

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 16TH DAY OF SEPTEMBER, 2014

PRESENT

THE HON'BLE MR.JUSTICE N.KUMAR

AND

THE HON'BLE MRS.JUSTICE RATHNAKALA

I.T.A.NO.473/2013

C/W

I.T.A.NO.474/2013 & I.T.A.NOS.513-514/2013

I.T.A.NO.475/2013 & I.T.A.NOS.511-512/2013

I.T.A.NO.476/2013 & I.T.A.NOS.536-537/2013

I.T.A.NO.105/2011, I.T.A.NO.106/2011

I.T.A.NO.107/2011, I.T.A.NO.108/2011

I.T.A.NO.109/2011, I.T.A.NO.110/2011

I.T.A.NO.112/2011, I.T.A.NO.113/2011

I.T.A.NO.115/2011, I.T.A.NO.118/2011

I.T.A.NO.119/2011, I.T.A.NO.124/2011

I.T.A.NO.125/2011, I.T.A.NO.126/2011

I.T.A.NO.127/2011, I.T.A.NO.128/2011

I.T.A.NO.129/2011, I.T.A.NO.114/2011

I.T.A NO.473/2013

BETWEEN:

M/S. BAGMANE CONSTRUCTIONS PVT. LTD.,
LAKE VIEW BUILDING,
NO.66/1-4, A BLOCK,
8TH FLOOR, BAGMANE TECH PARK
C.V. RAMAN NAGAR,
BANGALORE – 560 093
(REPRESENTED BY ITS DIRECTOR
D.V. RAMAKRISHNA
AGED ABOUT 42 YEARS,
S/O SRI VENKATARAMANAPPA) ...APPELLANT

(BY SRI K.P.KUMAR, SR.COUNSEL, ALONGWITH SRI
A.SHANKAR, ADV, FOR SRI RAVI G.SABHAHIT, ADV.)

AND:

1. THE COMMISSIONER OF INCOME TAX
CENTRAL REVENUE BUILDINGS,
QUEENS ROAD,
BANGALORE – 560 001.
2. THE ASSISTANT COMMISSIONER OF
INCOME TAX,
CENTRAL CIRCLE-2 (3),
CR BUILDINGS,
QUEENS ROAD,
BANGALORE – 560 001 ...RESPONDENTS

(BY SRI. K.V.ARAVIND, ADV.)

THIS INCOME TAX APPEAL IS FILED UNDER
SECTION 260-A OF INCOME TAX ACT 1961, ARISING OUT
OF ORDER DATED 12/11/2010 PASSED IN ITA
NO.446/BANG/2010, FOR THE ASSESSMENT YEAR 2006-

2007, PRAYING TO I. FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED THEREIN, II. ALLOW THE APPEAL AND SET ASIDE THE ORDER PASSED BY THE INCOME TAX APPELLATE TRIBUNAL, BANGALORE IN ITA NO.446/BANG/2010 DATED 12/11/2010, WHICH UPHOLDS THE ORDER OF THE LEARNED COMMISSIONER OF INCOME TAX (APPEALS).

I.T.A.NO.474/2013 &
I.T.A.NOS.513-514/2013

BETWEEN:

M/S. CHANDRA DEVELOPERS PVT. LTD.,
LAKE VIEW BUILDING,
NO.66/1-4, A BLOCK,
8TH FLOOR, BAGMANE TECH PARK
C.V. RAMAN NAGAR,
BANGALORE – 560 093
(REPRESENTED BY ITS DIRECTOR
D.V. RAMAKRISHNA
AGED ABOUT 42 YEARS,
S/O SRI VENKATARAMANAPPA)

...APPELLANT

(BY SRI K.P.KUMAR, SR.COUNSEL FOR
SRI RAVI G.SABHAHIT, ADV.)

AND:

1. THE COMMISSIONER OF INCOME TAX
CENTRAL REVENUE BUILDINGS,
QUEENS ROAD,
BANGALORE – 560 001.
2. THE ASSISTANT COMMISSIONER OF
INCOME TAX,
CENTRAL CIRCLE-2 (3),

CR BUILDINGS,
QUEENS ROAD,
BANGALORE – 560 001

...RESPONDENTS

(BY SRI. K.V.ARAVIND, ADV.)

THESE INCOME TAX APPEALS ARE FILED UNDER SECTION 260-A OF I.T. ACT, 1961, ARISING OUT OF ORDER DATED 12/11/2010 PASSED IN ITA NOS.458 TO 460/BANG/2010, FOR THE ASSESSMENT YEARS 2004-2005 TO 2006-2007, PRAYING TO: I. FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED THEREIN, II. ALLOW THE APPEAL AND SET ASIDE THE ORDER PASSED BY THE INCOME TAX APPELLATE TRIBUNAL, BANGALORE IN ITA NOS.458 TO 460/BANG/2010 DATED 12/11/2010, WHICH UPHOLDS THE ORDER OF THE LEARNED COMMISSIONER OF INCOME TAX (APPEALS).

I.T.A.NO.475/2013 &
I.T.A.NOS.511-512/2013

BETWEEN:

M/S. BAGMANE BUILDERS PVT. LTD.,
LAKE VIEW BUILDING,
NO.66/1-4, A BLOCK,
8TH FLOOR, BAGMANE TECH PARK
C.V. RAMAN NAGAR,
BANGALORE – 560 093
(REPRESENTED BY ITS DIRECTOR
D.V. RAMAKRISHNA
AGED ABOUT 42 YEARS,
S/O SRI VENKATARAMANAPPA)

...APPELLANT

(BY SRI K.P.KUMAR, SR.COUNSEL FOR
SRI RAVI G.SABHAHIT, ADV.)

AND:

1. THE COMMISSIONER OF INCOME TAX
CENTRAL REVENUE BUILDINGS,
QUEENS ROAD,
BANGALORE – 560 001.
2. THE ASSISTANT COMMISSIONER OF
INCOME TAX,
CENTRAL CIRCLE-2 (3),
CR BUILDINGS,
QUEENS ROAD,
BANGALORE – 560 001 ...RESPONDENTS

(BY SRI. K.V.ARAVIND, ADV.)

THESE INCOME TAX APPEALS ARE FILED UNDER SECTION 260-A OF I.T. ACT, 1961, ARISING OUT OF ORDER DATED 12/11/2010 PASSED IN ITA NOS.447 TO 449/BANG/2010, FOR THE ASSESSMENT YEARS 2004-2005 TO 2006-2007. PRAYING TO: I. FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED THEREIN, II. ALLOW THE APPEAL AND SET ASIDE THE ORDER PASSED BY THE INCOME TAX APPELLATE TRIBUNAL, BANGALORE IN ITA NOS.447 TO 449/BANG/2010 DATED 12/11/2010, WHICH UPHOLDS THE ORDER OF THE LEARNED COMMISSIONER OF INCOME TAX (APPEALS).

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I.T.A.NO.476/2013 &
I.T.A.NOS.536-537/2013

BETWEEN:

M/S. BAGMANE LEASING & FINANCE PVT. LTD.,
LAKE VIEW BUILDING,
NO.66/1-4, A BLOCK,
8TH FLOOR,
BAGMANE TECH PARK

C.V. RAMAN NAGAR,
 BANGALORE – 560 093
 (REPRESENTED BY ITS DIRECTOR
 D.V. RAMAKRISHNA
 AGED ABOUT 42 YEARS,
 S/O SRI VENKATARAMANAPPA) ...APPELLANT

(BY SRI K.P.KUMAR, SR.COUNSEL FOR
 SRI RAVI G.SABHAHIT, ADV.)

AND:

1. THE COMMISSIONER OF INCOME TAX
 CENTRAL REVENUE BUILDINGS,
 QUEENS ROAD,
 BANGALORE – 560 001.
2. THE ASSISTANT COMMISSIONER OF
 INCOME TAX,
 CENTRAL CIRCLE-2 (3),
 CR BUILDINGS,
 QUEENS ROAD,
 BANGALORE – 560 001 ...RESPONDENTS

(BY SRI. K.V.ARAVIND, ADV.)

THESE INCOME TAX APPEALS ARE FILED UNDER SECTION 260-A OF I.T. ACT, 1961, ARISING OUT OF ORDER DATED 04/11/2010 PASSED IN ITA NOS.442 TO 444/BANG/2010, FOR THE ASSESSMENT YEARS 2004-2005 TO 2006-2007, PRAYING TO: I. FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED THEREIN, II. ALLOW THE APPEAL AND SET ASIDE THE ORDER PASSED BY THE INCOME TAX APPELLATE TRIBUNAL, BANGALORE IN ITA NOS.442 TO 444/BANG/2010 DATED 04/11/2010, WHICH UPHOLDS THE ORDER OF THE LEARNED COMMISSIONER OF INCOME TAX (APPEALS).

I.T.A.NO.105/2011

BETWEEN:

1. THE COMMISSIONER OF INCOME TAX
C R BUILDING,
QUEENS ROAD,
BANGALORE.
2. THE ASST. COMMISSIONER OF INCOME-TAX,
CENTRAL CIRCLE-2 (3),
C.R BUILDING,
QUEENS ROAD,
BANGALORE. ...APPELLANTS

(BY SRI. K.V.ARAVIND, ADV.)

AND:

M/S. CHANDRA DEVELOPERS PVT. LTD.,
LAKE VIEW BUILDING,
NO.66/1-4,
A BLOCK, 8TH FLOOR,
BAGMANE TECH PARK,
C.V. RAMAN NAGAR,
BANGALORE. ...RESPONDENT

(BY SRI K.P.KUMAR, SR.COUNSEL FOR
SRI RAVI G.SABHAHIT, ADV.)

THIS INCOME TAX APPEAL IS FILED UNDER SECTION 260-A OF I.T. ACT, 1961 ARISING OUT OF ORDER DATED 12/11/2010 PASSED IN ITA NO.460/BANG/2010, FOR THE ASSESSMENT YEAR 2006-2007, PRAYING TO: I.FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED THEREIN, II. ALLOW THE APPEAL AND SET ASIDE THE ORDER PASSED BY THE INCOME TAX APPELLATE TRIBUNAL, BANGALORE IN ITA

NO.460/BANG/2010 DATED 12/11/2010 AND CONFIRM THE ORDER OF THE APPELLATE COMMISSIONER CONFIRMING THE ORDER PASSED BY THE ASSISTANT COMMISSIONER OF INCOME TAX, CENTRAL CIRCLE-2(3), BANGALORE, IN THE INTEREST OF JUSTICE AND EQUITY.

I.T.A.NO.106/2011

BETWEEN:

1. THE COMMISSIONER OF INCOME TAX,
C R BUILDING,
QUEENS ROAD,
BANGALORE.
 2. THE ASST. COMMISSIONER OF INCOME-TAX,
CENTRAL CIRCLE-2 (3),
C.R BUILDING,
QUEENS ROAD,
BANGALORE.
- ...APPELLANTS

(BY SRI. K.V.ARAVIND, ADV.)

AND:

M/S. CHANDRA DEVELOPERS PVT. LTD.,
LAKE VIEW BUILDING,
NO.66/1-4,
A BLOCK, 8TH FLOOR,
BAGMANE TECH PARK,
C.V. RAMAN NAGAR,
BANGALORE.

...RESPONDENT

(BY SRI K.P.KUMAR, SR.COUNSEL, ALONGWITH SRI A.SHANKAR, ADVOCATE, FOR SRI RAVI G.SABHAHIT, ADV.)

THIS INCOME TAX APPEAL IS FILED UNDER SECTION 260-A OF I.T. ACT, 1961 ARISING OUT OF ORDER DATED 12/11/2010 PASSED IN ITA NO.461/BANG/2010, FOR THE ASSESSMENT YEAR 2007-2008, PRAYING TO: I.FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED THEREIN, II. ALLOW THE APPEAL AND SET ASIDE THE ORDER PASSED BY THE INCOME TAX APPELLATE TRIBUNAL, BANGALORE IN ITA NO.461/BANG/2010 DATED 12/11/2010 AND CONFIRM THE ORDER OF THE APPELLATE COMMISSIONER CONFIRMING THE ORDER PASSED BY THE ASSISTANT COMMISSIONER OF INCOME TAX, CENTRAL CIRCLE-2(3), BANGALORE, IN THE INTEREST OF JUSTICE AND EQUITY.

I.T.A.NO.107/2011

BETWEEN:

1. THE COMMISSIONER OF INCOME TAX
C R BUILDING,
QUEENS ROAD,
BANGALORE.
2. THE ASSISTANT COMMISSIONER
OF INCOME-TAX,
CENTRAL CIRCLE-2 (3),
C R BUILDING,
QUEENS ROAD,
BANGALORE.

...APPELLANTS

(BY SRI. K.V.ARAVIND, ADV.)

AND:

M/S. BAGMANE LEASING &
FINANCE PVT. LTD.,
A BLOCK, 8TH FLOOR,
BAGMANE TECH PARK,

C.V. RAMAN NAGAR,
BANGALORE.

...RESPONDENT

(BY SRI K.P.KUMAR, SR.COUNSEL, FOR
SRI RAVI G.SABHAHIT, ADV.)

THIS INCOME TAX APPEAL IS FILED UNDER SECTION 260-A OF I.T. ACT, 1961 ARISING OUT OF ORDER DATED 04-11-2010 PASSED IN ITA NO.444/BANG/2010, FOR THE ASSESSMENT YEAR 2006-2007, PRAYING TO: I.FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED THEREIN, II. ALLOW THE APPEAL AND SET ASIDE THE ORDERS PASSED BY THE INCOME TAX APPELLATE TRIBUNAL, BANGALORE IN ITA NO.444/BANG/2010 DATED 04/11/2010 AND CONFIRM THE ORDER OF THE APPELLATE COMMISSIONER CONFIRMING THE ORDER PASSED BY THE ASSISTANT COMMISSIONER OF INCOME TAX, CENTRAL CIRCLE-2(3), BANGALORE, IN THE INTEREST OF JUSTICE AND EQUITY.

I.T.A.NO.108/2011

BETWEEN:

1. THE COMMISSIONER OF INCOME TAX
C R BUILDING,
QUEENS ROAD,
BANGALORE.
2. THE ASSISTANT COMMISSIONER OF
INCOME-TAX,
CENTRAL CIRCLE-2 (3),
C.R BUILDING,
QUEENS ROAD,
BANGALORE.

...APPELLANTS

(BY SRI. K.V.ARAVIND, ADV.)

AND:

M/S. BAGMANE LEASING &
FINANCE PVT. LTD.,
A BLOCK, 8TH FLOOR,
BAGMANE TECH PARK,
C.V. RAMAN NAGAR,
BANGALORE.

...RESPONDENT

(BY SRI K.P.KUMAR, SR.COUNSEL FOR
SRI RAVI G.SABHAHIT, ADV.)

THIS INCOME TAX APPEAL IS FILED UNDER SECTION 260-A OF I.T. ACT, 1961 ARISING OUT OF ORDER DATED 04-11-2010 PASSED IN ITA NO.443/BANG/2010, FOR THE ASSESSMENT YEAR 2005-2006, PRAYING TO: I.FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED THEREIN, II. ALLOW THE APPEAL AND SET ASIDE THE ORDERS PASSED BY THE INCOME TAX APPELLATE TRIBUNAL, BANGALORE IN ITA NO.443/BANG/2010 DATED 04/11/2010 AND CONFIRM THE ORDER OF THE APPELLATE COMMISSIONER CONFIRMING THE ORDER PASSED BY THE ASSISTANT COMMISSIONER OF INCOME TAX, CENTRAL CIRCLE-2(3), BANGALORE, IN THE INTEREST OF JUSTICE AND EQUITY.

I.T.A.NO.109/2011

BETWEEN:

1. THE COMMISSIONER OF INCOME TAX
C R BUILDING,
QUEENS ROAD,
BANGALORE.
2. THE ASSISTANT COMMISSIONER OF
INCOME-TAX,

CENTRAL CIRCLE-2 (3),
C.R BUILDING,
QUEENS ROAD,
BANGALORE.

...APPELLANTS

(BY SRI. K.V.ARAVIND, ADV.)

AND:

M/S. BAGMANE LEASING &
FINANCE PVT. LTD.,
A BLOCK, 8TH FLOOR,
BAGMANE TECH PARK,
C.V. RAMAN NAGAR,
BANGALORE.

...RESPONDENT

(BY SRI K.P.KUMAR, SR.COUNSEL FOR
SRI RAVI G.SABHAHIT, ADV.)

THIS INCOME TAX APPEAL IS FILED UNDER SECTION 260-A OF I.T. ACT, 1961 ARISING OUT OF ORDER DATED 04-11-2010 PASSED IN ITA NO.442/BANG/2010, FOR THE ASSESSMENT YEAR 2004-2005, PRAYING TO: I. FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED THEREIN, II. ALLOW THE APPEAL AND SET ASIDE THE ORDERS PASSED BY THE INCOME TAX APPELLATE TRIBUNAL, BANGALORE IN ITA NO.442/BANG/2010 DATED 04/11/2010 AND CONFIRM THE ORDER OF THE APPELLATE COMMISSIONER CONFIRMING THE ORDER PASSED BY THE ASSISTANT COMMISSIONER OF INCOME TAX, CENTRAL CIRCLE-2(3), BANGALORE, IN THE INTEREST OF JUSTICE AND EQUITY.

I.T.A.NO.110/2011

BETWEEN:

1. THE COMMISSIONER OF INCOME TAX
C R BUILDING,
QUEENS ROAD,
BANGALORE.
 2. THE ASSISTANT COMMISSIONER OF
INCOME-TAX,
CENTRAL CIRCLE-2 (3),
C.R BUILDING,
QUEENS ROAD,
BANGALORE. ...APPELLANTS
- (BY SRI. K.V.ARAVIND, ADV.)

AND:

M/S. BAGMANE LEASING &
FINANCE PVT. LTD.,
A BLOCK, 8TH FLOOR,
BAGMANE TECH PARK,
C.V. RAMAN NAGAR,
BANGALORE. ...RESPONDENT

(BY SRI K.P.KUMAR, SR.COUNSEL FOR
SRI RAVI G.SABHAHIT, ADV.)

THIS INCOME TAX APPEAL IS FILED UNDER
SECTION 260-A OF I.T. ACT, 1961 ARISING OUT OF ORDER
DATED 12-11-2010 PASSED IN ITA NO.446/BANG/2010,
FOR THE ASSESSMENT YEAR 2006-2007, PRAYING TO: I.
FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW
STATED THEREIN, II. ALLOW THE APPEAL AND SET
ASIDE THE ORDERS PASSED BY THE INCOME TAX
APPELLATE TRIBUNAL, BANGALORE IN ITA

NO.446/BANG/2010 DATED 12/11/2010 AND CONFIRM THE ORDER OF THE APPELLATE COMMISSIONER CONFIRMING THE ORDER PASSED BY THE ASSISTANT COMMISSIONER OF INCOME TAX, CENTRAL CIRCLE-2(3), BANGALORE, IN THE INTEREST OF JUSTICE AND EQUITY.

I.T.A.NO.112/2011

BETWEEN:

1. THE COMMISSIONER OF INCOME TAX
C R BUILDING,
QUEENS ROAD,
BANGALORE.
 2. THE ASST. COMMISSIONER OF INCOME-TAX,
CENTRAL CIRCLE-2 (3),
C.R BUILDING,
QUEENS ROAD,
BANGALORE.
- ...APPELLANTS

(BY SRI. K.V.ARAVIND, ADV.)

AND:

M/S. BAGMANE BUILDERS PVT. LTD.,
'LAKE VIEW BUILDING'
NO.66/1-4,
A BLOCK, 8TH FLOOR,
BAGMANE TECH PARK,
C.V. RAMAN NAGAR,
BANGALORE.

...RESPONDENT

(BY SRI K.P.KUMAR, SR.COUNSEL FOR
SRI RAVI G.SABHAHIT, ADV.)

THIS INCOME TAX APPEAL IS FILED UNDER SECTION 260-A OF I.T. ACT, 1961 ARISING OUT OF ORDER DATED 12-11-2010 PASSED IN ITA NO.449/BANG/2010, FOR THE ASSESSMENT YEAR 2006-2007, PRAYING TO: I. FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED THEREIN, II. ALLOW THE APPEAL AND SET ASIDE THE ORDERS PASSED BY THE INCOME TAX APPELLATE TRIBUNAL, BANGALORE IN ITA NO.449/BANG/2010 DATED 12/11/2010 AND CONFIRM THE ORDER OF THE APPELLATE COMMISSIONER CONFIRMING THE ORDER PASSED BY THE ASSISTANT COMMISSIONER OF INCOME TAX, CENTRAL CIRCLE-2(3), BANGALORE, IN THE INTEREST OF JUSTICE AND EQUITY.

I.T.A.NO.113/2011

BETWEEN:

1. THE COMMISSIONER OF INCOME TAX,
C R BUILDING,
QUEENS ROAD,
BANGALORE.
 2. THE ASST. COMMISSIONER OF INCOME-TAX,
CENTRAL CIRCLE-2 (3),
C.R BUILDING,
QUEENS ROAD,
BANGALORE.
- ...APPELLANTS

(BY SRI. K.V.ARAVIND, ADV.)

AND:

M/S. BAGMANE BUILDERS PVT. LTD.,
'LAKE VIEW BUILDING'
NO.66/1-4,
A BLOCK, 8TH FLOOR,

BAGMANE TECH PARK,
C.V. RAMAN NAGAR,
BANGALORE.

...RESPONDENT

(BY SRI K.P.KUMAR, SR.COUNSEL. FOR
SRI RAVI G.SABHAHIT, ADV.)

THIS INCOME TAX APPEAL IS FILED UNDER SECTION 260-A OF I.T. ACT, 1961 ARISING OUT OF ORDER DATED 12-11-2010 PASSED IN ITA NO.450/BANG/2010, FOR THE ASSESSMENT YEAR 2007-2008, PRAYING TO: I.FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED THEREIN, II. ALLOW THE APPEAL AND SET ASIDE THE ORDERS PASSED BY THE INCOME TAX APPELLATE TRIBUNAL, BANGALORE IN ITA NO.450/BANG/2010 DATED 12/11/2010 AND CONFIRM THE ORDER OF THE APPELLATE COMMISSIONER CONFIRMING THE ORDER PASSED BY THE ASSISTANT COMMISSIONER OF INCOME TAX, CENTRAL CIRCLE-2(3), BANGALORE, IN THE INTEREST OF JUSTICE AND EQUITY.

I.T.A.NO.115/2011

BETWEEN:

1. THE COMMISSIONER OF INCOME TAX,
C R BUILDING,
QUEENS ROAD,
BANGALORE.
2. THE ASST. COMMISSIONER OF INCOME-TAX,
CENTRAL CIRCLE-2 (3),
C.R BUILDING,
QUEENS ROAD,
BANGALORE.

...APPELLANTS

(BY SRI. K.V.ARAVIND, ADV.)

AND:

M/S. BAGMANE BUILDERS PVT. LTD.,
'LAKE VIEW BUILDING'
NO.66/1-4,
A BLOCK, 8TH FLOOR,
BAGMANE TECH PARK,
C.V. RAMAN NAGAR,
BANGALORE.

...RESPONDENT

(BY SRI K.P.KUMAR, SR.COUNSEL, ALONGWITH SRI
A.SHANKAR. ADVOCATE, FOR SRI RAVI
G.SABHAHIT, ADV.)

THIS INCOME TAX APPEAL IS FILED UNDER SECTION 260-A OF I.T. ACT, 1961 ARISING OUT OF ORDER DATED 12-11-2010 PASSED IN ITA NO.447/BANG/2010, FOR THE ASSESSMENT YEAR 2004-2005, PRAYING TO:I. FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED THEREIN, II. ALLOW THE APPEAL AND SET ASIDE THE ORDERS PASSED BY THE INCOME TAX APPELLATE TRIBUNAL, BANGALORE IN ITA NO.447/BANG/2010 DATED 12/11/2010 AND CONFIRM THE ORDER OF THE APPELLATE COMMISSIONER CONFIRMING THE ORDER PASSED BY THE ASSISTANT COMMISSIONER OF INCOME TAX, CENTRAL CIRCLE-2(3), BANGALORE, IN THE INTEREST OF JUSTICE AND EQUITY.

I.T.A.NO.118/2011

BETWEEN:

1. THE COMMISSIONER OF INCOME TAX,
C R BUILDING,
QUEENS ROAD,
BANGALORE.

2. THE ASST. COMMISSIONER OF INCOME-TAX,
CENTRAL CIRCLE-2 (3),
C.R BUILDING,
QUEENS ROAD,
BANGALORE. ...APPELLANTS

(BY SRI. K.V.ARAVIND, ADV.)

AND:

M/S. CHANDRA DEVELOPERS PVT. LTD.,
'LAKE VIEW BUILDING'
NO.66/1-4,
A BLOCK, 8TH FLOOR,
BAGMANE TECH PARK,
C.V. RAMAN NAGAR,
BANGALORE. ...RESPONDENT

(BY SRI K.P.KUMAR, SR.COUNSEL FOR
SRI RAVI G.SABHAHIT, ADV.)

THIS INCOME TAX APPEAL IS FILED UNDER SECTION 260-A OF I.T. ACT, 1961 ARISING OUT OF ORDER DATED 12-11-2010 PASSED IN ITA NO.458/BANG/2010, FOR THE ASSESSMENT YEAR 2004-2005, PRAYING TO: I.FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED THEREIN, II. ALLOW THE APPEAL AND SET ASIDE THE ORDERS PASSED BY THE INCOME TAX APPELLATE TRIBUNAL, BANGALORE IN ITA NO.458/BANG/2010 DATED 12/11/2010 AND CONFIRM THE ORDER OF THE APPELLATE COMMISSIONER CONFIRMING THE ORDER PASSED BY THE ASSISTANT COMMISSIONER OF INCOME TAX, CENTRAL CIRCLE-2(3), BANGALORE, IN THE INTEREST OF JUSTICE AND EQUITY.

I.T.A.NO.119/2011

BETWEEN:

1. THE COMMISSIONER OF INCOME TAX,
C R BUILDING,
QUEENS ROAD,
BANGALORE.
2. THE ASST. COMMISSIONER OF INCOME-TAX,
CENTRAL CIRCLE-2 (3),
C.R BUILDING,
QUEENS ROAD,
BANGALORE. ...APPELLANTS

(BY SRI. K.V.ARAVIND, ADV.)

AND:

M/S. CHANDRA DEVELOPERS PVT. LTD.,
'LAKE VIEW BUILDING',
NO.66/1-4,
A BLOCK, 8TH FLOOR,
BAGMANE TECH PARK,
C.V. RAMAN NAGAR,
BANGALORE. ...RESPONDENT

(BY SRI K.P.KUMAR, SR.COUNSEL FOR
SRI RAVI G.SABHAHIT, ADV.)

THIS INCOME TAX APPEAL IS FILED UNDER
SECTION 260-A OF I.T. ACT, 1961 ARISING OUT OF ORDER
DATED 12-11-2010 PASSED IN ITA NO.459/BANG/2010,
FOR THE ASSESSMENT YEAR 2005-2006, PRAYING TO:
I.FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW
STATED THEREIN, II. ALLOW THE APPEAL AND SET
ASIDE THE ORDERS PASSED BY THE INCOME TAX
APPELLATE TRIBUNAL, BANGALORE IN ITA

NO.459/BANG/2010 DATED 12/11/2010 AND CONFIRM THE ORDER OF THE APPELLATE COMMISSIONER CONFIRMING THE ORDER PASSED BY THE ASSISTANT COMMISSIONER OF INCOME TAX, CENTRAL CIRCLE-2(3), BANGALORE, IN THE INTEREST OF JUSTICE AND EQUITY.

I.T.A.NO.124/2011

BETWEEN:

1. COMMISSIONER OF INCOME TAX-III, CENTRAL REVENUE BUILDINGS,
QUEENS ROAD,
BANGALORE – 560 001.
 2. THE ASSISTANT COMMISSIONER OF INCOME-TAX,
CENTRAL CIRCLE 2 (3),
BANGALORE.
- ...APPELLANTS

(BY SRI. E.I.SANMATHI, ADV.)

AND:

MR. RAJA BAGMANE
NO.497, 14TH MAIN, 3RD BLOCK,
KORAMANGALA,
BANGALORE.

...RESPONDENT

(BY SRI K.P.KUMAR, SR.COUNSEL FOR
SRI RAVI G.SABHAHIT, ADV.)

THIS INCOME TAX APPEAL IS FILED UNDER SECTION 260-A OF I.T. ACT, 1961 ARISING OUT OF ORDER DATED 04-11-2010 PASSED IN ITA NO.490/BANG/2010, FOR THE ASSESSMENT YEAR 2007-2008, PRAYING TO:

I.FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED THEREIN, II. SET ASIDE THE APPELLATE ORDER DATED 04/11/2010 PASSED IN ITA NO.490/BANG/2010 BY THE INCOME TAX APPELLATE TRIBUNAL, 'B' BENCH, BANGALORE. IN THE INTEREST OF JUSTICE AND EQUITY.

I.T.A.NO.125/2011

BETWEEN:

1. COMMISSIONER OF INCOME TAX-III,
CENTRAL REVENUE BUILDINGS,
QUEENS ROAD,
BANGALORE – 560 001.
 2. THE ASSISTANT COMMISSIONER OF
INCOME-TAX,
CENTRAL CIRCLE 2 (3),
BANGALORE.
- ...APPELLANTS

(BY SRI. E.I.SANMATHI, ADV.)

AND:

MR. RAJA BAGMANE,
NO.497, 14TH MAIN, 3RD BLOCK,
KORAMANGALA,
BANGALORE.

...RESPONDENT

(BY SRI K.P.KUMAR, SR.COUNSEL FOR
SRI RAVI G.SABHAHIT, ADV.)

THIS INCOME TAX APPEAL IS FILED UNDER SECTION 260-A OF I.T. ACT, 1961 ARISING OUT OF ORDER DATED 04-11-2010 PASSED IN ITA NO.485/BANG/2010, FOR THE ASSESSMENT YEAR 2002-2003, PRAYING TO:

I.FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED THEREIN, II. SET ASIDE THE APPELLATE ORDER DATED 04/11/2010 PASSED IN ITA NO.485/2010 BY THE INCOME TAX APPELLATE TRIBUNAL, 'B' BENCH, BANGALORE, IN THE INTEREST OF JUSTICE.

I.T.A.NO.126/2011

BETWEEN:

1. COMMISSIONER OF INCOME TAX-III,
CENTRAL REVENUE BUILDINGS,
QUEENS ROAD,
BANGALORE – 560 001.
 2. THE ASSISTANT COMMISSIONER OF
INCOME-TAX,
CENTRAL CIRCLE 2 (3),
BANGALORE.
- ...APPELLANTS
- (BY SRI. E.I.SANMATHI, ADV.)

AND:

MR. RAJA BAGMANE,
NO.497, 14TH MAIN, 3RD BLOCK,
KORAMANGALA,
BANGALORE.

...RESPONDENT

(BY SRI K.P.KUMAR, SR.COUNSEL FOR
SRI RAVI G.SABHAHIT, ADV.)

THIS INCOME TAX APPEAL IS FILED UNDER SECTION 260-A OF I.T. ACT, 1961 ARISING OUT OF ORDER DATED 04-11-2010 PASSED IN ITA NO.488/BANG/2010, FOR THE ASSESSMENT YEAR 2005-2006, PRAYING TO: I.FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW

STATED THEREIN, II. SET ASIDE THE APPELLATE ORDER DATED 04/11/2010 IN ITA NO.488/BANG/2010 PASSED BY THE INCOME TAX APPELLATE TRIBUNAL, 'B' BENCH, BANGALORE, IN THE INTEREST OF JUSTICE AND EQUITY.

I.T.A.NO.127/2011

BETWEEN:

1. COMMISSIONER OF INCOME TAX-III,
CENTRAL REVENUE BUILDINGS,
QUEENS ROAD,
BANGALORE – 560 001.
2. THE ASSISTANT COMMISSIONER OF
INCOME-TAX,
CENTRAL CIRCLE 2 (3),
BANGALORE.

...APPELLANTS

(BY SRI. E.I.SANMATHI, ADV.)

AND:

MR. RAJA BAGMANE,
NO.497, 14TH MAIN, 3RD BLOCK,
KORAMANGALA,
BANGALORE.

...RESPONDENT

(BY SRI K.P.KUMAR, SR.COUNSEL FOR
SRI RAVI G.SABHAHIT, ADV.)

THIS INCOME TAX APPEAL IS FILED UNDER SECTION 260-A OF I.T. ACT, 1961 ARISING OUT OF ORDER DATED 04-11-2010 PASSED IN ITA NO.487/BANG/2010, FOR THE ASSESSMENT YEAR 2004-2005, PRAYING TO:

I.FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED THEREIN, II. SET ASIDE THE APPELLATE ORDER DATED 04/11/2010 IN ITA NO.487/BANG/2010 PASSED BY THE INCOME TAX APPELLATE TRIBUNAL, 'B' BENCH, BANGALORE, IN THE INTEREST OF JUSTICE AND EQUITY.

I.T.A.NO.128/2011

BETWEEN:

1. COMMISSIONER OF INCOME TAX-III,
CENTRAL REVENUE BUILDINGS,
QUEENS ROAD,
BANGALORE – 560 001.
 2. THE ASSISTANT COMMISSIONER OF
INCOME-TAX,
CENTRAL CIRCLE 2 (3),
BANGALORE.
- ...APPELLANTS

(BY SRI. E.I.SANMATHI, ADV.)

AND:

MR. RAJA BAGMANE
NO.497, 14TH MAIN, 3RD BLOCK,
KORAMANGALA,
BANGALORE.

...RESPONDENT

(BY SRI K.P.KUMAR, SR.COUNSEL, ALONGWITH SRI
A.SHANKAR, ADVOCATE, FOR
SRI RAVI G.SABHAHIT, ADV.)

THIS INCOME TAX APPEAL IS FILED UNDER
SECTION 260-A OF I.T. ACT, 1961 ARISING OUT OF ORDER
DATED 04-11-2010 PASSED IN ITA NO.486/BANG/2010,

FOR THE ASSESSMENT YEAR 2003-2004, PRAYING TO:
I.FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW
STATED THEREIN, II. SET ASIDE THE APPELLATE
ORDER DATED 04/11/2010 IN ITA NO.486/BANG/2010
PASSED BY THE INCOME TAX APPELLATE TRIBUNAL, 'B'
BENCH, BANGALORE, IN THE INTEREST OF JUSTICE.

I.T.A.NO.129/2011

BETWEEN:

1. COMMISSIONER OF INCOME TAX-III,
CENTRAL REVENUE BUILDINGS,
QUEENS ROAD,
BANGALORE – 560 001.
 2. THE ASSISTANT COMMISSIONER OF
INCOME-TAX,
CENTRAL CIRCLE 2 (3),
BANGALORE.
- ...APPELLANTS

(BY SRI. E.I.SANMATHI, ADV.)

AND:

MR. RAJA BAGMANE
NO.497, 14TH MAIN, 3RD BLOCK,
KORAMANGALA,
BANGALORE.

...RESPONDENT

(BY SRI K.P.KUMAR, SR.COUNSEL, ALONGWITH SRI
A.SHANKAR, ADVOCATE, FOR
SRI RAVI G.SABHAHIT, ADV.)

THIS INCOME TAX APPEAL IS FILED UNDER
SECTION 260-A OF I.T. ACT, 1961 ARISING OUT OF ORDER
DATED 04-11-2010 PASSED IN ITA NO.489/BANG/2010,

FOR THE ASSESSMENT YEAR 2006-2007, PRAYING TO:
I.FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW
STATED THEREIN, II. SET ASIDE THE APPELLATE
ORDER DATED 04/11/2010 IN ITA NO.489/BANG/2010
PASSED BY THE INCOME TAX APPELLATE TRIBUNAL, 'B'
BENCH, BANGALORE, IN THE INTEREST OF JUSTICE AND
EQUITY.

I.T.A.NO.114/2011

BETWEEN:

1. THE COMMISSIONER OF INCOME TAX,
C.R. BUILDING,
QUEENS ROAD,
BANGALORE.
 2. THE ASST. COMMISSIONER OF INCOME-TAX,
CENTRAL CIRCLE - 2 (3),
C.R.BUILDING,
QUEENS ROAD,
BANGALORE.
- ...APPELLANTS

(BY SRI. K.V.ARAVIND, ADV.)

AND:

M/S.BAGMANE BUILDERS PVT. LTD.,
'LAKE VIEW BUILDING',
NO.66/1-4,
A BLOCK, 8TH FLOOR,
BAGMANE TECH PARK,
C.V. RAMAN NAGAR,
BANGALORE.

...RESPONDENT

(BY SRI K.P.KUMAR, SR.COUNSEL, ALONGWITH SRI
A.SHANKAR, ADVOCATE, FOR
SRI RAVI G.SABHAHIT, ADV.)

THIS INCOME TAX APPEAL IS FILED UNDER SECTION 260-A OF I.T. ACT, 1961 ARISING OUT OF ORDER DATED 12-11-2010 PASSED IN ITA NO.448/BANG/2010, FOR THE ASSESSMENT YEAR 2005-2006, PRAYING TO: I.FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED THEREIN, II. ALLOW THE APPEAL AND SET ASIDE THE ORDERS PASSED BY THE INCOME TAX APPELLATE TRIBUNAL, BANGALORE IN ITA NO.448/BANG/2010 DATED 12/11/2010 AND CONFIRM THE ORDER OF THE APPELLATE COMMISSIONER CONFIRMING THE ORDER PASSED BY THE ASSISTANT COMMISSIONER OF INCOME TAX, CENTRAL CIRCLE-2(3), BANGALORE, IN THE INTEREST OF JUSTICE AND EQUITY.

THESE INCOME TAX APPEALS COMING ON FOR ADMISSION THIS DAY, N.KUMAR J., DELIVERED THE FOLLOWING:

J U D G M E N T

All these appeals are taken up for consideration together as common question of law is involved and therefore by a common order all these appeals are disposed of.

2. The substantial question of law that arise for our consideration is as under :-

“ Whether any payment by a company by way of advance or loan to a shareholder or to any concern made under Section 2(22) (e) of the Income Tax Act, 1961, to the extent to which the company possessed the accumulated profits includes a trade advance and constitutes deemed dividend ?”

3. ITA Nos.105, 106, 107, 108, 109, 110, 112, 113, 114, 115, 118 and 119/2011 are all appeals preferred by the Revenue in which the assessee is a concern. ITA Nos.124, 125, 126, 127, 128, 129/2011 are also appeals preferred by the Revenue in which the assessee is an individual shareholder. ITA Nos.473, 474, 475, 476, 511, 512, 513, 514, 536 and 537/2013 are all appeals by the assessee challenging the portion of the order of the Tribunal which is against its interest.

4. The factual background which has given rise to the substantial question of law are broadly as under:-

M/s. Bagmane Development Private Limited is a closely held Company (for short hereinafter referred to as “M/s. BDPL”). Sri Raja Bagmane was the substantial shareholder. M/s. BDPL advanced money to its sister concerns namely Bagmane Builders Pvt. Ltd., Chandra Developers Pvt. Ltd., Bagmane Leasing and Finance Pvt. Ltd., Bagmane Construction Pvt. Ltd., and Raja Bagmane, the shareholder, who is having 99% of the equity share capital in M/s. BDPL. It was the amounts advanced by M/s. BDPL to these sister concerns for different assessment years 2004 – 05 to 2007 – 08, and insofar as the shareholder of Raja Bagmane is concerned, the amounts were advanced for the assessment years 2002-03 to 2007–2008.

5. The recipient of these advances are the assessee before the Court. Proceedings were initiated under Section 153C insofar as Companies are concerned and in case of the individual assessee, proceedings under Section 153A were initiated, contending that the aforesaid amounts

received by the assesseees by way of loans were advanced to the extent of accumulated profits is treated as dividend. The assesseees were called upon to explain why they should not be taxed accordingly. They have shown in their accounts, the said amounts under the caption of 'unsecured loans and advances'. The case of the assesseees was, M/s. BDPL advanced the said amounts to them for sourcing land on account of joint venture agreement. The funds were given in connection with the property purchased because in Karnataka, Companies were not allowed to buy the land which is of agricultural status. Therefore, funds were given by M/s. BDPL to procure the land in the name of the directors and hold the same in the form of capital asset and then transfer back to the company after obtaining conversion order. Earlier also, Sri Raja Bagmane had procured and transferred the lands to M/s. BDPL after obtaining conversion during the assessment year 1997 – 98. Since the funds are not given for individual benefit of directors, deemed dividend is not applicable. They also furnished the

details of such purchases and the amounts paid and the survey numbers of the land which was to be procured under the aforesaid documents. They relied on several judgments of various Courts in support of their contentions.

