

आयकर अपीलीय न्यायाधिकरण में, हैदराबाद 'ए' बेंच, हैदराबाद

**IN THE INCOME TAX APPELLATE TRIBUNAL  
Hyderabad 'A' Bench, Hyderabad**

श्री रवीश सूद, माननीय न्यायिक सदस्य एवं श्री मधुसूदन सावडिया, माननीय लेखा सदस्य

**SHRI RAVISH SOOD, HON'BLE JUDICIAL MEMBER  
AND  
SHRI MADHUSUDAN SAWDIA, HON'BLE ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A.No. 598/Hyd/2025  
(निर्धारण वर्ष/ **Assessment Year: 2018-19**)

ACIT, Circle 5(1) Hyderabad	Vs.	Madineni Sitaramaiah Hyderabad  PAN : ANNPM5682Q
<b>(अपीलार्थी/ Appellant)</b>		<b>(प्रत्यर्थी/ Respondent)</b>

**CO No. 16/Hyd/2025  
Arising out of आयकर अपीलसं./I.T.A.No.598/Hyd/2025)**  
(निर्धारण वर्ष/ **Assessment Year: 2018-19**)

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करदाता का प्रतिनिधित्व/ Assessee Represented by	:	S/Sri. EV Sri Krishna & Siva Charan, Chartered Accountants
राजस्व का प्रतिनिधित्व/ Department Represented by	:	Sri. S Arun Kumar, Sr. DR

सुनवाई समाप्त होने की तिथि/ Date of Conclusion of Hearing	:	16.12.2025
घोषणा की तारीख/Date of Pronouncement	:	24.12.2025

## **ORDER**

**प्रति रवीश सूद, जे.एम./PER RAVISH SOOD, J.M:**

The present appeal filed by the Revenue is directed against the order passed by the CIT(Appeals), dated 26.12.2024, which in turn arises from the order passed by the AO under section 143(3) of the Income-tax Act, 1961 (for short, "Act"), dated 27.03.2021 for the Assessment Year 2018-19. The revenue has assailed the impugned order of the CIT(Appeals) on the following grounds of appeal before us:

- (i) The learned CIT(A) erred in deleting the addition of Rs.1.97 crores taxed as "deemed income" though the assessee has not demonstrated any evidence to show that he had spent the loan amount during normal course of his business or it is akin to any trade advances.
- (ii). The learned CIT(A) erred in appreciating the fact that the nature of loans advanced by the company to assessee do not fall under normal business activity or under any exceptional clauses (i) to (v) of sec.2(22)(e) and that the assessee was having substantial interest in the company and therefore provisions of sec.2(22)(e) are applicable.
- (iii). The learned CIT(A) erred in recognizing the agreement of sale dt.24.04.2017 between the assessee and the company which is not registered a instrument.
- (iv) The learned CIT(A) erred in observing that there would be a case of no positive amount for considering any "deemed income" in the hands of the assessee which is against the spirit of section 2(22)(e) of the Act, as the

assessee had received the loan amounts from out of substantial accumulated profits of the company.

(v) The learned CIT(A) ought to have appreciated that the AO has restricted the addition towards "deemed dividend" to the extent of the accumulated profits of the company.

(vi). Any other ground(s) that may be urged at the time of appeal hearing”

Also, the assessee is before us as a cross-objector, whereby his contention that the AO had exceeded the scope of “limited scrutiny” was rejected by the CIT(Appeals), raising the following objections:

“1 The learned CIT(A), NFAC erred in dismissing the ground of appeal of the Assessee that, the Assessing Officer erred in making the addition in the assessment in violation of CBDT Instruction Number F.No.225/402/2018/ITA.II dated 28th November, 2018.

2 The learned CIT(A), NFAC ought to have considered that the addition made u/s 2(22)(e) as deemed dividend in the hands of Assessee was never part of reasons for limited scrutiny and thus making such addition is not valid since no prior approval from CIT was obtained by the Assessing Officer for making such other addition.

3 The learned CIT(A), NFAC ought to have considered that the limited scrutiny reason of ‘Unsecured Loans ‘cannot be considered as origin for making addition under Section 2(22)(e) as ‘Deemed Dividend’ and thus erred in stating that addition made originated from the reasons for limited scrutiny.

4 The learned CIT(A), NFAC erred in not considering the judicial precedence that the addition made for issue not covered under limited scrutiny reasons cannot be sustained unless there is prior approval from CIT for conversion of limited scrutiny into complete scrutiny.

5 The learned CIT(A), NFAC thus erred in concluding that the Assessing Officer did not travel beyond the examination of the reasons for limited scrutiny.

6 Any other ground that may be raised during the appellate proceedings, with the kind prior permission from the Hon’ble Tribunal.”

2. Succinctly stated, the assessee had filed his return of income for the year under consideration, i.e., AY 2018-19, declaring an income of Rs. 63,23,570/-. Subsequently, the case of the assessee was selected for “limited scrutiny” of certain issues, viz. (i). verification of genuineness of expenses; (ii). unsecured loans., Pages 1-2 of APB

3. During the course of assessment proceedings, the AO observed that as per the documents submitted by the assessee, there was an outstanding loan of Rs. 3,13,91,987/- (Dr) of the assessee as on 31.03.2018 in the books of accounts of M/s Madineni Infra Pvt. Ltd (for short, “company”). On a perusal of the record, the AO observed that the assessee during the subject year had received an unsecured loan of Rs. 2,99,49,991/- from M/s. Madineni Infra Private Limited, a closely held company in which he held 50% of the shareholding. The AO further noticed that the said company had accumulated profits of Rs. 1,97,99,851/- as on 31.03.2017.

4. The AO, based on the aforesaid facts, called upon the assessee to explain why the provisions of section 2(22)(e) of the Act may not be applied with respect to the unsecured loan that he had received from M/s. Madineni Infra Private Limited. In reply, the assessee had come forth with multi-facet replies, viz. (i). that the loan received from the company was towards an under progress joint venture project wherein he, along with the company, had undertaken to develop certain agricultural lands into a residential layout at Peddavadlapudi village, Mangalagiri Mandal, Guntur District, Andhra Pradesh; (ii). the amount was

received from the company in 62 tranches in “current account”, which could safely be gathered from both the receipts and payments figuring in the said account; (iii). that the amount was received not as an advance or a loan but in the course of regular business transactions which benefited both his proprietary business as well as the company, as both the entities were engaged in real estate and infrastructure activities; (iv). that out of the amount of Rs. 2.99 crores (approx.) received by him an amount of Rs. 2.28 crores (aprox), i.e., 76% of the amount taken was repaid during the year itself; and (v). that as a director of the company he was supervising the activities of the company and not drawing any remuneration from the company for performing the said activities, which, thus resulted to the savings to the company and he was compensated by the company by granting of intermittent advances of money for the services rendered.

5 . The AO did not find substance in the aforesaid multi-facet explanation of the assessee, and, inter alia, observed as under:

“In view of such submission of the assessee, it is crystal clear that there was no agreement, written or otherwise, with the assessee and M/s. Madineni Infra P Ltd. for the instant assessment year 2018-19 (FY.2017-18)in respect of loan/advance taken by the assessee from the said company. The assessee, a substantial shareholder of the company, had taken loan/advance from the company as when required by him and utilized the same in his proprietorship business by his own admission. Also, the assessee could not furnish any documents viz. joint development agreement with the said company in respect of financial year 2017-18. There was not a shred of evidence furnished by the assessee to demonstrate business relationship between the assessee and the company concerned during the relevant financial year. In fact, the assessee has been changing his stance in the sense that initially it was attempted to explain the loan as being part of business venture with the assessee company while subsequently it was mentioned that it was part of remuneration from the company as director in lieu of services rendered for the company’s benefit, albeit without any evidence to that effect. Further, the assessee stressed that repayments were made promptly to the loans received and also the fact that

such loans were utilized in the assessee's own real estate business where the company would also get collateral benefit. It is reiterated that such submission on the assessee's part is not backed up with any evidence and also that the assessee has adopted different sets of explanation in his attempt to establish that such advance/loan was made during the ordinary course of business and not for the individual benefit of the assessee. It is, thus, clear that such loan/advance taken by the assessee from M/s. Madineni Infra P Ltd during the financial year was not in the nature of transaction made in the ordinary course of business and is in the nature of loan and advance."

The AO further observed that the amounts received by the assessee were reflected in the books of the company under the head "Unsecured Loans" and not as trade advances or current account balances.

6. The AO, based on the aforesaid facts, concluded that as the assessee, being a substantial shareholder in M/s Madineni Infra Pvt. Ltd., had during the subject year received unsecured loan of Rs. 2,99,49,991/- from the said company, thus, treated an amount of Rs. 1,97,99,851/-, i.e., up to the extent of the accumulated profits available with the said company on 31.03.2017 as deemed dividend in the hands of the assessee under section 2(22)(e) of the Act.

7. Aggrieved, the assessee carried the matter in appeal before the CIT(Appeals), wherein he raised two sets of contentions. Firstly, it was contended that since the case was selected for "limited scrutiny", the AO could not have invoked section 2(22)(e) without converting the case into complete scrutiny. Secondly, the assessee challenged the addition on merits by reiterating that the transactions were current account transactions and that Rs. 1,15,61,000/- was an advance received by him from the company towards the purchase of land.

8. The CIT(Appeals) rejected the assessee's jurisdictional objection, holding that the issue of deemed dividend arose directly from the examination of unsecured loans, which was the very reason for the case being selected for limited scrutiny. However, on merits, the CIT(Appeals) accepted the assessee's two-fold explanation, viz. (i). that an amount of Rs. 1,15,61,000/- that was received by the assessee in 6 tranches over the period 24/04/2017 to 07/10/2017, was received from the company as an advance for the purchase of land at Pedavalapudi village, as per the "agreement to sell", dated 24/04/2017; and (ii). that for the balance amount of Rs. 1,83,88,991/- (Rs. 2,99,49,991/- (minus) Rs. 1,15,61,000/-), it was observed by him that as the assessee had during the subject year repaid an amount of Rs. 2,28,35,565/-, i.e., in excess of the balance amount of Rs. 1.83 crores (approx.), there remained no balance amount for making an addition under Section 2(22)(e) of the Act. Accordingly, the CIT(A) vacated the entire addition of Rs. 1,97,99,851/- that was made by the AO under section 2(22)(e) of the Act. For the sake of clarity, we deem it apposite to cull out the observations of the CIT(Appeals), as under:

**“6. DECISION:**

**6.1 Additional grounds of appeal:** The appellant has filed 4 additional grounds of appeal, which are reproduced at Para 2.1 above. The additional grounds were also forwarded to the AO and the AO has not commented adversely on admission of the additional grounds. The additional grounds have been perused. They emanate from the current proceedings and are germane to the issue of whether the impugned addition is valid or not. Hence these additional grounds of appeal are hereby admitted.

6.2 Additional evidence: The appellant's petition for acceptance of additional evidence has been duly considered. The evidence was duly forwarded to the AO, who has examined the same and furnished a remand report. The appellant has also stated that the same could not be furnished in the original assessment proceedings as the assessee had sought time of three days to furnish the same but the assessment order was

passed before the evidence could be submitted. Since the additional evidence in the form of sale agreement between the assessee and the company and confirmation of payments of advance amounts as per this agreement is vital to the issue under dispute, the same is hereby admitted.

6.3 I have carefully considered the grounds of appeal, statement of facts, submissions made from time to time and the details mentioned in the assessment order and Remand Report of the A.O. The additional grounds of appeal are taken up for adjudication. Vide the four additional grounds of appeal, the appellant has stated that the order passed is null and void as prior permission from the CIT has not been obtained for converting limited scrutiny into complete scrutiny and hence addition made under the head capital gain is liable to be quashed. The appellant has relied upon various judicial pronouncements. These 4 additional grounds of appeal are taken up for adjudication together. The reasons for which the case was picked up for limited scrutiny are as follows:

*“Reasons: Large payments made u/s 194C to persons who have not filed return of income.*

*The assessee has shown large payment as contract payments to persons who have not filed returns of income for the relevant assessment year.*

*Reasons: Large increase in un-secured loans during the year.*

*As per the balance sheet submitted by the assessee in part A-BS of ITR, there is significant increase in the un-secured loans as compared to the previous year. Further, the amount of unsecured loans is substantial vis-à-vis the share capital (including the share premium and share application money )”*

As seen from the above, the second reason is examination of large increase in unsecured loans during the year. As seen from the assessment order, the appellant had obtained an unsecured loan of Rs. 2,99,49,991/- from M/s Madineni Infra Pvt. Ltd., a company in which the appellant had substantial interest. The addition made u/s 2(22)(e) of Rs. 1,97,99,851/- is in respect of the above unsecured loan, restricted to the extent of accumulated profits of the said company. Thus, the issue on which the addition has been made originates from one of the reasons for limited scrutiny and the AO has not travelled beyond examining the reasons for limited scrutiny. The addition u/s 2(22)(e) is just a logical conclusion of the facts related to one of the unsecured loans taken by the appellant during the year, by applying the relevant law to the facts of the unsecured loan. Thus, there is no merit in the contentions raised in the additional grounds of appeal and the additional grounds no. 1 to 4 are dismissed.

