

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
MUMBAI BENCH "T", MUMBAI**

**BEFORE SHRI D.T. GARASIA, JUDICIAL MEMBER AND  
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER**

**ITA No.4333/M/2012  
Assessment Year: 2010-11**

M/s. Reynold Shirting Pvt. Ltd., 1 <sup>st</sup> Floor, D-Wing, Oberoi Garden Estate Chandivali Farms Road, Chandivali, Andheri (E), Mumbai – 400 072 <b>PAN: AACCR 7055H</b>	Vs.	Asst. Commissioner of Income Tax, Central Circle – 38, Aayakar Bhavan, Ground Floor, M.K. Road, Mumbai - 400020
(Appellant)		(Respondent)

**ITA No.5390/M/2012  
Assessment Year: 2010-11**

Asst. Commissioner of Income Tax, Central Circle – 38, R.No.32(1), Ground Floor, Aayakar Bhavan, M.K. Road, Mumbai - 400020	Vs.	M/s. Reynold Shirting Pvt. Ltd., 143, Shiv Shakti Indl. Estate, 3 <sup>rd</sup> Phase, Opp. Mittal Estate, Andheri Kurla Road, Andheri (East), Mumbai – 400 059 <b>PAN: AACCR 7055H</b>
(Appellant)		(Respondent)

**Present for:**

Assessee by : Shri Vijay Mehta, A.R.  
Revenue by : Shri R. Ravikiran, D.R.

Date of Hearing : 05.04.2017

Date of Pronouncement : 28.04.2017

**ORDER**

**Per D.T. Garasia, Judicial Member:**

The above titled appeals one by the assessee and the other by the Revenue have been raised against the order dated 12.06.2012 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2010-11.

2. All the grounds are interconnected and the departmental appeal is interconnected. Therefore both the appeals are disposed of by this common order.

3. The Ld. A.R. has not pressed ground No.1. Hence, the effective ground in this appeal is Ground No.2. The short facts of the case are as under:

The Assessing Officer (hereinafter referred to as the AO) noticed that assessee company has purchased 99.75% shares in another company named M/s. B.R. Machine Tools Pvt. Ltd. vide agreement dated 02.04.07 and has become the holding company. The company acquired by the assessee company has not carried out any business during the year as well as next two years. The only income shown by the assessee was dividend income. The AO further noticed that assessee company has taken loans and advances of Rs.2,80,00,000/- on 31.03.10 and Rs.13,87,00,000/- on 04.12.09 from M/s. B.R. Machine Tools Pvt. Ltd. Accordingly, assessee was asked to explain why this amount may not be treated as income in the hands of company as per provision of section 2(22)(e) of the Income Tax Act. In response to show cause notice assessee has replied which is reproduced at page 3 of the assessment order. After considering the reply AO observed that M/s. B.R. Machine Tools Pvt. Ltd. is not a company in which public are substantially interested. The assessee holds more than 10% of voting power in M/s. B.R. Machine Tools Pvt. Ltd. and advance or loan amounting to Rs.16,67,00,000/- is given by M/s. B.R. Machine Tools Pvt. Ltd. to the assessee company during the year. The accumulated profit of M/s. B.R. Machine Tools Pvt. Ltd. was at Rs.21,78,62,798/-. Money lending was not the business of M/s. B.R. Machine Tools Pvt. Ltd. as seen from the balance sheet of last four years. Thus, after considering the reply of the assessee the AO rejected the claim and held that assessee is not in business of money lending. Therefore, they are excluded from definition of section 2(22)(e). All the transactions involved are loans and advances, therefore section 2(22)(e) is applicable. Therefore, amount of

Rs.16,67,00,000/- was treated as deemed dividend and added to the total income of the assessee.

