आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, CHENNAI

श्री बी.आर. बास्करन, लेखा सदस्य एवं

श्री एस. एस. गोदारा, न्यायिक सदस्य के समक्ष

BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER AND
SHRI S.S. GODARA, JUDICIAL MEMBER

आयकर अपील सं./ **I.T.A. Nos.19 to 25/Mds/2014**
(निर्धारण वर्ष **/** Assessment Years : 2005-2006 to 2011-2012)

Shri. Lankalingam Murugesu, No.12 & 13, Kothari Road, Nungambakkam Chennai 600 034. [PAN :AACPL0314N]	Vs.	The Deputy Commissioner of Income Tax, Central Circle III (2), Chennai 600 034.
(**अपीलार्थी**/Appellant)		(**प्रत्यर्थी**/Respondent)

आयकर अपील सं./ **I.T.A. No.2242/Mds/2013**
(निर्धारण वर्ष **/** Assessment Year : 2008-2009)

The Deputy Commissioner of Income Tax, Central Circle III (2), Chennai 600 034.	vs.	Smt. Reeta Lankalingam No.12 & 13, Kothari Road, Nungambakkam Chennai 600 034. [PAN : ABEPL 4560Q]
(**अपीलार्थी**/Appellant)		(**प्रत्यर्थी**/Respondent)

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ITA No. 15 to 18/Mds/2014 and
C.O.No.11/Mds/2014 (in ITA No.2242/Mds/2013)
(निर्धारण वर्ष **/** Assessment Years : 2008-2009, 2009-10, 2010-11 ,
2011-2012 & 2008-2009)

Smt. Reeta Lankalingam No.12 & 13, Kothari Road, Nungambakkam Chennai 600 034. [PAN : ABEPL 4560Q]	Vs.	The Deputy Commissioner of Income Tax, Central Circle III (2), Chennai 600 034.
(**अपीलार्थी**/Appellant/ Cross Objector)		(**प्रत्यर्थी**/Respondent)

अपीलार्थी की ओर से / Appellant by	:	Dr. Anitha Sumanth, Advocate
प्रत्यर्थी की ओर से / Respondent by	:	Shri. N. Rangaraj, IRS, CIT.

सुनवाई की तारीख/Date of hearing	:	04.02.2015.
घोषणा की तारीख /Date of Pronouncement	:	27.02.2015.

आदेश / O R D E R

Per S.S. GODARA, JUDICIAL MEMBER

This batch of 13 cases pertains to two different assessees namely Shri. Lankalingam Murugesu and Smt. Reeta Lankalingam. The former assessee has filed seven appeals. The latter one has preferred four appeals and x-objections in the Revenue's sole appeal. Relevant assessment years are from 2005-06 to 2011-12. These cases arises from different orders of Commissioner of Income Tax (Appeals)(C)-II, Chennai; all dated 30.09.2013 in proceedings

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u/s.153A r.w.s. 143(3) of the Income Tax Act, 1961 [in short the 'Act'].

2. The assessees file composite charts of the grounds raised in this batch of 12 cases. The Revenue does not dispute correctness thereof. The same reads as under:-

Assessee : Shri. Lankalingam Murugesu.

Sl.No	ITA No.	Appeal By	A.Y.	Issues involved
1	19/2014	Assessee	2005-06	1. Deemed Dividend u/s.2 (22) (e) – Addition of ₹18,06,358/- 2. Levy of interest u/s.234B.
2	20/2014	Assessee	2006-07	1. Deemed Dividend u/s.2 (22) (e) – Addition of ₹20,03,789/- 2. Levy of interest u/s.234B
3	21/2014	Assessee	2007-08	1. Deemed Dividend u/s.2 (22) (e) – Addition of ₹7,66,915/-. 2. Disallowance of expenditure u/s.40A (3) – Disallowance of ₹79,38,484/-. 3. Levy of interest u/s.234B
4	22/2014	Assessee	2008-09	1. Deemed Dividend u/s.2 (22) (e) – Addition of ₹2,64,29,468/- 2. Disallowance of expenditure u/s.40A (3) – Disallowance of ₹58,99,389/- 3. Levy of interest u/s.234B
5	23/2014	Assessee	2009-10	1. Deemed Dividend u/s.2 (22) (e) – Addition of ₹1,59,85,847/- 2. Disallowance of expenditure u/s.40A (3) –

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				Disallowance of ₹29,83,455/- 3. Levy of interest u/s.234B
6	24/2014	Assessee	2010-11	1. Deemed Dividend u/s.2 (22) (e) – Addition of ₹66,86,508/- 2. Disallowance of expenditure u/s.40A (3) – Disallowance of ₹63,25,065/-. 3. Levy of interest u/s.234B

Assessee Mrs. Reeta Lankalingam

Sl.No	ITA No.	Appeal By	A.Y.	Issues involved
1	15/2014	Assessee	2008-09	1. Disallowance of interest on loan taken for immovable property –Disallowance of ₹26,13,233/-
2	2242/2013	Department	2008-09	1. Disallowance of bad debts to the tune of ₹31,83,626/-
3	CO 11/2014	Assessee	2008-09	1. Disallowance of interest on loan taken for immovable property –Disallowance of ₹26,13,233/-
4	16/2014	Assessee	2009-10	1. Deemed Dividend u/s.2(22) (e) – Addition of ₹ 1,62,17,271/-
5	17/2014	Assessee	2010-11	1. Deemed Dividend u/s.2(22) (e) – Addition of ₹ 66,86,509/-
6	18/2014	Assessee	2011-12	1.Deemed Dividend u/s.2(22) (e) – Addition of ₹ 2,42,99,879/-

In the course of hearing, both parties agree that ITA No.19/Mds/2014 for the assessment year 2005-2006 and ITA No. 21/Mds/2014 for the assessment year 2007-2008 in case of Shri. Lankalingam be treated as the 'lead cases' for deciding common

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issues of deemed dividend u/s.2(22)(e) and disallowance of expenditure u/s.40A(3); respectively. We proceed accordingly. ITA No.19/Mds/2014 is taken up for deciding correctness of deemed dividend addition amounting to ₹.18,06,358/- made in the course of assessment and upheld in the lower appellate order.

3. The assessee; Shri. Lankalingam Murugesu, is an 'individual'. He is a proprietor of M/s. Lanson Ventures carrying out diversified business in various fields. The assessee had filed his 'return' on 31.03.2006 admitting income of ₹7,20,11,094/-. Thereafter, the department conducted a search/survey dated 23.04.2010 conducted in this assessee's case; his wife Mrs. Reeta Lankalingam and also the Lanson Group of companies culminating in section 153A notice dated 25.07.2012. The assessee filed a fresh 'return' dated 07.12.2012 increasing his income to ₹8,00,94,916/-.

4. The Assessing Officer took up 'scrutiny'. He noticed from the seized documents that one of the group concerns M/s. Lanson Motor Cars Private Limited had advanced loans of ₹18,06,358/- to M/s. Link Enterprises. Assessee is proprietor of the latter firm. The company had accumulated profits of ₹1,18,94,917/-. The assessee holds not

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less than 10% of its share holding. The Assessing Officer formed an opinion that this loan amounted to deemed dividend u/s. 2(22)(e) of the Act.

5. The assessee filed his response. He stated that the creditor company needed more funds. He had furnished his personal properties as collateral securities in obtaining funds from banks and other financial institutions. He claimed to have requested the lender company to lend advances to his firm for safe guarding his interest. The company was also stated to be charging interest. Loan's purpose was clarified as to secure his properties given as collaterals. Case law i.e. (2012) 24 Taxman 75 (Chennai) ACIT vs. Smt. G. Sreevidya and (2011) 203 Taxman 110 (Calcutta) in Pradip Kumar Malhotra vs. CIT was referred to. The assessee submitted that the lender company had funded his firm for day to day business operations. He categorized the impugned loans as mere trade advances.

6. These pleading failed to convince the assessing authority. It cited lack of evidence for entertaining the assessee's plea of safeguarding its interest. And also that no documents /written agreements were forthcoming for receiving single return lumpsum

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benefits. It was of the view that impugned payment did not show any type of regularity or periodicity. The Assessing Officer gave a finding that the assessee had borrowed funds from lender company like current account. And his personal expenses were reflected in the loan account. He held that charging of this interest @ 8 -10% would not change character of the deemed dividends unless significant part of the creditor entity's business was money lending. The company also admitted giving loans to the assessee. All this made the Assessing Officer to view the impugned amounts as advances only. He distinguished aforesaid case laws (supra) as well. He went on to observe that the assessee's plea to add these sums in one of his concerns met the same fate with a remark that they were not shareholders in the lender entity as per expression ''any concern" used in the section 2(22) (e) of the Act. He also quoted Navnit Lal C. Jhaveri Vs. K.K. Sen (1965) 56 ITR 198 (SC) to discuss nature and scope of relevant statutory provision. The Assessing Officer held in these facts and circumstances that loan in question of ₹18,06,358/- had to be treated as deemed dividends only. The assessment order dated 31.03.2013 reads that the assessee had filed a letter dated 28.03.2013 agreeing to the aforesaid addition. All this resulted in deemed dividend addition of ₹18,06,358/-.

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7. The assessee preferred an appeal. His sole substantive ground was that impugned loan is security offered by the creditor entity in lieu of his amounts pledged as collateral securities. The Commissioner of Income Tax (Appeals) rejects his contention as under:-

> I have carefully considered the facts of the case, grounds of appeal and various submissions made by the learned AR and the assessment order. The submissions made before me, during the course of appeal proceedings, are more or less the same as had been made before the Assessing Officer. To come within the ambit of the aforesaid provisions,' the following conditions must exist-
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> *(a)* It must be a company in which public are not substantially interested.
> *(b)* The company must have made payments by way of advance or loan to a share-holder, holding more than 10% of the shares of the company;
> *(c)* The company must have accumulated profits during the relevant year; (ii) of u/s. 2(22) (e) carves out an exception by providing that any loan or advance to a share-holder bv a company, which is engaged in money lending business,' in the ordinary course of its business; shall not be treated as dividend.
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> In the facts of the present case, it is not disputed that all the conditions attracting the provisions of **S.** 2(22) (e) exist. The quantum of addition made on account of deemed dividend is also not disputed by the appellant. The availability of accumulated profits has also not been disputed in the present appeals. Before me the appellant has not submitted or argued that the monies received were on account of advance against any property transaction between the appellant's wife and the company and the amounts were received on that behalf. Before me, it is the case of the appellant that since he& his wife have mortgaged their property with the bank to enable

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the company to avail finance facilities from the bank, the advance by the company is not a gratuitous loan or advance, but in return for an advantage which the company has already availed on account of mortgaging of properties done by the appellant. .This contention of the appellant is not tenable for the following factual and legal position:

> The language of section 2(22) (e) is clear and unambiguous and does not leave any scope for interpreting it in a different manner.
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> It is a settled law that the deeming provisions have to be interpreted strictly in accordance with the spirit of the language contained therein. The provisions section 2(22) (e) being a deeming provision, have been interpreted strictly in accordance with the spirit of the language contained therein.

During the course of search and thereafter it has been claimed by the appellant that the transactions represents payment of amounts by the company to him are not in the capacity as director or as shareholder but these payments were received by him on behalf of his wife and that these payments represent advance towards purchase of property belonging to his wife Who authorized him to collect the money. However, when the appellant had not been able to substantiate the above claim with any material or evidence, the appellant changed stance and made an attempt to bring the facts of his case within scope of the decision in the case of ACIT v. G. Sreevidya (supra) though as would he discussed in the ensuing part of this order in the facts of the present case the ratio of the aforesaid decision is not applicable.

In the private limited company mortgage of the personal properties by the directors for the company to raise finance is quire common and so is the cases of the appellant who along with his wife has a given personal guarantee and / or mortgaged personal property to help the company avail loan/ credited facility from the bank.

It is only incidental in, the present case that the appellant along with his wife have mortgaged their personal property arid apparently, there was no condition or understanding at the time of mortgage

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that the directors could withdraw money is according to their needs as and when they wished.

It is a fact borne out of the assessment records that the company *M/s* Lanson Motors Private Ltd. had also mortgaged Its property to the City Bank against loan taken by its director . Such is the loan in the assessment year 2007-08 was Rs. 400 lakhs and in the assessment year 2008-09 the said loan is to the extent of Rs.400lakhs. The company has also given a cross guarantee on behalf of an associate concern for an amount up to ₹ 2050.00 lakhs. Therefore the transactions of mortgage of properties and/or offering personal guarantees amongst the group concerns and the director(s) for availing loans from banks are based on commercial conveniences.

No evidence to the effect that there was any condition or understanding on which the appellant along with his wife had mortgaged their properties with the bank has been produced either before the Assessing Officer or before me. No resolution to that effect has been passed.

The reliance of the appellant on the decision of ITAT Chennai in the case of ACIT Vs. Smt. G. Sreevidya [2012(24 Taxman 75) Chennai] is misplaced in as much as in the said case the amount was advance to her (Smt. G. Sreevidya) as per her pre-condition of granting bank guarantee and a collateral security for funding of the company. Relevant extract from the decision is reproduced as under:-

" the assessee contended that the amount was advanced to her as per her pre-condition of granting bank guarantee and a collateral security for funding of the company. She further, submitted that she had given personal guarantee and had given collateral security to facilitate availing of credit facility by the company**. At time of extending guarantee/security she had sought liberty to withdraw funds from company as and when required by her for personal purposes. It was thus in this background, the assessee had**

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withdrawn certain amount from the company and had also repaid the amounts withdrawn periodically. Therefore, the transaction between the assessee and the company was purely out of business consideration and could not be termed as deemed dividend. (Emphsis supplied). Whereas, no material or evidence with regard to existence of such conditions has been brought on record by the present appellant. In view of the clear distinction of the facts, as discussed above, the ratio of the case of Smt. G. Sreevidya (supra) is not applicable to the present appellant's facts.

The appellant has also not produced any corresponding made either with the bank or with the company towards release of the properties mortgaged as was the fact in the case of Pradip Kumar Malhotra. **(supra). Therefore the reliance of the appellant on the said case of Pradip Kumar Malhotra v. CIT [2011] 338 ITR 538/203 Taxman 110 is also misplaced.**

Reliance is placed on the decision of ITAT HYDERABAD Bench 'A' in the case of Deputy Commissioner of Income Tax, Circle 1(3) v. B. Dhanunjaya Rao [2013] 29 taxmann.com 254 (Hyd.) wherein the ITAT, distinguishing the case of Pradip Kumar Malhotra v. CIT (supra), held that the provisions of Section 2(22)(e) were applicable on similar facts.

Further Hon'ble HIGH COURT OF MADRAS in the case of Commissioner of Income Tax v. P.K. Abubucker [2004] 135 TAXMAN 77 (MAD.) on the facts of an assessee who was managing director of a private limited company and had substantial interest in it had leased out premises owned by him to that company and that company in terms of agreement advanced certain sum to him for meeting cost of construction of additional floors to said premises, which income-tax authorities treated as deemed dividend within meaning of section 2(22)(e) – Answered the question-

> Whether fact that advance paid to assessee was to be set off against future rent would not alter fact that assessee in eyes of law had received dividend from company during accounting year relevant to assessment year in question which was assessable as deemed dividend under section 2(22)(e) -

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In the affirmative holding that the amount was correctly taxed as deemed dividend. While holding so the Hon'ble jurisdictional High Court quoted the Supreme Court in the case of Miss P. Sharda v. CIT [1998] 229 ITR 444, wherein the apex court considered section 2(22)(e) of the Act and wherein it was held 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 eye of law, had received dividend from the company during the relevant accounting period ."

And observed that the fact that advance paid to the assessee was to be set off against the future rents would therefore not alter the fact that the assessee in the every of law had received dividend from the company during the relevant accounting period.

As already reiterated hereinabove, the payments made by the company towards advances to the appellant fulfils all the characteristics of 'dividend' as envisaged in section 2(22) (e). In the aforesaid circumstances, there canoe be any other conclusion except to considering the advances given by the company to the appellant as deemed dividend at the hands of the appellant.

In view of the above discussed factual and legal position, I uphold the action of the Assessing Officer in bringing to tax the advances received by the appellant in view of the provisions of section 2(22) (e) in all the 7 appeals in ITA Nos. 207 to 213. The grounds of appeal with regard to this issue in all these appeals are, therefore, dismissed".

This leaves the assessee aggrieved.

08. The assessee's arguments challenge this deemed dividend addition and seek its deletion. The Revenue supports the CIT(A)'s

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order. The question that arises for our consideration is as to whether authorities below have rightly added the impugned loan advanced of ₹18,06,358/- as deemed dividends u/s 2(22)(e) of the Act or not. Admitted factual position is that the assessee is a share holder/ director of the creditor company. He is also proprietor of the recipient firm. He qualifies share holding strength stipulated u/s.2(22)(e) of the Act as well. This lender entity's accumulated profits are already on record (supra). There is no quarrel about the quantum of impugned loans advanced to M/s. Link Enterprises. The assessee's sole argument is that this loan advance is in lieu of his collateral securities furnished to the lender entity's creditors. He places on record various correspondence(s) (dated 17.07.20013, 30.07.2003, 31.07.2003, 27.02.2007, 10.04.2007 and 17.03.2011 from M/s. HDFC Bank, Lanson Toyota, UTI Bank and Axis Bank etc). Case law of Smt. G. Sreevidya, Pradip Kumar Malhotra, Nannit Lal C. Jhaveri and CIT vs. Creative Dyeing and Printing Pvt. Ltd (2009) 318 ITR 476 (Delhi).

09. It is noticed from page 3 of the aforesaid paper book that assessee had furnished collateral securities to banks and other financial institutions for getting loans approved for M/s. Lanson

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Motors/ the payer entity. The Revenue terms it as additional evidence not liable to be accepted. We find it to be relevant for appropriate adjudication of the issue involved. The Revenue's objection is overruled. The assessee terms this evidence as sufficient to prove the element of business/commercial expediency in obtaining the loans in question. We are not impressed. It seems to be only one side of the coin. The lower appellate authority records in every clear terms that the lender entity had also furnished similar huge securities in assessee/ its director's favour in succeeding assessment years. He has nowhere controverted this fact in arguments raised before us. This leads to an inference that the lender company, assessee and his payee concern have been helping each other by pledging collateral securities and the quid pro quo is a routine affair exist. These fact indicate that the lender entity has already obliged the assessee in return. Thus, the impugned loans are over and above the said mutual arrangement. This negates the assessee's contention to have helped the lender company in raising loans from banks and financial institutions. Therefore, his argument projecting business/commercial expediency on the lender entity's part in advancing loan to the proprietary concern is not accepted.

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10. Now we come to case law. The first judgment is in Smt. G. Sreevidya's case (supra). The assessee therein had withdrawn amounts in question to meet her short term cash requirement to tide over liquidity crunch arising from her action of giving personal guarantees and collateral securities in favour of the lender entity who had advanced monies to her. She had also repaid the amount. No such material is available pointing out such circumstances in the present case. We make it clear that our findings on quid pro quo arrangement already go against the assessee. This case law stands distinguished.

11. The second judgment is that of Pradip Kumar Malhotra (supra) he had mortgaged his personal properties to the bank for enabling the lender company to raise loans. He requested the company to arrange release of his assets. It was unable to do so. Its directors passed a resolution authorizing the assessee to obtain interest free deposits upto ₹.50,00,000/-, as and when required. The assessee obtained a sum of ₹.20,75,000/- only. The hon'ble Calcutta high court in these circumstances held that advances in question had not arisen out of gratuitous element because of the lender entity's business interest. The present case does not involve such facts or any business interest.

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The assessee, his proprietary concern and the lender entity have already been found furnishing assets as collaterals in each other's favour. This case law also does not apply on facts of instant case.

12. The assessee's third judgment is in M/s. Creative Dying and Printing case (supra). The hon'ble Delhi high court holds that advances made for business transactions do not amount to deemed dividends u/s.2(22) (e). The hon'ble apex court has affirmed the said view. We reiterate that there is no business transaction involved in facts of this case.

13. The last judgment is of Navnit Lal C. Jhaveri (supra). The assessee had challenged vires of the corresponding provisions in Income Tax Act 1922. Their lordships' majority view upholds its constitutionality and observes that the deemed fiction of dividends does not violate articles 19(1)(f) and (g) of the Constitution. Nature and ambit of this deeming fiction has been elaborately discussed. We quote our discussion hereinabove that this case satisfies all conditions envisaged u/s. 2(22) (e) of the Act. This last judgment rather goes against the assessee. We conclude that the authorities below have rightly assessed impugned loans/ advances of ₹18,06,358/- given by

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M/s. Lanson Cars (P) Ltd to M/s. Link Enterprises as deemed dividends. The assessee's ground fails.

14. We find that this is not end of the issue. We had heard these cases on 27.01.2015. We found that the assessment order mentions about a letter dated 28.03.2013 recording assessee's agreement in favour of the impugned addition. He could not give a clear reply. It was urged that even if the said consent is given, the same would not amount to any estoppel against the law precluding him for filing these appeals. We fixed the case as part heard for 04.02.2015. The assessee appeared on the said date. He submitted a paper book. It is evident that he had filed letter dated 28.03.2013 before the DCIT, Central Circle –III (2), Chennai expressing willingness for the addition without prejudice to his right of appeal. On the same day i.e. 28.03.2013, the assessee moved yet another written communication unconditionally agreeing for adding the impugned deemed dividends.

15. The assessee strongly argues that the said letter dated 28.03.2013 was filed in duress. We do not agree. Much water has flown downstream since 28.03.2013, i.e, a period of two years. His case on merits has also been rejected. Thus, the assessee's relevant

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ground is not maintainable for want of a valid cause of action. He further argues that the Revenue ought to have objected non-maintainability of his appeal in the lower appeal proceedings and not at this stage. Case law of M/s. Ritambara Associates vs. DCIT in ITA No.14/Mds/2014 decided on 25.05.2014 is also quoted. The 'tribunal' holds therein that addition of deemed dividend cannot be sustained merely on agreement and estoppel principle in absence of the specific conditions u/s.2(22) (e) of the Act. We observe that facts of this case are otherwise. Thus, we quote our inherent jurisdiction u/s.254(1) of the Act, take notice of the assessee's unconditional written concession and hold this ground as not maintenable. The relevant question stands decided in the Revenue's favour.

16. Now, we come to case ITA 21/2014 raising challenging disallowance of expenditure u/s.40A(3) amounting ₹79,38,484/- made in the course of assessment and affirmed in the lower appellate order.

17. The assessee had made cash payments for papadam packing expenses, freight, commission and miscellaneous charges of ₹.8,09,050/- ₹7,23,980/-, ₹.57,47,746/- and ₹.6,57,708/- respectively. These amount totalled to Rs.79,38,484/-. The Assessing Officer

quoted Rule 6 DD(K) of the Income Tax Rules reading ''where the payment is made by any person to this agent who is required to make payment in cash for goods or services on behalf of such person". The assessee pleaded that the expenses were paid to his papadam packing workers in lieu of their services. The Assessing Officer expressed disagreement. He relied on the aforesaid rule and opined that agent word used in the rule would not include an employee. The payee's name in this case is Ms. Indira. She claimed herself to be a packing contractor for M/s. Lanson Ventures from the year 2002 and its employee in the preceding period. This payee clarified that she was responsible for quality packing, wiping, weighing and packing of papadum in factories located at Tiruchendur and Kathirvedu. The strength of the labour in said two locations was stated to be 80 & 90; respectively. Her remuneration on commission basis was quoted @ 5 paisa/ per kg with bonus. For assessment years 2006-07 to 2009-2010, packing expenses amounting to Rs.69,31,973/- had been paid to her. Smt. Indira took a categorical stand that the said payments had been received and distributed to the papadam packing workers.

18. The Assessing Officer sought to verify the aforesaid actual position. The assessee explained that these amounts were salary

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payments less than Rs.20,000/- given to the working labours through Smt.Indira. The Assessing Officer was of the view that such payment totaling to ₹. 69,31,973/- in four financial years (supra) had to be disallowed u/s. 40A(3). It was held that Smt. Indira was an employee and not an agent as per Rule 6DD. The Assessing Officer found Smt. Indira not to have disclosed impugned amounts deposited in her account as income in toto. And also referred to nom-compliance of the relevant ESI and PF provisions. He further quoted irregularities in funds deducted and their reimbursement. All this resulted in adding impugned disallowed sums of ₹79,38,484/-.

19. The CIT(A) findings rely heavily on the assessee consent in letter dated 30.03.2003 for upholding the AO action as under:-

> '' I have considered the submissions of the appellant and have also gone through the assessment order. The contentions of the appellant have not been accepted by the Assessing Officer for the detailed reasons discussed in the assessment order. The Assessing Officer has also detailed reasons as to why the case of the appellant would not be covered by the provisions of Rule 6DD (K) read with section 40A(3) and also as to which the ratio of the decisions relied on by the appellant would not be applicable to the facts of the appellant's case. It is also seen from the assessment order that the appellant, during the course of assessment proceedings, had agreed for the aforesaid disallowance/addition under Sec 40A(3). The relevant extract of the assessment order for the assessment year 2007-2008, in this regard, is reproduced as under:-

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> " The assessee submitted a letter dated 30.03.2013 stating the above payments are genuine payments. However, they have offered the above payments to be disallowed to submit to the legality of the issue in the larger interest of the society. And also prayed to view the issue favourably and to drop any penal action. Hence, accordingly to the discussions above a sum of ₹79,38,484/- is disallowed u/s.40A(3) and added to the total income. The assessee's AR has concurred for the disallowance vide letter dated 30.03.2013".

> Similar is the position with regard to the disallowance made by the Assessing Officer in the other two assessment years viz., 2008-09 & 2009-10 and Assessing Officer has mentioned in the respective assessments orders the fact with regard to the AR of the appellant having agreed to the disallowance vide letter dated 30.3.2013.

> The aforesaid facts with regard to the appellant having agreed to the aforesaid disallowances under section 40A(3) and with regard to the appellant concurrence, the AR has not controverted before me during the appeal proceedings. Once the appellant had agreed to a particular addition before the Assessing Officer, he cannot be allowed to challenge it in the appeal proceedings. In view of these facts, the action of the Assessing Officer in making disallowance of the cash payments in contravention of the provision of section 40A(3) is upheld and the grounds of appeal with regard to this issued in ITA Nos.209,210 & 211/13-14 are also dismissed."

20. Both sides heard. Records stand perused. The question before us is to whether Sec 40A (3) disallowances of ₹.79,38,484/- arising from cash payments exceeds Rs.20,000/- for papadam packing, freight, commission and miscellaneous expenses have been rightly made or not. It is evident that the assessee during 'scrutiny' had only justified his cash payments of papadam packing charges and not the

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other three heads (supra). His explanation on these expenses came only on 30.03.2013 as under:-

> **Freight:**-
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> The raw material black gram of the quality needed by lanson ventures is purchased through brokers from Andhra Pradesh and Maharashtra and lorry freight is incurred to bring the materials to the factories of lanson ventures. Thr suppliers of raw material belong to unorganized sector in rural areas, where they arrange lorry drivers available to dispatch goods. The lorry freight is cost of purchase of black gram and it is deducted from the amount paid to the supplier of black gram. Payment in cash were done to the lorry driver, for and on behalf of the supplier of black gram as carriage inwards. This is an arrangement where by the safety and quality of the product is ensured. Cheques are not normally accepted by the lorry drivers/agencies, as they own only 1 or 2 vehicles. This is the truth of the whole transactions.
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> **Conversion expenses**:-
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> As pointed, there were payments in cash to contractors for conversion of raw material to finished goods during 2006-2007 to 2009-2010. These materials were made primarily for distribution of workers wages, which are payable at the week end. The contractors produce their production details to the concern, for payment by mid week. The rate of conversion is as per oral agreement between M/s. Lanson ventures and the contractors and their margin is paid packing expenses, were wages paid in Rani Maharajapuram, a factory of M/s Lanson Ventrues, for lanson ventures packing workers in cash through an assistant of M/s. indira, one of the packing contractors in lanson ventures. Cash was paid on behalf of the packing contractor.
>
> **Pappadum Packing expenses paid to T. Indira:**
>
> Packing expenses, were wages paid in Rani Maharajapuram, a factory of M/s. Lanson Ventures, for lanson ventures packing workers in cash through an assistant of Ms. Indira, one of the packing contactors in lanson ventures. Cash was paid on behalf of the packing contractor.
>
> **Miscellaneous expenses:-**
>
> These expenses wee paid in cash for various reasons.

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> The payment are genuine payments. However to submit to the legality of the issue in the large interest of the society, we offer to above payments to be disallowed as per the governing rates.
>
> Having submitted, I request you to view us favourably and drop penalty and prosecution proceedings for the above transactions".

This factual position continued in his grounds of appeal filed in the lower appellate proceedings. Relevant pleadings in form 35 are silent on the issues of commission, payment of freight and other miscellaneous charges etc. Therefore, these three payments have to be disallowed in any case for want of any explanation much less a satisfactory one. We come to papadam packing expenses now. The assessee has already agreed for disallowance. Therefore, we adopt similar reasoning as discussed on the issue of deemed dividend decided hereinabove, invoke estoppel principle and reject the assessee's grounds as not maintainable. It is made clear that this estoppel bars the assessee only on facts and not on law. On latter limb, we are of the view that even if an assessee submits to assessment of a particular sum, he can still argue for appropriate application of the statutory provisions enshrined in the Act. It is to be seen that Sec. 40A (3) (a) as in assessment year 2007-2008 reads ''where the assessee incurs any expenditure in respect of which payment is made in a sum exceeding twenty thousand rupees otherwise than by an account payee cheque drawn on a bank or

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account payee bank draft, no deduction shall be allowed in respect of such expenditure''. We find that the authorities below have invoked the said provision in view of cash payments only without any reference to the statutory expressions i.e. payments made is 'a' sum exceeding twenty thousand rupees used therein. We reiterate the settled law that a disallowing provision in tax statutes has to be literally interpreted. Therefore, the assessee's present ground deserves acceptance on legality aspect only. The impugned disallowance of ₹.79,38,484/- is remitted back to the Assessing Officer for a limited exercise of recomputation as per the statutory expressions employed in sec 40A(3) extracted hereinabove. The relevant ground is partly allowed for statistical purposes. He shall also take into account amendments if any made in the relevant statutory provision wherever necessary.

21. The third ground challenging sec.234B interest is treated as consequential in nature.

22. In view of the above findings, Shri. Lankalingam Murugesu appeals in ITA Nos.19,20 and 25/Mds/2014 are dismissed and ITA Nos.21 to 24 are partly allowed for statistical purposes.

23. Now we come to appeals relating to the other assessee Smt. Reeta Lankalingam. There are total six cases. For assessment year

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2008-2009, ITA No15/Mds/2014 is assessee's appeal. The Revenue has filed ITA No.2242/Mds/2013 and assessee prefers C.O.No.11/2014 therein. We take up assessee's appeal No. ITA 15/Mds/2014 first. Her sole substantive ground challenges correctness of the lower appellate order upholding the Assessing Officers action in disallowing interest on loan taken for immovable property of ₹26,13,233/-. The assessee had sold a property in Kodaikanal resulting in short term capital gains. She claimed cost of building improvement as per bills. The Assessing Officer sought copies thereof. The assessee produced the same. The Assessing Officer observed that these bills did not pertain to the property in question. This led to impugned interest disallowance of ₹26,13,233/- for want of evidence that the loan was utilized for improving the property sold.

24. The CIT(A)'s order cites assessee's failure to prove the evidence of the expenditure by way of supporting material or evidence.

25. We have heard the rival contentions and gone through relevant findings. The assessee appears to have filed same bills and other details in support of the impugned expenditure incurred for improvement of the property sold. Neither of the lower authority

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matching of impugned expenditure vis-à-vis the property is only a tallying exercise. In these circumstances, interest of justice would be met in the Assessing Officer re-examines the issue. The assessee will be at liberty to place on record all her documents in three effective opportunities of hearing. The relevant ground is remitted back to the Assessing Officer.

Case ITA No.15/Mds/2014 is allowed for statistical purposes.

26. Now, we come to Revenue's appeal in ITA 2242/Mds/2013 raising sole substantive issue of bad debts amounting to ₹31,83,626/- disallowed/added in course of a 'regular' assessment and deleted in the lower appellate order.

27. The assessee had claimed aforesaid bad debts in accounts of M/s. Lanson Value Added Services as its proprietrix. These debts had arisen from sale of accessories and polishing service to its customers in small amounts. Relevant assessment years were from 2005-06 onwards. These sums had not been recovered. The assessee appears to have expressed her inability to produce supportive details with regard to their traceability of collections thereof. The Assessing

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Officer rejected the claim u/s.36(2) of the Act. He took into consideration prominent names in the debtors' list eg M/s. MRF Ltd, M/s. Brakes India Ltd, M/s. Chief Workshop Manager and M/s. Caterpillar India Ltd to hold that the debt in such cases could not have been termed as bad. This resulted in the impugned disallowance /addition.

28. The Commissioner of Income Tax (Appeals) has accepted the assessee's contention by relying on case law of TRF Ltd in 327 ITR 416 as under:-

> "I have carefully considered the facts of the case and the submissions made by the learned AR. The Assessing Officer has mentioned in the assessment order that the AR had also stated that no details the steps taken to recover the same were available and she cold not prove that it was a bad debt to the satisfaction of the Assessing Officer and that it was not believable that debts were not recoverable from such MNC companies like M/s. MRF Ltd, M/s. Brakes India Ltd etc. Though I subscribe to the views of the AO that even after the amendment to section 36(1)(vii) the deft from 01.04.1989 it is not every debt that can be written off and would be allowable under the provisions of this section. To come within the ambit of allow ability a debt has to be only a bad debt. However, now it is a settled law that the decision with regard to the allow ability of a bad debt is required to be taken on the finding of facts that the debt has actually been written off in the books of account of the assessee. The Hon'ble Supreme Court in the case of TRF Ltd v. CIT (supra) had held, when bad debt occurs, the bad debt account is debited and the customer's account is credited, thus, closing the account of the customer. In the case of companies, the provision is deducted from sundry debtors. The Assessing Officer, it has been held, has to examine whether, in fact, the bad debt or part thereof is written off in the accounts of the assessee.
>
> In view of the above discussed legal position, the Assessing Officer is directed to allow the claim of bad debts of the appellant after verification that the bad debts have in fact been written off in the

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> accounts of the appellant as mandated by the Hon'ble Supreme Court in the case of TRF Ltd v. CIT (supra). The grounds of appeal, as they relate to this issue, are considered allowed for statistical purposes''.

29. Heard both sides. Records perused. The Revenue seeks to restore impugned bad debts disallowance. The lower appellate authorities has accepted assessee's ground on legality issue per TRF case (supra). The factual aspect stands remitted back to Assessing Officer for verification ie whether bad debts claimed had been actually written off or not. The Revenue fails to point out any distinction to the said law or any judgment to the contrary. Therefore, we uphold the findings under challenge. The Revenue's appeal ITA No.2242/Mds/2013 is dismissed.

This leaves us with the assessee's cross-objections No.11/2014. She has raised two grounds ie disallowance of interest and bad debts. We have already dealt with the same in cross-appeals decided hereinabove. This renders the cross objections infructuous.

30. Now, we come to ITAs No.16 to 18/Mds/14 raising identical issue of deemed dividends and find it to be covered by our discussion in ITA No.19/Mds/14 decided hereinabove. We appreciate both parties fair

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stand and reject the assessee's identical ground in all three cases. ITAs 16-18/Mds/2014 are dismissed.

To sumup : ITAs 19 & 20 and 25/Mds/2014	:	Dismissed.
21 to 24/Mds/2014	:	Partly allowed for statistical purposes.
15/Mds/2014	:	Allowed for statistical purposes.
2242/Mds/2013	:	Dismissed.
C.O. No.11/Mds/2014	:	Dismissed as Infructuous.
16 to 18/Mds/2014	:	Dismissed.

Order pronounced on Friday, the 27th of February, 2015, at Chennai.

Sd/-
(बी.आर. बास्करन)
(B.R. BASKARAN)
लेखा सदस्य/ ACCOUNTANT MEMBER

Sd/-
(**एस. एस. गोदारा**)
(S.S. GODARA)
न्यायिक सदस्य /JUDICIAL MEMBER

K.V
चेन्नई/Chennai
दिनांक/Dated:27.02.2015.

आदेश की प्रतिलिपि अग्रेषित/Copy to: 1. अपीलार्थी/Appellant 2.प्रत्यर्थी/ Respondent 3. आयकर आयुक्त (अपील)/CIT(A) 4. आयकर आयुक्त/CIT 5. विभागीय प्रतिनिधि/DR 6. गार्ड फाईल/GF.

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