6.4 The appellant has filed 9 grounds of appeal. **Grounds no. 1 and 9** are general and do not require any adjudication. **Grounds no. 2 to 8** all relate to the addition of Rs. 1,97,99,851/- u/s 2(22)(e) and are disposed of together. Facts pertaining to the issue are already discussed in detail at Paras 4 to 4.3 above. The AO added the amount of Rs. 1,97,99,851/- for the following reasons:

1. Loan is given by Madineni Infra P Ltd to the assessee amounting to Rs.2,99,49,991/-.
2. Assessee holds substantial (50%) shareholding in the said Company.
3. The accumulated profit shown in the books of Madineni Infra P Ltd is Rs.1,97,99,851/- in the Books of the Company as on 31.03.2017.
4. Though the assessee has submitted that “...the transactions of advances given and taken which are regular and current in nature, may not be considered as deemed dividend u/s.2(22)(e) of the Income Tax Act, 1961” but in the Asset side of the balance sheet of M/s. Madineni Infra Private Limited an amount of Rs.5,13,96,769/- has been specifically categorised under the head Short Term Loans & Advances as on 31.03.2018.

6.5 However, the AO disregarded certain facts pertaining to the loan transactions between the appellant and the company M/s Madineni Infra Pvt. Ltd. There are frequent payments and receipts between the appellant and the company, as seen from the ledger produced during the assessment proceedings. A summary of these transactions is as below:

*The summary of receipts and payments of amounts for the above account from Madineni Infra Private Limited, during the year is as under.*

Month	Receipts from company	Payments to company
April	23,20,000	8,99,966
May	54,41,851	25,00,000
June	95,140	3,35,000
July	81,20,000	12,31,000
August	50,00,000	12,58,350
September	17,89,000	9,90,000
October	57,56,000	50,00,000
November	40,000	4,31,000
December	40,000	13,65,000
January	0	9,57,000
February	7,13,000	21,77,000
March	6,25,000	56,91,250
TOTAL	2,99,49,991	2,28,35,566

While there are receipts of Rs. 2,99,49,991/- during the year, there are also payments of Rs. 2,28,35,566/- A summary of the transactions during the year is as follows:

<i>Opening Balance</i>	<i>Cr. Rs. 2,42,77,561</i>
<i>Add: Amounts taken during the year</i>	<i>Rs. 2,99,49,991</i>
<i>Less: Amounts repaid during the year</i>	<i>Rs.2,28,35,565</i>

*Closing Balance*

*Cr. Rs.3,13,91,987*

*Thus this is not a case of a one time loan given to the appellant.*

6.6 Transactions are in the nature of a current account between the appellant and the company, as clear from the ledger. The AO has also corroborated this fact in the remand report, as seen from Para 5.1 above. The pattern of transactions is similar to the transactions in the case of Sree Krishna Gyanodaya Flour Mills pvt. Ltd. ITA No. 1008/Kol./2016 ITAT Kolkatta bench, wherein the Hon'ble ITAT held that such nature of transactions do not fall within the purview of section 2(22)(e). The appellant has also stated that the advances and repayments are in the nature of business transactions and that "There are business advantages to Madineni Infar Pvt. Ltd. in extending temporary advances to me. Such business advantages are savings in salary/remuneration cost, ease of business operations in real estate business and beneficial terms with landlords for development agreements entered/to be entered into by the company." Reference may also be made to the decision of the Hon'ble Supreme Court in the case of Madhur Housing & Development Co. [2018] 93 taxmann.com 502 (SC) wherein the Supreme Court affirmed the stand taken by the Hon'ble Delhi High Court in the case of Ankitech (P) Ltd., [2011] 11 taxmann.com 100 (Delhi) that 'where loans and advances are given in normal course of business and transaction in question benefits both payer and payee companies, provisions of section 2(22)(e) cannot be invoked'.

6.7 The appellant has produced an agreement to sell dated 24/04/2017 for sale of land at Pedavadlapudi village and an affidavit from the Director of Madineni Infra pvt. Ltd. (both of which were duly remanded to the AO), whereby the following payments are in the nature of advance towards this purchase:

Date of Payment	Amount in rupees
24/04/2017	20,00,000
10/05/2017	20,10,000
23/08/2017	50,00,000
15/09/2017	10,69,000
16/09/2017	7,00,000
07/10/2017	7,82,000
	1,15,61,000

The AO has not given any adverse comment on these documents in his remand report. Thus, payments to the extent of Rs. 1,15,61,000/- are clearly not falling within the ambit of 'loans', though they can be considered as 'advances' against a business transaction. These payments cannot be considered to be falling within the purview of section 2(22)(e), as held by the Hon'ble Supreme Court in the case of Madhur Housing & Development Co. (supra). Thus for the purpose of section 2(22)(e), payments to the extent of Rs. 1,15,61,000/- are to be excluded from the payments of Rs. 2,99,49,991/- received during the year, leaving a balance of Rs. 1,83,88,991/-

6.8 Even if the argument of 'business purpose' is not accepted for a moment, as seen from the preceding paragraph, the amount of loan/advance that can be considered for the purpose of section 2(22)(e) is Rs. 1,83,88,991/-, against which repayment during

the year stands at Rs. 2,28,35,565/- If the repayment is deducted from the receipt during the year, as mandated by the Hon'ble Madras High Court in the case of Sunil Kapoor (2015 ) 63 taxmann.com 97, there is no positive amount left which can be added u/s 2(22)(e).

6.9 In view of the detailed discussion at Paras 6.5 to 6.8 above, there is no justification for the addition of Rs. 1,97,99,851/- u/s 2(22)(e) and the same is directed to be deleted. Grounds no. 2 to 8 are hereby allowed.

7.0 The appeal is treated as partly allowed.”

9. The revenue being aggrieved by the order of the CIT(Appeals), wherein he has deleted the addition on merits, has carried the matter in appeal before us. The assessee, on the other hand, aggrieved by the rejection of his limited-scrutiny objection by the CIT(A), has filed a cross-objection.

10. We have heard the Ld. Authorised representatives of both parties, perused the orders of the authorities below and considered the judicial pronouncements that have been pressed into service by them to drive home their respective contentions.

11. We shall first take up the cross-objection filed by the assessee, wherein it is claimed by him that the AO has exceeded his jurisdiction under the “limited scrutiny” by invoking section 2(22)(e) of the Act without converting the case into complete scrutiny.

12. We have given thoughtful consideration and find no merit in the Ld. AR's contention. As observed by us hereinabove, the case was selected for “limited scrutiny” specifically for verification of unsecured loans. The AO, while examining the unsecured loans, was necessarily required to examine their

nature, source and tax implications. Accordingly, once the AO found that the lender was a closely held company, wherein the assessee was a substantial shareholder, and that accumulated profits were available with the assessee company, the applicability of section 2(22)(e) followed as a direct statutory consequence. In our view, as the AO in the course of the “limited scrutiny” has not examined any issue alien to the issue based on which the subject scrutiny proceedings were triggered, therefore, we find no substance in the Ld. AR’s contention that the AO had traversed beyond the scope of his jurisdiction and without converting the case into a complete scrutiny touched issues which did not form a basis for selection of the case for such limited scrutiny assessment.

13. We find that the assessee, in his attempt to persuade us to accept his aforesaid averment regarding the invalid assumption of jurisdiction by the AO in making the impugned addition towards “deemed dividend” under Section 2(22)(e) of the Act, without converting the case into full scrutiny, has relied upon certain judicial pronouncements, viz. (i). ABIL Realty Pvt. Ltd. Vs. ITO, Ward 1(1), Pune, ITA No. 446/Pun/2024, dated 19/03/2025; (ii). Ranchodbhai Jerambhai Meghani vs. ITO, Ward 1(1)(3), Rajkot, ITA No. 346/Rjt/2023, dated 02/09/2024; and (iii). Urban Improvement Co. (P) Ltd. vs. ITO, Ward 27(2), New Delhi, ITA No. 7496/Del/2019, dated 07/02/2020. We have thoughtfully considered the aforesaid orders of the coordinate benches of the Tribunal and are of the view that as the same are factually distinguishable, therefore, the reliance placed Ld. AR on the same is misplaced, for reasons stated hereunder:

(i). ABIL Realty Pvt. Ltd. Vs. ITO, Ward 1(1), Pune.: The said case was selected for limited scrutiny on issues, viz. low income in comparison to high loans/advances or investments, low income vis-à-vis high investments reflected in the balance sheet, large other expenses, and large current liabilities in comparison to total assets. Accordingly, the verification of loans, as such, was never a specific issue for which that case was selected for limited scrutiny. It was in that factual backdrop that the Tribunal held that the AO could not have invoked section 2(22)(e) without converting the case into complete scrutiny. In the present case, however, verification of unsecured loans itself was the precise reason for the selection of the case.

(ii). Ranchodbhai Jerambhai Meghani vs. ITO, Ward 1(1)(3), Rajkot. In the said case, the Tribunal had recorded a factual finding that the addition made by the AO was on an issue wholly unconnected with the limited scrutiny reason and required an independent enquiry. In the present case, the addition under section 2(22)(e) is intrinsically linked to the examination of unsecured loans, which formed the very basis of limited scrutiny.

(iii). Urban Improvement Co. (P) Ltd. vs. ITO, Ward 27(2), New Delhi. In the said case, the AO had travelled to issues completely alien to the limited scrutiny trigger. In the present case, the AO confined himself strictly to the scrutiny issue and applied the relevant provision of law to the facts emerging therefrom.

In our view, none of the decisions relied upon by the Ld. AR lays down a proposition that the AO is barred from applying the correct charging provision

to the very issue for which the case was selected for limited scrutiny. We, thus, finding no substance in the cross-objection filed by the assessee, reject the same.

14. We now advert to the Revenue's appeal on merits. Admittedly, the assessee is a substantial shareholder in a closely held company, viz, M/s Madineni Infra Pvt. Ltd., wherein accumulated profits of Rs. 1,97,99,851/- were available with the company on 31.03.2017. Also, it is a matter of fact borne from the record that the assessee during the subject year had received sums aggregating to Rs. 2,99,49,991/- from the company. Insofar the two-fold claim of the assessee is concerned, viz. (i). that he had received the amount of Rs. 2.99 crores (supra) towards his "current account" transactions with the company; and (ii). the amount of Rs. 1.15 crores (approx.) was received by him from the company as an advance for the purchase of land at Pedavalapudi village, as per the "agreement to sell", dated 24/04/2017, we are unable to persuade ourselves to accept either of the said claims.

15. Apropos the claim of the assessee that the amount of Rs. 2.99 crores (supra) was, during the year, received by him towards his "current account" transactions with the company, we find that the same is in clear contradiction of the fact that the company, viz. Madineni Infra Pvt. Ltd. (supra) had disclosed the subject amount under the head "Unsecured loans" in its audited "balance sheet" for the said year, i.e., year ending 31.03.2018, Page 1 of APB. In our view, the CIT(Appeals) had grossly erred in accepting the assessee's claim that the subject amount was received by him from the company towards his "current

account” transactions without even consulting the audited “balance sheet” of the company that was available before him, which clearly contradicts the assessee’s stand.

16. Coming to the second facet of the assessee’s contention, that the amount of Rs. 1,15,61,000/-was received by him from the company as an advance for the purchase of land at Pedavalapudi village, as per the “agreement to sell”, dated 24/04/2017, we find that the said claim is not supported by any credible evidence. We say so, for the reason that there is no registered agreement evidencing the subject transaction. Also, the Ld. AR, on being specifically queried as to whether the said “agreement to sell” had subsequently materialised in an actual sale transaction, fairly answered in the negative. Apart from that, it would be relevant to point out that the impugned “agreement to sell”, dated 24/04/2017, was never produced by the assessee in the course of the assessment proceedings and was along with his self-serving “affidavit”, dated 16.04.2021, filed by him for the first time only before the CIT(Appeals), who had forwarded the same to the AO and called for his “remand report”. We find that the AO, after inter alia referring to the “agreement to sell”, dated 24.04.2017, had vide his “remand report”, dated 26/12/2024, left it to the CIT(Appeals) to consider the submissions of the assessee and decide the appeal based on the merits of the case. Apart from that, we find that no corporate resolution authorising such a purchase of land by the company, viz. M/s Madineni Infra Pvt. Ltd. was either produced before the authorities below or

before us, which would have otherwise supported the veracity of the subject “agreement to sell”, dated 24.04.2017.

17. Be that as it may, the fact that the company, viz. M/s Madineni Infra Pvt. Ltd., had disclosed the entire amount advanced to the assessee under the head “Unsecured loans”, and no part of the same is disclosed as an “advance for purchase of land”, further disproves the claim of the assessee that an amount of Rs. 1.15 crores (approx.) was received by him from the company as an advance for the purchase of land. We, thus, in the totality of the facts pertaining to the assessee’s claim that an amount of Rs. 1.15 crore (supra) was received by him as an advance for the purchase of land, viz. (i). the impugned “agreement to sell”, dated 24.04.2017, is an unregistered agreement; (ii). copy of the “agreement to sell”, dated 24.04.2017, was filed for the first time before the CIT(Appeals); (iii). the entire amount received by the assessee from the company is disclosed in the latter’s “balance sheet” under the head “unsecured loans”; (iv). that the “agreement to sell” had thereafter not fructified into an actual sale transaction; and (v). the assessee has failed to produce either before the authorities below or before us a copy of the corporate resolution that would have been passed by the company while resolving to purchase the subject land; thus are of firm conviction that, as the said claim of the assessee is not supported by any credible evidence, the same cannot be accepted.

18. During the hearing of the appeal, the Ld. AR has relied upon the “remand report” and contended that since the AO had not drawn any specific

adverse inference regarding the “agreement to sell”, the Tribunal should not now examine its veracity. We are unable to accept this contention. While the Tribunal cannot assume the role of an investigating agency, it remains the final fact-finding authority. Under section 254(1) of the Act, the Tribunal is empowered “*to pass such orders as it may deem fit*”, which necessarily includes examining the credibility and legal effect of material already on record. The Tribunal’s powers cannot be curtailed merely because the authorities below have not drawn explicit adverse inferences. Though the Tribunal cannot place an appellant in a worse position than before, this limitation does not prevent it from restoring a lawful addition wrongly deleted by the CIT(A).

19. Coming to the observations of the CIT(A) that, as the assessee had repaid an amount of Rs. 2,28,35,565/- during the subject year, therefore, the AO had erred in not considering the said fact while making the addition under Section 2(22)(e) of the Act in the hands of the assessee, we find that the same suffers from certain serious factual infirmities. Before proceeding further on the issue, we may herein observe that the **Hon’ble Supreme Court** in the case of **Miss P. Sarada Vs. Commissioner of Income-tax (1998) 229 ITR 444 (SC)**, had observed that the loan or advance taken from the company may have been ultimately repaid or adjusted, but that will not alter the fact that the assessee, in the eyes of law, had received dividend from the company during the relevant accounting period. For the sake of clarity, we deem it apposite to cull out the observations of the Hon’ble Apex Court, as under:

“8. From the facts, as stated hereinabove, it appears that the withdrawals made by the appellant from the company amounted to grant of loan or advance by the company to the shareholder. The legal fiction came into play as soon as the monies were paid by the company to the appellant. The assessee must be deemed to have received dividends on the dates on which she withdrew the aforesaid amounts of money from the company. The loan or advance taken from the company may have been ultimately repaid or adjusted but that will not alter the fact that the assessee, in the eye of law, had received dividend from the company during the relevant accounting period.

9. It was held by this Court in the case of *Smt. Tarulata Shyam v. CIT* [1977] 108 ITR 345 that the statutory fiction created by section 2(6A)(e) of the Indian Income-tax Act, 1922 would come into operation at the time of the payment of advance or loan to a shareholder by the company. The Legislature had deliberately not made the subsistence of the loan or advance, or its remaining outstanding, on the last date of the previous year relevant to the assessment year a prerequisite for raising the statutory fiction.

10. In the instant case, excess withdrawals were made by the assessee on various dates between 3-7-1972 to 22-3-1973 when the account of Mahesh had not been debited. The assessee's account was consequently overdrawn. On the very last day of accounting year some adjustment was made but that will not alter the position that the assessee had drawn a total amount of Rs. 93,027 between 3-7-1972 to 22-3-1973 from the company when her account with the company did not have any credit balance at all. That means these advances made by the company to the assessee will have to be treated as deemed dividends paid on the dates when the withdrawals were allowed to be made. Subsequent adjustment of the account made on the very last day of the accounting year will not alter the position that the assessee had received notional dividends on the various dates when she withdrew the aforesaid amounts from the company.”

20. It transpires on a perusal of the record that the CIT(Appeal) had drawn support from the judgment of the **Hon'ble High Court of Madras** in the case of **Sunil Kapoor Vs. CIT, Tamil Nadu-1, Chennai (2015) 63 taxmann.com 97 (Madras)**, wherein it was observed that repayments made by the assessee should be reduced from the loan advanced, and only the difference figure should be added as deemed dividend. However, we find that the AO has rightly observed that the said judicial pronouncement will not assist the case of the assessee before us. In the said case, the company was maintaining

two separate accounts of the assessee, i.e., “Sunil Kapoor Loan A/c” and “Sunil Kapoor A/c”. It was in the backdrop of the aforesaid factual position that the Hon’ble High Court had observed that the position as regards each debit will have to be individually considered, because it may or may not be a loan. The AO was directed to verify each debit entry on the aforesaid line and treat only the excess amount as deemed dividend u/s 2(22)(e) of the Act. We find that the AO, based on the aforesaid observations of the Hon’ble High Court, had observed that throughout the year, the assessee was a loan debtor even after considering the repayments. For the sake of clarity, the observations of the AO wherein he has referred to the monthly balances in the account of the assessee are culled out as under:

Month	Receipts from company	Payments to company	Monthly closing Balance (Rs) <b>(Dr.)</b>
Opening Balance as on 01.04.2017 (Rs.)	2,42,77,561/-		2,42,77,561
April	23,20,000	8,99,966	2,56,97,595
May	54,41,851	25,00,000	2,86,39,446
June	95,140	3,35,000	2,83,99,586
July	81,20,000	12,31,000	3,52,88,586
August	50,00,000	12,58,350	3,90,30,236
September	17,89,000	9,90,000	3,98,29,236
October	57,56,000	50,00,000	4,05,85,236
November	40,000	4,31,000	4,01,94,236

December	40,000	13,65,000	3,88,69,236
January	0	9,57,000	3,79,12,236
February	7,23,000	21,77,000	3,64,58,236
March	6,25,000	56,91,250	3,13,91,986
<b>TOTAL</b>	<b>2,99,49,991</b>	<b>2,228,35,566</b>	<b>3,13,91,986</b>

Accordingly, the balance throughout the year in the “loan account” of the assessee in the books of the company, viz. M/s Madineni Infra Pvt. Ltd., is a “debit balance”. We find that the CIT(Appeals) has even otherwise misconceived the judgment of the Hon’ble High Court of Madras in the case of Sunil Kapoor Vs. CIT (supra), and had wrongly observed that as the assessee during the subject year had made repayments of Rs. 2,28,35,565/-, therefore, the said amount was to be excluded from the amount received by him during the year (after excluding the amount received as an advance for purchase of land). We say so, for the reason that the Hon’ble High Court had directed the AO to verify each debit entry individually, because it may or may not be a loan on the said respective dates. Also, the AO was directed to treat only the excess amount as deemed dividend u/sec. 2(22)(e) of the Act. However, the CIT(Appeals) has misconstrued the observation of the Hon’ble High Court and wrongly concluded that the entire amount of the repayments of the loan is to be excluded from the amount of the loan advanced for the purpose of quantifying the addition under Section 2(22)(e) of the Act. In fact, the said view of the CIT(Appeals) is contrary to the judgments of the **Hon’ble Supreme Court** in

the case of **Smt. Tarulata Shyam v. CIT [1977] 108 ITR 345 (SC)** and **Miss P Sarada Vs. CIT (1998) 229 ITR 444 (SC)**, wherein it has been held that the legal fiction will come into play as soon as the monies were paid by the company to the assessee shareholder, and the subsequent repayment or adjustments will have no bearing on the fact that the assessee had received dividend from the company. Apart from that, we find that the observation of the CIT(A), wherein he had concluded that the repayments of Rs. 2,28,35,565/- made by the assessee during the subject year were in excess of the amount received by him from the company of Rs. 1,83,88,991/- (supra), is factually incorrect. We say so, for the reason that the CIT(Appeals), while so concluding, had grossly erred in not considering the “Opening balance” on 01.04.2017 of Rs. 2,42,77,5161/- (Dr) that was outstanding by the assessee towards the company.

21. On a holistic consideration of the facts, we are of the firm view that, as the assessee had failed to rebut the statutory fiction under section 2(22)(e) of the Act, therefore, the AO was justified in treating Rs. 1,97,99,851/- as “deemed dividend” in the hands of the assessee.

22. Resultantly, not being able to persuade ourselves to subscribe to the view taken by the CIT(Appeals), we set aside his order and restore the order passed by the AO.

23. In the result, the appeal filed by the Revenue is allowed, and the cross-objection filed by the assessee is dismissed.

Order pronounced in the Open Court on 24<sup>th</sup> December, 2025.

<p style="text-align: center;"><b>Sd/-</b> <b>(मधुसूदन सावडिया)</b> <b>(MADHUSUDAN SAWDIA)</b> <b>लेखा सदस्य/ACCOUNTANT MEMBER</b></p>	<p style="text-align: center;"><b>Sd/-</b> <b>(रवीश सूद)</b> <b>(RAVISH SOOD)</b> <b>न्यायिक सदस्य/JUDICIAL MEMBER</b></p>
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Hyderabad, dated 24.12.2025.

**आदेशकी प्रतिलिपि अग्रेषित/ Copy of the order forwarded to:-**

1.	निर्धारिती/The Assessee	:	Sri. Madineni Sitaramaiah Prop. Landmark Projects, Plot No. 257, Seetahrampuram, Near Vedika Function Hall, Sangareddy, Patancheru 502319, Sangareddy.
2.	राजस्व/ The Revenue	:	The ACIT, Circle-5(1)), Hyderabad
3.	The Principal Commissioner of Income Tax, Hyderabad		
4.	विभागीयप्रतिनिधि, आयकर अपीलीय अधिकरण, हैदराबाद / DR, ITAT, Hyderabad		
5.	गार्डफ़ाईल / Guard file		

आदेशानुसार / BY ORDER

Sr. Private Secretary  
ITAT, Hyderabad