

**IN THE INCOME TAX APPELLATE TRIBUNAL “E” BENCH, MUMBAI
BEFORE SHRI SAKTIJIT DEY, VP AND SHRI PRABHASH SHANKAR, AM**

ITA No.3273/Mum/2025
(Assessment Year: 2015-16)

Tejal Ketan Shah, 2901/2902, Estonia B Wing Hiranandani, S.V. Road Poisar Opp. Ragulila Mall Kandivali, Mumbai- 400067	Vs.	Income Tax Officer, Ward-42(1)(5), Mumbai
(Appellant)	:	(Respondent)
PAN NO. AGLPS 5568C		

Appellant by	:	Shri Rajesh Shah
Respondent by	:	Shri Hemanshu Joshi, Sr. DR
(Appellant)		(Respondent)

Date of Hearing	:	14.07.2025
Date of Pronouncement	:	24.07.2025

ORDER

Per Saktijit Dey, VP:

This is an appeal by the assessee against order dated 25.03.2025 passed by National Faceless Appeal Centre (NFAC), Delhi for the Assessment Year 2015-16.

2. The dispute in the present appeal is confined to addition of an amount of Rs.1,17,40,867/- as deemed dividend under Section (u/s.) 2(22)(e) of the Income Tax Act, 1961 (in short the ‘Act’).

3. Briefly the facts are, the assessee is a resident Individual. For the assessment year under dispute, assessee filed her return of income on 31.08.2015 declaring total income of Rs.14,70,330/-. The return so filed by the assessee was selected for scrutiny and in course of assessment proceeding, the Assessing Officer (AO) called upon the assessee to furnish various details in relation to the income offered by her. While verifying the information

available on record, the AO observed that during the year under consideration, the assessee had availed following unsecured loans (i) Rs.87,50,000/- from M/s Vipul & Co. (ii) Rs.30,00,000/- M/s Mundra Developers. He further observed that these loans availed on 30.03.2015 were utilized on the very same day in giving advance for the purchase of commercial property for an amount of Rs.93,00,000/- and investment in FD for an amount of Rs.26,00,000/-. To verify the genuineness of these loan transactions, the AO carried out independent enquiry by issuing notices u/s. 133(6) of the Act to the lenders. In response to the query raised, both the lenders furnished loan confirmation, their income tax return copies, bank statement copies etc. On verification of the details furnished by the lenders, the AO noticed that the lenders had received certain amounts from a company, namely, M/s Shrikari Financial Services Pvt. Ltd. (in short 'SFSPL') and, in turn, had advanced those amounts as loan to the assessee. He further found that the assessee is one of the Directors of SFSPL having 50% shareholding. He further found that on the date of advancement of loan, SFSPL had accumulated profit to the extent of loan advanced to the assessee by the other two entities.

4. Thus, he was of the view that since the amount advanced as loan to the assessee by two entities originated from the payment made by the SFSPL wherein the assessee is a Director and the company had accumulated profits more than the amount of loan advanced, the loan received by the assessee is in the nature of deemed dividend u/s. 2(22)(e) of the Act. Accordingly, he issued a show cause notice to the assessee to explain why the amount should not be added at her hands. Though, the assessee objected to the proposed addition by stating that the conditions of Section 2(22)(e) are not satisfied, however, the AO did not find merit in the submissions of the assessee. Ultimately he proceeded to add the amount of Rs.1,17,40,867/- at the hands of the assessee by treating it as deemed dividend u/s.

2(22)(e) of the Act. Though, the assessee contested the aforesaid additions by filing an appeal before learned First Appellate Authority, however, she was unsuccessful.

5. Before us, learned counsel appearing for the assessee strenuously urged that the conditions of Section 2(22)(e) of the Act are not satisfied as the assessee has not received any loan advance from the company wherein, she is a Director. Learned counsel submitted, two entities from whom the assessee had received the loan are creditors to SFSPL and from their running loan account with the company they had received the amount towards repayment of loan, out of which, on the request of assessee's husband, they had advanced the loan to the assessee charging interest. Learned counsel further submitted that repayment of loan by the company to the third parties cannot be equated to loans and advances given by the company on behalf or for the benefit of assessee as there is no depletion in the capital account of the assessee in company's book nor there is depletion in the capital and reserve of the company. In support of such contention, learned counsel relied upon the following decisions:

- i. CIT vs. Mukundray K. Shah [2007] 290 ITR 433 (SC).
- ii. PCIT vs. Anumod Sharma [2021] 132 taxmann.com 70 (Delhi).
- iii. ACIT vs. Shri Anumod Sharma, ITA No.6892/Del/2015, dated 26.12.2019.

6. Learned Departmental Representative (DR) relied upon the observations of the First Appellate Authority.

7. We have considered rival submissions in the light of the judicial precedent cited before us and perused the materials on record. In so far as factual position relating to the issue in dispute is concerned, there is no dispute that during the year under consideration, the assessee had received an amount of Rs.87,50,000/- as unsecured loan from M/s Vipul & Co. and further unsecured loan of Rs.30,00,000/- from another entity M/s Mundra

Developers. These loans were availed on 30.03.2015. It is a fact on record that in course of assessment proceeding, both the lenders had furnished requisite details confirming the loan transactions. In fact, the AO has accepted the creditworthiness of the parties and the genuineness of loan transactions as he has not made any addition u/s. 68 of the Act. However, he has treated the loan advanced to the assessee by the aforesaid entities as deemed dividend u/s. 2(22)(e) of the Act only because prior to advancement of loan the parties had received the amount in dispute towards repayment of loan by SFSPL, wherein, the assessee is a Director having 50% of the shareholding. Therefore, the core issue arising for consideration, is whether in the given facts and circumstances of the case, the loan received by the assessee from two unrelated parties can be treated as deemed dividend u/s 2(22)(e) of the Act.

8. On going through the assessment order as well as order of First Appellate Authority, it becomes crystal clear that both the authorities have agreed that neither the loan was received by the assessee from SFSPL nor SFSPL had advanced any loan to a concern wherein the assessee is a member or a partner and wherein she has substantial interest. Hence, they were satisfied that the first and second limbs of Section 2(22)(e) of the Act do not apply. However, both the authorities have concluded that the transaction is covered under the third limb, which is to the effect that the payment made by the company was on behalf of or for the benefit of shareholder. According to the Departmental Authorities, the repayment of loan by SFSPL to the lender entities was only to facilitate the advancement of loan to the assessee, hence, for the individual benefit of the assessee. The acceptability of the aforesaid conclusion drawn by the Departmental Authorities needs to be examined. On perusal of financial statement of SFSPL placed in the paper book and more particularly the balance sheet as on 31.03.2015, it is evident, both M/s Vipul & Co. and M/s Mundra

Developers are creditors to SFSPL and had existing loan accounts. As on 01.04.2014, M/s Vipul & Co. had an opening credit balance of Rs.3,43,68,867.00, in the books of SFSPL. During the Financial Year 2014-15, SFSPL had repaid an amount of Rs.3,62,5,279/- to M/s Vipul and Co. between 09.07.2014 to 30.03.2015 including amount of Rs.87,40,867.00 which was advanced as loan by M/s Vipul & Co. to the assessee. At the end of the year, M/s Vipul & Co. still had a credit balance of Rs.30,27,710/- in the books of SFSPL. Likewise, as on 01.04.2014 M/s Mundra Developers had an opening credit balance of Rs.60,00,000/- in the books of SFSPL. During the F.Y. 2014-15, the entire amount of Rs.60,00,000/- was repaid by SFSPL to M/s Mundra Developers and the loan account was squared off. Thus, as could be seen from aforesaid facts, this is not a case where SFSPL firstly received loan from M/s Vipul & Co. and M/s Mundra Developers and immediately thereafter repaid the loan to them to facilitate advancement of loan to the assessee. In other words, there is nothing on record to suggest that M/s Vipul & Co. and M/s Mundra Developers were merely used as pass through entities to facilitate the loan transaction with the assessee solely for the purpose of avoiding the consequences of Section 2(22)(e) of the Act.

