आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'B' अहमदाबाद ।

IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, AHMEDABAD

(*Convened through Virtual Court*)

BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
& SMT. MADHUMITA ROY, JUDICIAL MEMBER

आयकर अपील सं./I.T.A. Nos. 1492/Ahd/2014, 545/Ahd/2016 & 2491/Ahd/2017

(**निर्धारण वर्ष /** Assessment Year : 2011-12 to 2013-14)

The Asstt. Commissioner of Income-tax Kheda Circle, Nadiad - 387002	**बनाम**/ Vs.	**M/s. Krishna Coil Cutters Pvt. Ltd.** 256/2 Kanera, Kanera Sarrsa Road, Kheda - 387530
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AADCK0462C		
(अपीलार्थी /**Appellant**)	..	(प्रत्यर्थी / **Respondent**)

अपीलार्थी ओर से /**Appellant by :**	Shri R. R. Makwana, Sr.DR
प्रत्यर्थी की ओर से / **Respondent by :**	Shri Sakar Sharma, A.R.

सुनवाई की तारीख / **Date of Hearing**	22/06/2021
घोषणा की तारीख /**Date of Pronouncement**	06/07/2021

आदेश/O R D E R

PER PRADIP KUMAR KEDIA - AM:

All three captioned appeals have been filed at the instance of the Revenue against the order of the Commissioner of Income Tax (Appeals)-IV, Baroda ('CIT(A)' in short), dated 28.02.2014, 03.12.2015 & 16.08.2017, respectively; arising in the assessment order dated 23.05.2013, 24.03.2015 & 28.03.2016, respectively; passed by

the Assessing Officer (AO) under s. 143(3) of the Income Tax Act, 1961 (the Act) concerning AYs. 2011-12 to 2013-14.

2. At the beginning of the hearing, it was stated on behalf of the assessee that all the three matters captioned above are inter-connected and involves common issue. Accordingly, all the three matters were heard together for adjudication purposes.

3. We shall take Revenue's appeal in ITA No. 1492/Ahd/2014 concerning AY 2011-12 as a lead case for adjudication.

ITA No. 1492/Ahd/2014 - AY- 2011-12

4. The ground of appeal raised by the Revenue reads as under:

> *"1. On the facts and in the circumstances of the case and in law the learned CIT(A) erred in deleting the addition of Rs. 19,65,00,000/- made by A.O. u/s 2(22)(e) of the Act in respect of loan received from M/s. Krishna Sheet Processors Pvt. Ltd. (KSPPL) without appreciating the fact that the assessee's share holding in the company exceeded 10% therefore loan received from KSPPL therefore the same was rightly treated as deemed dividend within the meaning of section 2(22)(e) of the Act.*
>
> *2. On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in holding that money lending was a substantial part of assessee's business without appreciating the fact that the assesses had resorted to colourable device to escape the provisions of section 2(22)(e) of the Act.*
>
> *3. On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in holding that loan given to M/s. Krishna Coil Cutters Pvt. Ltd. by M/s. Krishna Sheet-Processors Pvt. Ltd.(KSPPL), was in the ordinary course of its money lending business without appreciating the fact that KSPPL had not obtained requisite permission to carry on money lending business, which gets support from the decision of the Hon'ble Allahabad High Court in the case of Shri Krishna Gopal Maheshwari, reported in 44 taxmann.com 127 [2014] & the decision of ITAT Lucknow in the case of Kishori Lal Agarwal reported in [2014] 42 taxmann.com 37.*

4. On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in allowing the alternate claim of the assesses that the loan, was in the nature of inter corporate deposit and therefore not In the nature of loans and advances without appreciating the fact that in the balance sheet of the lender company M/s. Krishna Sheet Processors Pvt Ltd. and the recipient company M/s. Krishna Coil Cutters Pvt. Ltd., the transactions were reflected as loans and advances and unsecured loans respectively and no deposit certificate was Issued by the lending company."

5. The assessee is a private limited company engaged in the business of manufacturing of HR/CR Sheets and trading of M S Plates. In the course of assessment proceedings, the AO *inter alia* noticed that the assessee has availed unsecured loan from group concern M/s. Krishna Sheets Processors Pvt. Ltd. (lender) to the tune of Rs.19,65,00,000/-. It was found that the assessee is holding 21.45% shareholding in the lender company. The AO accordingly after a detailed discussion observed that the amount of loans received from the sister concern falls within the ambit of provisions of Section 2(22)(e) of the Act and consequently, susceptible to tax as deemed dividend. The AO accordingly made an addition of unsecured loan equivalent to Rs.19,65,00,000/- in the hands of the assessee under s.2(22)(e) of the Act.

6. Aggrieved, the assessee preferred appeal before the CIT(A).

7. The CIT(A) after taking into account the factual position and the submissions of the assessee in rebuttal to the assessment order found merit in the plea of the assessee for reversal of the addition. The relevant part of the order of the CIT(A) is reproduced hereunder:

"5.3. I have considered the appellant's submission as well as AO's observations. Before the AO as well as before the Jt. CIT in respect of application made u/s 144A of the IT Act, the appellant had made submissions that loan taken by it from KSPPL was covered by the exceptions provided u/s 2(22)(e) and hence, the amount received by it from the other, company cannot be taxed as deemed dividend. These submissions of the appellant are under following heads:

I. The transactions of the loan were carried out in the ordinary course of where lending of money, is substantial part of the business of the lending company i.e. M/s. Krishna Sheet Processors Pvt. Ltd. and hence it is covered by the exception provided in clause (ii) or section 2(22) (e) of the Act.

II. The transactions were in the nature of Inter Corporate Deposit (ICD) between KSPPL and appellant company and hence, it cannot be termed as loans and advances.

III. The money has been received by the appellant in the ordinary course of business from the company which is having substantial investment in the appellant company.

*5.3.1. So far as the first argument of the appellant is concerned, the AO in his order has discussed the issue in paragraphs 6.2 to 6,8 and has also relied upon the direction issued by the Jt. CIT Kheda Range, Nadiad which has been reproduced in his order. On the basis of such discussions and direction, the AO has stated that the gross turnover of the lending company is '2,68,37,87,457/-. As against this, the deployment of funds in loans and advance on which interest earned is of ' 27,51,65,572/- which is only 10.25% of gross turnover. Hence, even comparing the deployment of funds towards gross turnover, the ratio is 10,25% which is less than 50% which proves that the principal activities of the lending company are not money lending activities. The Jt. CIT in his order u/s 144A of the IT Act has discussed the claim of the appellant in Para 3.12, 3.8 of his order which has been reproduced in the assessment order. He has stated that as per the decision in the case of Rekha Modi (supra), if more than 20% of the activity of the assessee is money lending then it can be considered to be substantial. After this, he has compared the gross interest income of the lending company with its gross turnover and stated that it is only 0.5%. He has further stated that the gross income from the interest of the appellant is only 11.22% of the gross profit which is again less than 20%. Further, he has stated that the assessee's action of comparing net profit with gross interest is not logical and hence, net interest income should be compared with the net profit. Since, the net interest income as per Jt.CIT was (-) ' 1,62,40,013/-, hence, he concluded that the money lending activity is less than 20% as compared to other business activity of the lending company. After that he has discussed the figures regarding deployment of funds as per the balance sheet of the lending company. As per him, the percentage of total funds deployed in loans and advances i.e. investment activities was 46.28% and since, it was less than 50%, and hence, he has stated that the principle activity of the lending company is not money lending activity. Here, the Jt. CIT has used the word "principle activity of the lending company" in place of "substantial part of business of the lending company." He has further stated that the entire fund of the lending appellant company should be considered including borrowed funds for such computation. Besides, the fixed deposits should not be treated as part of money lending business. Finally, he has stated that the total turnover with respect to deployment of funds to earn interest ratio is 10:1 in favour of turnover approximately. Hence, as per the criteria laid down by the Hon'ble Bombay High Court in its decision in the case of **Parle Plastics Ltd.** (supra), the appellant's case is not covered by exceptions of section*

2(22)(e) relating to loans and advances as a part of money fending activity.

5.3.2. The appellant has filed detailed submission in this regard before the AO as well as during the course of appellate proceedings. Since, "substantial part of the business" has not been defined in the IT Act, 1961, hence, the judicial pronouncements in this regard are required to be analyzed first. This has been done as follows:

a) The Hon'ble Calcutta High Court in its decision in the case of Pradipkumar Malhotra supra has held that not every advance or loan to a shareholder is liable to be taxed as deemed dividend u/s 2(22)(e) of the Act, but, only gratuitous loans advanced by the company to shareholders can be treated as deemed dividend.

In this case the court had held as follows:

"The phrase 'by way of advance or loan' appearing to sub-clause (e) of section 2(22) must be construed to mean those advances or loans which a shareholder enjoys for simply on account of 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 10 per cent of the voting power; but if such loan or advance is given to such share holder as a consequence of any further consideration which Is beneficial to the company received from such s shareholder, in such case, such advance or loan cannot be said to a deemed dividend within the meaning of the Act. Thus, for gratuitous loan or advance given by a company to those classes of shareholders would come within the purview of section 2(22) but not to the cases where the loan or advance is given in return to an advantage conferred upon the company by such shareholder.
[Para 10]

In the instant case, the assesses permitted his property to be mortgaged to the bank for enabling the company to take the benefit of loan and in spite of request of the assessee, the company was unable to release the property from the mortgage. In such a situation, for retaining the benefit of loan availed from the bank if decision was taken to give advance to the assessee such decision was not to give gratuitous advance to its share holder but to protect the business interest of the company. [Para 11]

Therefore, the authorities below erred in law in treating the advance given by the company to the assessee by way of compensation for keeping its property as mortgage on behalf of the company to reap the benefit of loan as deemed dividend within the meaning of section 2(22)(e). [Para 13]

Consequently, the order of the Tribunal below was to be set aside directing the Assessing Officer not to treat the advance in question as a deemed dividend"

(a)(i) In this regard, the appellant have submitted that these loans were not advanced to the appellant company as interest free loans. Lending company had charged interest @ 12% on such loans and hence,

these loans are not gratuitous in nature. The appellant has also submitted that the AO himself has allowed interest paid by the appellant company to KSPPL while computing business income of the appellant company on the amount so received from KSPPL which was assessed in the nature of deemed dividend u/s 2(22)(e) of the Act. Such interest payment could not have been allowed by the AO while computing the business income as no one makes payment of interest on the amount of income it earns or which law assumes to be belonging only to the recipient as his money. Thus, the AO had nowhere held that the amount advanced by the KSPPL to the appellant was a gratuitous payment. It has also been submitted by the appellant that KSPPL was advancing funds to the appellant on interest at market rate even when the appellant was not its shareholder at all and, therefore, routine advance of funds for earning of interest income by KSPPL in which appellant has become substantial shareholder cannot be considered to be dividend merely because recipient has subsequently acquired substantial holding in the share capital offending company.

ii) Both the appellant as well as the AO have relied upon the decision of Rekha Modi (supra) of Delhi Bench of ITAT. Both the appellant and the AO are in agreement that in order to ascertain as to whether money lending was a substantial part of total business of lender company, the facts has to be considered in respect of the previous year relevant to the assessment year under consideration and not in relation to earlier years since each assessment year is a separate and independent assessment year and the assessment of total income is made with reference to the previous year relating to the relevant assessment year as held in the case of Mrs. Rekha Modi (supra). Further the tribunal had held as follows in this order:

"The expression 'substantial part of the business' used in item (ii) of section 2(22)(e) has not been defined in the statute. However, a similar expression 'substantial interest' is used in sub-clause (e) of section 2(22) and the same has been defined in Explanation 3(b) to section 2(22)(e). Although the term 'substantial interest' as defined in Explanation 3(b) to section 2(22)(e) is different than the expression 'a substantial part of the business' used in item (ii), one thing that is dearly evident from the said definition is that the factual position as it stands during the relevant previous year only is supposed to be taken into consideration to decide the issue about the substantial interest in the context of deemed dividend under section 2(22)(e). This aspect which is clearly evident from the definition of 'substantial interest in a concern' given in Explanation 3(b) to section 2(22)(e) itself, thus, supported the contention of the revenue that the money in question having been advanced in the year under consideration, the facts and figures of the said year alone needed to be taken into account to find out as to whether the lending of money was a substantial part of the business of the company 'A', Therefore, the facts and figures of the year under consideration alone could be taken into consideration to ascertain the exact position as done by the Commissioner (Appeals) in his impugned order while upholding the action of the Assessing Officer on this count. [Para 12]

In the instant case, during the previous year out of the total funds of Rs. 2.62 crores available with the company 'A' only an amount to the

extent of Rs. 42.68 lakhs, i.e., 16.29 per cent was used for money-lending business. Since the money-lending business of the company 'A' constituted less than 20 per cent of the total business of the company 'A', the lending of money could not be said to be a substantial part of the business of the company 'A'. Therefore, the condition stipulated in item (ii) of sub-clause (e) of section 2(22) was not satisfied and the amount in question advanced by the company 'A' to the assessee was not covered by the exception provided in the said sub-clause as claimed by the assessee. Therefore, the amount in question was rightly treated by the Assessing Officer as dividend in the hands of the assessee by applying the deeming provisions of section 2(22)(e) and the Commissioner (Appeals) was fully justified in sustaining the addition made by the Assessing Officer on this count. [Para 13]"

Thus, in this decision the Tribunal had examined the facts from both income criteria and the deployment of fund criteria. In this regard, the appellant has submitted computation by adopting different ratio which has already been reproduced above.

iii) The appellant has further relied upon the decision in the case of ***ITO Vs. Krishnomics Ltd.(Supra)*** *in which the Jurisdictional Tribunal has held that for the purpose of determining as to whether the lending company is substantially engaged in the money lending business, income criteria need not required to be followed and such aspect needs to be examined with reference to the deployment of the funds in such activity to the total available funds. The Tribunal has held as follows in this order:*

> *"The provisions of section 2(22)(e)(ii) refer to the words 'substantial part of the business' and nowhere refer to the words 'substantial income / which means that to find out as to whether a given case is covered by the provisions of section 2(22)(e) or not, income criteria from a particular source is not relevant. However, these provisions take the case out of the scope of section 2(22)(e)(ii) only if substantial part of the business carried out by the payer-company is found to be that of lending of money and, therefore, to find out substantial part of business of the payer-company, one should consider the 'objects' and 'deployment of the funds' by the payer-company, because there can be cases where the company might have deployed more funds by way of loans during the course of business of money lending at the fag end of the previous year and may not have earned any interest or earned a small interest, but might have earned more dividend on investment having been made before the declaration of dividend on shares earning dividend, even if the investment so made may be quite less as compared to money given by way of loan, if income criteria is taken into account, there will be absurd result. Consequently, such system is to be discarded for finding out as to whether the money lending was substantial part of the business carried out by the payer-company or not, To find out these facts, one must see the main objects and the deployment of funds of the payer-company, meaning thereby that if it is found that the payer-company had money lending as its main objects and funds deployed during the course of money lending business were substantial as compared to the total of*

other funds deployed for carrying on the other business, then the amount given by such payer-company to any other company will not attract the provisions of section 2(22)(e). So far as the instant case was concerned, after going through its. Memorandum and Articles of Association and its balance sheet it was noticed that money lending was not only one of the six main objects of the payer-company, but it was carrying on this business in preference to other business and at the same time had deployed funds to the extent of Rs. 37,77,475 by way of loan to the assessee and to the tune of Rs, 1,08,099 to one 'G" Ltd. out of total funds available at Rs. 44,56,304 as against the deployment of amount of Rs. 4,14,300 as an investment in shares earning dividend."

As per this criteria, the appellant had submitted that the percentage of assets representing investment and financing activity of the lending company is 59.51% of the entire funds. In this regard, it is seen that the Jt. CIT in his order u/s 144A had held that for this purpose the investment in FDRs should not be considered. Hence, if only the income generating loans and advances are considered as part of the money lending activity of the lending company. For this purpose, the income generating loans and advances are taken at Rs,19,52,76,906/- and total funds available with the lending company are taken at Rs.59,44/79,8457-. Then the ratio of such funds comes to 37.31% of the total net current assets of the lending company. Such percentage comes to 32.85% if the total funds available with the lending company including share capital reserves and surplus, secured loan and advances and unsecured loans are taken into account.

iv) The Hon'ble Bombay High Court in its decision in the case of ***Parle Plastics Ltd.*** *has discussed the issue as to what can be considered to be the substantial part of the business. In this decision the Court has held that the phrase "substantial part" appearing in section 2(22)(e) does not mean "Principal Business" or such activity which constitutes more than 50% of the total activity or assets of the company. Hence, the findings given by the Jt. CIT that since, the funds deployed in loans and advances is less than 50% of the total funds available with the lending company, hence, lending of money is not a substantial part of the business of the lending company is not correct.*

v) The ITAT, Mumbai Bench in its decision in the case of Jayant H Modi 56 SOT 84 (Mum) has held as follows by relying upon the decision in the case of Parle Plastic Ltd.:

" 12. In the present case, interest income earned by M/s JMC Securities Pvt. Ltd. during the year under consideration was to the tune of Rs.9,16,088/- which constituted about 70% of its total business income amounting to Rs.13,04,088/-. Moreover, the maximum amount of loan advanced by M/s JMC Securities Pvt Ltd. during the year under consideration was to the tune of Rs. 95,45,000/- which constituted 32% of the total funds available with the said company. If these facts and figures are considered in the light of the decision of Hon'ble Bombay High Court in the case of Pan'e Plastics Ltd. (supra), it becomes abundantly dear that lending of money was a substantial part of

a business of M/s JMC Securities Pvt. Ltd, and the loan in question to the assessee was made by the said company in the ordinary course of its business. It, therefore, follows that the conditions stipulated in clause (ii) of section 2(22)(e) were duly satisfied and the amount of loan advanced by M/s JMC Securities Pvt. Ltd. to the assessee could not be regarded as a deemed dividend."

5.3.3. While discussing the decision in the case of Krishnonics Ltd (supra), the AO has stated that as per this decision, one must see the main object of the lending company and deployment of funds of the payer company meaning thereby that if it is found that the payer company has main objects and funds deployed during the year are more than other funds deployed carrying other businesses, then the money given by the payer company cannot be treated as deemed dividend. In this regard, on being asked during the course of appellate proceedings, the appellant submitted a copy of Memorandum of Association of lending company. One of the objects incidental or ancillary to the attainment of the main objects as per the clause 26 of the MOA is to "advance and lend money upon such security as may be thought proper or without taking any security therefore," Thus, one of the ancillary objects of the lender company is to lend money. It may be mentioned here that one of the arguments given by the revenue in the case of M/s Parle Plastics Ltd was that objects clause of AMPL does not contain lending of money as one of the main objects. The Hon'ble court held in this case that though a copy of Memorandum of association was not filed on record, it was not the case of the Revenue that the act of the lending money was ultra vires the object clause of AMPL. The court further held that it was not the case of the Revenue that AMPL had no power under the Memorandum of Association to lend any money or that the business of advancing and lending money could not be undertaken by the AMPL. On the basis of such observations the Revenue's objection was not accepted by the Court. In the present case a/so, since one of ancillary objects permits the appellant to carry on the business of lending of money, hence the objection raised by the AO in this regard is not acceptable.

5.3.4. Thus it is seen that in the decision in the case of Rekha Modi (supra) it has been held that since money lending business constituted less than 20% of the total business of the assessee and, it cannot be said that the lending of money was a substantial part of the business of the company. Further in the case of krishnonics Ltd (Supra) it has been held that only the deployment of fund is to be considered to find out whether the money lending is substantial part of the business of the company or not. In the case of Jayant H Modi it was held that where the maximum funds deployed in lending activities was 32% of the total fund available with the company, then it can be held that the company had lending money as substantial part of its business. If these decisions are considered together in the case of the appellant, then it is seen that the fund deployed by the appellant in money lending activity is more than 32,8% of the total funds available with the lending company. Besides the loans given to the appellant by the lending company are not gratuitous loans. The appellant is paying interest at the rate of 12% to the lending company on which the lending company is paying taxes. Besides the lending company had also granted loan on

interest to the appellant company in preceding years when the appellant company was not holding substantial interest in the lending company. Thus taking into the account the ratios laid down by the decisions in the case of Pradeepkumar Malhotra (Supra), Rekha Modi (Supra), Krishnonics Ltd (Supra), Jayant H Modi (Supra) and Parle Plastics Ltd (Supra), it is held that the lender company in the present case i.e. M/s Krishna Sheet Processors Pvt. Ltd. had lending of money as a substantial part of its business during the financial year 2010-11 and the loan to the appellant has been advanced in the ordinary course of its business. Accordingly such loan cannot be taxed as deemed dividend in the hands of the appellant.

5.4. So far as the other pleas of the appellant are concerned, since it has already been held that the lending company was having lending of money as substantial part of its business, the other pleas become academic in nature and are accordingly not adjudicated."

8. Aggrieved by the relief granted by the CIT(A) and reversal of additions made under s.2(22)(e) of the Act, the Revenue has preferred appeal before the Tribunal.

8.1 The learned DR for the Revenue relied upon the assessment order and could not point out any specific defect in the order of the CIT(A).

8.2 The learned counsel for the assessee, on the other hand, justified the first appellate order and pointed out that Section 2(22)(e) of the Act has no applicability in the facts of the case. The case of the assessee is squarely covered by the exceptions provided in the provisions of Section 2(22)(e) of the Act itself. The learned counsel for the assessee broadly divided his contentions in three parts; (i) the unsecured loan received was in the ordinary course of business and such transactions have occurred in the earlier years also when the shareholding of the assessee company in the lending company was less than the threshold limit; (ii) the lender company was substantially engaged in money lending activity and has charged interest on the money lent to the assessee as can be seen from the notice dated 19.02.2016 issued by the AO himself under s.142(1) of the Act; & (iii) the transactions carried out between the lender company and assessee

are in the nature of deposit in contrast to loans or advances and therefore falls outside the sweep of Section 2(22)(e) of the Act.

8.3 The assessee referred to a certain documents to support the aforesaid contentions and relied upon various case laws in this regard. We shall deal with the same appropriately wherever consider expedient in the succeeding paragraphs.

9. We have carefully considered the rival submissions and the documents referred and relied upon under Rule 18(6) of the Income Tax (Appellate Tribunal) Rules, 1963 and perused the assessment order and the first appellate order. The applicability of Section 2(22)(e) of the Act in the facts of the case is in controversy.

9.1 The facts emerging from the case records are briefly recited for ready reference as follows:

The assessee holds 21.45% equity share capital of M/s. Krishna Sheets Processors Pvt. Ltd. (lender company) and the lender company also hold 40.83% in equity share capital of the assessee. Thus, both the companies have cross shareholdings in each other. Both assessee and lender company are engaged in the similar line of business of manufacturing of HR/CR Sheets and trading of M S Plates and are stated to be acting for mutual benefits / business of each other due to cross holding and common management. As further claimed, major raw materials for both concerns are steel and same is mainly procured from S. R. Steel Ltd. The negotiations for quantity of raw material to be procured from the supplier are negotiated in consolidated manner to get price advantage which is beneficial to both the companies. It is claimed that to get the price advantage, temporary funds were provided by the lender to the assessee in order to make onward payments to the supplier and other pressing creditors. It is thus

claimed that advancing of funds to assessee was meant for business exigencies only and in the course of business. As further contended, the assessee also had trading transactions with the lender. It is also the case of the assessee that the lender has been advancing funds to the assessee when assessee was not its shareholder at all i.e. right from A.Y. 2009-10. The assessee received funds to the extent of Rs.4.6 Crores in AY 2009-10; Rs.10.90 Crores in AY 2010-11 & Rs.9.65 Crores in AY 2011-12 whereas the assessee acquired significant shareholding in lender company during AY 2011-12 only. It is thus the case of assessee that transactions of borrowal in ordinary course of business to achieve economy of sale is outside the purview of s.2(22)(e) of the Act. It is further the case of the assessee that the lender advances funds to the assessee in the ordinary course of business and money lending is substantial part of its business. Interest income earned in money lending activity has been offered and assessed under the head 'business income' in the hands of the lending company. As further stated, the lender advanced funds to the assessee by way of intercorporate deposits (ICDs) and the lending was done on the similar rate of interest on which funds were advanced to unrelated party and hence all the transactions were at arm's length. It is further claimed that both the companies had also considered the setup of another unit in the State of Gujarat and had entered into various correspondence by entering into preliminary agreement. Funds were kept by the assessee in order to initiate the land-to-land deal which did not materialize owing to the fact that some of the adjoining land holders were not forthcoming and therefore required land cannot be procured.

9.2 In this factual backdrop, the CIT(A) has adjudicated the issue in favour of the assessee and held that Section 2(22)(e) of the Act is not applicable in the peculiar facts. On a perusal of the order of the CIT(A), we find that the CIT(A) has acted on sound legal principles in

the light of the facts broadly noticed above. On facts, it has emerged that the lender company has charged interest on the advances made to the assessee company. In the circumstances, the Hon'ble Calcutta High Court in the case of *Pradip Kumar Malhotra vs. CIT (2011)338 ITR 538(Cal)* has observed that advances given by the lender was not for the individual benefit of the shareholder but for business purposes and therefore such transactions would not fall within the sweep of deeming fiction created under s.2(22)(e) of the Act. This reason on a standalone basis is sufficient to exclude the applicability of Section 2(22)(e) of the Act on the money received by the assessee.

9.3 We also simultaneously find merit in the other line of argument advanced on behalf of the assessee. It is case of the assessee than money lent to the assessee was received in the ordinary course of business for fulfillment of business supply through consolidated negotiation. It is also demonstrated by the assessee that similar advance was obtained in the earlier years right from AY 2010-11 where assessee was not a shareholder in the lender company at all. It is also simultaneously the case of the assessee that the lender company was substantially engaged in money lending activity. Furthermore, the lender company has charged interest on the loans advanced to the assessee. In these facts, the case of the assessee is squarely covered by the decision of the Hon'ble Gujarat High Court in *Pr. CIT v Mohan Bhagwatprasad Agrawal [2020] 115 taxmann.com 69 (Gujarat)* & *CIT Vs. Parle Plastics Ltd. (2011) 332 ITR 63 (Bombay).* Section 2(22)(e) of the Act requires money so lent to be only 'substantial part' of business and in contrast to the 'principal business' as wrongly assumed by the AO.

9.4 Thus, seen from any angle, no addition could be made by way of deemed dividend in the case of the assessee as rightly held by the

CIT(A) on the factual backdrop. We thus see no error in the first appellate order in all three appeals captioned above.

10. In the result, all three captioned appeals of Revenue are dismissed.

This Order pronounced on 06/07/2021

Sd/-	Sd/-
(MADHUMITA ROY)	(PRADIP KUMAR KEDIA)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Ahmedabad: Dated 06/07/2021

True Copy

S. K. SINHA

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण, अहमदाबाद ।