

**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.No.2241/Mds/2013

निर्धारण वर्ष /Assessment year : 2008-09

The Dy. Commissioner of  
Income-tax  
Central Circle III(3)  
Chennai

**(अपीलार्थी/Appellant)**

**Vs.** M/s Lanson Homes Pvt. Ltd  
34, Poonamallee High Road  
Koyambedu  
Chennai 600 017

**[PAN AABCL 0278 M ]**

**(प्रत्यर्थी/Respondent)**

अपीलार्थी की ओर से/ Appellant by  
प्रत्यर्थी की ओर से /Respondent by

: Shri N. Rengaraj, CIT  
: Dr. Anita Sumanth, Advocate

सुनवाई की तारीख/Date of Hearing

: 27-01-2015

घोषणा की तारीख /Date of Pronouncement

: 4-02-2015

**आदेश / ORDER**

**PER S.S.GODARA, JUDICIAL MEMBER**

This Revenue's appeal for assessment year 2008-09, is directed against order of the Commissioner of Income-tax (Appeals)- II Chennai dated 30.9.2013, passed in Appeal No.183/2013-14, in proceedings under section 153C r.w.s 143(3) of the Income-tax Act, 1961 (in short the 'Act').

**2.** The Revenue's grounds challenge the lower appellate order deleting deemed dividend addition u/s 2(22)(e) of ₹ 64,89,407/- made on 'protective' basis in a regular assessment framed on 27.3.2013.

**3.** The assessee-company is engaged in property development business. It is an associate concern of its eponymous group of companies engaged in diversified businesses. The assessee had filed its original return on 29.9.2008 admitting income of ₹ 14,87,400/-. Thereafter, the department conducted a 'search/survey' in case of its group concerns/promoters on 23.4.2010. This culminated in issuance of section 153C notice dated 17.10.2012. The assessee responded by filing a fresh return dated 11.12.2012 reiterating the income already disclosed earlier.

**4.** The Assessing Officer took up 'scrutiny'. He noticed that the assessee had obtained a loan of ₹ 64,89,407/- from its group concern M/s Lanson Motors Pvt. Ltd. It has come on record that the assessee is not a shareholder in the aforesaid group entity. It is also evident that both these companies have common individual shareholders namely Shri Lankalingam and Smt. Reeta Lankalingam to the tune of 50% share each. There is no issue that the Assessing Officer had added the very amount in their hands on 'substantive' basis as deemed

dividend. He justified this protective addition in the assessee's case by observing that the same is made till the aforesaid substantive assessments attain finality. The assessee's income was accordingly computed as ₹ 79,76,810/-.

**5.** The assessee preferred an appeal. The lower appellate authority observes that the assessee is neither a registered nor a beneficial shareholder in the creditor entity to invoke section 2(22)(e). It has also been held that once 'substantive' additions stand made (supra), this 'protective' addition does not hold ground. The assessee has accordingly succeeded in the lower appellate proceedings. This leaves the Revenue aggrieved.

**6.** We have heard both parties and gone through the case file. It is an undisputed fact that the assessee has obtained loan from its group entity M/s Lanson Motors Pvt. Ltd amounting to ₹ 64,89,407/-. The fact also remains that it is not a shareholder in the said entity. It has come on record that the present is only a 'protective' addition over and above the 'substantive' one already made in the hands of the concerned entity's shareholders. In these circumstances, we quote case law ACIT vs Bhaumik Colour P. Ltd. [2009]118 ITD 1 (Mumbai) (SB) and CIT vs Ankitech Pvt. Ltd [2011] 11 taxmann.com 100 (Delhi) and hold that a deemed dividend addition u/s 2(22)(e) of the Act can

only be made in the hands of a registered or beneficial shareholder. The Revenue fails to point out any distinction on facts. In these circumstances, we uphold the CIT(A)'s order. The Revenue's grounds are rejected.

7. The Revenue's appeal is dismissed.

Order pronounced on Wednesday, the 4<sup>th</sup> of February, 2015, at Chennai.

Sd/-

(बी.आर. बास्करन)  
(B.R. BASKARAN)

**लेखा सदस्य /ACCOUNTANT MEMBER**

चेन्नई/Chennai

दिनांक/Dated: 4<sup>th</sup> February, 2015

RD

Sd/-

(एस. एस. गोदारा)  
(S. S. GODARA)

**न्यायिक सदस्य/JUDICIAL MEMBER**

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