9. On the contrary, facts on record reveal that both M/s Vipul & Co. and M/s Mundra Developers are creditors to SFSPL from past years and had running loan accounts with SFSPL. As discussed earlier, in the financial year relevant to the assessment year under dispute, out of the credit balance of Rs.3,43,68,867/- standing in the name of M/s Vipul & Co. an amount of Rs.3,62,5,279/- was repaid by SFSPL on various dates, out of which, amount of Rs.87,40,867/- was advanced as loan by M/s Vipul & Co. to the assessee. Similarly, out of the opening credit balance of Rs.60,00,000/- standing in the name of M/s Mundra Developers entire amount was repaid during the year by SFSPL. Out of which,

Rs.30,00,000/- was advanced as loan by M/s Mundra Developers to the assessee. Thus, it is not a case where the repayment by SFSPL was only to facilitate the loan transaction between M/s Vipul & Co. and M/s Mundra Developers on one hand and the assessee on the other. Rather the process of repayment of loan by SFSPL to the creditors appears to be in regular course as it was done through out the year. Mere fact that due to close acquaintance of assessee's husband with the lender entities and on his request loan was advanced to the assessee by other two entities, would not lead to the conclusion that SFSPL has made the payment on behalf of or for the individual benefit of the shareholder i.e. the assessee. On the contrary, the pattern of loan transaction between M/s Vipul & Co. and M/s Mundra Developers with SFSPL clearly reveals that it was in normal course and not for the benefit of any third party including the assessee as a shareholder. Moreover, there is nothing on record to suggest that SFSPL was compelled to repay the loan to facilitate advancement of loan to assessee. Rather, it is manifest, SFSPL has repaid the loan to the creditors in normal course for discharging the liability towards lenders.

10. When the loan transactions are between third parties and the loan advanced to the assessee is on charging of interest, it cannot be said that the repayment of loan by SFSPL to M/s Vipul & Co. and M/s Mundra Developers is on behalf of the assessee or for the benefit of the assessee. M/s Vipul & Co. and M/s Mundra Developers being totally unrelated parties and not being under the control of either SFSPL or the assessee, are entitled to take independent decision how to utilize their fund. Even, the financial statement available on record do not suggest that as a result of repayment of loan by SFSPL to M/s Vipul & Co. and M/s Mundra Developers, there is either depletion in the capital and reserve of the company or there is debit balance in assessee's capital account in the company. In case of CIT vs. Mukundray K. Shah (Supra), the Hon'ble Supreme Court has observed that

whether a particular payment falls within the ambit of deemed dividend in terms with Section 2(22)(e) of the Act depends upon two factors, firstly, whether the payment is a loan and whether on the date of payment their existed accumulated profit. In the facts of the present appeal, the first condition that the payment has to be in the nature of loan is not fulfilled, though, it may be fact that company wherein the assessee is a shareholder had accumulated profit. Even, applying the principle laid down by the coordinate Bench in the case of PCIT vs. Anumod Sharma (Supra), which was subsequently upheld by the Hon'ble Delhi High Court the loan received by the assessee cannot be treated as deemed dividend u/s. 2(22)(e) of the Act. Therefore, we are inclined to delete the addition.

11. In the result, appeal is allowed.

Order pronounced in the open court on 24 /07/2025..

Sd/-
(Prabhash Shankar)
Accountant Member

Sd/-
(Saktijit Dey)
Vice President

Mumbai; Dated : 24 /07/2025

Aks/-

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT - concerned
5. DR, ITAT, Mumbai
6. Guard File

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai