Lid. is not into the business of lending of money, the payments made by it to the assessee-company would therefore be covered by section 2(22)(e)(ii) and consequently payments even for business transactions would be a deemed dividend. We do not agree. The Tribunal has dealt with this aspect as reproduced in para (9) above. The provision of section 2(22)()() is basically in the nature of an explanation. That cannot however, have bearing on interpretation of the main provision of section 2(22)(e) and once it is held that the business transactions does not fall within section 2(22)(e), we need not to go further to section 2(22)(e)(ii). The provision of section 2(22)(e)(ii) gives an example only of one of the situations where the

loan/advance will not be treated as a deemed dividend, but that's all The same cannot be expanded further to take away the basic meaning, intent and purport of the main part of section 2(22)(e). We feel that this interpretation of ours is in accordance with the legislative intention of introducing section 2(22)(e) and which has been extensively dealt with by this Court in the judgment in Raj Kumar's case (supra). This Court in Raj Kumar's case (supra) extensively referred to the report of the Taxation Enquiry Commission and the speech of the Finance Minister in the Budget while introducing the Finance Bill. Ultimately, this Court in the said judgment held as under:

"10.3 A bare reading of the recommendations of the Commission and the Speech of the then Finance Minister would show that the purpose of insertion of clause (e) to section 2(64) in the 1922 Act was to bring within the tax net monies paid by closely held companies to their principal shareholders in the guise of loans and advances to avoid payment of tax.

10.4 Therefore, if the said background is kept in mind, it is clear that sub-clause (e) of section 2(22) of the Act, which is pari materia with clause (e) of section 2(64) of the 1922 Act, plainly seeks to bring within the tax net accumulated profits which are distributed by closely held companies to its shareholders in the form of loans. The purpose being that persons who manage such closely held companies should not arrange their affairs in a manner that they assist the shareholders in avoiding the payment of taws by having these companies pay or distribute, what would legitimately be dividend in the hands of the shareholders, money in the form of an advance or loan.

10.5 If this purpose is kept in mind then, in our view, the word 'advance has to be read in conjunction with the word 'loan'. Usually attributes of a loan are that it involves positive act of lending coupled with acceptance by the other side of the money as loan: it generally carries an interest and there is an obligation of repayment. On the other hand, in its widest meaning the term 'advance' may or may not include lending. The word 'advance' if not found in the company of or in conjunction with a word 'loan' may or may not include the obligation of repayment. If it does then it would be a loan. Thus, arises the conundrum as to what meaning one would attribute to the term 'advance'. The rule of construction to our minds which answers this conundrum is noscitur a socils. The said rule has been explained both by the Privy Council in the case of Angus Robertson v. George Day [1879] 5 AC 63 by observing it is a legitimate rule of construction to construe words in an Act of Parliament with reference to words found in immediate connection with them and our Supreme Court in the case of Rohit Pulp & Paper Mills Ltd. v. Collector of Central Excise AIR 1991 SC 754 and State of Bombay v. Hospital Mazdoor Sabha AIR 1960 SC 610." (p. 165).

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

In view of the above, I hold that the transactions in the client ledger accounts, are transactions entered in the ordinary course of business and are relating to sale/purchase of share/currency/derivatives only. Therefore, I further hold that since these transactions

are trading/business transactions, accordingly, provisions of section 2(22)(e), do not apply to the facts of the case of the appellant.

Accordingly, the addition made by the A.O. on account of deemed dividend of Rs.60,40,87,544/-, is hereby deleted."

18. At the time of hearing, Ld.CIT DR for the Revenue relied upon the assessment order.

19. Per contra, Ld. Counsel for the assessee, submitted that the issue is covered by the order of the ITAT in assessee's own case for AY 2011-12 in ITA No.3561/Del/2016 order dated 27.07.2021 as well as in assessee's own case in AY 2012-13 in ITA No.3562/Del/2016 order dated 03.01.2023 and thus order of CIT(A) is not only based on sound reasoning but also covered by the decisions of ITAT. The Ld. Counsel for the assessee also submitted that the issue is also covered by the ITAT in group cases of Gaurav Arora for AY 2011-12 in ITA No.2034 & 2035/Del/2016 order dated 17.12.2018. It was further pointed out that decision rendered by the ITAT in Gaurav Arora has also been affirmed by the Hon'ble Delhi High Court in ITA No.507/2017 order dated 15.04.2024. The Ld. Counsel for the assessee submitted that otherwise also, credit the appearing in the books of the assessee are purely on account of continuous business transactions and thus credit arising which are outside the purview of s. 2(22)(e) of the Act as rightly held by the Co-ordinate Benches in assessee's own case as well as in the case of group companies in tune with the settled position of law.

20. On perusal of record, it is evident that the impugned credit resulting in additions under s. 2(22)(e) of the Act are offshoot of business transactions and thus outside the bounds of s. 2(22)(e) of the Act. The rationale in the view adopted by the CIT(A) is thus is in tune with the Co-ordinate Bench order in assessee's own case and group case as pointed out on behalf of the assessee. We thus see no reason to interfere with the well-reasoned order of CIT(A) and uphold the finding of the Ld. CIT(A) and accordingly, dismiss the ground Nos.(e) & (f) raised by the Revenue.

21. Ground Nos.(g) & (h) raised by the Revenue concerns additions on account of loss on shares amounting to INR 2,88,90,000/-.

22. The submission made before the CIT(A) on the aforesaid issue reads as under:-

11. "Ground no. 17, is relating to the addition of Rs. 2,88,90,000/- on account of loss on sale of shares.

11.1 The A.O. has made the above addition and findings of the A.O. in assessment order u/s 153A dated 31.3.2015, are reproduced as under:-

"12. Unexplained sale and purchase of investment in shares

12.1 The special audit has been referred in respect of M/s Futurz Next Services Ltd. During the course of such audit, the auditor has observed that the M/s Futurz Next Services Ltd. has entered into a transaction of sale and purchase of shares of another group company M/s Jaypee Capital Services Ltd. with the assessee company. The sale of 1,54,08,000 shares of JCSL was made with the assessee company on 31-03-2010 @ Rs. 40 per share. On the same date M/s FNSL repurchased 96,30,000 shares @ Rs. 37 per share. It was observed that in this way a loss of Rs. 2,88,90,000/- was created in the hand of assessee company M/s Gen X Commodities Ltd. The assessee group was therefore confronted about the same and was asked to explain the transaction alongwith the documentary evidences.

12.2 In response to the same, it was submitted that the profit generated from the transactions has been taken into account in the case of M/s FNSL.

12.3 1 have considered the above mentioned reply. The assessee has only explained the one leg of the transaction which is profit arises in M/s Futurz Next Services Ltd. However, he left the other part of the transaction which is a loss arises in the case of assessee company. He could not explain the reason how a share having a value of Rs. 40/- purchase in a same day is sold at a price of Rs. 37/-. No prudent person could sell a share which has been bought at a cost of Rs. 40/-on the price of Rs. 37/- and made a loss on a same day. The situation may be different, if the stock is listed in the recognized stock exchange where the fluctuation in share price regulated by market sentiments. But in a given case, the share of M/s Jaypee Capital Services Ltd., which is a closely held company, is sold by M/s Futurz Next Services Ltd. to assessee company was not influence by any market condition. The transaction become more dubious as all three company including assessee company belongs to a one group. It is also be noted that under arm length world, if the transaction has been executed the result of such transaction would not be the similar as effected in a given case. In my concerned opinion, the whole transaction was executed to generate a fictitious loss in a assessee company for the purpose of reducing the income of the assessee for the year under consideration. In view of above, the loss claimed by assessee company amounting Rs. 2,88,90,000/- is disallowed and added to the income.

(Addition Rs. 2,88,90,000/-)"

11.2 During the appellate proceedings, Ld. A.R. has filed written submission vide letter 28.3.2016 and the relevant portion is reproduced as under:-

> *16.1 This ground deals with the action of the Ld. A.O. in making the impugned addition of Rs. 2,88,90,000/- on the ground that the loss incurred by the assessee company on the sale of shares of M/s Jaypee Capital Services Ltd. is a fictitious*

loss and was generated only for the purpose of reducing the income of the assessee company. This issue has been dealt with the Ld. A.O, at Page 20-21 in Para 12 of the assessment order.

16.2 In this regard, it is respectfully submitted before Your Honour that during the year under consideration, assessee had entered into a transaction of sale and purchase of shares of M/s Jaypee Capital Services Ltd. through M/s Futurz Next Services Ltd. This fact was observed by the Special Auditor during the course of Special Audit conducted in the case of M/s Futurz Next Services Ltd. Assessee company purchased 96,30,000 shares of M/s Jaypee Capital Services Ltd. @ Rs.40 per share on 31.03.2010. Thereafter, 1,54,08,000 shares were sold by the assessee company @ Rs.37 per share. The Ld. A.O. has alleged that the assessee company has claimed a loss of Rs. 2,88,90,000/- (96,30,000 x (40-37)]. However, this is not the case of the assessee. The assessee company has not claimed any loss on the sale of these shares. Therefore, the impugned disallowance made by the Ld. A.O. is uncalled for and liable to be deleted.

