

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

**Before Shri P.M. Jagtap, Accountant Member**

**I.T.A. No. 1408 /KOL/ 2015  
Assessment Year: 2003-2004**

***Deputy Commissioner of Income Tax,.....Appellant  
Circle-10(1), Kolkata,  
Aayakar Bhawan,  
P-7, Chowringhee Square,  
Kolkata-700 069***

**-Vs.-**

***M/s. Magnum Clothing (P) Limited,.....Respondent  
133, Canning Street,  
Kolkata-700 001  
[PAN: AABCR 7243 Q]***

**Appearances by:**

*Shri Uday Kumar Sardar, JCIT, D.R., for the Department  
Shri S.L. Kochar, Advocate, for the assessee*

Date of concluding the hearing : July 26, 2016

Date of pronouncing the order : September 21, 2016

**O R D E R**

This appeal is preferred by the Revenue against the order of Id. Commissioner of Income Tax (Appeals)-4, Kolkata dated 02.09.2015, whereby he deleted the addition of Rs.47,05,000/- made by the Assessing Officer to the total income of the assessee on account of deemed dividend under section 2(22)(e) of the Income Tax Act, 1961.

2. The assessee in the present case is a Company, which is engaged in the business of manufacturing of garments. The return of income for the year under consideration was filed by the assessee on 17.11.2003 declaring total income of Rs.2,10,760/-. During the course of assessment proceedings, it was noticed by the Assessing Officer that the assessee has received advances of Rs.25,06,000/- and Rs.21,99,000/- from M/s. Magnum Fashions Pvt. Limited and M/s. Magnum Cotton Pvt. Limited respectively. Since the assessee-company was holding more than 10%

equity shares of the said Companies and the accumulated profits of the said companies at the relevant time were to the extent of Rs.46,02,484/- and Rs.45,15,477/- in the case of M/s. Magnum Fashions Pvt. Limited and M/s. Magnum Cotton Pvt. Limited respectively, the Assessing Officer held that the provisions of section 2(22)(e) were clearly applicable to the advances received by the assessee from the said company. In this regard, the explanation offered by the assessee that the said advances having been received against sale of its flats, the provisions of section 2(22)(e) were not attracted, was not found acceptable by the Assessing Officer and relying on the assessment order passed in assessee's case for A.Y. 2002-03, wherein the similar advances were treated by him as deemed dividend under section 2(22)(e), he proceeded to add the total advances of Rs.47,05,000/- received by the assessee during the year under consideration to its total income by treating the same as deemed dividend under section 2(22)(e).

3. The addition made by the Assessing Officer on account of deemed dividend under section 2(22)(e) was challenged by the assessee in the appeal filed before the Id. CIT(Appeals) and after considering the submissions made by the assessee and perusing the relevant material on record, the Id. CIT(Appeals) deleted the said addition for the following reasons given in paragraph no. 2 of his impugned order:-

*"I have considered the submission of the appellant in the matter and perused the material evidence on record. I find that the erstwhile CIT(A)-X exercising jurisdiction over the appellant considered that there was no occasion for section 2(22)(e) of the Act being attracted in the case of the appellant for AY 2002-03 and for which necessary appeal effect had also been given by the concerned AO. The then CIT(A)-X, Kolkata had passed an order in Appeal No. 56/CIT(A)-X, Ward-10(2)/05-06 on 04.04.2006 accepting the contention of the appellant that the appellant had not received any loan/advance that could come within the proposition as laid down under the provisions of sec. 2(22)(e). The factual situation still persists in this year for which there is no logistics on the part of the AO to harp on the issue for which he had already passed an order in favour of the appellant in the earlier year. Such being the case, I find that there is no cause for me to differ with the finding of the erstwhile CIT(A), facts remaining the same for the AY 2003-04.*

*The AO has not brought on record any finding to the contrary in the matter with any palpable material, Under such facts and circumstances, the action of the AO is not endorsable from my end for which the same is treated as not tenable and the addition made in this ground by the AO is directed to be deleted”.*

Aggrieved by the order of the Id. CIT(Appeals), the Revenue has preferred this appeal before the Tribunal.

4. I have heard the arguments of both the sides and also perused the relevant material available on record. As agreed by the Id. representatives of both the sides, the issue involved in this appeal of the Revenue relating to the addition made on account of deemed dividend under section 2(22)(e) is squarely covered in favour of the assessee and against the Revenue by the order of the Tribunal dated 19.04.2016 passed in assessee's own case for A.Y. 2002-03 in ITA No. 1352/KOL/2006, wherein the similar addition made by the Assessing Officer was held to be not sustainable by the Tribunal for the following reasons given in paragraph no. 10 of its order:-

*“10. We have heard the rival contentions and perused the materials available on record. Before us Ld. AR submitted paper book which is running pages 1 to 38 and stated that relied on the order of the Ld. CIT(A). On the other hand Ld. DR relied in the order of AO. From the aforesaid discussion, we find that the AO has treated the advance received by the assessee against a sale of properties as deemed dividend because assessee was holding the equity shares of the company, carrying voting rights more than 10%. However from the facts of the case we find that the money received by the assessee was representing the sale of the flats and therefore we conclude that the advance received by the assessee was not on returnable basis. The advance representing against the consideration for the sale of the flats is out of the purview of the provisions of section 2(22)(e) of the Act. In holding so we are putting our reliance in the decision of Hon'ble Bombay High Court in the case of CIT- v. Nagindas M Kapadia (1989) 177 ITR 393 (Bom) wherein Hon'ble court has held that only the payments and advances to the extent of accumulated profits could be treated as loans or advances within the meaning of Sec.2(22)(e) and this was what the Tribunal had done and,*

*therefore, the Tribunal was right in holding that only Rs.28,500 and Rs.10,000 could be treated as deemed dividend in the assessment years 1968-69 and 1969-70".*

As the issue involved in the year under consideration as well as all the material facts relating thereto are similar for A.Y. 2002-03, I respectfully follow the order of the Tribunal for A.Y. 2002-03 and uphold the impugned order of the Id. CIT(Appeals) deleting the addition made by the Assessing Officer on account of deemed dividend under section 2(22)(e).

**5. In the result, the appeal of the Revenue is dismissed.**

Order pronounced in the open Court on September 21, 2016.

**Sd/-  
(P.M. Jagtap)  
Accountant Member**

***Kolkata, the 21<sup>st</sup> day of September, 2016***

- Copies to :
- (1) ***Deputy Commissioner of Income Tax,  
Circle-10(1), Kolkata,  
Aayakar Bhawan,  
P-7, Chowringhee Square,  
Kolkata-700 069***
  - (2) ***M/s. Magnum Clothing (P) Limited,  
133, Canning Street,  
Kolkata-700 001***
  - (3) ***Commissioner of Income Tax (Appeals)-4, Kolkata;***
  - (4) ***Commissioner of Income Tax- ,***
  - (5) ***The Departmental Representative***
  - (6) ***Guard File***

*By order*

***Assistant Registrar,  
Income Tax Appellate Tribunal,  
Kolkata Benches, Kolkata***

***Laha/Sr. P.S.***