6. The Assessing Authority on consideration of the aforesaid material and the submission of the assessee held that the materials do not indicate the existence of any agreement between M/s BDPL and the assessee-companies till 15/12/2008 though the assessee made submission on various dates had not claimed even on a single occasion that there was a written agreement between the assessee-company and M/s BDPL. It appears that the agreement is only off the record and to give it with different colour. The said agreement was also not registered with the concerned Government Authority. The deed is dated 13/11/2002. The period of limitation for a specific performance of the contract is three years from the date fixed for the performance. There is no mention in the agreement about the time limit within

which the performance is to be completed. Therefore, these facts indicate that the agreement was submitted before the department for camouflaging the transaction when the question of deemed dividend had been raised.

7. The transaction of funds and payments by M/s. BDPL to the assesseees were made bit by bit during the whole year and hence the assesseees were given the loan or advance bit by bit from its profits during the year. Therefore, the assesseees cannot take the plea that loans or advances do not attract the provisions of Section 2(22)(e) of the Income Tax Act, 1961. Therefore, tax was levied on such loans and advances received to the extent of the accumulated profits earned by M/s. BDPL. Aggrieved by the said orders, the assesseees preferred the appeals before the Commissioner of Income Tax (Appeals). The Appellate Commissioner on consideration of the aforesaid material, declined to interfere with the said finding recorded by the Assessing Authority. Aggrieved by the same, the assesseees preferred appeals

before the Tribunal. The Tribunal on consideration of the rival contentions and after taking note of the various Judgments relied upon by the parties and also the statutory provisions, held that the material on record shows that funds have flown from M/s.BDPL to the assessee-companies. In the balance sheet the funds received could have been shown inadvertently as “unsecured loans/advances”, by the persons who are at the helm of affairs in the accounting section of the assessees. However, it does not alter the nature and character of the transaction of funds which took place and it cannot be a sole reason to brand that those were unsecured loans and that the provisions of Section 2(22)(e) of the Act have come to play a role. It further held that the balance sheet’s journal entries in the books of accounts amply make it clear that funds were provided during the course of business. It was also held that the assessees in fact produced the agreement in the midst of assessment proceedings. Therefore on the ground of belated production, the said documents cannot be rejected. M/s.BDPL was not

engaged in the business of money lending. The funds so allocated to the assessee during the course of business is purely on the business exigencies and thus, the amount so funded do not fall within the sphere of loans or advances as the case may be so as to bring it within the purview of the Act. Section 2(22)(e) brings in deeming fiction. In certain circumstances it provides an advance or loan treated as dividend in the hands of the shareholders. Advances and loans have to be interpreted in its true sense. Any payment made out of business does not fall within the ambit of advance and loans, through the accounting entries which are passed as such. The true nature of the transaction has to be seen as to whether the transaction is attributable to a loan or advance. Thus, it is obvious that the fiction created in Section 2(22)(e) only refers to pure advances or loans. Any amount paid on account of business transactions between the entities fall outside the ambit of Section 2(22)(e). As a result of globalization during the recent past, various giant infrastructure projects have come up and many are in

pipeline. Multifarious activities are involved in promoting these projects, for which activity different kinds of commercial agreements and technical agreements are involved. The finance structure of every activity differs. The risk of reward involved in every activity has difference. In order to meet such complex constraints, the flagship company/promoter may create various distinct entities being Special Utility Vehicles (SUV) to deal in each of these activities independently. The promoter along with these SUVs jointly works to complete the overall project. In such situation, funds being the bloodline for all these entities flow from one entity to the other. Such transfer of funds arising out of commercial expediency may not be in the nature of advance or loans in all circumstances.

8. After looking into the details in each of these cases, it was held that the assessing authority was not justified in invoking the provisions of Section 2(22)(e) of the Act which the assessee disputed before the CIT (A), the

Appellate Authority. The order passed by the Appellate Authority upholding the order of the Assessing Authority was held to be unjustified and therefore, the appeal was allowed and it was held that the advances made by flagship company i.e., M/s.BDPL to these assesseees would not fall within the definition of “dividend” as contained in Section 2(22)(e) of the Act and not taxable. Aggrieved by this, revenue has preferred the appeals.

9. In the assesseees’ appeals they have challenged the very institution of the proceedings under Section 153C and 153A of the Act on the ground that satisfaction of the Assessing Authority was not recorded in writing as held by the Apex Court in the case of ***Manish Maheshwari v. Assistant Commissioner of Income Tax and another*** (289 ITR 341).

10. Therefore all these appeals were taken up for consideration together.

RIVAL CONTENTIONS

11. Learned counsel for the revenue assailing these impugned orders contended that advancing of money from the flagship company to its sister company is not in dispute. The assessee in their account have entered these amounts under the heading of "unsecured loans". At the time of advancing money no agreements were entered into and no such agreement was seized or was available at the time of search under Section 132 of the Act. It is only at the far end of the proceedings on 15/12/2008 the memorandum of agreement was produced. The material on record clearly establishes that it is a document created to support the claim of the assessee and it is not a genuine document. It is in the nature of an after thought. That document is not registered. As is clear from Section 2(22)(e) of the Act, any payment made by way of advance or loan to a concern or to a shareholder to the extent the company possessed the accumulated profits would be deemed to be a dividend. The word "any payment" includes even a trade advance or

monies lent or advanced by way of business expedience or commercial expedience. The legislature by way of exception has provided that where any advance or loan is made to a share holder or concern in the ordinary course of the business, where, lending of money is a substantial part of the business of the company, such advances or loans fall outside the purview of the dividend.

12. In the instant case, M/s.BDPL is not in the business of money lending and therefore, any payment made by the said company to these assesseees is deemed to be a dividend and liable to tax. The Tribunal has erred in interfering with the well considered order passed by the lower authorities. Therefore, the said order requires to be set aside.

13. Per contra, learned counsel appearing for the assesseees submitted that the material on record clearly discloses that the flagship company - M/s.BDPL is in the

business of development of land and building. It is a company registered under the Companies Act, 1956 in the State of Karnataka. In view of the provisions of the Karnataka Land Reforms Act, a non-agriculturist including a company cannot purchase or own agricultural land. In those circumstances, for the purpose of acquiring agricultural land and development of such agricultural land, they form sister companies/sister concerns and advance money to them to enable them to acquire agricultural land and get it converted for non-agricultural purposes and then convey such land. Therefore, the amounts were given to these assesseees as trade advance. It is not given out of the accumulated profits. In fact, the material on record shows that major portion of such advances are not out of such accumulated profits and therefore, he submits that the word "advance or loan" referred to in Section 2(22)(e) of the Act has to be interpreted in the context in which the said provisions was brought on the statute book and the object was sought to be achieved. The literal interpretation of the said provision would lead to

absurdity and injustice and therefore, purposive construction has to be placed on the said provision i.e., precisely what the Tribunal has done and hence, there is no substance in these appeals.

STATUTORY PROVISIONS

14. In order to appreciate these rival contentions, first we have to look at the word “dividend”, which is defined in the Companies Act. The word “dividend” is inserted by the Companies (Amendment) Act, 2000 which came into force on 13/12/2000 as Section 2(14)(a), which reads as under:-

“Dividend includes any interim dividend”

15. Section 206 of the Companies Act defines to whom the dividend is payable, which reads as under:-

“Dividend not to be paid except to registered shareholders or to their order or to their bankers.

206. (1) *No dividend shall be paid by a company in respect of any share therein, except : -*

(a) *to the registered holder of such share or to his order or to his bankers; or*

(b) *in case a share warrant has been issued in respect of the share in pursuance of section 114, to the bearer of such warrant or to his bankers.*

(2) *Nothing contained in sub-section (1) shall be deemed to require the bankers of a registered shareholder to make a separate application to the company for the payment of the dividend.”*

As could be seen from the aforesaid provisions, the only person who is entitled to a dividend is the registered holder of any share in the company. Even a person who holds shares as trustee, for any person is registered as a shareholder. Shareholder is the only person recognized by the company, who is entitled to payment of dividend.

16. The word “dividend” has been defined under the Act in Section 2(22). It reads as under:-

Definitions.

2. In this Act, unless the context otherwise requires,-

(22) “dividend” includes-

(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;”

17. Sections 104 to 109 of the Act relate to levy of additional tax on certain closely held companies other than those in which the public was substantially interested, if they fail to distribute a specified percentage of their distributable profits as dividends. These provisions had lost much of their relevance with the reduction of the maximum marginal rate of personal tax to 50% which is lower than the rate of corporation tax on closely held companies. Therefore, Sections 104 to 109 have been omitted by the Finance Act, 1987. If on the deletion of Sections 104 to 109, there was a likelihood of closely held companies not distributing their profits to share holders by way of dividends but by way of loans or advances so that these are not taxed in the hands of the shareholders, to forestall the manipulation, Section 2(22) has been suitably amended. Under the existing provisions payment by way of loans or advances to shareholders who have substantial interest in a company to the extent to which the company possessed accumulated profits is treated as dividend. The shareholders who have substantial interest

are those who have shares carrying not less than 20% of voting power as per the provision of clause (32) of Section 2 of the Act. Amendment to the definition extends its application to payments made (1) to a shareholder holding not less than 10% of the voting power or (2) to a concern in which the shareholder has substantial interest. "Concern" as per newly inserted Explanation 3(a) to Section 2(22) means a Hindu undivided family, or a firm or an association of persons or a body of individuals or a company. A shareholder having substantial interest in a concern as per Explanation 3(b) to Section 2(22), is deemed to be one who is beneficially entitled to not less than twenty percent of the income of such concern.

18. The Apex Court in the case of ***K.P.Varghese v. Income Tax Officer, Ernakulam and another, reported in [131 ITR 597]***, dealing with the interpretation to be placed on sub-section (2) of Section 52 of the Act explaining the scope of literal construction held as under:-

“The task of interpretation of a statutory enactment is not a mechanical task. It is more than a mere reading of mathematical formulae because few words possess the precision of mathematical symbols. It is an attempt to discover the intent of the Legislature from the language used by it and it must always be remembered that language is at best an imperfect instrument for the expression of human thought and, as pointed out by Lord Denning, it would be idle to expect every statutory provision to be “drafted with divine prescience and perfect clarity”. We can do no better than repeat the famous words of judge Learned Hand when he said “.... it is true that the words used, even in their literal sense, are the primary and ordinarily the most reliable source of interpreting the meaning of any writing: be it a statute, a contract or anything else. But it is one of the surest indexes of a mature and developed jurisprudence not to make a fortress out of the dictionary; but to remember that statutes always have some purpose or object to accomplish, whose sympathetic and imaginative discovery is the surest guide to their meaning.”

X x x

We must, therefore, eschew literalness in the interpretation of Section 52, sub-section (2), and try to arrive at an interpretation which avoids this absurdity and mischief and makes the provision rational and sensible, unless of course, our hands are tied and we cannot find any escape from the tyranny of the literal interpretation. It is now a well-settled rule of construction that where the plain literal interpretation of a statutory provision produces a manifestly absurd and unjust result which could never have been intended by the Legislature, the court may modify the language used by the Legislature or even “do some violence” to it, so as to achieve the obvious intention of the Legislature and produce a rational construction.”

19. The Apex Court again explained the meaning of a deeming provision under the Income Tax Act in the case of **Commissioner of Income Tax, Kanpur v. Mother India Refrigeration Industries P.Ltd. [155 ITR 711]** as under:-

“The legal fictions are created only for some definite purpose and these must be limited to that

purpose and should not be extended beyond that legitimate field.”

20. The Delhi High Court had an occasion to consider the scope of Section 2(22)(e) in the case of ***Commissioner of Income Tax v. Rajkumar [2009 318 ITR 462]*** wherein it was held as under:-

“21. This, however, leaves us with the submission of the Revenue that even a trade advance could fall within the ambit of section 2(22)(e) of the Act. In order to deal with this submission it would be convenient to extract the relevant part of the provision of section 2(22)(e) of the Act:

“2. In this Act, unless the context otherwise requires,-...

(22) ‘dividend’ includes-

(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 (hereinafter 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.”

21. The Calcutta High Court explaining Section 22(e) in the case of **Pradeep Kumar v. Income Tax Officer [2011 338 ITR 538]**, held as under:-

“After hearing the learned counsel for the parties and after going through the aforesaid provisions of the Act, we are of the opinion that the phrase “by way of advance or loan” appearing in sub-clause (e) 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 ten per cent of the voting power; but 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 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”.

22. The Delhi High Court in the case of ***Commissioner of Income-Tax v. Ankitech P. Ltd. [(2012) 340 ITR 14 (Delhi)]***, explaining the meaning of the word “concern” found in the provisions as well as the Explanation (3), where the meaning of the said word is expressly given, held as under:-

“24. *The intention behind enacting the provisions of section 2(22)(e) is that closely-held companies (i.e., companies in which public are not substantially interested), which are controlled by a group of members, even though the company has accumulated profits would not distribute such profit as dividend because if so distributed the dividend income would become taxable in the hands of the shareholders. Instead of distributing accumulated profits as dividend, companies distribute them as loan or advances to shareholders or to concern in which such shareholders have substantial interest or make any payment on behalf of or for the individual benefit of such shareholder. In such an event, by the deeming provisions, such payment by the company is treated as dividend. The intention behind the provisions of section 2(22)(e) of the Act is to tax dividend in the hands of shareholders. The deeming provisions as it applies to the case of loans or advances by a company to a concern in which its shareholder has substantial interest, is based on the presumption that the loans or advances would ultimately be made available to the shareholders of the company giving the loan or advance.*

23. Following the said judgment, this Court in the case of ***The Chief Commissioner of Income Tax-III v. M/s.Sarva Equity Pvt. Ltd.*** in ***ITA.No.322/12*** and other connected matters, disposed of on 08/01/2014 held as under:-

“16. In the present case, we are concerned with the second limb of Section 2(22)(e) of the Act namely, to any concern, like the respondent-assessee, in which such shareholder is a member or a partner and in which he has a substantial interest. The respondent assessee is admittedly not a shareholder of M/s.Ittina. It is not even the case of the assessee that it is a shareholder of M/s.Ittina, though, shareholders of the respondent-assessee and M/s.Ittina are common and/or members of the same family. In this backdrop when we look at the provisions contained in Section 2(22)(e) of the Act, the intendment of the Legislature is clear, which means to tax dividend in the hands of shareholders. The deeming provisions, as observed by Delhi High Court, as it applies to the case of loans/advances by a Company to a concern in which its shareholders have substantial interest,

is based on the presumption that the loans or advances would ultimately be made available to the shareholders of the Company giving the loan or advances. Loan or advance given to the shareholders or to a concern, under normal circumstances would not qualify as dividend, but it is so made by legal fiction created under Section 2(22)(e) of the Act. Thus, the definition of dividend has been enlarged, and that loan or advances given under the conditions specified under this provision would also be treated as dividend. The fiction, however, is not to be extended for enlarging the concept of shareholders. Dividend is to be given by any company, to its shareholders. Thus, in the second category under Section 2(22)(e) of the Act, loan or advances given to a concern, like the assessee in the present case, which is admittedly not a shareholder of the payee company, under no circumstances, could be treated as shareholder receiving dividend. As observed by Delhi High Court, if the intention of the Legislature was to tax such loan or advance as deemed dividend at the hands of deeming shareholder, then the legislature would have inserted deeming provision in respect of

shareholder as well. The legislature has not done so.

17. Section 2(22)(e) of the Act is designed to strike balance, i.e., advance or loan to a shareholder and that the word shareholder can mean only a registered shareholder. A beneficial owner of shares whose name does not appear in the Register of shareholders of the Company cannot be stated to be a shareholder. He may be beneficially entitled to the share but he is certainly not a shareholder. In other words, it is only the person whose name is entered in the Register of the shareholders of the Company as the holder of the shares who can be said to be a shareholder qua Company and not the person beneficially entitled to the shares. We are therefore, of the view that it is only where a loan is advanced by the Company to the registered shareholder and the other conditions set out in Section 2(22)(e) of the Act are satisfied, that amount of loan would be liable to be regarded as deemed dividend within the meaning of this section.

24. Therefore, from the aforesaid judgments, it is clear that the purpose of the insertion of sub-clause (e) of Section 2(22) of the Act was 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. 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 a deemed dividend within the meaning of the Act. Instead of distributing accumulated profits as dividend, companies distribute them as loan or

advances to shareholders or to concern in which such shareholders have substantial interest or make any payment on behalf of or for the individual benefit of such shareholder, in such an event, by the deeming provisions, such payment by the company is treated as dividend. It is so made by legal fiction created under Section 2(22)(e) of the Act. Thus, the definition of dividend has been enlarged, and that loan or advances given under the conditions specified under this provision would also be treated as dividend. 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. The intention behind the provisions of section 2(22)(e) of the Act is to tax dividend in the hands of shareholders.

25. It is in this background, the word “**any payment**”, by a company, by way of advances or loans, has

to be interpreted. The attribute of a loan is that it is a positive act of lending money coupled with acceptance by the other side of the money as loan and generally carries interest and there is an obligation of repayment. The term “advance” may or may not include lending. The word “advance” if not found in the company or in conjunction with the word loan may or may not include the obligation of repayment. If it does then it would be a loan. However, the Legislature has used the expression by way of advance or loan. Therefore, both these words are used to mean different things. The principle of statutory interpretation by which a generic word receives a limited interpretation by reason of its company is well established. In such circumstance, one can legitimately draw on the *noscuntur a sociis* principle. In fact this latter maxim is only an illustration or specific application and broader than the maxim *ejusdem generis*.

26. The Apex Court in the case of ***State of Bombay and Others v. The Hospital Mazdoor Sabha and Others*** reported in ***AIR 1960 SC 610*** has observed as under:-

9. It is, however, contended that, in construing the definition, we must adopt the rule of construction *noscuntur a sociis*. This rule, according to Maxwell, means that, when two or more words which are susceptible of analogous meaning are coupled together they are understood to be used in their cognate sense. They take as it were their colour from each other, that is, the more general is restricted to a sense analogous to a less general. The same rule is thus interpreted in *Words and Phrases* (Vol. XIV, p. 207):

“Associated words take their meaning from one another under the doctrine of *noscuntur a sociis*, the philosophy of which is that the meaning of a doubtful word may be ascertained by reference to the meaning of words associated with it; such doctrine is broader than the maxim *Ejusdem Generis*.” In fact the latter maxim “is only an illustration or specific application of the broader maxim *noscuntur a sociis*”. The argument is that certain essential features or attributes are invariably associated with the words “business and trade” as understood in the popular and conventional sense, and it is the colour of these attributes which is taken by the other words used

in the definition though their normal import may be much wider. We are not impressed by this argument. It must be borne in mind that noscitur a sociis is merely a rule of construction and it cannot prevail in cases where it is clear that the wider words have been deliberately used in order to make the scope of the defined word correspondingly wider. It is only where the intention of the legislature in associating wider words with words of narrower significance is doubtful, or otherwise not clear that the present rule of construction can be usefully applied. It can also be applied where the meaning of the words of wider import is doubtful; but, where the object of the legislature in using wider words is clear and free of ambiguity, the rule of construction in question cannot be pressed into service. As has been observed by Earl of Halsbury, L.C., in Corporation of Glasgow v. Glasgow Tramway and Omnibus Co. Ltd. [(1898) AC 631 at p. 634] in dealing with the wider words used in Section 6 of Valuation of Lands (Scotland) Act, 1854,

“the words ‘free from all expenses whatever in connection with the said tramways’ appear to me to be so wide in their application that I should

have thought it impossible to qualify or cut them down by their being associated with other words on the principle of their being ejusdem generis with the previous words enumerated”.

If the object and scope of the statute are considered there would be no difficulty in holding that the relevant words of wide import have been deliberately used by the legislature in defining “industry” in Section 2(j). The object of the Act was to make provision for the investigation and settlement of industrial disputes, and the extent and scope of its provisions would be realised if we bear in mind the definition of “industrial dispute” given by Section 2(k), of “wages” by Section 2(rr), “workman” by Section 2(s), and of “employer” by Section 2(g). Besides, the definition of public utility service prescribed by Section 2(m) is very significant. One has merely to glance at the six categories of public utility service mentioned by Section 2(m) to realise that the rule of construction on which the appellant relies is inapplicable in interpreting the definition prescribed by Section 2(j).

27. In this background when we look at the aforesaid provision, it is clear that any payment made by a company by way of advance or loan has to be understood in the context of the object with which the said provision is introduced. Though the legislature has introduced 'advance' as well as 'loan' which are two different words, the meaning of each of those words have to be understood in the context in which they are used. Each word takes its colour from the other. The meaning of the word 'advance' is to be understood by the meaning of the word loan which is used immediately thereafter. Associated words take their meaning from one another under the doctrine of *noscuntur a sociis*, the philosophy of which is that the meaning of a doubtful word may be ascertained by reference to the meaning of words associated with it. This rule, according to Maxwell, means that, when two or more words which are susceptible of analogous meaning are coupled together they are understood to be used in their cognate sense. They take as it were their colour from each other, that is, the more

general is restricted to a sense analogous to a less general. In the case of a loan, money is advanced generally on payment of interest. In other words the loan advanced has to be repaid with interest. In the case of an advance also, the element of repayment is there but such a repayment may be with interest or without interest. Therefore, when the said two words are used in the aforesaid provision with the purpose of levying tax, if the intention of such advance or loan is to avoid payment of dividend distribution of tax under Section 115-O of the Act, such a payment by a company certainly constitutes a deemed dividend. But if such a payment is made firstly not out of accumulated profits and secondly even if it is out of accumulated profits, but as trade advance as a consideration for the goods received or for purchase of a capital asset which indirectly would benefit the company advancing the loan, such advance cannot be brought within the word 'advance' used in the aforesaid provision. The trade advance which is in the nature of money transacted to give effect to commercial transactions

would not fall within the ambit of the provisions of Section 2(22)e of the Act.

28. In this context, it is useful to refer to the judgment of the Apex Court in the case of **LIC of India -vs- Retired LIC Officers Association [2008(3) SCC 321]** where it was held that each word employed in a statute must take colour from the purport and the object for which it is used. Principle of purposive interpretation should be taken recourse to. If a literal interpretation is given to the said words, it means all trade advances are to be taxed as deemed dividend. If such an interpretation is placed, it would lead to absurdity. That was not the intention of the legislature in enacting the aforesaid provision. Even if the accumulated profit which ought to have been paid to the shareholders as the dividend paid to a sister concern for the purpose of acquisition of capital assets or as a consideration for the goods received which is required for carrying on the business, it would not fall within the definition of Section

2(22)e of the Act as the object was not to pay the said amount to the shareholders after avoiding payment of dividend distribution tax under Section 115-O of the Act. In that view of the matter, it is not possible to accept the interpretation sought to be placed by the revenue.

29. The learned Counsel for the revenue pointed out clause(ii) of Section 2(22)e which expressly provides that any payment by a company by way of any advance or loan made to a shareholder or the concern in the ordinary course of business where the lending of money is a substantial part of the business of the company and if the case of the assessee does not fall under the said provision, the said advance constitutes dividend. The question of looking into the aforesaid provision would arise only when all the conditions prescribed in clause (e) of Sub-Section (2) of Section 22 are complied with. If a payment is made by way of trade or business, advance or loan, clause (e) of Sub-section (2) of Section 22 of the Act is not at all attracted and the question

of applying the aforesaid clause (ii) would not arise and therefore, we do not see any substance in the said contention.

30. It was also contended on behalf of the revenue that having regard to the plain words used in clause (e) 'to any concern', when the amount is paid or when any payment is made to a concern, the tax is levied on the concern and not on the shareholders. As far as this question is concerned, this Court following the judgment of the Bombay High Court in the case of Commissioner of Income Tax vs Universal Medicare (P) Limited reported in 324 ITR 263 has categorically held that when any payment is made by a company to any concern, which falls under clause (e), the tax is leviable on the shareholder only and not on the concern. We respectfully agree with the aforesaid judgment and we do not see any justification to take another view of this matter. Therefore, the finding recorded by the Tribunal that, these advances made by the BDPL to the sister concern

as well as to its shareholder do not constitute deemed dividend under Section 2(22)(e) of the Act, is legal and valid and do not call for any interference.

31. In so far as the appeals filed by the assesses are concerned, as we have held there is no primary liability to pay tax, we are not going into other contentions and we leave it open to be adjudicated at the appropriate time in an appropriate forum. In view of our findings that the advances made do not fall within the definition of a deemed dividend under Section 2(22)(e) of the Act, we have not gone into the merits of the contemporaneous issues which are raised in appeal and they are kept open to be adjudicated in an appropriate forum.

32. Consequently the substantial question of law is answered in favour of the assessee and against the revenue and the assesses' appeals are all disposed of.

33. The finding recorded by the Tribunal in ITA 127/2011 that once the assessee has taken an advance amount of Rs.49.35 lakhs and returns of the same, even in the absence of any documentary evidence evidencing the same is acceptable, cannot be found fault with. Accordingly, we do not find any merit in the said contention.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

Ng/nvj/mvs/nsu