4. Matter carried to Ld. CIT(A) and the Ld. CIT(A) has partly allowed the claim by observing as under:

"4.5 From the perusal of the submissions made by the appellant and facts of the case, it is observed that the conditions laid down in section 2(22)(e) are applicable to the facts of the present case because the assessee has taken loan/advance and having more 10% voting powers in M/s. B.R. Machine Tools Private Limited has accumulated profit during the year under consideration and moreover M/s. B. R. Machine Tools Private Limited is not dealing in the business of money lending and also not a company in which public are substantially interested. Thus all the conditions are fulfilled and the case of the appellant does not fall under any exception to this section. The argument of the appellant that it was purely a business transaction and the provisions of section 2(22)(e) are not applicable is not acceptable because the A.R. of the appellant has failed to submit any evidence before the A.O. and before me to prove this fact that the loan was taken for purchase/sale of property. Therefore, the argument of the A.R. that it was a business transaction cannot be accepted without any documentary evidence. The claim of the A.R. of the appellant that agreement was submitted before the A.O. is considered and observed that nowhere in this agreement it is mentioned that the assessee will receive loan from the subsidiary company for purchasing a particular plot of land. What will be the amount of loan and what will be the price of a particular property. It is a general agreement which do not prove that the loan has been received for business purposes. Therefore, the argument of the appellant is rejected. The second contention of the appellant that it had advanced loan of Rs. 9.40crore to M/s. B.R. Machine Tools Private Limited and net balance was Rs. 4.47 crore and further repaid the loan of Rs. 5.40 crore and received back Rs. 2.80 crore and the net credit balance was Rs. 1.87 crore is correct as shown in the copy of a/c of M/s. B.R. Machine Tools Private Limited. In view of these facts it was argued that if any addition is to be made u/s. 2(22)(e) it will be only rs. 6.34 crore and not Rs. 16.67 crore. The A.R. has also relied on the decision of Hon'ble Bombay High Court in the case of CIT vs. P.K. Badiani (Supra), where it is held as under:

*"The assessee was the major shareholder and the managing director of a private limited company, S. The assessee had a mutual, open and current account in the books of the company and he had withdrawn through that account a sum of Rs.3,37,416 in the accounting year April 1, 1957, to March 31, 1958, relevant to the assessment year 1958-59. The account being a mutual, open and current account, every debit, that is, every payment by the company to the assessee may not be a loan. To be treated as a loan, every amount paid must make the company a creditor of the assessee for that amount. If, however, at the time when the payment is made, the company is*

*already a debtor of the assessee, the payment would be merely a repayment by the company towards its already existing debt. It would be a loan by the company only if the payment exceeds the amount of its already existing debt and that too only to the extent of the excess. Therefore, the position as regards each debit will have to be individually considered, because it may or may not be a loan. The two basic principles are that only a loan which would include the other payments mentioned in section 2(6A)(e) can be deemed to be dividend and that too only to the extent that the company has at the date of the payment "accumulated profits" after deducting therefrom all items legitimately deductible therefrom. What has to be considered is not the balance in account but the position of every payment, and, therefore, the debit balance of the assessee with the company at any point of time could not be taken to represent an advance or loan by the company to the assessee; nor could the amount outstanding at the end of the accounting year be alone taken as loan within the meaning of section 2(6A)(e)."*

4.6 Keeping in view the facts and circumstances of the present case it is held that the appellant company has failed to prove that it was a business transaction thus rejected. However the second contention of the appellant that it has advanced loans to M/s. B.R. Machine Tools Private Limited which was received back and cannot be treated as loan received from the subsidiary company is correct as per the copy of account submitted. Moreover, the facts of the case are squarely covered by the decision of the Hon'ble High Court in the case of CIT vs. P.K. Badiani (Supra). Therefore following the decision of the Hon'ble Bombay High Court in the case of P.K. Badiani, the A.O. is directed to restrict the disallowance made u/s. 2(22)(e) to Rs. 6.34 crores in place of Rs. 16.67 crores made in the assessment order. Thus the addition of Rs. 6.34 crores is confirmed and balance is deleted. Ground of appeal is partly allowed.

5. The Department is in appeal against deletion of addition of Rs.16,67,00,000/- and the assessee is in appeal against confirming the addition of Rs.6.34 crores.

