

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: 'SMC' NEW DELHI**

**BEFORE SH. BHAVNESH SAINI, JUDICIAL MEMBER**

**I.T.A .No.-4138/Del/2016  
(ASSESSMENT YEAR-2013-14)**

ITO, Ward-10(3), New Delhi.  <b>(APPELLANT)</b>	Vs	Great Indian Tamasha Company P.Ltd., M-118, Connaught Place, New Delhi-110001. PAN-AADCG2014J  <b>(RESPONDENT)</b>
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<b>Assessee by</b>	<b>Smt. Bedobani Chaudhri, Sr. DR</b>
<b>Revenue by</b>	<b>Sh.Rajat Jain &amp; Sh.Akshat Jain, CAs.</b>
<b>Date of Hearing</b>	<b>03.04.2017</b>
<b>Date of Pronouncement</b>	<b>17.04.2017</b>

**ORDER**

**PER BHAVNESH SAINI, JUDICIAL MEMBER**

This appeal by Revenue has been directed against the order of CIT(A)-4, New Delhi dated 31.05.2016 for A.Y. 2013-14.

2. I have heard Ld. Representatives of both the parties and perused the material on record.

3. The Revenue on Ground No.1 challenged the order of Ld.CIT(A) in deleting the protective addition of Rs.35,07,000/- on account of deemed dividend u/s 2(22)(e) of the I.T.Act, 1961 (in short "Act").

4. The CIT(A) noted that the assessee company has received loans and advance of Rs.35,07,000/- from M/s Apra Auto (India) P.Ltd., during the year under consideration, on which the AO has made addition u/s 2(22)(e) of the Act in the hands of the assessee on protective basis. However, the assessee company does not hold any share in M/s Apra Auto (India) P.Ltd. Sh. Anumod Sharma, Director of the assessee company is having 50% and its 86.67% share holding in the assessee company and M/s Apra Auto (India) P. Ltd. respectfully as on 31.03.2013. The case of Sh. Anumod Sharma was also

assessed u/s 143(3) of the Act, for assessment year under consideration and no addition on account of deemed dividend on the transaction of loans and advance given by M/s Apra Auto (India) P.Ltd. to the assessee company has been made on substantive basis, although Sh. Anumodh Sharma is a registered/ beneficial shareholder in both the companies. The AO alleged that since the transaction of the assessee company with the group company is clearly hit by provisions of section 2(22)(e) of the Act, therefore, the addition was made.

5. The assessee contended that the addition u/s 2(22)(e) on account of deemed dividend could be taxed in the hands of the shareholder only. Therefore, the provisions of sections 2(22)(e) are not applicable in the case of the assessee as assessee is not registered/ beneficial shareholders of M/s Apra Auto (India) P. Ltd. The same issue has been considered in the case of Sh. Anumod Sharma in which Sh. Anumod Sharma replied that he has given loan of Rs.6.70 crores to M/s Apra Auto (India) P. Ltd. having closing balance of Rs.1.36 crores as on 31.03.2013, therefore, no addition of Rs.35,07,000/- should be made on account of loan given by M/s Apra Auto (India) P. Ltd. out of the loan received from Sh. Anumod Sharma u/s 2(22)(e) of the Act. It was also submitted that no substantive addition has been made in the hands of Sh. Anumod Sharma. The copy of order u/s 143(3) for Assessment Year 2013-14 was filed before CIT(A). The CIT(A) accepted that since assessee is not registered/beneficial shareholder in M/s Apra Auto (India) P. Ltd., the addition on account of deemed dividend u/s 2(22)(e) cannot sustained. It was also noted that no substantive addition has been made in the hands of Sh. Anumod Sharma who is registered/beneficial shareholder, therefore, no protective addition could be made in the hands of the assessee. The addition was deleted and the appeal of the assessee was allowed.

6. After considering the rival submissions, I do not find any merit in this ground of the appeal of the Revenue. It is admitted fact that the assessee is not a registered/beneficial shareholder in M/s Apra Auto (India) P. Ltd., therefore, no addition u/s 2(22)(e) can be made in the hands of the assessee. The transaction was conducted by Sh. Anumod Sharma who had advanced loan to M/s Apra Auto (India) P. Ltd. In his case, no substantive addition is made in assessment order for A.Y. 2013-14 u/s 143(3) of the Act. The Ld. Counsel for the assessee relied upon the order of Division Bench, ITAT Delhi Bench in the case of *DCIT vs Yash Pal Narender Kumar dated 07.02.2013 in ITA No.5340/Del/2012 and Others.* etc. in which it was held that *"It is well-settled position of law that when substantive addition has been deleted by the competent statutory authority, then the protective addition made thereunder and related to the substantive addition cannot survive."* Considering the totality of the facts and circumstances of the case, I am of the view that the Ld. CIT(A) correctly deleted the addition. No inference is called forth, Ground No. 1 of the appeal of the Revenue is dismissed.

7. On Ground No.2, the Revenue challenged the deletion of addition of Rs.64,468/- on account of disallowance of loss. The AO noted that since business activity of the assessee company has not commence during the year, loss of Rs.64,468/- was disallowed. The assessee pleaded before Ld.CIT(A) that it is incorporated during the F.Y. 2007-08 and was engaged in business of running plays, musical shows and other entertainment programmes for which it has purchased a piece of land in Kodagu District, Karnatka in October 2009 and constructing a theatre. It was submitted that expenses were incurred for statutory obligations for audit and other amortization of preliminary expenses. The Ld.CIT(A) noted that these expenses have been incurred wholly and exclusively for the purpose of business on going concern basis since the incorporation, loss was accordingly allowed.

8. After considering the rival submissions, I do not find any merit in this ground of appeal of the Revenue. The finding of fact is recorded by the Ld.CIT(A) and the submissions of the assessee have not been rebutted by the Department through any evidence or material on record, therefore, no infirmity is pointed out in the order of the Ld.CIT(A). No inference is called for on this ground therefore it stands dismissed.

9. In the result, the appeal of the Revenue is dismissed.

**The order is pronounced in the open court on 17<sup>th</sup> April 2017.**

**Sd/-  
(BHAVNESH SAINI)  
JUDICIAL MEMBER**

**Date:-17.04.2017**

*\*Amit Kumar\**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

**ASSISTANT REGISTRAR  
ITAT NEW DELHI**