

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'C' BENCH, KOLKATA**

Before

**SHRI GEORGE MATHAN, JUDICIAL MEMBER
&
SHRI RAKESH MISHRA, ACCOUNTANT MEMBER**

**ITA No.: 1289/KOL/2024
Assessment Year: 2014-15**

JHV Construction Co. Pvt. Ltd. (Appellant)	Vs.	D.C.I.T., CC-2(2), Kolkata (Respondent)
PAN: AAACJ5746M		

Appearances:

Assessee represented by : Rajeeva Kumar, Adv.

Department represented by : Praveen Kishore, CIT (DR).

Date of concluding the hearing : 29-December-2025

Date of pronouncing the order : 09-February-2026

ORDER

PER RAKESH MISHRA, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of the Pr. Commissioner of Income Tax (Central), Kolkata-1 [hereinafter referred to as 'Pr. CIT'] passed u/s 263 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') for AY 2014-15 dated 27.03.2024.

1.1 The Registry has informed that the appeal is barred by limitation by 12 days. However, the assessee has filed a petition for condonation of delay of 11 days explaining the reasons that the memorandum of appeal along with the required documents were given to the tax consultant who could not file the appeal in time due to the illness of the tax consultant's father and the assessee has prayed for condonation of the said delay. After perusing the same, we are satisfied that the assessee had a reasonable and sufficient cause and was prevented from filing the instant appeal within the statutory time limit. We, therefore, condone the delay and admit the appeal for adjudication.



2. The assessee is in appeal before the Tribunal raising the following grounds of appeal:

“1. That on the facts and in the circumstances of the case, the order dated 27.03.2024 under section 263 of the Income Tax Act, 1961 passed by the Ld. PCIT is bad in law and is need to be quashed.

2. That under the facts and in the circumstances of the case, the Ld. PCIT erred in passing order u/s. 263 of the Income Tax Act, 1961 setting aside the order dated 21.07.2021 passed u/s. 153A of the Act holding the same to be erroneous & prejudicial to the interest of revenue on the ground that the unsecured loan received from M/s. Welcome Distilleries Pvt Ltd should have been treated as deemed dividend in terms of section 2(22)(e) of the Income Tax Act, 1961. Since no incriminating material was found in the course of the search and seizure operation carried out in the case of the assessee, the assessment was made u/s 153A of the Act without taking any adverse view for the unsecured loan received from M/s. Welcome Distilleries Pvt Ltd. Hence, the order under section 263 of the Income Tax Act, 1961 is bad in law and needs to be quashed.

3. The assessee craves leave to add, alter, amend or withdraw any ground or grounds of appeal before or at the time of hearing”

3. Brief facts of the case are that the assessee had filed its original return of income for AY 2014-15 on 31.12.2014 showing 'NIL' income and the assessment u/s 143(3) of the Act was completed on 17.12.2016 at 'NIL' income. Subsequently, a search and seizure action u/s 132 of the Act on 08.10.2018 in which certain documents were found but the assessment order u/s 153A of the Act dated 21.07.2021 was made at the total income of ₹39,59,000/-. The assessee company was primarily engaged in the business of real estate activities. In the order u/s 153A of the Act dated 21.07.2021 as per para 8.1.2 and 9, a sum of ₹39,59,000/- was added u/s 68 of the Act. The relevant extract from the order of the Assessing Officer (hereinafter referred to as Ld. 'AO') is as under:

“8.1.2. The key person of the group, Heeralal Jaiswal, in his statements recorded post Search Operation on 06.12.2018 and 21.01.2019 also

affirmed that same of infusion of unaccounted income of Rs. 43,99,55,103/-

But the assessee, during the course of assessment proceedings, in reply to the show cause notice dated 06.05.2021 replied vide its letter dated: 14.05.2021 that the key person, Heeralal Jaiswal has retracted of his statement recorded during the course of Search and Seizure Operation conducted under section 132 of Income-tax Act, 1961 and post Search, before none of the Income-tax Authority but before a non-Income-tax Authority, Judicial Magistrate through an affidavit only, which has not evidentiary value (as has been discussed in the earlier paras) The assessee, is actually a habitual violator of the government rules and regulations and an offender and evader of Income-tax and other taxes.

9. On the basis of the fact of the case, as per the report submitted by the investigation wing and the investigation carried out at the assessment stage, it is held that satisfactory explanation was not offered by the assessee towards the loan taken by the assessee company of Rs. 37,00,000/- and the commission paid thereon of Rs. 2,59,000/- does not pass the test required Under section 68 of the IT Act, 1961 and under section 69C of Income-tax Act, 1961 respectively. Hence, amount of Rs. 39,59,000/- (Rs. 37,00,000/- + Rs. 2,59,000/-) is added back to the total income of the assessee.

[ADDITION :- Rs 39,59,000/-]

3.1 Subsequently, the Ld. Pr. CIT observed on examination of documents that the assessee had received loan of ₹72,78,469/- from Welcome Distilleries Pvt. Ltd. The relevant extract from the order of the Ld. Pr. CIT is as under:

“2. On examining the return of income and other documents it has been observed that JHV Construction Company Private Limited has received loan of Rs.72,78,469/- from Welcome Distilleries Private Limited.

3. Further, it is observed from the return of income of the company and the return of income of Welcome Distilleries Private Limited that Shri Heera Lal Jaiswal was holding 95.93% share of JHV Construction Company Private Limited and 87.32% share capital of Welcome Distilleries Private Limited during the year under consideration. Thus it is clear that the Shri Heera Lal Jaiswal had substantial interest in both the entities i.e. Welcome Distilleries Private Limited & JHV Construction Company Private Limited.

4. From the facts it transpires that Welcome Distilleries Private Limited paid an amount of Rs.72,78,469/- to JHV Construction Company Private Limited as loan, wherein Shri Heera Lal Jaiswal was a common shareholder. Hence, such loan should have been treated as Deemed Dividend u/s. 2(22)(e) of the Income Tax Act, 1961.

5. Section 2(22)(e) of the Income Tax Act is reproduced as under:

"2. In this Act, unless the context otherwise requires, (22) "dividend" includes (e) - any payment by a company, not being a company in which the public are substantially interested, of any sum (whether as representing a part of the assets of the company or otherwise) made after the 31st day of May, 1987, by way of advance or loan to a shareholder, being a person who is the beneficial owner of shares (not being shares entitled to a fixed rate of dividend whether with or without a right to participate in profits) holding not less than ten per cent of the voting power, or to any concern in which such share holder is a member or partner and in which he has a substantial interest (hereafter in this clause referred to as the said concern) or any payment by any such company on behalf, or for the individual benefit, of any such shareholder, to the extent to which the company in either case possesses accumulated profits."

6. Accordingly, the payment of loan of Rs.72,78,469/- paid by Welcome Distilleries Private Limited to the assessee, wherein Shri Heera Lal Jaiswal being a substantial shareholder as defined supra, falls under the purview of dividend as per the provisions of section 2(22)(e) of the Act."

3.2 Since the Ld. AO did not enquire and verify the issue referred in the order of the Ld. Pr. CIT, the assessment order u/s 153A of the Act dated 21.07.2021 was considered to be erroneous insofar as it was prejudicial to the interests of the Revenue in terms of clause (a) of Explanation-2 to section 263 of the Act as amended and inserted with effect from 01.06.2015. Accordingly, after considering the submission of the assessee, the order u/s 153A of the Act was set aside and the Ld. AO was directed to make necessary verification and pass a fresh assessment order after making proper enquiry on the issue involved and the Ld. AO was further directed to decide the matter as per law after giving a reasonable opportunity of being heard to the assessee.



4. Aggrieved with the order of the Ld. Pr. CIT, the assessee has filed the appeal before the Tribunal.

5. Rival submissions were heard and the record and the submissions made have been examined. The Ld. AR stated that the assessment for AY 2014-15 was unabated and the search was carried out on 08/10/2018. The documents were found and seized but no addition was made on the basis of these documents and our attention was drawn to para 8.1.2 of the assessment order to state, that the addition was made on account of the statement of Shri Hiralal Jaiswal which had been retracted later and the consequential assessment order is pending in appeal before the Ld. CIT(A). It was stated that the loan was received by the assessee from Welcome Distilleries Private Limited and Shri Heera Lal Jaiswal was a common shareholder.

6. The Ld. DR relied upon the order of the Ld. Pr. CIT and mentioned that since the Ld. AO had not carried out the requisite enquiry, the order of the Ld. Pr. CIT u/s 263 of the Act May be upheld.

7. We have considered the facts of the case, the submissions made and the documents filed. The provisions of section 2(22)(e) of the Act have been reproduced in para 5 of the order of the Ld. Pr. CIT who has also considered the amendment by way of insertion Explanation 2 to section 263 of the Act with effect from 01/06/2015 for exercising revisionary power under section 263 of the act. He has relied upon the decisions in *Thalibai F. Jain v. ITO* 101 ITR 1, 6 (Karn), *Malabar Industrial Co. Pvt. Ltd. v. CIT* (2000) 243 ITR 83, 87-88 (SC), *Rampyari Devi Saraogi v. CIT* [1968] 67 ITR 84 & *Smt. Tara Devi Aggarwal v. CIT* [1973] 88 ITR 323 (SC), *Gee Vee Enterprise v. Addl. CIT* [1975] 99 ITR 375 (Del) and the decision of the Hon'ble Supreme Court in the case of



CIT v. Shree Manjunathesware Packing Products & Camphor Works [1998] 231 ITR 53/96 Taxman 1 and has set aside the order of the directions. The Ld. DR relied upon the order of the Ld. Pr. CIT(Central) and requested that the same may be upheld.

8. We have considered the submissions made, gone through the facts of the case and perused the record and the order of the Ld. CIT(A). It has been held in **Commissioner of Income Tax. vs. Madhur Housing & Development Co. [2018] 93 taxmann.com 502 (SC)/[2018] 401 ITR 152 (SC)[05-10-2017]** in which the order in the case of **Commissioner of Income-tax v. Ankitech (P.) Ltd. [2011] 11 taxmann.com 100 (Delhi)** by the Hon'ble High court had been affirmed which had stated that in which it was held that (i) legal fiction created under section 2(22)(e) enlarges definition of dividend only and it cannot be extended further for broadening concept of shareholders, (ii) a concern in which shareholder of payer company has at least 20 per cent of voting power and loan or advance under this category is given admittedly not to a shareholder/member of payer company, under no circumstances, said concern can be treated as shareholder/member receiving dividend, (iii) in a case where conditions stipulated in section 2(22)(e) treating loan and advance as deemed dividend are established, revenue can treat dividend income at hands of shareholders and tax them accordingly, and (iv) 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.

9. In this case, since Shri Heera Lal Jaiswal was holding 95.93% share of JHV Construction Co. Pvt. Ltd. and 87.32% share of Welcome



Distilleries Private Limited and M/s. Welcome Distilleries Private Limited had accumulated profits, the loan received by the concern in which the shareholder of the assessee company had substantial interest was to be assessed as deemed dividend in the hand of the shareholder viz. Shri Heera Lal Jaiswal and the same could not be treated as deemed dividend in the hand of the company which had received the loan as the company was not the registered shareholder. Hence, the order of the Ld. Pr. CIT being based upon incorrect appreciation of law, the order of the Ld. AO being neither erroneous nor prejudicial to the interests of the Revenue in the case of the assessee, therefore, the order u/s 263 of the Act of the Ld. Pr. CIT is hereby quashed and Ground No. 1 of the appeal is allowed. Ground No. 2 is not adjudicated as the Ld. Pr. CIT has addressed this issue in his order and the Ld. AO had also passed the order u/s 153A of the Act which is under appeal.

10. Ground No. 3 being general in nature does not require any separate adjudication.

11. In the result, the appeal filed by the assessee is partly allowed but the order of the Pr. CIT u/s 263 of the Act is quashed.

Order pronounced in the open Court on 9th February, 2026.

Sd/-

[George Mathan]
Judicial Member

Sd/-

[Rakesh Mishra]
Accountant Member

Dated: 09.02.2026

Bidhan (Sr. P.S.)



Copy of the order forwarded to:

1. **Jhv Construction Co. Pvt. Ltd., C/o. CA Samit Jena & Associates, Room No.-2H, 2nd Floor, 36A, Bentinck Street, Kolkata, West Bengal, 700069.**
2. **D.C.I.T., CC-2(2), Kolkata.**
3. CIT(A)-
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.
6. Guard File.

// True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata