

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G', NEW DELHI**

Before Sh. Amit Shukla, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

ITA No. 4194/Del/2018 : Asstt. Year : 2013-14

ITA No. 4195/Del/2018 : Asstt. Year : 2014-15

TCI Exim Pvt. Ltd., C/o Ravi Gupta, Adv., E-6A, Kailash Colony, New Delhi	Vs	ACIT, Circle-25(2), New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AAAC8397A		

Assessee by : Sh. Ruchesh Sinha, Adv.

Revenue by : Sh. Ratan Singh, Sr. DR

Date of Hearing: 21.10.2021

Date of Pronouncement: 02.11.2021

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeals have been filed by the assessee against the orders of the Id. CIT(A)-9, New Delhi dated 09.03.2018.

2. Since, the issues involved in both the appeals are identical, they were heard together and being adjudicated by a common order.

3. In ITA No. 4194/Del/2018, following grounds have been raised by the assessee:

"1. That on facts and circumstances of the case, the order passed by the Ld. CIT (Appeal) is bad both in the eyes of law and on facts.

2. *That on the facts and circumstances of the case and in law the Ld. CIT(A) erred in law as the provisions of section 2(22)(e) of the Act are not applicable as the impugned transaction is in the nature of business transaction and not in the nature of loan or advances.*
3. *That on the facts and circumstances of the case and in law the Ld. CIT(A) erred in interpreting the provisions of section 2(22)(e) of the Income Tax Act, 1961 ignoring the judgment of Hon'ble Supreme Court in case of CIT v Madhur Housing and Development Co.*
4. *That on the facts and circumstances of the case, the Ld. CIT(A) erred in law in sustaining addition of Rs 37,00,000/- in the hands of the appellant company, who is not the shareholder of the company, u/s 2(22)(e) of the Act."*
4. The moot issue pertains to the objection to the addition of Rs.52,00,000/- u/s 2(22)(e) of the Income Tax Act, 1961.
5. The undisputed facts are,
 - That there is cross holding of shares between the assessee and M/s TCI India Ltd.
 - The assessee received loan on interest from M/s TCI India Ltd. of Rs.52,00,000/- during the F.Y. 2012-13 to fulfill the enhanced requirement of working capital for export orders.
 - TCI India Ltd. is closely held company holding 50,000 equity shares of the assessee company which is 2.5% of the total equity shares issued and subscribed.
 - The AO made addition based on the fact that Mrs. Urmila Agarwal having more than 20% equity holding is also

holding more than 10% of equity holding in the lender company.

- The lender company and the assessee do not share more than 2.5% of cross holding having the voting power.
- The Id. CIT(A) confirmed the addition based on the fact that Mrs. Urmila Agarwal is the common umbilical cord between the assessee and the lender company.

6. The Id. AR relied on the fact that the assessee company do not have any share holding in the TCI India Ltd. and hence the provisions of Section 2(22)(e) are not attracted. Further, he argued that the trade loans do not fall under the category of loans and advances as envisaged u/s 2(22)(e) of the Act.

7. The Id. DR relied on the provisions of the Act with specific reference to the later part "*or to any concern in which such shareholder is a Member or partner in which he has a substantial interest*".

8. Heard the arguments of both the parties and perused the material available on record.

9. The Hon'ble High Court of Delhi in the case of CIT Vs. Raj Kumar (2009) 318 ITR 181, held that "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)."

10. Reliance was also placed on the judgment of the High Court of Delhi in the case of CIT Vs. Ambassador Travels Pvt. Ltd., where the Court has held that "since the transactions were normal business transactions, which were carried out during the course of the relevant previous year, they cannot be described as advances or loans, which form a distinct category of financial transactions."

11. We are aware of the circular of the CBDT below w.r.t the section 2(22)(e) which is as under:

*Circular No. 19/2017
F. No. 279/Misc./140/2015/ITJ
Government of India
Ministry of Finance
Central Board of Direct Taxes*

New Delhi, Dated 12th June, 2017

Sub: Settled View on section 2(22)(e) of the Income Tax Act, trade advances -reg.

Section 2(22) clause (e) of the Income Tax Act, 1961 (the Act) provides that "dividend" includes any payment by a company, not being a company in which the public are substantially interested, of any sum 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.

2. The Board has observed that some Courts in the recent past have held that trade advances in the nature of commercial transactions

would not fall within the ambit of the provisions of section 2(22) (e) of the Such views have attained finality.

2.1 Some illustrations/examples of trade advances/commercial transactions held to be not covered under section 2(22)(e) of the Act are as follows:

(i) Advances were made by a company to a sister concern and adjusted against the dues for job work done by the sister concern. It was held that amounts advanced for business transactions do not to fall within the definition of deemed dividend under section 2(22)(e) of the (CIT vs. Creative Dyeing & Printing Pvt. Ltd, Delhi High Court).

(ii) Advance was made by a company to its shareholder to install plant and machinery at the shareholder's premises to enable him to do job work for the company so that the company could fulfil an export order. It was held that as the assessee proved business expediency, the advance was not covered by section 2(22)(e) of the (CIT vs Amrik Singh, P&H High Court)

(iii) A floating security deposit was given by a company to its sister concern against the use of electricity generators belonging to the sister The company utilised gas available to it from GAIL to generate electricity and supplied it to the sister concern at concessional rates. It was held that the security deposit made by the company to its sister concern was a business transaction arising in the normal course of business between two concerns and the transaction did not attract section 2(22) (e) of the Act. (CIT, Agra vs Atul Engineering Udyog, Allahabad High Court)

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.

4. The above may be brought to the notice of all

5. Hindi version follows.

(Neetika Bansal)
Deputy Secretary to Government of India

12. After perusing the judgments of the Hon'ble Supreme Court in the case of Rameshwarlal Sanwarmal Vs. CIT (122 ITR 162), judgment of Hon'ble Bombay High Courts in the case CIT Vs. Impact Containers (P.) Ltd. (367 ITR 346) and in the case of CIT Vs. Jignesh P. Shah (ITA No. 197/2013) and the judgment of Division Bench of Hon'ble Delhi High Court in the case of CIT Vs. Ankitech Pvt. Ltd. and after giving due credence to the circular of the CBDT and looking into the facts of the instant case, where it can be held that the transaction is a commercial transaction and hence the provisions of Section 2(22)(e) are not attracted.

13. The ground pertaining to prior period expenses not pressed.

14. In the result, both the appeals of the assessee are allowed.

Order Pronounced in the Open Court on 02/11/2021.

Sd/-

(Amit Shukla)
Judicial Member

Dated: 02/11/2021

Subodh Kumar, Sr. PS

Copy forwarded to:

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

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR