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IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "G", NEW DELHI
BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

| | I.T.A. No. 6462/DEL/2014 | |
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| | A.Y. : 2010-11 | |
| ACIT, CENTRAL CIRCLE-3, NEW DELHI ROOM NO. 332, ARA CENTRE, JHANDEWALAN EXTENSION, NEW DELHI | VS. | SEEMA DEVI BANSAL, SHOP NO. 2, SARBATI BUILDING, JAWALA HERI MARKET, PASCHIM VIHAR, NEW DELHI (PAN: AAFPB3425R) |
| **(APPELLANT)** | | **(RESPONDENT)** |

Department by : Sh. K. Tewari, Sr. DR
Assessee by : Sh. Ved Jain, Adv.

**ORDER**

**PER H.S. SIDHU : JM**

Revenue has filed this appeal against the order dated 01.9.2014 for A.Y. 2010-11 of the Ld. CIT(A)-I, New Delhi relevant to assessment year 2010-11.

2. The Revenue has raised the following grounds:-

*"(i) The order of Ld. CIT(A) is not correct in law and facts.*

*(ii) On the facts and circumstances of the case the Ld. CIT(A) has erred in deleting the addition of Rs. 1,03,00,000/- made by AO on account of deemed dividend u/s. 2(22)(e) of the I.T. Act, 1961.*

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*(iii) The appellant craves leave to add, amend any / all the grounds of appeal before or during the course of hearing of the appeal.*

3. The brief facts of the case are that return declaring income of Rs. 7,19,410/- was filed on 30.7.2010. The return was processed u/s. 143(1) of the Income Tax Act, 1961 (hereinafter referred as the Act). The original assessment in this case was completed u/s. 143(3) of the Act on 14.11.2012 at returned income at Rs. 7,19,410/-. Notice u/s. 148 of the Act was issued on 24.1.2013, after recording reasons and objections were filed by the assessee were also disposed of vide order dated 17.2.2013. Notice u/s. 142(1) of the Act alongwith questionnaire was issued on 20.12.2013. In response to the same, the A.R. of the assessee attended the proceedings from time to time and filed the necessary details/ clarifications. The AO reassessed the income of the assessee Rs.1,10,19,412/- after making addition of Rs. 1,03,00,000/- as deemed dividend u/s. 2(22)(e) of the Act vide his order dated 11.3.2014 passed u/s. 148 of the Act. Against the reassessment order dated 11.3.2014, the assessee appealed before the Ld. CIT(A), who vide his impugned order dated 1.9.2014 deleted the addition u/s. 2(22)(e) of the Act on the ground that the said amount was advanced for the business purposes and hence a commercial transaction not covered within the meaning of deemed dividend u/s. 2(22)(e) of the Act.

4. Aggrieved with the ld. CIT(A)'s order, the Revenue is in appeal and assessee has filed Cross Objection.

5. Ld. DR relied upon the order of the AO and reiterated the contentions raised in the grounds of appeal. In support of his contention, he filed the Written Submission, which read as under:-

*"Sub: Written Submission in the above case- reg.*

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*In the above case, it is humbly submitted that the following decisions may kindly be considered with regard to deemed dividend u/s 2(22)(e) of I.T. Act:*

*1- Miss P. Sarada Vs CIT T96 Taxman 11. 229 ITR 444. 144 CTR 2091 (where Hon'ble Supreme Court held that advances made by company to assessee would have to be treated as deemed dividends paid on dates when withdrawals were allowed to be made and subsequent adjustment of account made on very last day of accounting year would not alter position that assessee received notional dividends on various dates.*

*<u>CIT Vs Miss P. Sarada T21 Taxman 941</u>*

*where Hon'ble Madras High Court held that Amount of impugned excess withdrawals, even though adjusted against credit balance before close of year, was assessable as deemed dividend in assessee's hands in terms of section 2(22)(e)*

*2. Gopal And Sons (HUF) Vs CIT [2017] 77 taxmann.com 71 (SC)/2017 245 Taxman 48 (SC)[2017] 391 ITR 1 (SC)/[2017] 291 CTR 321 (SC)*

*where Hon'ble Supreme Court held that even if HUF is not a registered shareholder in lending company, advances/loans received by HUF is taxable as deemed dividend under section 2(22)(e) if Karta-shareholder has substantial interest in HUF.*

*3. CIT Vs Mukundrav K. Shah r20071 160 Taxman 276 (SC)/r20071 290 ITR 433 (SC)/r20071 209 CTR 97 (SC)*

*A search conducted at assessee's premises led to seizure of a diary, which contained purchasing of nine per cent RBI relief bonds by assessee from funds received from two firms 'B' and*

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*'C' in which he was a partner. Tribunal after examination of cash flow statement held that two firms were used as conduits by assessee; that 'A' had made payments to 'B' and 'C' for benefit of assessee, which enabled him to buy nine per cent RBI Relief Bonds and upheld finding of Assessing Officer. Upheld addition u/s 2(22(e) of I.T. Act.*

*4. Puneet Bhaqat v. ITO (157 ITD 353)*

*Where Hon'ble ITAT Delhi held that deemed dividend-Loans and advances to share holders- Loans received by the company would be treated as deemed dividend in hands of P and S in proportion to their shareholdings.*

*5. Addl CIT Vs Shri Chandrakant V Gosalia [2015]-TIQL-1187-lTAT-MUM*

*where Hon'ble ITAT Delhi held that mere repayment of money borrowed by the shareholder will not escape him from the provisions of section 2(22)(e), and thus, it can be treated as deemed dividend.*

*6. Sunil Kapoor Vs CIT f2015l 63 taxmann.com 97 (Madras)/[2015] 235 Taxman 279 (Madras)*

*where Hon'ble Madras High Court held that where assessee, holding 60 per cent shares of a company, took personal loan from accumulated surplus of said company, said amount would be treated as deemed dividend under section 2(22)(e), after reducing therefrom amount repaid by assessee during year*

*7. Shashi Pal Aqarwal Vs CIT T20151 54 taxmann.com 289 (Allahabad)/[2015] 229 Taxman 307 (Allahabad)/[2015] 370 ITR 720 (Allahabad)*

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*where Hon'ble Allahabad High Court held that where lending of money was not part of business of lending companies, loan/advance given to assessee-shareholder would be treated as deemed dividend under section 2(22)(e)*

*8. Star Chemicals (P.) Ltd Vs CIT T72 Taxman 279. 203 ITR 11, 114 CTR 1851*

*where Hon'ble Bombay High Court held that provisions of section 2(22)(e) would apply to a company which had taken loan from its subsidiary.*

*9. CIT v Sunil Chopra f20111 12 taxmann.com 496 (Delhi)/f2011l 201 Taxman 316 (Delhi)/r20111 242 CTR 498 (Delhi)*

*Tribunal deleted addition accepting assessee's contention that said advances were received against sale of property under terms of agreement dated 18-9-2003 and, therefore, money was taken by assessee in line of his business of real estate. Hon'ble Delhi High Court held that there was great perversity and infirmity in findings and observations of Tribunal and, therefore, impugned order was to be set aside.*

*10. M. Amareswara Rao v. Dv.CIT [157 ITD 6571 136 DTR [153/ 178 TTJ 700]*

*where Hon'ble ITAT Vishakhapatnam held that deemed dividend-Loan-beneficial ownership of more than 10 per cent shares in a closely held company- Assessable as deemed dividend."*

6. On the contrary, Ld. A.R. of the assessee relied upon the order of the Ld. CIT(A) and filed the written synopsis, which read as under:-

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*"1. This is an appeal filed by the department against the order dated 01.09.2014 passed by the Ld. CIT(A), whereby the Ld. CIT(A) has deleted the addition of Rs.1,03,00,000/- made by the AO on account of deemed dividend u/s 2(22)(e) of the Income Tax Act, 1961.*

*2. Assessee filed her return of income for the year under consideration on 30.07.2010, declaring an income of Rs.7,19,410/-. The said return was assessed u/s 143(3) of the Act and was completed on 14.11.2012*

*3. Thereafter, after recording reasons, the case of the assessee was reopened and notice u/s 148 of the Act was issued to the assessee on 24.01.2013. Objection filed by the assessee was also disposed by a written order dated 17.02.2013. The AO reassessed the income of the assessee at Rs 1,10,19,412/-,after making an addition of Rs.1,03,00,000/- u/s 2(22)(e) of the Act. The AO has discussed this issue at Page 2 onwards of the assessment order.*

*4. Pursuant to the order passed by the Ld. AO, the assessee went into appeal before the Commissioner of Income Tax (Appeals)-I. The CIT(A) allowed the appeal of the assessee vide order dated 01-09-2014 and deleted the addition made by the AO u/s 2(22)(e) of the Act. He has deleted the addition on the grounds that the said amount was advanced for the business purposes and hence a commercial transaction not covered within the meaning of deemed dividend under section 2(22)(e) of the Act.*

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*5. It was explained to the AO that the companies have received the money for its business purposes and hence a commercial transaction. The AO has quoted the explanation at Pg 10 para (g) and Pg 12 para (b) where records as under:*

*Page 10*

*"(g) To Sum up M/s Super Plastic Coats Limited had advanced (advance against Business transaction and Material amounting to Rs.*

*1.0 Crores) to Northern Strips Limited and M/s Northern Strips Limited had advanced against business transactions amounting to Rs.*

*3.0 Lacs to Allied Poles India Limited and not the assessee whose case is supposed to be reassessed under section 147 read with Section 148 of the Act. It may be placed on record that Section 2(22)(e) of the Act provided the payment to the assessee who is registered Share holder not in the case of assessee who had not received the payment."*

*Page 12*

*(b) It may be placed on record that M/s Super Pastic Coats Private Limited and M/s Northern Strips Limited are engaged in similar trade and activities. It had already been stated during assessment proceedings of both the Companies (the assessment proceedings in both the company case have been completed under section 143(3) of the Act and under your charge) that these amount was given as advance against material. The same fact was also confirmed and certified by the*

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*Statutory Auditors in their Report that the company had given advance as against material not Loan to companies in which directors are interested. The Company M/s Northern Strips Limited is providing Goods transport services to M/s Super Plastic Coats Private Limited. "*

*The above explanation of the assessee has not been controverted by the AO as in evident from the assessment order where AO after quoting submission of the assessee has just referred to percentage of holding and various case laws from Pg 21 to 41.*

*Thus the fact that amount was for a commercial transaction has not been rebutted.*

*6. In this regard, the CBDT has also recently issued a Circular No. 19/2017 dated 12.06.2017, whereby it has been clarified by the CBDT that the advances which are in the nature of commercial transactions would not fall within the ambit of the word 'advance' u/s 2(22)(e) of the Act. The relevant extract of the Circular is reproduced hereunder for the sake of ready reference:*

*"3. In view of the above it is, a settled position that trade advances, which are in the nature of commercial transactions would not fall within the ambit of the word 'advance' in section 2(22)( e) of the Act. Accordingly, henceforth, appeals may not be filed on this ground by Officers of the Department and those already filed, in Courts/Tribunals may be withdrawn/not pressed upon."*

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*7. Therefore, in view of the facts of assessee's case, the Circular issued recently by the CBDT in this regard, the addition made by the AO is liable to be deleted.*

*8. Further, reliance is placed on the judgment of Hon'ble Jurisdictional High Court in the case of CIT v. Raj Kumar [2009] 318 ITR 462, wherebythe Hon'ble Court has held as under:*

*"If the history and purpose with which the said provision was brought on to the statute book is kept in mind, it is clear that sub-clause (e) of section 2(22) which is pari materia with clause (e) of section 2(6A) of the Indian Income-tax Act, 1922, plainly seeks to bring within the tax net accumulated profits which are distributed by closely held companies to its shareholders in the form of loans. 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 the payment of taxes by having these companies pay or distribute, what would legitimately be dividend in the hands of the shareholders, money in the form of an advance or loan. [Para 10.4]. Keeping the aforesaid rule in mind, the word 'advance', which appears in the company of the word 'loan', can only mean such advance which carries with it an obligation of repayment. Trade advance, which is in the nature of money transacted to give effect to a commercial transaction, would not fall within the ambit of the provision of section 2(22)(e). This interpretation would alloy the rule of purposive construction with noscitur a sociis.[Para 10.9]"*

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*9. Further reliance in this regard is placed on the following judgments:*

- *Delhi High Court in the case of CIT v. Sunil Sethi in ITA No. 569/2009 dated 03.02.2010*

*After hearing the counsel for the appellant / revenue, we are unable to agree with her submission that the Tribunal had erred in deleting the said addition. This is so because we are of the view that the finding was one which was purely of fact. The Tribunal observed that the only basis on which the provisions of Section 2(22)(e) were contested by the assessee was that the amount of Rs 30 lakhs, which had been given by the company to the assessee, who was a director in the said company, was neither a loan or an advance and or was it for individual benefit of the said assessee. The Tribunal has accepted the factual position that the said sum of Rs 30 lakhs was given to the assessee for the purposes of making advance in respect of certain land dealings which were proposed to be entered into by the company through the assessee. The Tribunal noted that no material had been brought on record to suggest that what was explained by the assessee was incorrect. The Tribunal also noted the fact that the said amount of Rs 30 lakhs had been given to the assessee on 27.06.2003 and as the deal did not materialize, the same was returned by the assessee shortly thereafter, i.e., on 04.07.2003. In view of the clear finding returned by the Tribunal that since the amount of Rs 30 lakhs which was given to the assessee was in the nature of imperest payment, the same could not be treated as deemed*

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*dividend under Section 2(22)(e) of the said Act, we see no reason to interfere with the impugned order.*

- *Delhi High Court in the case of CIT v. Creative Dyeing & Printing Pvt. Ltd. [2009] 318 ITR 476*

  *Deemed Dividend - nature of advance payment for a commercial purpose to the assessee company by its sister concern - held that - , the word 'advance' has to be read in conjunction with the word 'loan' - Usually attributes of a loan are that it involves positive act of lending coupled with acceptance by the other side of the money as loan: it generally carries an interest and there is an obligation of repayment. On the other hand, in its widest meaning the term 'advance' may or may not include lending. The word 'advance' if not found in the company of or in conjunction with a word 'loan' may or may not include the obligation of repayment - that the amounts advanced for business transaction between the parties was not such to fall within the definition of deemed dividend under Section 2(22)(e).*

- *Delhi High Court in the case of CIT v. Arvind Kumar Jain in ITA No. 589 of 2011 dated 30.09.2011*

  *Deemed Dividend - Trading transaction - Treatment of unsecured loan given to shareholder of company (holding 50% of shares) as deemed Dividend - Held that:- the amount was not in the nature of 'advance' or 'loan' and in fact there was a business transaction between the assessee and company and the amount reflected running business relationship and there was a running account maintained by the assessee showing those transactions as in the books of accounts, though*

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*the amount was shown as "unsecured loan". - It is trite law that mere nomenclature of entry in the books of accounts is not determinative of the true nature of transaction. See Commissioner of Income Tax Vs. India Discount Co. Ltd. (1969 - TMI - 5158 - SUPREME Court) - the payment made were the result of trading transaction between the parties and the amount was not given by way of loan or advance. - Decided against the revenue.*

- *ITAT Agra Bench in the case of Krishan Murari Lai Agarwal v. DCIT [2013] 59 SOT 136*

  *Deemed dividend u/s 2(22)(e) - Disallowance u/s 56 rws 2(22)(e) - Commercial transaction versus loan or advances - Held that:- sub-clause (e) of Section 2(22) lays down that dividend includes any payment by a closely held company of any sum by way of advance or loan to a shareholder who comes in the category described in that sub-clause or to a concern in which such shareholder has a substantial interest. Dividend under the sub-clause also includes any payment by such company on behalf or for the individual benefit, of any such shareholder. Deemed dividend under this sub¬clause would be to the extent to the company in either case possesses accumulated profits. The shareholder referred to here should be beneficial owner of shares holding not less than 10% of the voting power but those shares should not be shares entitled to a fixed rate of dividend with or without a right to participate in profits For the purpose of Income-tax, one is to examine the nature of transaction in accordance with law. In the light of the facts, the same is to be decided*

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*in accordance with law. In the case under consideration as stated above, the assessee has demonstrated that the amount was received for the purpose of commercial transaction. As regards, the second objection, which is agreement and MOU as afterthought, in this regard, we are of the view that these documents are already on record and the Revenue did not point out any contrary material to these documents. Therefore, merely by stating that this is after thought, such argument of the revenue without supporting material/evidence is not sustainable, therefore, the same is rejected - amount of Rs.1,00,00,000/- received to the assessee is on account of commercial transaction, therefore, the Section 2(22) (e) is not applicable - Decided in favour of assessee.*

*10. Without prejudice to the above, the CIT(A) has given a finding that the amounts returned back within a days' time & and no benefit as such accrued to the payee. In such circumstances also no addition of deemed dividend u/s 2(22)(e) can be made even in the hands of the recipient.*

*11. Therefore, in view of the facts of assessee's case, the Circular issued recently by the CBDT in this regard and the various judicial pronouncements, the addition made by the AO which was deleted by the Ld. CIT(A) against which the department is in appeal is liable to be dismissed."*

7. We have heard both the parties and perused the records, especially the impugned order passed by the revenue authorities as well as the written submissions/synopsis and the case laws relied upon from both

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sides. The brief facts of the case is that M/s Northern Strips Pvt. Ltd. received Rs. 1 Crore from M/s Super Plastic Coats Ltd. and M/s Northern Strips Pvt. Ltd. had advance an amount of Rs. 3 lacs to M/s Allied Poles India Ltd. during the assessment year. The Assessee is holding 47.86% of shares in Northern Strips Pvt. Ltd. and further 29.79% shares in M/s Super Plastic Coats Ltd.. M/s Super Plastic Coats Ltd. is holding 99.40% shares of M/s Allied Poles India Ltd. and Assessee holds 0.05% shares of M/s Allied Poles India Ltd. Therefore, the AO has held that by virtue of holding in M/s Super Plastic Coats Ltd., the assessee holds substantial interest in Allied Poles India Ltd. and therefore, the provisions of section 2(22)(e) of the Act are applicable in the hands of the assessee of the loan of Rs. 1 Crore received by M/s Northern Strips Pvt. Ltd. and Rs. 3 lacs by M/s Allied Poles India Ltd. Looking at the brief nature of transaction, it is important to note that the amount of Rs. 1 Crore was received by M/s Northern Strips Pvt. Ltd. from M/s Super Plastic Coats Ltd. in its current account with Karnataka Bank Ltd. on 19.10.2009 and on the same date M/s Northern Strips Pvt. Ltd. paid Rs. 1 Crore to M/s Super Plastic Coats Ltd. This fact is evident by the amount credited in the bank account of M/s Super Plastic Coats Ltd. on 20.10.2009. Therefore, it is apparent to note that on the same date there is a transaction of Rs. 1 Crore received from M/s Northern Strips Pvt. Ltd. and on the same date M/s Northern Strips Pvt. Ltd. paid Rs. 1 Crore to M/s Super Plastic Coats Ltd. Therefore, the apparent fact shows that during the day itself i.e. on 19.10.2009 there is an exchange of cheques between M/s Super Plastic Coats Ltd. as

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well as M/s Northern Strips Pvt. Ltd. These cheques have infact been cleared in the bank account of respective parties. This fact has not been disputed by the Revenue. Therefore, it is not clear that whether M/s Northern Strips Pvt. Ltd. paid the sum first to M/s Super Plastic Coats Ltd. or M/s Super Plastic Coats Ltd. paid the above sum first to M/s Northern Strips Pvt. Ltd. In the books of M/s Super Plastic Coats Ltd. there is a transaction of debit and credit and similarly there is a transaction of debit and credit on the same date in the case of M/s Northern Strips Pvt. Ltd. Therefore, in the present case merely citing the provisions of setion 2(22)(e) of the Act, the AO has attempted to tax the income in hands of the assessee as deemed dividend. Similarly, M/s Allied Poles India Ltd. received Rs. 3 lacs on 13.8.2009 from M/s Northern Strips Pvt. Ltd. by cheque of Karnataka Bank Ltd. and on the same date M/s Allied Poles India Ltd. paid to M/s Northern Strips Pvt. Ltd. the same amount which stands duly credited in the bank account of M/s Northern Strips Pvt. Ltd. on 13.08.2009. In view of this it is apparent that there are transaction of receipt and payment on the same date itself by both the parties. Issue is whether such transaction is covered in the definition of deemed dividend in the hands of the assessee u/s. 2(22)(e) of the Act or not. The issue is squarely covered in favour of the Assessee by the decision of the Coordinate Bench in the case of Pravin Bhimsi Chheda Shivsadan vs. DCIT reported in 141 TTJ 58 against which the Hon'ble Bombay High Court in the case of CIT vs. Pravin Bhimsi Chheda in 48 taxmann.com 151 (Bombay) has not admitted the appeal of the

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Revenue holding that when the Company got back its funds on the same day, it cannot fall into the definition of the deemed dividend. Therefore, the issue is squarely covered in favour of the Assessee by the above decision of the Hon'ble Bombay High Court confirming the views of the Coordinate Bench.

7.1 Ld. DR has heavily relied on the decision of Miss P. Sarada vs. CIT 144 CTR 209. We have carefully gone through that decision and find that in that particular case the Hon'ble Supreme Court has held that when the loans are given to the parties on various dates and subsequently when adjustment of accounts was made on the last day of the accounting year would not alter the position that assessee received notional dividends on various dates and therefore, the Hon'ble Supreme Court held that the same is covered under the definition of deemed dividend. In that particular case the assessee has withdrawn a sum of Rs.93,027/- from 03.7.1972 to 22.3.1973. The letter dated 03.4.1972 was relied upon written by another party that the above amount given as a loan to that assessee may be debited to the extent of Rs. 1 lakh from his account and consequently there was no outstanding of the concerned assessee on the last day of the accounting year. The Hon'ble Supreme Court held that on each date of the withdrawal there was a debit balance in the account of the assessee which was ultimately squared up at the end of the accounting year and therefore, it cannot be said that advances were not given to the assessee. In the present case the transactions of Rs. 1 Crore and another transaction of Rs. 3 lacs were squared up on the

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same date. There was no outstanding balance of either party in the books of either party at the end of the day. In view of this the decision in the case of Miss P. Sarada vs. CIT (Supra) does not apply to the facts of the present case. The second decision relied upon in the case of Gopal and Sons (HUF) vs. CIT 391 ITR 1 of the Hon'ble Supreme Court, does not deal with the issue of taxability of the loan, but deals with the controversy of tax in the hands of HUF who is not a registered share holder. There is no such dispute in the present case before us. The decision of the Hon'ble Supreme Court in the case of CIT vs. Mukundray K. Shah 290 ITR 433 also do not apply to the facts of the case. Here there is no allegation of any conduit introduced by the assessee. The other decisions relied upon also deal with other controversy which are not before us. In view of this the decision relied upon by the Ld. DR are not applicable to the present case.

7.2 Further the claim of the assessee is that the transaction entered into by the two Companies are the business transactions. It is stated that both the parties are engaged in similar trade and activities and the above amount was given as advance against business transaction. The above facts were also confirmed by the Audited Accounts by the parties and M/s Northern Strips Pvt. Ltd. is also providing goods transport services to M/s Super Plastic Coats Ltd. The AO did not controvert the above submissions of the assessee by making the further enquiry. He has merely rejected the above claim of the assessee without further adducing any evidence. The CBDT in its Circular No. 19 of 2017 has

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clarified that trade and commercial transactions are not covered in the definition of loans and advances on which provision of Section 2(22)(e) of the Act can be applied. In view of this, respectfully following the Hon'ble Bombay High Court decision in the case of CIT vs. Pravin Bhimsi Chheda (Supra) and in view of the CBDT's Circular (Supra), we are of the view that Ld. CIT(A) has dealt with the issue correctly and no interference is required, therefore, we confirm the finding of the Ld. CIT(A) on the issue in dispute and reject the ground raised by the Revenue.

8. In the result, the Revenue's appeal stands dismissed.

Order pronounced on 18-07-2018.

| Sd/- | Sd/- |
|---|---|
| **[PRASHANT MAHARISHI]** | **[H.S. SIDHU]** |
| **ACCOUNTANT MEMBER** | **JUDICIAL MEMBER** |

*Date 18/07/2018*

**"SRBHATNAGAR"**

***<u>Copy forwarded to: -</u>***

1. Appellant
2. Respondent
3. CIT
4. CIT (A)
5. DR, ITAT

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Assistant Registrar, ITAT