

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, CHENNAI

श्री ए. मोहन अलंकामणी, लेखा सदस्य एवं
श्री एस. एस. गोदारा, न्यायिक सदस्य के समक्ष

BEFORE SHRI A.MOHAN ALANKAMONY, ACCOUNTANT MEMBER &
SHRI S.S. GODARA, JUDICIAL MEMBER

आयकर अपील सं./ I.T.A. No.890/Mds/2014
(निर्धारण वर्ष / Assessment Year : 2008-2009)

M/s. Finco Holdings (P) Limited,
No.31, Moore Street,
Chennai 600 001.

The DCIT,
Vs Company Circle II (1),
Chennai

[PAN: AAACF 1144K]
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri. G. Seetharaman, C.A.,

प्रत्यर्थी की ओर से / Respondent by : Shri. P. Radhakrishnan, IRS, JCIT.

सुनवाई की तारीख/Date of hearing : 24.02.2015

घोषणा की तारीख /Date of Pronouncement : 27.02.2015

आदेश / O R D E R

PER S.S. GODARA, JUDICIAL MEMBER

This assessee's appeal for assessment year 2008-09;
emanates from order dated 17.12.2013 passed by the Commissioner of
Income Tax (Appeals)-II, Chennai in ITA No.433/13-14 sustaining

deemed dividend's addition of ₹ 32,14,906 u/s. 2(22)(e), in proceedings under section 143(3) of the Income Tax Act, 1961 [in short the "Act"].

2. The assessee is an associate concern of M/s. Fairmacs group of companies engaged in the businesses of logistics, ship handling, imports and exports. It had filed its 'return' on 25.12.2008 stating income of ₹82,037/-. The same was 'summarily' processed.

3. The Assessing Officer took up 'scrutiny'. He noticed from the assessee's books, balance sheets and other details that unsecured loans had been obtained from its group entity Fairmacs Shipping & Transport Services Pvt. Ltd. S/Sh. D.R. Shete and Sunil R. Shete hold 50% each of the assessee's shareholdings and 75% : 25% in case of the lender entity. The latter entity had accumulated profits of ₹3,76,48,555/- as on 31.03.2008. The Assessing Officer invoked section 2(22)(e) and viewed the impugned loans as deemed dividends u/s. 2(22)(e) of the Act resulting in the addition in question.

4. The Commissioner of Income Tax (Appeals) also affirmed the Assessing Officer's findings. The assessee argued in the lower appellate proceedings that it itself is not a shareholder in the lender

entity to invoke section 2(22) (e). The lower appellate authority held the assessee to be "a concern in which the shareholders of the lender entity are interested". This leaves the assessee aggrieved.

5. We have heard both sides and gone through the case file.

Factual backdrop of the case already stands narrated. The assessee reiterates its argument raised in the lower appellate proceedings that it is not a shareholder in the lender company. The Revenue fails to convert this factual position. We find that a Special Bench of the 'tribunal' in *Bhaumik Colour* [2009] 313 ITR 146 Mumbai has held in the very circumstances that section 2(22) (e) does not apply in case of common shareholders and the debtor entity itself should be a shareholder in the creditor entity. The parties inform us that hon'ble Bombay high court has affirmed this decision. The hon'ble Delhi high court in *ITA No.462/2009 CIT vs ANKITECH Private Limited* decided on 11.05.2011 has also taken a similar view. We draw support therefrom and hold that the authorities below have erred in adding impugned unsecured loans of ₹32,14,906/- as deemed dividend u/s.2(22)(e) of the Act despite the fact that the assessee is not a shareholder in the lender company. It is made clear that the Assessing Officer shall be at liberty to add the aforesaid loans as

deemed dividends in the hands of the above said shareholders as per law. The assessee's ground succeeds.

6. The assessee's appeal is allowed.

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

Sd/-
(ए. मोहन अलंकामणी)
(A.MOHAN ALANKAMONY)
लेखा सदस्य/ ACCOUNTANT MEMBER

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

चेन्नई/Chennai.

दिनांक/Dated:27.02.2015.

KV

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.