16.3 With regard to the same, it is respectfully submitted that the assessee company was holding 1,54,08,000 shares of M/s Jaypee Capital Services Ltd. for an amount of Rs.38,52,00,000/- (value of Rs.25 per share), as is evident from the Balance Sheet of the assessee company Thereafter, the assessee company has further purchased 96,30,000 shares of M/s Jaypee Capital Services Ltd. on 31.03.2010 @ Rs.40 per share from M/s Futurz Next Services Ltd., for an aggregate amount of Rs.38,52,00,000/- Meaning thereby, that the assessee company was now holding 2,50,38,000 shares of M/s Jaypee Capital Services Ltd. for an aggregate amount of Rs.77,04,00,000/-. Out of these 2,50,38,000 shares, the assessee company has sold 1,54,08,000 shares on 31.03.2010 @ Rs.37 per share to M/s Futurz Next Services Ltd., resulting into a profit of Rs. 18,48,96,000/- in aggregate, which has been duly recorded in the books by the assessee company, as is evident from the copy of the ledger account of M/s Futurz Next Services Ltd. in the books of the assessee.

16.4 A perusal of the above facts clearly shows that the Ld. A.O. has blindly relied upon the findings of the Special Auditor in the Special Audit Report and has completely disregarded the facts and circumstances prevailing in the case of the assessee company. The above facts clearly show that the assessee company has not claimed any loss from the said sale/purchase transaction, but has in fact, earned profit from the said transaction, which has been duly recorded in the books of accounts of the assessee. Therefore, the allegation of the Ld. A.O. is only based upon surmises and conjectures, and without any application of mind and consideration of the facts of assessee's case, and thus, the addition made on this account is bad in law and liable to be deleted."

23. The CIT(A) has decided the issue in favour of the assessee in following terms:-

11.3. "Findings: The findings are as under:-

11.4. I have carefully considered assessment order, written submissions and oral arguments of Ld. AR. The objections/arguments of the appellant are discussed as under:-

(i) In the assessment order, the A.O. has considered that the sale of shares 154,08,000 of JCSL @ Rs. 40 per share were sold on 31.3.2010 from FNSL and on the same date, 96,000,000 shares were sold @ Rs. 37 per share to FNSL. Therefore, the A.O. was of the

view that this transaction has been taken place to generate artificial loss of Rs. 3 per share and accordingly, estimated loss of Rs. 2,88,90,000/-, in the hands of the appellant.

(ii) During the appellate proceedings, the appellant has stated that they have filed the complete details of the shares of JCSL owned by the appellant and accordingly before sale of 96,000,000 shares were sold @ Rs. 37 per share to FNSL, the appellant was having total number of shares 154,08,000, having purchase at an average value of Rs. 25 per shares. Therefore, it is submitted by the appellant that the shares, sold on 31.3.2010, were infact purchased at an average price of Rs. 25, per share and not Rs. 40 per share, as alleged by the A.O. Accordingly, it is claimed that the loss determined by the A.O. is not correct and infact the appellant has got a profit of Rs. 18,48,96,000/-, from this transaction, which has been offered to tax as a business income.

On perusal of the ledger, relating to purchase and sale of shares, the appellant has sold the old stock of JCSL shares, having been purchase at average purchase price @ Rs. 25 per share, which was also submitted in the assessment proceedings. In view of these facts, it is clear that findings of the A.O. are erroneous, since the appellant has offered a profit of Rs. 18,48,96,000/-, to tax in the year under consideration and the loss determined by the A.O., is not correct and accordingly, addition made on this account cannot be sustained.

In view of the above, addition of Rs. 2,88,90,000/-, made by the A.O. on account of alleged loss, is deleted.

Accordingly, ground no. 17, is hereby allowed."

24. At the time of hearing, the Ld. Counsel for the assessee reiterated the submissions made before the CIT(A) and submitted that the assessee has not claimed any loss on sale of shares and the disallowance made by the AO is without application of mind and totally uncalled for. The Ld. Counsel submitted that assessee has purchased the share of JCSL at an average price of INR 25 per share and sold at INR 37/- per share. The AO had wrongly assumed that the shares were purchased at INR 40/- per share and hence incurred loss. The Ld. Counsel for the assessee submitted that the assessee has actually received profits on the transactions rather than the loss wrongly assumed by the AO. The profits arising from the transactions have been duly offered to tax in accordance with law and therefore the agitation by the Revenue on the point is wholly unjustified.

25. The CIT(A) has dealt with the issue objectively and returned the findings on facts that the assessee has derived profits on the impugned transactions rather than loss incurred as wrongly rendered by the AO. The profits arising have been offered for taxation and thus no cause of action, against the assessee, plausibly exists. The Revenue could not bring anything on record

to rebut the findings of the AO. We thus see no reason to disturb the findings of the CIT(A) and upheld the same thus, Ground Nos. (g) and (h) raised by the Revenue are dismissed.

26. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the Open Court on 25TH July, 2025.

SD/- ***SD/-***

(AMITABH SHUKLA)
ACCOUNTANT MEMBER

(MAHAVIR SINGH)
VICE PRESIDENT

Date: 25.07.2025

SR BHATNAGAR

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI