



आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणेमें।
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCHES "B" :: PUNE

BEFORE DR.DIPAK P. RIPOTE, ACCOUNTANT MEMBER
AND
SHRI VINAY BHAMORE, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.1720/PUN/2025

निर्धारण वर्ष / Assessment Years: 2013-14

The Income Tax Officer, Ward-3(1), Pune.	V s.	Sachin Govind Apte, 759-63, Prabhat Road, Erandwana, Pune – 411004.
		PAN: AAVPA9458P
Appellant/ Revenue		Respondent /Assessee

Assessee by	Ms.Vaishnavi Badwe
Revenue by	Shri Amit Bobde - CIT(DR)
Date of hearing	16/12/2025
Date of pronouncement	03/02/2026

आदेश/ ORDER

PER DR. DIPAK P. RIPOTE, AM:

This is an appeal filed by the Revenue against the order of Id.Commissioner of Income Tax(Appeal)[NFAC], passed under section 250 of the Income Tax Act, 1961 for the A.Y.2013-14 dated 15.05.2025 emanating from the Assessment Order passed under section 143(3) of the Act, dated 30.03.2016. The Revenue has raised the following grounds of appeal :

“1. Whether on the facts and circumstances of the case and in law the Hon'ble CIT (A) was justified in deleting the addition of Rs.78,72,000/- made under head STCG and disallowance of deduction u/s 54F of the IT. Act, 1961?

2. Whether on the facts and circumstances of the case and in law the Hon'ble CITI (A) was justified in deleting the addition of Rs.1,20,00,000/- made on account of deemed dividend u/s Section 2(22)(e) of the I.T. Act, 1961?



3. *Whether on the facts and in the circumstances of the case and in law, the Hon'ble CIT(A) erred in not complying with the provisions of Rule 46A(3) of IT Rules while admitting fresh evidence establishing the alleged dissolution of firm on 31.03.2007.*

4. *Whether on the facts and in the circumstances of the case and in law, the Hon'ble CIT (A) erred in not complying with the provisions of Rule 46A(3) of IT Rules while admitting fresh evidence relied upon while coming to a conclusion that the advances of Rs.1,20,00,000/- were given in the course of regular business as trade advances.*

5. *The appellant craves leave to add, alter, amend, or withdraw any ground of appeal at the time of hearing."*

Findings & Analysis :

2. We have heard both the parties and perused the records. In this case Assessee Sachin Govind Apte filed Return of Income Electronically for A.Y.2013-14 on 18/02/2014 declaring Total Income at 28,53,900/-.The Assessee is an Individual qualified Civil Engineer. He is proprietor of M/s.Empire Ventures. He is also Director in Empire Shelters Pvt. Ltd. The assessee's case was selected for scrutiny. The Income Tax Officer, Ward-3(2), Pune, Assessing Officer(AO) issued various notice, the Authorized representative of the assessee appeared and filed details during scrutiny proceedings. During the year Assessee had sold plot of land bearing Survey No.44, Hissa No.1/2, Baner, Pune on 15/03/2013 for a consideration of Rs.1,50,00,000/-. The Assessee had shown Long Term capital gain and claimed deduction u/s.54F of



the Act. However, the AO denied the claim of 54F and held that it was short term capital gain. AO alleged that the Assessee became owner of the said plot only on 04/03/2013. AO also made addition u/s.2(22)(e) of Rs.1,20,00,000/- alleging that m/s Empire Shelters Pvt. Ltd has given advance /loan to Assessee.

2.1 Aggrieved by the Assessment Order the Assessee filed Appeal before Ld.CIT(A).The Ld.CIT(A) allowed appeal of the Assessee. Aggrieved by the Order of the Ld.CIT(A), Revenue has filed appeal before Tribunal.

3. We will discuss grounds of appeal here onwards.

Ground Number 1 & 3 :

3.1 These grounds pertain to Capital Gain. We have already mentioned that the Assessee had sold plot having Survey No.44, Hissa No.1/2, Baner, Pune on 15/03/2013. It is the case of the Assessing officer that impugned plot was owned by Partnership Firm called Empire ventures which had acquired it in 2006. It is the case of the Assessing Officer that the Partnership firm Empire Ventures dissolved on 04/03/2013 hence the AO held that impugned plot of land became property of Assessee i.e.Sachin Apte on



04/03/2013, hence AO held that on sale of said plot there was Short Term Capital Gain. On appeal filed by the Assessee, Ld.CIT(A) specifically held in the order u/s 250 that Partnership Firm Empire Ventures dissolved with effect from 31/03/2007. Ld.CIT(A) had decided it on the basis of Dissolution Deed evidencing dissolution of the firm from 31/03/2007, Affidavit of retired Partners. Revenue has not brought on record any evidence to counter the findings of the Ld.CIT(A).

3.2 We have perused the Dissolution deed which is at page 71-79 of the paper book. The said Dissolution Deed was registered on 04/03/2013. The relevant covenants of the said Dissolution Deed are reproduced here under :

- 1) *That the partnership firm was established by the parties to these presents by virtue of the Deed of Partnership dated 04/10/2006 under the name & style of m/s Empire Ventures having its registered office at Vithal 47/A, Mayure Colony Kothrud,Pune-411029*
- 2) *That the said partnership firm under the name and style as m/s Empire Ventures is dissolved and shall be deemed to be dissolved from 31st March 2007.*
- 3) *That the parties to these presents hereby confirm that business of the partnership firm could not be commenced / the objects of the partnership fulfilled as per the partnership agreement 04.10.2006 and hence, is dissolved by the partners mutually w.e.f. 31/03/2007.*
.....
- 5) *That the plot bearing S.No.44, Hissa No. 1/2, admeasuring about 00-H 63R, from and out of the total area admeasuring about 8116 Sq.ft.*



equivalent to 754.27 Sq. Mtrs. situated at Baner. Is purchased by the and as partners of the firm have no right title or interest of whatsoever nature in the said plot and parties to this deed hereby confirm that they have not entered in to any agreement of whatsoever nature with any other person in respect of the said Plot. Hence forth party of the first part shall take over this asset and ail other parties agree to sign any documents, deeds, notices, affidavit as and when required for transfer, sale, assignment etc. and now the party of the first part has become absolute owner and party of second, third and fourth part agrees not to claim any right, compensation in future and shall confirm the releases of their rights in favour of party of the first part.

3.3 Thus, it is specifically mentioned in the Dissolution Deed that the Partnership Firm was dissolved with effect from 31/03/2007. It is also mentioned that the Plot No.44 shall be taken over by Sachin Apte.

3.4 We have also perused the Affidavit of the erstwhile Partners of Empire Ventures confirming the dissolution of the firm on 31/03/2007 and also confirming that the plot at Survey No.44, Hissa No.1/2, Baner, Pune will be property of Mr.Sachin Apte w.e.f 31/03/2007. The Affidavit is dated 28/3/2013 and it has been duly Notarized.

3.5 These documents clearly establish the fact that the Partnership Firm Empire Venture was dissolved w.e.f 31/03/2007 and on



dissolution of the firm the plot at Survey No.44 became property of Sachin Apte (Assessee) w.e.f. 31/03/2007.

3.6 Revenue has not rebutted these documents.

4. In these facts and circumstances of the case, we are of the considered opinion that the impugned plot became the property of Assessee Sachin Apte w.e.f. 31/03/2007, which was Sold on 15/03/2013, hence the impugned Plot becomes Long Term capital Asset as defined in Section 2(29A) of the Income Tax Act. Hence the sale of impugned plot gives rise to Long Term Capital Gain. The AO had disallowed Assessee's Claim for 54F deduction only on the ground that it was not Long-Term Capital Gain. Since now we have held that sale of impugned plot give rise to Long Term Capital Gain, Assessee is eligible for deduction u/s.54F of the Act. Accordingly, Ground No.1 of the Revenue is dismissed.

5. We have observed that Ld.CIT(A) has relied on the Dissolution Deed, Affidavit of Partners, copy of Return of the Firm. These documents were filed by the Assessee during Assessment proceedings and this fact is noted in para 5.6 of the Assessment Order. Thus, there was no document which can be treated as



Additional Evidence as per Rule 46A of the Income Tax Rules. We specifically asked Ld.DR to demonstrate the documents which according to Revenue were not filed before the AO, but ld.DR failed to demonstrate the same. Accordingly, Ground No.3 of the Revenue is dismissed.

Ground No.2 & 4:

6. These grounds pertain to the additions made u/s.2(22)(e) of the Act. It is a fact that the Assessee is a director in the company Empire Shelters Private Limited and also substantial shareholder. The company is engaged in Construction and Development. AO made addition of Rs.1,20,00,000/- u/s.2(22)(e) of the Act as Empire Shelters Pvt. Ltd. had given advance to assess during the year on time to time.

7. It was submitted by the Assessee during Assessment Proceedings that these amounts advanced was Trade Advances for the purpose of business of the company of acquiring land for development.

8. Ld.CIT(A) held that the advances have been given in the course of regular business as Trade Advances relevant to real Estate



Business of the said company. Hence, Ld.CIT(A) held that these amounts were not qualifying for deemed dividend u/s.2(22)(e) of the Act.

9. We have perused the Ledger Accounts of the Assessee in the Books of the Company i.e. Empire Shelters Private Limited and noted that it is a running account. There was opening balance of Rs.37,44,569.35. It means, Company was to pay Rs.37,44,569.35 to Mr.Sachin Apte as on 01.04.2012 in other words, Mr.Sachin Apte had given advance to the Company of Rs.37,44,569.35 as on 01.04.2012. Then, on 09.04.2012, Empire Shelters Private Limited paid Rs.1 crore to Mr.Sachin Apte. Then, on 08.11.2012, Mr.Sachin Apte paid Rs.20 lakhs to Company, then on 10.11.2012 Sachin Apte paid Rs.5 lakhs to Company. Then, on 21.11.2012, Company paid Rs.20 lakhs to Mr.Sachin Apte.

9.1 Thus, there are continuous transactions in this account. We have perused the Ledger Account for earlier year also, which is also showing similar entry. It was submitted that the Company wanted to purchase a land for which Company had given advance of Rs.1 crore to Mr.Sachin Apte who was to pay the amount to the Farmers from



whom Company wanted to purchase the land. Revenue has not brought on record any document which will contradict assessee's submission. It is also noted that on 01.04.2013, the Company has purchased a land at Kondwa, Pune through Mr.Sachin Apte. Assessee also relied on the CBDT Circular No.19/2017 dated 12.06.2017 wherein, CBDT has clarified as under :

“3. In view of the above it is, a settled position that trade advances, which are in the nature of commercial transactions would not fall within the ambit of the word ‘advance’ in section 2(22)(e) of the Act. Accordingly, henceforth, appeals may not be filed on this ground by Officers of the Department and those already filed, in Courts/Tribunals may be withdrawn/not pressed upon.”

9.2 Thus, CBDT has clearly clarified that Trade Advances would not fall within the ambit of Section 2(22)(e) of the Act.

9.3 Ld.DR relied on the decision of Hon'ble Bombay High Court in the case of Shri Jaykumar B.Patil(Deceased) through L/H Shri MNitin J. Patil Vs. Joint Commissioner of Income Tax, ITA No.669/2003 order dated 07.08.2025. In the case relied by Revenue, Deceased Jaykumar B.Patil had utilized the advance for payment of his individual Income Tax under Kar Vivad Samadhan Scheme. There was specific finding recorded by Assessing Officer demonstrating that the amount advanced by Company was utilized



for payment of Individual Income Tax under Kar Vivad Samadhan Scheme. In these facts, Hon'ble Bombay High Court held that the amount advance falls within the ambit of Section 2(22)(e) of the Act.

9.3.1 However, the facts in the case of the assessee are different. There is no finding recorded by the Assessing Officer that the impugned advance was utilized by assessee for his personal purposes. Therefore, the decision of Hon'ble Bombay High Court relied by Revenue is distinguishable on facts.

9.4 On the contrary, Id.AR has relied on the decision of Hon'ble Karnataka High Court in the case of Smt.Jamuna Vernekar Vs. DCIT [2021] 432 ITR 146, wherein vide order dated 10.02.2021 Hon'ble High Court held as under:

“7.....A sum of Rs.19,37,355/- amounts to trade advances which was recovered from rentals during the usual course of business. The trade advances arising during usual course of business and not for individual benefit of the assessee and the same amounts to advance payment of the rents adjusted monthly with the ledgers of the assessee. The Commissioner of Income-tax (Appeals) has also held that under the commercial transactions, the assessee had given prime property and after construction to the company and the company was benefited as the building after construction was let out to the company at much lower rate than the market price and therefore, the transaction



in question is commercial transaction and is outside the purview of section 2(22)(e) of the Act. However, the aforesaid aspect of the matter has not been appreciated by the tribunal. Therefore, the finding recorded by the tribunal cannot but be termed as perverse.

In view of preceding analysis, the substantial question of law is answered in the negative and in favour of the assessee and against the revenue. In the result, the impugned order of the tribunal dated 30-8-2012 insofar as it contains the finding against the appellant is hereby quashed.

In the result, the appeal is allowed.”

9.5 Ld.AR for the Assessee relied on the decision of Hon’ble Delhi High Court in CIT Vs. Creative Dyeing & Printing (P.) Ltd., [2009] 318 ITR 476 wherein vide order dated 22.09.2009 Hon’ble High Court has held as under :

“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 under section 2(22)(e). The present appeal is therefore dismissed.”

9.6 Ld.AR for the Assessee relied on the decision of Hon’ble Delhi High Court in CIT Vs. Rajkumar [2009] 318 ITR 462 wherein, vide order dated 14.05.2009 Hon’ble High Court held as under :

“10.9 Keeping the aforesaid rule in mind we are of the opinion that the word 'advance' which appears in the company of the word 'loan' could only mean such advance which carries with it an obligation of



repayment. Trade advance which are in the nature of money transacted to give effect to a commercial transactions would not, in our view, fall within the ambit of the provisions of section 2(22)(e) of the Act. This interpretation would alloy the rule of purposive construction with noscitur a sociis, as was done by the Supreme Court in the case of LIC of India v. Retd. LIC Officers Association [2008] 3 SCC 321. The observation in para 24 of the report being apposite are extracted hereinbelow:—

"Each word employed in a statute must take colour from the purport and object for which it is used. The principle of purposive interpretation, therefore, should be taken recourse to."

9.7 Thus, the preposition of law laid down by Hon'ble High Courts is that Trade Advances do not fall in the ambit of Section 2(22)(e) of the Act. The CBDT has also clarified that Trade Advances do not fall in the ambit of Section 2(22)(e) of the Act.

9.8 In the case of the assessee, Assessing Officer has not alleged that the impugned amounts were utilized for the personal purpose of the assessee. On perusal of the ledger accounts and submission of the assessee, it is a fact that the amount advanced was in the nature of trade advances during the normal business of the Company. Accordingly, Ground No.2 raised by Revenue is dismissed.

10. In the result, Ground No.2 raised by the Revenue is dismissed.



11. In Ground No.4, Revenue has alleged that Id.CIT(A) has admitted additional evidence. However, on perusal of the order of Id.CIT(A), it is observed that while deciding the issue of deemed dividend, Id.CIT(A) has relied on the documents which were already filed before Assessing Officer during assessment proceedings. We had specifically asked Id.DR for the Revenue to demonstrate the documents which were allegedly filed as additional evidence, but Id.DR could not specify any such document. Ld.DR for the Revenue has submitted the report of ITO, Ward-3(1), Pune regarding additional evidence. The same is reproduced here as under :

Sir,

Kindly refer to your office letter dated 06.11.2024, the point-wise reply is as under:-

A. Copy of scrutiny report submitted against the order of CIT(A) NFAC dt 15.05.2025. :
Copy of Scrutiny report dated 07.07.2025 attached.

B. Copies of return of income filed by assessee for A.Y. 2009-10 to 202-13: **Copies of ITR for A.Y. 2009-10 to 202-13 are attached.**

C. Copies of submission made by the assessee before the AO during assessment proceedings: **Not available with this office.**

D. Copies of submission made by the assessee before the Ld. CIT(A) during appellate proceedings: **Not available with this office.**

E. Kindly state the details of fresh/additional evidence/s admitted by the CIT(A) as stated in Grounds of appeal no. 3& 4 raised by the Department before the Hon'ble ITAT:
Neither remand report was called for by the CIT(A) NFAC, nor fresh/addition evidence forwarded by CIT(A). Hence, not available with this office.



11.1 Thus, ITO, Ward-3(1), Pune who is Assessing Officer had not specified any document which was alleged to have been admitted as additional evidence. Rather, ITO, Ward-3(1), Pune has admitted that the office does not have copies of the submission made by Assessee during the assessment proceedings. Once the Assessing Officer do not have copies of the submission made by Assessee during assessment proceedings, the AO cannot comment regarding additional evidence. Since Revenue has alleged admission of additional evidence, the onus is on Revenue to prove by documentary evidence the same. Revenue has failed to prove that any specific document was admitted by Id.CIT(A) as additional evidence.

11.2 In these facts and circumstances of the case, Ground No.4 raised by the Revenue is dismissed.

12. Ground No.5 is general in nature, Revenue has not added, altered or amended any ground. Hence, Ground No.5 is dismissed.

13. Accordingly, Grounds of appeal raised by the Revenue are dismissed.

Order pronounced in the open Court on 03 February, 2026.

Sd/-
VINAY BHAMORE
JUDICIAL MEMBER

Sd/-
Dr.DIPAK P. RIPOTE
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 03 Feb, 2026/ SGR



आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A), concerned.
4. The Pr. CIT, concerned.
5. विभागीयप्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच, पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

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Assistant Registrar
आयकर अपीलीय अधिकरण, पुणे/ITAT, Pune.