6. In respect of assessee's appeal, the Ld. A.R. has made submission on the ground that purpose of the insertion of sub-clause (e) of section 2(22) of the Act is to bring within the tax net accumulated profits which are distributed by closely held companies to his shareholders in the form of loans to avoid payment of dividend distribution tax under section 115-O of the Act. The purpose being that persons who manage such closely held companies should not arrange their affairs in a manner that they assist the shareholders in avoiding payment of tax by having these companies pay or distribute money in the form of advance or loan. The loan or advance given to the shareholders or to a concern, under normal circumstances would not qualify as dividend. If

such loan or advance is given to such shareholder as a consequence of any further consideration which is beneficial to the company received from such a shareholder, in such case, such advance or loan cannot be said to be a deemed dividend within the meaning of the Act. The Ld. A.R. submitted that in the present case the assessee company has given money in advance by sums of Rs.5 crores, Rs.4 crores and Rs.40 lakhs totaling to Rs.9.40 crores and as against the same, the company received a sum of Rs.13.87 crores. If the net of this is taken, the balance would be Rs.4.47 crores and further repaid the loan at Rs.5.40 crores and received back Rs.2.80 crores, therefore net credit balance is Rs.1.87 crores. If any advance or loan made to a shareholder or the said concern by a company in the ordinary course of its business, where the lending of money is a substantial part of the business of the company, then section 2(22)(e)(ii) is not applicable. But in this instant case the assessee company is not in a business of money lending. The judgment of Hon'ble Punjab & Haryana High Court, decision of jurisdictional High Court and the decision of Hon'ble Gujarat High Court wherein a consistent view has been taken that if any company which is not financial company but if the advance or loan is given to subsidiary company and if it is an ordinary course of business transaction then whether the section 2(22)(e) applicable is to be seen from the facts of each and every case. The Ld. A.R. has drawn our attention to the paper book wherein the assessee has filed the chart showing the ledger of M/s. B.R. Machine Tools Pvt. Ltd. wherein it shows that the assessee company has given loan to M/s. B.R. Machine Tools Pvt. Ltd. which is a subsidiary company. The Ld. A.R. submitted that from 01.04.09 to 31.03.10 the amount was given to M/s. B.R. Machine Tools Pvt. Ltd. and he submitted that in some of the dates there were amounts of credit balance and debit balance also. In respect of balance between 01.04.10 to 31.03.11, on various dates viz. 01.05.10, 2.09.10 and 20.05.10 there was a credit balance. Thereafter, there was a debit balance. The assessment year is 2010-11, therefore if you verify the transactions between these two companies the assessee company has given

loan but the M/s. B.R. Machine Tools Pvt. Ltd. had also given advance to the assessee company, therefore it has to be presumed that this transaction shows that there was a business transaction between those two companies and if there is a business transaction between the two companies the section 2(22)(e) is not applicable. If the assessee company is not a financial company, then company will be exempt from applicability of section 2(22)(e) of the Act. The Ld. A.R. has also drawn our attention to the judgment of Hon'ble Gujarat High Court wherein it has been held that if there is a movement of funds of both the companies on need basis and the transactions are in the form of current accommodation adjustment entries, then the transaction cannot be termed as loans and advances and section 2(22)(e) is not applicable to the facts of the case. In support of the claim, the Ld. A.R. also relied upon the decision of Mumbai Bench, ITAT – 183 TTJ 459.

7. On the other hand, the Ld. D.R. relied upon the decision of Hon'ble Bombay High Court in the case of Star Chemicals (P.) Ltd. vs. CIT 72 Taxman 279 and submitted that section 2(22)(e) would apply to a company which had taken loan from its subsidiary and for the purposes of section 2(22)(e) the loan received during the accounting year has to be taken into account. The Ld. D.R. submitted that the Hon'ble Punjab & Haryana High Court's judgment which was given into different context and Hon'ble Punjab & Haryana High Court's judgment is not a jurisdictional one and it is distinguishable on the fact. Similarly, he has also submitted the same argument in respect of Hon'ble Gujarat High Court. In respect of departmental appeal, the Ld. D.R. submitted that he relies upon the decision of AO.

For the departmental appeal, the Ld. D.R. submitted that the Ld. CIT(A) is justified in allowing the claim by relying upon the decision of Hon'ble jurisdictional Bombay High Court in the case of CIT vs. P.K. Badiani.

8. We have heard the rival contentions of both the parties. Looking to the facts and circumstances of the case, for understanding the issue, we reproduce section 2(22)(e) as under:

“2(22)(e) any payment by a company, not being a company in which the public are substantially interested, of any sum (whether as representing a part of the assets of the company or otherwise) made after the 31st day of May, 1987, by way of advance or loan to a shareholder, being a person who is the beneficial owner of shares (not being shares entitled to a fixed rate of dividend whether with or without a right to participate in profits) holding not less than ten per cent of the voting power, or to any concern in which such shareholder is a member or a partner and in which he has a substantial interest (hereafter in this clause referred to as the said concern) or any payment by any such company on behalf, or for the individual benefit, of any such shareholder, to the extent to which the company in either case possesses accumulated profits;

but "dividend" does not include—

- (i) a distribution made in accordance with sub-clause (c) or sub-clause (d) in respect of any share issued for full cash consideration, where the holder of the share is not entitled in the event of liquidation to participate in the surplus assets ;
- (ia) a distribution made in accordance with sub-clause (c) or sub-clause (d) in so far as such distribution is attributable to the capitalised profits of the company representing bonus shares allotted to its equity shareholders after the 31st day of March, 1964, and before the 1st day of April, 1965 ;
- (ii) any advance or loan made to a shareholder or the said concern by a company in the ordinary course of its business, where the lending of money is a substantial part of the business of the company ;
- (iii) any dividend paid by a company which is set off by the company against the whole or any part of any sum previously paid by it and treated as a dividend within the meaning of sub-clause (e), to the extent to which it is so set off;
- (iv) any payment made by a company on purchase of its own shares from a shareholder in accordance with the provisions of section 77A13 of the Companies Act, 1956 (1 of 1956);
- (v) any distribution of shares pursuant to a demerger by the resulting company to the shareholders of the demerged company (whether or not there is a reduction of capital in the demerged company).

Explanation 1.—The expression "accumulated profits", wherever it occurs in this clause, shall not include capital gains arising before the 1st day of April, 1946, or after the 31st day of March, 1948, and before the 1st day of April, 1956.

Explanation 2.—The expression "accumulated profits" in sub-clauses (a), (b), (d) and (e), shall include all profits of the company up to the date of distribution or payment referred to in those sub-clauses, and in sub-clause (c) shall include all profits of the company up to the date of liquidation, but shall not, where the liquidation is consequent on the compulsory acquisition

of its undertaking by the Government or a corporation owned or controlled by the Government under any law for the time being in force, include any profits of the company prior to three successive previous years immediately preceding the previous year in which such acquisition took place.

Explanation 3.—For the purposes of this clause,—

- (a) "concern" means a Hindu undivided family, or a firm or an association of persons or a body of individuals or a company ;
- (b) a person shall be deemed to have a substantial interest in a concern, other than a company, if he is, at any time during the previous year, beneficially entitled to not less than twenty per cent of the income of such concern ;

9. In the above section it is stated that if the assessee company is a financial company and if there is a loan and advance by the financial company they are exempted from rigors of applicability of section 2(22)(e) of the Act. The assessee has submitted the chart before us which is reproduced by the Ld. CIT(A) and we reproduce the same for understanding the case which reads as under:

<u>COPY OF A/C</u>							
<u>BR MACHINE TOOLS A/C</u>							
Date	Particulars	Debit	Credit	Balance in Rs.		Peak Credit Balance	
01-04-2009	Opening Balance	-	-	2,45,65,009	Cr	-	-
30-10-2009	Paid	5,00,00,000	-	5,00,00,000	Dr	-	-
25-11-2009	Paid	4,00,00,000	-	9,00,00,000	Dr	-	-
02-12-2009	Paid towards bill	40,00,000	-	9,40,00,000	Dr	-	-
04-12-2009	Recd	-	13,87,00,000	4,47,00,000	Cr	4,47,00,000	Cr
17-02-2010	Paid	5,40,00,000	-	93,00,000	Dr	-	-
31-03-	Recd	-	2,80,00,000	1,87,00,000	Cr	-	-

2010							
31-03-2010	Closing Balance	-	-	1,87,00,000	Cr	-	-
		<b>14,80,00,000</b>	<b>16,67,00,000</b>				

10. The assessee has produced the copy of the account of M/s. B.R. Machine Tools Pvt. Ltd. On 01.04.09 the opening balance was Rs.2,45,65,009/-. Thereafter, the assessee has paid Rs.5 crores, Rs.4 crores & Rs.40 lakhs on 30.10.09, 25.11.09 & 02.12.09 respectively and on 02.12.09 there was a debit balance of Rs.9,40,00,000/- and on 04.12.09 there was credit balance of Rs.4,47,00,000/- and again on 17.02.10 there was debit balance of Rs.93,00,000/- and on 31.03.10 there was credit balance of Rs.1,87,00,000/- only in the account of M/s. B.R. Machine Tools Pvt. Ltd. It is not in dispute that assessee has taken loan/advance and having more than 10% voting powers in M/s. B.R. Machine Tools Pvt. Ltd. assessee has accumulated profit during the year under consideration and moreover M/s. B.R. Machine Tools Pvt. Ltd. is not a company in which public are substantially interested.

11. We find that the Ld. CIT(A) has held that the assessee had advanced loans to M/s. B.R. Machine Tools Pvt. Ltd. which were received back and cannot be treated as loan received from subsidiary company is correct as per the copy of the account submitted. The Ld. CIT(A) has held that conditions laid down in section 2(22)(e) are applicable to the present case because assessee has taken loan/advance and having more than 10% voting powers in M/s. B.R. Machine Tools Pvt. Ltd. assessee has accumulated profit during the year under consideration and moreover M/s. B.R. Machine Tools Pvt. Ltd. is not dealing in the business of money lending and also is not a company in which public are substantially interested. Thus all the conditions are fulfilled. We find that the Ld. CIT(A) has accepted the contention of the assessee that it had advanced the loan of Rs.9.40 crores to M/s. B.R. Machine Tools Pvt. Ltd. and net balance was Rs.4.47 crores and repaid loan of Rs.5.40 crores and

received back Rs.2.80 crores, hence, section 2(22)(e) will apply only for Rs.6.34 crores. The Ld. CIT(A) has confirmed the addition of Rs.6.34 crores under section 2(22)(e) by following the judgment of Hon'ble Bombay High Court in the case of CIT vs. P.K. Badiani. Therefore, our interference is not required.

12. In respect of assessee's appeal, the Ld. A.R. has submitted the chart before us for clarifying the transaction between assessee and M/s. B.R. Machine Tools Pvt. Ltd. The assessee has submitted the ledger of M/s. B.R. Machine Tools Pvt. Ltd. which reads as under:

Date	Particulars	Amount Debit (Rs.)	Amount Credit (Rs.)	Closing Balance	Debit/Credit
01/04/2009	Balance B/F:		245,65,009	(245,65,009)	Credit
30/10/2009	BR Machine Tools Pvt. Ltd.	500,00,000		254,34,991	Debit
25/11/2009	BR Machine Tools Pvt. Ltd.	400,00,000		654,34,991	Debit
02/12/2009	BR Machine Tools Pvt. Ltd.	40,00,000		694,34,991	Debit
04/12/2009	BR Machine Tools Pvt. Ltd.		1387,00,000	(692,65,009)	Credit
17/02/2010	BR Machine Tools Pvt. Ltd.	540,00,000		(152,65,009)	Credit
31/03/2010	BR Machine Tools Pvt. Ltd.		280,00,000	(432,65,009)	Credit
31/03/2010	BALANCE C/F:	432,65,009			
	TOTAL:	1912,65,009	1912,65,009		
01/04/2010	BALANCE B/F:		432,65,009	(432,65,009)	Credit
15/05/2010	BR Machine Tools Pvt. Ltd.	1,00,000		(431,65,009)	Credit
02/09/2010	BR Machine Tools Pvt. Ltd.	1,00,000		(430,65,009)	Credit

25/09/2010	BR Machine Tools Pvt. Ltd.	5600,00,000		5169,34,991	Debit
25/09/2010	BR Machine Tools Pvt. Ltd.	975,00,000		6144,34,991	Debit
15/02/2011	BR Machine Tools Pvt. Ltd.	53,00,000		6197,34,991	Debit
29/03/2011	BR Machine Tools Pvt. Ltd.	17,00,000		6214,34,991	Debit
31/03/2011	BR Machine Tools Pvt. Ltd.	1058,00,000		7272,34,991	Debit
31/03/2011	BALANCE C/F: TOTAL	7705,00,000		7705,00,000	
01/04/11	BALANCE B/F:	7272,34,991		7272,34,991	Debit
07-05-11	B R Machine Tools Pvt. Ltd.	300,00,000		7572,34,991	Debit
18/05/2011	BR Machine Tools Pvt. Ltd.		225,00,000	7347,34,991	Debit
21/05/2011	BR Machine Tools Pvt. Ltd.		30,00,000	7317,34,991	Debit
23/05/2011	BR Machine Tools Pvt. Ltd.		34,00,000	7283,34,991	Debit
24/05/2011	BR Machine Tools Pvt. Ltd.		11,00,000	7272,34,991	Debit
24/06/2011	BR Machine Tools Pvt. Ltd.		100,00,000	7172,34,991	Debit
29/06/2011	BR Machine Tools Pvt. Ltd.	256,00,000		7428,34,991	Debit
29/06/2011	BR Machine Tools Pvt. Ltd.	1350,00,000		8778,34,991	Debit
26/08/2011	BR Machine Tools Pvt. Ltd.	1972,50,000		10750,84,991	Debit
28/09/2011	BR Machine Tools Pvt.	2958,75,000		13709,59,991	Debit

	Ltd.				
29/09/2011	BR Machine Tools Pvt. Ltd.	4,37,500		13713,97,491	Debit
31/03/2012	BALANCE C/F		13713,97,491		
	TOTAL	14113,97,491	14113,97,491		
01/04/2012	BALANCE B/F	13713,97,491		13713,97,491	Debit
31/05/2012	BR Machine Tools Pvt. Ltd.	200,00,000		13913,97,491	Debit
18/06/2012	BR Machine Tools Pvt. Ltd.		50,00,000	13863,97,491	Debit
30/06/2012	BR Machine Tools Pvt. Ltd.	100,00,000		13963,97,491	Debit
31/07/2012	BR Machine Tools Pvt. Ltd.	58,00,000		14021,97,491	Debit
05/09/2012	BR Machine Tools Pvt. Ltd.		68,00,000	13953,97,491	Debit
05/09/2012	BR Machine Tools Pvt. Ltd.	10,00,000		13963,97,491	Debit
05/09/2012	BR Machine Tools Pvt. Ltd.	10,00,000		13973,97,491	Debit
05/09/2012	BR Machine Tools Pvt. Ltd.	10,00,000		13983,97,491	Debit
05/09/2012	BR Machine Tools Pvt. Ltd.	25,00,000		14008,97,491	Debit
06/09/2012	BR Machine Tools Pvt. Ltd.		135,00,000	13873,97,491	Debit
06/09/2012	BR Machine Tools Pvt. Ltd.	300		13873,97,791	Debit
28/09/2012	BR Machine Tools Pvt. Ltd.	6,00,100		13879,97,891	Debit
28/09/2012	BR Machine Tools Pvt. Ltd.	52,00,100		13931,97,891	Debit
30/09/2012	BR Machine Tools Pvt.	175,00,000		14106,97,891	Debit

	Ltd.				
30/09/2012	BR Machine Tools Pvt. Ltd.	175,00,000		14281,97,891	Debit
04/12/2012	BR Machine Tools Pvt. Ltd.		12,00,000	14269,97,891	Debit
02/02/2013	BR Machine Tools Pvt. Ltd.		45,00,000	14224,97,891	Debit
31/03/2013	BALANCE C/F:		14224,97,891		
	TOTAL	14534,97,891	14534,97,891		

From the above chart it is clear that from 01.04.2009 to 31.03.2010 there was a credit balance of Rs.432,65,009/-. Similarly from 01.04.2010 to 31.03.2011 there was debit balance. Similarly from 01.04.2011 to 31.03.2012 there was also a debit balance. From the above chart and from the entries of the ledger account of M/s. B.R. Machine Tools Pvt. Ltd., we find that assessee had running account with the company and it had been advancing money to the company as and when required for the purpose of business of the company. Moreover, we find that there was movement of funds on both ways on need basis. The transactions in nature of loans and advances are usually very few in number whereas in the present case such transactions are in form of current accommodation adjustment entries. Therefore, we hold that the transactions were not in nature of loans and advances. We also find from the chart placed on the record that for the two years there are larger number of debit and credit transactions meaning thereby assessee has given and received funds as and when required to and from his sister concern. It is not an account whereby loans and advances have been given to associate concern, but this account is in nature of **current accommodation account wherein** there is a movement of funds both ways on need basis. We have gone through the decision of Hon'ble Punjab & Haryana High Court in the case of CIT vs. Suraj Dev Dada 367 ITR 78 (P & H) wherein it is held that section 2(22)(e) is a deeming provision which assumes existence of certain facts if the conditions specified in a

particular section are fulfilled. These provisions are to be strictly construed. The copy of the account of the assessee in the books of the company clearly shows that the assessee has running current account with the company and in fact the assessee has been advancing money to company as and when required for the purpose of business of the company. Therefore, the judgment of Hon'ble Punjab & Haryana High Court is squarely applicable to the facts of the assessee's case. Moreover, Hon'ble Gujarat High Court in tax appeal Nos.958 & 959 of 2015 has held as under:

"It can thus be seen that the Commissioner as a matter of fact found that the payments were not in the nature of current adjustment. There was movement of fund both ways on need basis. The transactions in the nature of loans and advances are usually very few in number whereas in the present case, such transactions are in the form of current accommodation adjustment entries. The Commissioner therefore, held that the transactions were not in the nature of loans and advances. The Revenue carried the matter in appeal. The Tribunal concurred with the view of the CIT(Appeals) and held that the amounts were not in the nature of Inter Corporate Deposits and were therefore, not to be treated as loans or advances as contemplated in section 2(22)(e) of the Act."

12. Respectfully following the decisions of two High Courts, we are of the view that assessee is able to prove that the transactions between assessee and his subsidiary company M/s. B.R. Machine Tools Pvt. Ltd. are not a loan or advance but are current accommodation adjustment entries. During the course of hearing, Ld. D.R. did not bring any contrary decision. Therefore, respectfully following the decisions of Hon'ble Punjab & Haryana High Court and Hon'ble Gujarat High Court we delete the addition of Rs.6.34 crores.

13. In the result, assessee's appeal is allowed and departmental appeal is dismissed.

**Order pronounced in the open court on 28.04.2017.**

**Sd/-**  
**(Manoj Kumar Aggarwal)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(D.T. Garasia)**  
**JUDICIAL MEMBER**

Mumbai, Dated: 28.04.2017.

\* Kishore, Sr. P.S.

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai  
The CIT (A) Concerned, Mumbai  
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.