

INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCH "B": NEW DELHI]

BEFORE SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 1383/Del/2017 [by Assessee]
And
ITA No. 2396/Del/2017 [by Department]
(Assessment Year: 2013-14)

Dy. CIT, Central Circle-29, New Delhi	Vs.	M/s Futurz Next Services (Private) Limited, FA - 45, Shivaji Enclave, New Delhi – 110 027. PAN: AABCJ7692K
(Appellant)		(Respondent)

Revenue by :	Ms Ashima Neb Sr DR Mr. Jagdish Singh, Sr. DR
Assessee by:	Shri Ved Jain Advocate Shri Rishabh Jain CA Shri Ashish Goel, C. A.;
Date of Hearing	31/10/2019 and 16/03/2020
Date of pronouncement	02/06 /2020

ORDER

PER PRASHANT MAHARISHI, A. M. :

- 01 These are cross appeals filed by the assessee and the Revenue against the order of The Commissioner of Income Tax (Appeals)-30, New Delhi,[the Ld CIT (A)] dated 25.01.2017. The assessee has raised the following 3 grounds in its appeal No. 1383/Del/2017 and the Revenue has raised the following 7 grounds in its appeal No. 2396/Del/2017:-

ITA No. 1383/Del/2017 :

1. On the facts and circumstances of the case, the order passed by the learned

Commissioner of Income Tax (Appeals) [CIT(A)] is bad both in the eye of law and on facts.

2. (i) On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law, in confirming addition of an amount of Rs.29,63,061/- on account of claim of depreciation on building.

(ii) That the disallowance has been confirmed rejecting the contention of the assessee that the building has not been transferred during the year, therefore the depreciation on the same is allowable during the year.

(iii) That the disallowance has been confirmed misinterpreting the Sale Deed made on transfer of property.
3. Without prejudice to the above and in the alternative, the learned CIT(A) has erred both on facts and in law in rejecting the contention of the assessee that the value of the block of building taken at Rs.2,87,14,500/- by the AO is wrong as the sale consideration of the property was agreed upon at Rs.2,00,00,000/- only. “

ITA No. 2396/Del/2017 :

“1. Whether on the facts & circumstances of the case, the Ld. CIT(A) has erred in law & on facts in deleting the disallowance u/s 14A read with rule 8D of the Income Tax Rules amounting to 2,12,74,766/- made by the AO ignoring the fact that the provisions of section 14A are mandatory.

2. On the facts and in the circumstances of the case, the Ld. CIT(A) had erred in law and on facts by deleting the addition of Rs. 94,32,600/- made on account of deemed dividend u/s 2(22)(e) of the Act.

3. On the facts and in the circumstances of the case, the Ld. CIT(A) had erred in law and on facts by holding that recasting of ledger account of assessee in the books of JCPL by the AO is not correct.

4. On the facts and in the circumstances of the case, the Ld. CIT(A) had erred in law and on facts in holding that all the transactions with JCPL are business transaction, thus, ignoring the fact that assessee company is a client of JCPL and it was obliged to pay only the profit earned by the assessee company.

5. That the order of the CIT (A) is perverse, erroneous and is not tenable on facts and in law.

6. That the grounds of appeal are without prejudice to each other.
7. The appellant craves leave to add, alter or amend any/ all of the ground(s) of appeal before or during the course of the hearing of the appeal.”

- 02 Brief facts of the case shows that assessee is a company engaged in the business of on-line trading in various commodities, shares and securities and trading in physical commodities like silver and gold. It filed its return of income on 30.09.2013 at Rs.58,39,990/-. The case of the assessee was picked up for scrutiny and the ld. Assessing Officer made a disallowance of
- a. Rs.5,90,843/- being loss on sale of fixed assets, which was not added back in the computation.
 - b. Disallowance under Rule 14A of the Income Tax Rules of Rs.2,12,74,766/- was also made.
 - c. Addition of Rs.94,32,600/- as deemed dividend under Section 2(22)(e) of the Income Tax Act, 1961 (the Act).
 - d. Disallowed excess claim of depreciation of Rs.29,63,061/-.
- Total income of assessee was assessed at Rs. 4,01,01,260/- vide order dated 23.03.2016 passed under Section 143(3) of the Act.
- 03 Assessee aggrieved with the order of the ld. Assessing Officer preferred an appeal before the ld. CIT (Appeals). The ld. CIT (Appeals) deleted the disallowance u/s 14A of the Act holding that assessee has not earned any exempt income and, therefore, there cannot be any disallowance u/s 14A. He confirmed the addition of excess depreciation claimed by the assessee of Rs.29,63,061/-. He deleted the addition made by the Assessing Officer on account of deemed dividend of Rs.94,32,600/-. Thus appeal of the assessee was partly allowed.
- 04 Therefore, assessee is in appeal against the confirmation of the addition of Rs.29,63,061/- on excess claim of depreciation on building. The ld. Assessing Officer is in appeal before us on deletion of the disallowance u/s 14A of the Act of Rs.2,12,74,766/- and against the deletion of addition of

Rs.94,32,600/- on account of deemed dividend under Section 2(22)(e) of the Act.

- 05 We first come to the ground No. 1 of the appeal of the Assessing Officer against deletion of disallowance u/s 14A of the Act of Rs.2,12,74,766/-. The ld. Assessing Officer noted that assessee has substantial amount of investment in the shares of the companies, which can have tax-free dividend income. The assessee was asked about details of exempt income and other expenditure for disallowance u/s 14A of the Act. Assessee submitted that it has not received any exempt income during the year and, therefore disallowance u/s 14A of the Act cannot be made. The ld. Assessing Officer rejected the contentions of the assessee and computed disallowance u/s 14A of the Act applying the provisions of Rule 8D of the Income Tax Rules. The learned CIT (Appeals) deleted the same for the reason that during the year the assessee has not earned any exempt income there cannot be any disallowance u/s 14A of the Act.
- 06 The learned Departmental Representative relied upon the order of the Assessing Officer and the learned Authorized Representative relied upon the order of the Hon'ble Delhi High Court to support his case.
- 07 We have carefully perused the contentions. It has been categorically held by the Assessing Officer that no exempt income is earned by the assessee during the year. Thus issue is squarely concluded in favour of the assessee by the decision of the Hon'ble Delhi High Court in Cheminvest Limited Vs. CIT 378 ITR 33 (Del.) wherein it has been held that Section 14A envisages that there has to be an actual receipt of exempt income during the relevant previous year for purpose of making any disallowance u/s 14A of the Act. Thus, following the decision of the Hon'ble Delhi High Court in 378 ITR 33 (Del.) (supra) we hold that the learned CIT (Appeals) has correctly deleted the addition. Thus, ground No. 1 of the appeal of the ld. Assessing Officer is dismissed.

08 The second ground of appeal relates to an addition of Rs.94,32,600/- on account of deemed dividend under Section 2(22)(e) of the Act. The learned CIT (Appeals) has dealt with this issue as per para No. 8 of his order, which is as under:-

“8. Ground No. 8. is relating to the addition of Rs. 94,32,600/- on account of deemed dividend us 2(22)(e) of the Act.

8.1 The A.O. has made the above addition in the assessment order u/s 143(3) of the Act dated 23.3.2016 and relevant portion is reproduced as undcr:-

“6. Income treated as deemed dividend ids 2(22) (e) of the Act

6.1 During the concerned assessment year, Assessee Company held more than 40% shareholding in M/s. Jaypee Capital Services Ltd. As JCSL is a private company in which public arc not substantially interested, had given a loan or advances to Assessee Company on various dates during the year under consideration. The assessee submitted that it had made share currency trading transactions as a client, of the company JCSL. During the year under consideration, the assessee company has made business transactions of Rs. 87.95 crore (net purchased value) and Rs. 92.26 crore (net sale value). Therefore, the payment has been made by JCSL to the assessee company against the business transaction. Accordingly, the payments made by JCSL to the assessee were not in the nature of loan and advance but it was in the nature of business transactions. Along with that reply a copy of ledger from F.Y. and the net summarized position was submitted. It was further submitted that the word "advance" has to be read in conjunction with the word 'loan' The word loan involves positive act of lending coupled with acceptance by the other side as loan. On the other hand meaning of the term, "advances" may or may not include lending. Trade advances are in the nature of money transacted to give effect to a commercial transaction, therefore, it is not covered u/s 2(22)(e) of the Act.

6.2 The reply of the assessee is carefully considered. From the copy of account filed along with the above reply, it is found that there are many transactions of payment by company JCSL to the assessee. There are some entries of cheque payment and cheque receipt. The accounts also includes the entries having narration of settlement posting" which indicates that the relevant debit and credit entry is the result of said transaction at that day. Since, the share / F & O / Currency transactions done by the assessee as a client of JCSL are in

the normal course of business activity as done by the assessee company for any other client, the debits (payment)resulting from such transactions is not covered u/s 2(22)(e). However, in the case of cheque payment, it has to be considered for the purpose of that section, it is also seen from the copy of account that on the different dates the running balance is negative for most part of the year. The negative balance indicates that the company JCSL has made payment to the assesses and it has to receive that much amount from the assesses. On the other hand, positive balance shows that the company owns that amount to the assessee. Therefore, any cheque payment made by the company JCSL on the date when there is zero or negative balance has to be treated as loan and advance because on that day no amount is payable In the company, it has to rather receive some amount to the assessee. However, any payment made on a date when there is positive balance will not be considered as deemed dividend because that payment is towards the amount company due to the assessee. On the above principals payments as per chart enclosed as Ann A to this Order are to be treated as deemed dividend us 2(22)(e). This issue has been discussed in detail in the assessment order of Jaypee capital Services Ltd. of. AY 2013-14. Wherein, it is held that the payment amounting Rs 94,32,600/ - is deemed dividend m the hand of assessee company. The relevant extract of the finding in the order of Jaypee Capital Services ltd. IY 2013- 14 are as under:-

" 12.6 The reply of assessee is carefully considered.

(i) The provision of section 2(22)(e) applies to closely held company the assessee company is a private company in which the public is not substantially interested. Section 2(22)(e) of the Income Tax Act, 1961 plainly seeks to bring within the tax net accumulated profits which are distributed by closely held companies to its shareholders in the form of loans or advances. The purpose being that persons who manage such closely held companies should not arrange the affairs of company in such a manner that they assist the major shareholders in utilizing the fund of company in the form of advance or loan for personal use and avoid the payment of taxes on dividends. *Adl v. Raj Kumar* (21)09/ 161 Taxman 155 (Delhi).

(ii) The provision of section 2(22)(e) make it clear that payment should be of the nature was advance OR loan. Thus, the intent of legislation in disjoining the words is clear i.e. the transfer of fund may be as advance or as a loan. Therefore, there is no force on the argument of the assessee that the word loan and advance should be read in conjunction and advance should be of the nature of loan.

(iii) Section 2(22)(e) does not say that in order to come in the category of deemed dividend, loan or advances should be of a particular minimum duration. A loan for a few days would be within its ambit. Thus, duration of loan is not material [*Walchand & Co. Vs. CIT* (1975) 100 ITR 598 (Bom)]. The withdrawal over and above credit balance is to be treated as deemed dividend. For example, when company has accumulated profits,

withdrawal by a shareholder over and above the credit which he has with the company would be deemed dividend when the shareholder had no credit balance in any other account [CIT Vs. P. Sarada (1985) 46 ITR (Mad) 326 : (1985) 154 ITR 387 (Mad) : TC A1R 306].

(iv) The assessee company is a share and currency broker. Its business dealing either in share and in commodities own behalf re in "PRO" account or on behalf of clients. In respect of PRO trading, it gets the direct benefit of profit and loss whereas, in respect of trading on behalf of them, it can only earn the brokerage and commission. The advances are not been given for the purpose of trade as the client did not have the obligation to provide any goods or services to the assessee company. The trade undertaken by M/s Future Next Services Ltd., who in his dealing with the assessee company as a client . gain profit or loss to himself. There is no profit sharing agreement between the company and the client Ms Futurz Next Services Ltd. in respect of shares currencies traded out of funds advanced by the company. There is also no agreement executed by the company in respect of the advance and loan granted to Ms Futurz Next Services Ltd. The assessee company in no way have any control on the flow of fund so advanced, from the accounts of the recipient for their use. The company is itself in the business of share trading and it could have done the transactions in the FRO account by using its fund in place of using the fund fur the business of itself, it diverted the fund therefore, provisions of section 2(22)(e) is applicable on the asses see.

(v) The other argument of assessee that the account

with M v Future Text Services Ltd. is a pure business account in which only the business transactions have been entered is not correct, , as per the copy of account, it was found that Ms Futurz Next Services Ltd was already have debit balance of Rs 71.57 crore in the opening. Thereafter, many transactions of the nature of trade has been undertaken The trade transactions of shares, future option and currency segment has both buy and safes. However, the profit and repayment was not exceeding the opening debit balance till 25-1)3-2013, Therefore, the company was not required to made any payment to Ms Futurz Next Services Lid. However, it continued to make advances at regular interval. Thus the assessee advanced amounts, over and above the balance of Ms Future Next Services Ltd. The chart of fund flow From between the assessee company and Ms Futurz Next Services Ltd. examined. For the purpose of determining dividend under section 2(22)(e). only the payments that resulted in the debit balances to M s Futurz Next Services Ltd. Where ever the payment i.\ made on account on trade profit the same have not been taken in to account for the purpose of determining deemed dividend it's 2(22)(e).

(vi) There are various judicial pronouncements for the proposition that the fiscal laws should be strictly construed and (he true test is always the language used.

In the ease of Gurudev Datta VKSSS Maryadit v. State of Maharashtra.. AIR 2001 SC 1980). their Lordships of the apex court held as under (head-note).

"It is a cardinal principle of interpretation of statute that the words of statute must be understood in their natural, ordinary or popular sense and construed according to

their grammatical meaning, unless such construction leads to some absurdity or unless there is something in the context or in the object of the statute to suggest to the contrary. The golden rule is that the words of a statute, must prima facie be given their ordinary meaning. It is yet another rule of construction that when the words of the statute are clear, plain and unambiguous, then the courts are bound to give effect to that meaning irrespective of consequences. It is said that the words themselves best declare the intention of the law giver. The courts have adhered to the principle that effort should be made to give meaning to each and every word used by the Legislature and it is not a sound principle of construction to brush aside words in a statute as being inapposite surpluses if that can have a proper application in circumstances conceivable within the contemplation of the statute '

In the case of Keshavji Ravji and Co. Vs. CIT [1990] 183 ITR 1 (SC), the apex court observed as under (head note):

"As long as there is no ambiguity in the statutory language, resort to any interpretative process to unfold the legislative intent becomes impermissible. The supposed intention of the Legislature cannot then be appealed to whittle down the statutory language, which is otherwise unambiguous. If the intentment is not in the words, it is nowhere else. The need for interpretation arises when the words used in the statute are, on their own terms, ambivalent and do not manifest the intention of the Legislature. "

The Hon'ble Supreme Court, in the case of Smt. Tarulata

Shyam v.CIT [1977] 108 ITR 345 (SC) approved the observations in the case of Cape Brandy Syndicate Vs. IRC [1921] 1 KB 64 observing as under (page 357):

To us, there appears no justification to depart from the normal rule of construction according to which the intention of the Legislature is primarily to be gathered from the words used in the statute. It will be well to recall the words of Rowlatt J. in Cape Brandy Syndicate v. IRC [1921] 1 KB 64 (KB) at page 71, that:

'..... in a taxing Act one has to look merely at what is clearly said There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in. nothing is to be implied. One can only look fairly at the language used. '

Once it is shown that the case of the assessee comes within the letter of the law. he must be taxed, however, great the hardship may appear to the judicial mind to be.

"

Similarly in the case of Prakash Nath Khanna v. CIT (2004) 266 ITR 1 (SC), their Lordships have observed as under:

“ It is a well-settled principle in law that the court cannot read anything into a statutory provision which is plain and unambiguous. A statute is an edict of the Legislature. The language employed in a statute is the determinative factor of legislative intent. The first and primary rule of construction is that the intention of the legislation must be found in the words used by the Legislature itself. The question is not what may be

supposed and has been intended but what has been said.' Statutes should be construed, not as theorems of Euclid' Judge Learned Hand said, but words must be construed with some imagination of the purposes which lie behind them. While interpreting a provision the court only interprets the law and cannot legislate it. If a provision of law is misused and subjected to the abuse of process of law, it is for the Legislature to amend, modify or repeal it, if deemed necessary, to see *Rishabh Agro Industries Ltd. v. P.N.B. Capital Services Ltd.* [2000] 101 Comp Cas 254 (SC): [2000] 5 SCC 515. The legislative causus omissus cannot be supplied by judicial interpretative process. Two principles of construction one relating to casus omissus and the other in regard to reading the statute as a whole appear to be well-settled. Under the first principle a casus omissus cannot be supplied by the court except in the case of clear necessity and when reason for it is found in the four corners of the statute itself but at the same time a casus omissus should not be readily inferred and for that purpose all the parts of a statute or section must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that the construction to be put on a particular provision makes a consistent enactment of the whole statute. "

(vi) The above judgments made it clear beyond doubt that courts are not required to look into the object or intention of the Legislature by resorting to aids to interpretation where the language of the provision is clear and unambiguous. Consequently, the meaning of each word used by the Legislature is to be given its plain and natural meaning and no word should be ignored while

interpreting a provision of a statute. Thus, it is clear that where the assess does not fulfill the conditions laid down in plain and clear language in a section, the assessee shall be subjected to provisions of section. The liberal interpretation cannot be construed to the plain & unambiguous' words.

12.7 In view of facts and judicial decisions discussed above, that the payment made by the assessee company by way of loan and advances to Ms futurz Next Services Ltd. during the year is treated as deemed dividend in the hand of M/s futurz Next Services Ltd. The chart of transactions of the nature of loans and advances given to M/s futurz Next Services Ltd. is enclosed as Annexure-A. As per which the amount of Its. 94.32,000.'- was advanced by way of cheque or fund transfer on the dates on which there was existing running balances. The complete chart of transactions with M/s futurz Next Services Ltd. is also enclosed as Annexure-H. The comparison of chart proves that the transactions as per Annexure-A are of the nature of loans and advances. M/s futurz Next Services Ltd. have more than 40% shareholding in the assessee company. Therefore, the amount of Rs. 94.32.0(10 - loan and advances given by assessee company to M/s futurz Next Services Ltd. will be treated as deemed dividend in the hand of M/s futurz Next Services Ltd. ”

6.3 In view of above discussion, amount of Rs. 94.32.600/- is added to the income of the assessee company as deemed dividend under s 2(22)(e) of the Act.

(Addition Rs. 94.32,600/-)"

8.2 During the appellate proceedings, the Ld.AR has filed written submissions/objections vide letter dated 09.01.2017 and the relevant portion is reproduced as under:-

"8.1. The Id. AO has made an addition of Rs 94.32.600 - on account of business transactions with M/s. Jaypee Capital Services P. Ltd. treating the same to deemed dividend under the provisions of section 2(22) (e). The assessee company is a shareholder in M s Jay pee Capital Services P. Ltd. with a shareholding of 40.85% shares. Along with being a shareholder the assessee company 'was also a client of the above mentioned company The assess company through M s day pee Capital Services Ltd. had engaged in trading of shares and securities and has a current account running for the same.

8.2 On perusal of the account of the company with the assessee it is very much clear that the amount which has been credited and debited in the account of the assessee in association with the said two parties is on the account of business transactions and transacted by the assessee as if it being a client and not as a director shareholder of the company

8.3. While drafting the assessment the Ul.AO has basically confused himself with the two capacity of the assessee i.e. the assessee is sure!) the shareholder in such companies but at the same point he is their client also Consequently there are 2 types of transactions, one business transaction and other transactions, which are done in the capacity of shareholder. But over here the Id.AO has wrongly treated the business transactions as loans and advances for the purpose of section 2(22)(e).

8.4. Your honor from the perusal of ledger account, you will also appreciate the very fact that, the account of assessee is a running account, that is on every day there are transactions of receipt and payment. Your honor you will also agree that a company is not going to grant advance or loan to assessee on even day 'as is and receive it back on same day or other hence such a frequency of transactions cannot be At any stretch of imagination he included in the purview of loan or advances, by simple common sense such transactions are to be termed as business transaction In this regard, it is submitted that, there is no bar by any provision of Law. that a shareholder cannot be a client to the company and transact business. Hence before calling for any allegation the Id. AO should scrupulously examine the nature of transaction rather than sticking to

his contention without any basis.

8.5. Your honor. It is a settled law that the payments made against the business transactions are outside the purview of section 2(22)(e) of the Act. However the AO without applying his mind applied the provisions of Section 2(22)(e).

8.6 In this regard reliance is placed on following judicial precedents, which differentiates business transactions from loans and advance as per provisions of Section 2(22)(e).....

8.7 In light of above observations, regular routine transactions cannot be termed as loan and advances in pursuance of Section 2(22)(e), the same are to be held as business transaction, hence the action of AO in the instant case in treating the regular business transactions as loan and advances is incorrect.

8.8 In this regard, it is hereby submitted that, every day it company will not grant loan or advance to a person and recover the same on the same day itself in fact the person will pay off an excessive amount. Your honor, as can be observed from the ledger account each and every day there are 2-3 transactions and hence this simply constitute business transaction and not at all as loan or advances Your honor it is apparently visible from the ledger account and frequency of transaction itself, that these transactions are regular business transactions.

8.9 Your honor, none of the provision of Act bars the substantial shareholder to transact any business with the related company Hence there is no doubt that a shareholder can enter into a business transaction with a company and these transactions are not covered under the provisions of Sec.2(22)(e). That is the tax authorities cannot blindly deem every payment by company to shareholder as loan and advance for the purpose of deemed dividend u/s 2(22)(e). The AO should first try to understand the nature of transactions executed between the same before forming any opinion.

8.10 In the case under consideration, despite of all material brought on record and providing every relevant explanation, the ld. AO has not given any weight to the nature of transactions and the nature of business relationship shared between the shareholder and company in order to evaluate the transaction in terms of normal business transaction or loan and advances for deemed dividend. Hence the action of AO of making an addition even without giving any regard to its nature is unjust and not tenable in law.

8.11 Moreover, your Honor will also agree to the fact that nowhere the assessee has shown the amount transacted with the

Ms Jay pee Capital Services P. Ltd. as loan and advances, intact /ram the perusal of ledger account, jour honor will observe that there are various transactions of receipt and payment throughout the year. Even there are same entries having narration of 'settlement posting" all these things even more strengthens the contention of assessor and indicates that all these transactions are simply routine or regular business transaction only Therefore there is no basis to form an opinion that these transactions are in the nature of loan and advances.

8.12 Your honor, the AO in the instant case is grossly ignoring the facts which apparently establish that these transactions are in the nature of business transaction and is sticking to his vague contention that these transactions are loans to shareholder. It 's a very common sense question that a company will not advance a loan to its shareholder for a day or even receive hack on the same day itself moreover such a scenario is running throughout the year, hence by any stretch of imagination such transactions cannot be construed as loan and advance for the purpose of sec. 2(22)(e).

8.13 Your honor, the assessee has submitted [refer pg. no. 4 para 6.2 of Assessment Order] that:

“There are some entries of cheque payment and cheque receipt. The accounts also 'unlinks the entries having narration of settlement posting" which indicates that the relevant debit and credit entry is result of said transaction at the day. ”

8.14 Your Honor, in our case the transaction is apparently in the regular business transaction. And if the contention of AO is acts pied then each and every payment to

shareholder would tantamount to deemed dividend u/s 2(22)(e). even the payment for re-imbursement of any expense incurred by the shareholder director on the part of company would be deemed dividend. Certainly this is not the intendment of the Section, the section only wants to cover those transactions, which are really in the nature of dividend and not each and every payment.

8.15 Further reliance is also placed on the order passed by Your Honor in the case of the assessee for the A.Y 2011-12 whereby your Honor has deleted addition u/s 2(22)(e). Relevant extract is quoted below:

In view of the above, I hold that the transactions in the client ledger accounts are transactions entered in the ordinary course of business and are relating to sale/purchase of share /currency/derivatives only. Therefore, I hold that since these transactions are trading business transactions, accordingly, provisions of Section 2(22)(e), do not apply to the facts of the case of the appellant.

Accordingly, the addition made by the A.O. on account of deemed dividend of Rs.19,34,21,760 is hereby deleted.

8.16 Hence the contention of AO is not at all tenable in law and should be set aside.

8.17 Your honor in view of the above facts and the position of law, it is prayed that the additions made be deleted and such other relief be given which your honor may deem fit. “

Besides the above, the appellant has also relied upon the following case laws/decisions:-

•Ishwar Chand Jindal Vs. ACIT. 12015] 61

Taxmann.com 428 Delhi- Trib.) Delhi Tribunal

•CIT Vs. Arvind Kumar Jain, 2011 (9)TM1 363

•CIT Vs. Creative Dyeing & Printing (P.) Ltd .
[2009] 184 Taxman 483 (Delhi). High Court of Delhi

•CIT Vs. Ambassador Travels (IF) Ltd.. [2008] 173
Taxman 407 (Delhi), High Court of Delhi

•Smt. Radha Daga Vs. the Asst. Commissioner of
Income tax. 2014(6) I'M I 642, IT AT, Chennai

•Mr. Purushottam Das Mhnani Vs. DCFF. 2014
(12)TM1 801. 11 A ! Kolkata

•Commissioner of Income tax. Agra Vs. Atul
Engineering Udyog, Nunihai. Agra, 2014 (10) TMI
41, Allahabad High Court

•Assistant Commissioner of Income Tax, Central
Circle 1(4) Vs. Madras Madurai Properties (p) Ltd.,
2010(11) TMI 141. Chennai Tribunal.

•Ms. Percy Peshotan Batlivala Vs. I FO. 2012 (0) 1
MI 154. FI A 1 Delhi

8.3 Findings: The findings are as under:-

8.4 I have carefully considered the assessment order, written submission, and case laws relied upon and oral arguments of the I.d.AR. the objections arguments of the appellant are discussed as under:-

The A.O. in the assessment order, has made an addition of Rs.94.32.600'- u s 2(22)(e) of the Act. For the following reasons:

(i) The assessee has substantial holding in JCSL. There are large numbers of transactions including payments by the

JCSL to the assessee. Further, the group companies' are also making the payments to each other regularly as per the ledger account submitted.

- (ii) The ledger account submitted by the appellant, consists of large number of transactions in respect of shares transactions done by assessee, as client of JCSL, which are not covered u/s 2(22)(e) of the act. However, where there are cheque payments, the same has to be considered as loan/advance for the purpose of section 2(22)(e) of the act.

It is further held by the A.O. that the JCSL, have granted advances in the nature of loan to the assessee. The payment received from the JCSL by assessee is to be treated as deemed dividend in the hands of the assessee.

The objections/arguments submitted by the appellant during the appellate proceedings are discussed as under:-

- (i) The JCSL is share/currency /derivatives brokers, with whom the appellant and the group concerns maintain client account, in which business transaction of sale and purchase of share/currency/derivatives have taken place during the year under consideration.

In the appellate proceedings, appellant has submitted that the accounts of the assessee and other concerns, in which it is substantially interested, with JCSL are not in the nature of advance or loan. Therefore, it is claimed that these accounts relate to business transactions of share currency 'derivatives only, which is evident from the copy of accounts filed in the assessment proceedings, as well as in the appellant proceedings.

(ii) it has been further submitted that the A.O. have extracted the alleged account and re- casted account without following any accounting norms. For the purpose of making the alleged addition by the A.O.. the method adopted is discussed as under:

(a) The A.O., while recasting the account, has picked up the figures of cheque received and paid by JCSL. After taking the figures of money received and money paid, the A.O. has worked out the peak balance of the same and treated it as deemed dividend in the hands of the appellant.

The A.O., while recasting the account, has picked up the figure of payments made by JCSL during the year and the negative balance appearing after the payments. Lower of the two figures i.e. amount paid by the company and the negative balance appearing after the payment, has been taken as the deemed dividend by the A.O.. The A.O. has adopted pick and choose, whereby he picked up only the debit entries of the cheque payments, but has ignored the debit and credit side of the transactions relating to purchase and sale of share currency derivatives.

(b) Both the above-alleged accounts extracted by the A.O. did not take into consideration, the business transactions entered into by the appellant/concern with this company. This fact is evident from the amount of Rs.94,32,600 computed by the A.O. in the case of JCSL on the basis of alleged re-casted copy of account, as against the actual copy of account maintained in the books of accounts of this company.

(iii) It is further submitted by the appellant that the ledger account maintained in the books of accounts of JCSL, copy of which was submitted before the A.O. as well as in the appellate proceedings, shows that the same is a running account of purchase/sale, the cheque payments & receipts are relating to transactions of share currency derivatives and there is no loan/advance transactions.

From the above, the following facts emerge:

(a) The transactions of cheques received and paid from to the broker company JCSL. are related to the business transactions of sale purchase of share/currency-derivatives carried out during the year under consideration, which cannot be segregated. If the transactions of cheque received and paid are taken out of the alleged client accounts, then there is no meaning of trading transactions. In the type of business transaction entered by the appellant with the broker company, the transfer of funds money on both the sides, is part and parcel of the business done, otherwise it will not be possible to settle the accounts.

It is not possible to settle the trading transactions without transfer of the funds/money. Therefore, the method adopted by the A.O. in assessment order, is not correct. The positive and the negative balances, emerging out of the said accounts, is the result of business activities, which cannot be considered as loans advances, as to cover the same within the provisions of section 2(22)(e) of the Act.

(b) The company JCSL is a registered stock, currency and derivative broker on NSE, BSE. USE and MCX Sx. The transactions entered by the said company with appellant and group concerns are related to its business only. I he appellant and the group concerns, maintain client account with this company, where in large number of share/currency/derivatives trading transactions, has taken place in the year under consideration. These transactions arc nowhere prohibited under any existing law and not covered u/s 2(22)(e) of the Act.

(c) The transactions entered into are in the regular course of business and it is not a case where it has been alleged by the A.O. that transactions of sale / purchase of share

currency / derivatives, are not genuine. The A.O. has recasted the ledger account by not considering the business transaction of sale/purchase of share/currency/derivatives, which is not correct, since deemed dividend cannot be computed by way of pick and choose of few transactions, rather an account has to be considered in its entirety.

The above view is also supported by the ratio laid down in the decision by Jurisdictional High Court of Delhi in the case of CIT Vs. Creative Dyeing & Printing (P.) Ltd.. [2009] 184 TAXMAN 483 (DELHI), as under:

" **11.** The counsel for the appellant has very strenuously urged that neither the Tribunal nor the judgment of this Court in Raj Kumar's case (supra) deals with that part of the definition of deemed dividend u/s 2(22)(e) which states that deemed dividend does not include an advance or loan made to a shareholder by a company in the ordinary course of its business where the lending of money is a substantial part of the business of the company [section 2(22)(e)(ii)] i.e. there is no deemed dividend only if the lending of moneys is by a company which is engaged in the business of money lending. Dilating further the counsel for the appellant contended that since M/s. Pee Ampro Exports (P) Ltd. is not into the business of lending of money, the payments made by it to the assessee-company would therefore be covered by section 2(22)(e) (ii) and consequently payments even for business transactions would be a deemed dividend. We do not agree. The Tribunal has dealt with this aspect as reproduced in para (9) above. The provision of section 2(22)(e)(ii) is basically in the nature of an explanation. That cannot however, have bearing on interpretation of the main provision of section 2(22)(e) and once it is held that the business transactions does not fall

within section 2(22)(e), we need not to go further to section 2(22j)(e)(ii). The provision of section 2(22)(e)(ii) gives an example only of one of the situations where the loan advance will not be treated as a deemed dividend, but that's all. The same cannot be expanded further to take away the basic meaning, intent and purport of the main part of section 2(22)(e). We feel that this interpretation of ours is in accordance with the legislative intention of introducing section 2(22)(e) and which has been extensively dealt with by this Court in the judgment in Raj Kumar's case (supra). This Court in Raj Kumar's case (supra) extensively referred to the report of the Taxation Enquiry Commission and the speech of the Finance Minister in the Budget while introducing the Finance Bill. Ultimately, this Court in the said judgment held as under:

"10.3 A bare reading of the recommendations of the Commission and the Speech of the then Finance Minister would show that the purpose of insertion of clause (e) to section 2(6A) in the 1922 Act was to bring within the tax net monies paid by closely held companies to their principal shareholders in the guise of loans and advances to avoid payment of tax.

10.4 Therefore, if the said background is kept in mind, it is clear that sub-clause (e) of section 2(22) of the Act, which is *pari materia* with clause (e) of section 2(6A) of the 1922 Act, plainly seeks to bring within the tax net accumulated profits which are distributed by closely held companies to its shareholders in the form of loans, the purpose being that persons who manage such closely held companies should not arrange their affairs in a manner that they assist the shareholders in avoiding the payment of taxes by having these companies pay or

distribute, what would legitimately be dividend in the hands of the shareholders, money in the form of an advance or loan.

10.5 If this purpose is kept in mind then, in our new. the word 'advance ' has to be read in conjunction with the word 'loan' Usually attributes of a loan are that it involves positive act of lending coupled with acceptance by the other side of the money as loan: it generally carries an interest and there is an obligation of repayment. On the other hand, in its widest meaning the term 'advance' may or may not include lending. The word 'advance' if not found in the company of or in conjunction with a word 'loan' may or may not include the obligation of repayment. If it does then it would be a loan. Thus, arises the conundrum as to what meaning one would attribute to the term 'advance'. The rule of construction to our minds, which answers this conundrum, is *noscitur a sociis*. The said rule has been explained both by the Privy Council in the case of *Angus Robertson v. George Day* [1879] 5 AC 63 by observing 'it is a legitimate rule of construction to construe words in an Act of Parliament with reference to words found in immediate connection with them' and our Supreme Court in the case of *Rohit Pulp & Paper Mills Ltd. Vs. Collector of Central Excise* AIR 1991 SC 754 and *State of Bombay Vs. Hospital Mazdoor Sabha* AIR 1960 SC 610." (p. 165)

12. Therefore, we hold that the Tribunal was correct in holding that the amounts advanced for business transaction between the parties, namely, the assessee-company and M/s Pee Empro Exports (P.) Ltd. was not such to fall within the definition of deemed dividend u/s 2(22)(e). The present appeal is therefore dismissed."

In view of the above, I hold that the transactions in the client ledger accounts, are transactions entered in the ordinary course of business and are relating to sale purchase of share currency / derivatives only. Therefore, I further hold that since these transactions are trading business transactions, accordingly, provisions of section 2(22)(e) of the Act, do not apply to the facts of the case of the appellant. Accordingly, the addition made by the A.O. on account of deemed dividend of Rs.94,32.600/-, is hereby deleted.

Accordingly, ground No. 8, is allowed. “

- 09 The learned Departmental Representative relied upon the order of the ld. Assessing Officer and the learned Authorized Representative reiterated the submissions made before the learned CIT (Appeals). The learned AR also filed orders of Mr. Gaurav Arora for assessment year 2011-12 and the order of the learned CIT (Appeals) in that case wherein the disallowance under Section 2(22)(e) of the Act in the hands of that gentleman who was the key person of the appellant-company has been deleted. Therefore, the learned AR submitted that there is no infirmity in the order of the learned CIT (Appeals). The learned AR also placed reliance on Circular No. 19 dated 12th June, 2017 stating that the trade advances which are in the nature of commercial transactions would not fall in the ambit of advance under Section 2(22)(e) of the Act. He also relied on several decisions of Hon'ble Delhi High Court as well as of the Co-ordinate Bench to support his case.
- 10 We have carefully considered the rival contentions and perused the orders of the lower authorities. Identical issue has been considered by the coordinate bench in case of **2019 (3) TMI 1289 - ITAT DELHI DCIT CENTRAL CIRCLE-29, NEW DELHI VERSUS SHRI GAURAV ARORA** where it has been held as under :-

“3. Brief facts of the case for asstt. Year 2011-12 are that the assessee filed return of income on 17.3.2012 declaring total income of ₹ 46,51,720/-. Subsequently on account of search and seizure action u/s 132 of the Income Tax Act 1961 (in short the Act) carried out on 30.3.2012, a notice u/s 153A of the Act was issued and assessment was completed on 31.3.2015 u/s 153A of the Act after making addition of ₹ 7,88,99,522/- on account of deemed dividend u/s 2(22)(2) of the Act. On further appeal, Ld. CIT(A) deleted the addition. Aggrieved the Revenue is in appeal before the Tribunal raising grounds as reproduced above.

4. Before us, Ld. DR relying on the order of the AO submitted that assessee has failed to demonstrate that the money advanced by the companies to him was in the nature of trade advance and, therefore, Ld. CIT(A) is not justified in deleting the addition.

4. We have heard the submissions of the Ld. DR and perused the relevant material on record including the impugned order of the Ld. CIT(A). In the case ,assessee is having substantial share holding in few companies namely M/s. Jaypee Capital Services Ltd. (JCSL) ; M/s. **Futurz** Next Services Ltd. (FNSL) & M/s. Gen X Commodities Ltd. The AO noticed receipt of money by the assessee from these companies.

The AO has also noted certain transactions inter se in these companies. According to the AO, these transactions falls in the nature of deemed dividend in the hands of the assessee. Ld. CIT(A) however, after detailed verification of the facts has observed that these transactions were in the nature of the trade advance. As far as the share holding of the company in those companies is concerned, there is no dispute between the Revenue and the assessee. The only dispute is in respect whether the advances were in the nature of trade or not.

The Ld.CIT(A) has noted that those companies were engaged in the brokerage of stock derivatives, currency and commodities etc. and the transactions of the assessee with those companies are in respect of dealing with shares, commodities, etc. Relevant finding of the Ld. CIT(A) on the issue in dispute are reproduced are as under :-

“8.3 Findings: The findings are as under:

8.4 I have carefully considered the assessment order, written submissions, case laws relied upon and oral arguments of the Ld. AR.

The A.O. in the assessment order, has made an addition of ₹ 7,88,99,522/- u/s 2(22)(e), for the following reasons:

(i) The companies namely M/s Jaypee Capital Services Pvt. Ltd.(JCPL), M/s **Futurz** Next Services Ltd.(FNSL) and M/s Gen X Commodities Ltd.(GCL), are closely held companies, in which assessee has substantial share holding. There are large number of transactions including payments by the 2 companies JCPL and FNSL to the assessee. Further, the group companies are also making the payments to each other regularly as per the ledger account submitted.

(ii) The ledger account submitted by the appellant, consists of large number transactions in respect of shares transactions done by assessee, as client of JCPL and FNSL, which are not covered u/s 2(22)(e) of the act. However, where there are cheque payments, the same has to be considered as loan/advance for the purpose of section 2(22)(e) of the act.

It is further held by the A.O. that the 2 companies JCPL and FNSL, have granted advances in the nature of loan to each other, the assessee and also to the group company GCL. The payment received from the JCPL and FNSL by assessee and group concerns, are to be treated as deemed dividend in the hands of the assessee.

The objections/arguments submitted by the appellant during the appellate proceedings are discussed as under:-

(i) The 2 companies JCPL and, FNSL, are share / currency / derivatives/commodities brokers, with whom the appellant and the group concerns maintain client account, in which business transaction of sale and purchase of share/currency/derivatives/commodities have taken place during the year under consideration.

In the appellate proceedings, appellant has submitted that the accounts of the assessee and other concerns, in which he is substantially interested, with these 2 companies, are not in the nature of advance or loan.

Therefore, it is claimed that these accounts relates to business transactions of share / currency / derivatives / commodities only, which is evident from the copy of accounts filed in the assessment proceedings, as well as in the appellant proceedings.

(ii) It has been further submitted that the special auditor as well as the A.O., have extracted the alleged account and recasted account without following any accounting norm. For the purpose of making the alleged addition by the A.O., the method adopted is discussed as under:

(a) The special auditor, while recasting the account, has picked up the figures of cheque received and paid by the 2 companies. After taking the figure of money received and money paid, the special

auditor has worked out the peak balance of the same and treated it as deemed dividend in the hands of the appellant.

The A.O., while recasting the account, has picked up the figure of payments made by the 2 companies during the year and the negative balance appearing after the payments. Lower of the two figures i.e. amount paid by the companies and the negative balance appearing after the payment, has been taken as the deemed dividend by the A.O. The A.O. has adopted pick and choose, whereby he picked up only the transactions relating to purchase and sale of share / currency / derivatives / commodities .

(b) Both the above alleged accounts extracted by the special auditor and A.O., did not take into consideration, the business transactions entered into by the appellant/concern with these companies. This fact is evident from the amount of ₹ 7,43,00,000/-, computed by the A.O. in the case of JCPL and ₹ 45,99,522/-, in the case of FNSL on the basis of alleged re-casted copy of account, as against the actual copy of account maintained in the books of accounts of these 2 companies.

(c) It has been further submitted that the even alleged account prepared by the special auditor, which has not been followed by the A.O. and has prepared another account. The A.O. has taken alleged loan amount by adopting lesser of the payment made by the 2 companies to the appellant/concerns and net balance available on a particular date. Therefore, it is, submitted that even the alleged account prepared by the A.O., does not reflect the correct nature of the account, as same is prepared without following any accounting principles and ignoring the nature of each transaction. It is argued that the A.O. cannot ignore the nature of business transactions entered into by the assessee with these companies, which are relating to share / currency / derivatives / commodities and therefore, it is wrong on part of the A.O. to consider running account of business transactions as loans and advances, so as to consider the same as deemed dividend under section 2(22)(e) of the Act.

(ii) It is further submitted by the appellant that the ledger account maintained in the books of accounts of these 2 companies, copy of which was submitted before the A.O. as well as in the appellate proceedings, shows that the same is a running account of purchase/sale. The cheque payments & receipts are relating to transactions of share/currency/derivatives/commodities and there is no loan/advance transactions.

Conclusion:

In view of the above discussion, the following facts emerges:

(a) The transactions of cheques received and paid from/to the 2 broker companies JCPL and FNSL, are related to the business

transactions of sale/purchase of share / currency / derivatives / commodities carried out during the year under consideration, which cannot be segregated. If the transactions of cheque received and paid are taken out of the alleged client accounts, then there is no meaning of trading transactions. In the type of business transaction entered by the appellant with these 2 broker companies, the transfer of funds/money on both the sides, is part and parcel of the business done, otherwise it will not be possible to settle the accounts.

It is not possible to settle the trading transactions without transfer of the funds/money. Therefore, the method adopted by the special auditor in the audit report, which has not been considered and also the method adopted by the A.O. in assessment order, is not correct. The positive and the negative balances, emerging out of the said accounts, is the result of business activities, which cannot be considered as loans/advances, as to cover the same within the provisions of section 2(22)(e).

(b) The 2 companies JCPL and FNSL are the registered stock, derivative, currency and commodities brokers. The JCPL deals in stock, currency and derivatives on NSE, BSE, USE and MCX Sx and the FNSL, deals in commodities on NCDEX and MCX. The transactions entered by the said companies with appellant and group concerns are related to their business only. The appellant and the group concerns, maintain client account with these 2 companies, where in large number of share / currency / derivatives / commodities trading transactions, has taken place in the year under consideration. These transactions are nowhere prohibited under any existing law and not covered u/s 2(22)(e) of the act.

(c) The transactions entered into are in the regular course of business and it is not a case where it has been alleged by the A.O. that transactions of sale/purchase of share / currency / derivatives / commodities, are not genuine. In fact, these purchase and sale transactions, have not even doubted by the special auditor in the audit report as well as by the A.O. in assessment order. The special auditor and A.O. has re-casted the ledger account by not considering the business transaction of sale/purchase of share / currency / derivatives / commodities, which is not correct, since deemed dividend cannot be computed by way of pick and choose of few transactions, rather an account has to be considered in its entirety.

The above view, is also supported by the ratio laid down in the decision by Jurisdictional High Court of Delhi in the case of CIT Vs. Creative Dyeing & Printing (P.) Ltd., [2009] 184 TAXMAN 483 (DELHI), as under:

"11. The counsel for the appellant has very strenuously urged that neither the Tribunal nor the judgment of this Court in Raj Kumar's case (supra) deals with that part of the definition of deemed dividend under section 2(22)(e) which states that deemed dividend does not

include an advance or loan made to a shareholder by a company in the ordinary course of its business where the lending of money is a substantial part of the business of the company [section 2(22)(e)(ii)] i.e., there is no deemed dividend only if the lending of moneys is by a company which is engaged in the business of money lending. Dilating further the counsel for the appellant contended that since M/s. Pee Empro Exports (P.) Ltd is not into the business of lending of money, the payments made by it to the assessee company would therefore be covered by section 2(22)(e)(ii) and consequently payments even for business transactions would be a deemed dividend

We do not agree. The Tribunal has dealt with this aspect as reproduced in para (9) above. The provision of section 2(22)(e)(ii) is basically in the nature of an explanation. That cannot however, have bearing on interpretation of the main provision of section 2(22)(e) and once it is held that the business transactions does not fall within section 2(22)(e), we need not to go further to section 2(22)(e)(ii). The provision of section 2(22)(e)(ii) gives an example only of one of the situations where the loan/advance will not be treated as a deemed dividend, but that's all The same cannot be expanded further to take away the basic meaning, intent and purport of the main part of section 2(22)(e).

We feel that this interpretation of ours is in accordance with the legislative intention of introducing section 2(22)(e) and which has been extensively dealt with by this Court in the judgment in Raj Kumar's case (supra).

This Court in Raj Kumar's case (supra) extensively referred to the report of the Taxation Enquiry Commission and the speech of the Finance Minister in the Budget while introducing the Finance Bill Ultimately, this Court in the said judgment held as under:

"10.3 A bare reading of the recommendations of the Commission and the Speech of the then Finance Minister would show that the purpose of insertion of clause (e) to section 2(6A) in the 1922 Act was to bring within the tax net monies paid by closely held companies to their principal shareholders in the guise of loans and advances to avoid payment of tax.

10.4 Therefore, if the said background is kept in mind, it is clear that sub-clause (e) of section 2(22) of the Act, which is pari materia with clause (e) of section 2(6A) of the 1922 Act, plainly seeks to bring within the tax net accumulated profits which are distributed by closely held companies to its shareholders in the form of loans. The purpose being that persons who manage such closely held companies should not arrange their affairs in a manner that they assist the shareholders in avoiding the payment of taxes by having these companies pay or distribute, what would legitimately be

dividend in the hands of the shareholders, money in the form of an advance or loan.

10.5 If this purpose is kept in mind then, in our view, the word 'advance' has to be read in conjunction with the word 'loan: Usually attributes of a loan are that it involves positive act of lending coupled with acceptance by the other side of the money as loan: it generally carries an interest and there is an obligation of repayment. On the other hand, in its widest meaning the term 'advance' may or may not include lending. The word 'advance' if not found in the company of or in conjunction with a word 'loan' may or may not include the obligation of repayment. If it does then it would be a loan. Thus, arises the conundrum as to what meaning one would attribute to the term 'advance: The rule of construction to our minds which answers this conundrum is noscitur a sociis. The said rule has been explained both by the Privy Council in the case of Angus Robertson v. George Day [1879] 5 AC 63 by observing 'it is a legitimate rule of construction to construe words in an Act of Parliament with reference to words found in immediate connection with them' and our Supreme Court in the case of Rohit Pulp & Paper Mills Ltd v. Collector of Central Excise AIR 1991 SC 754 and State of Bombay v. Hospital Mazdoor Sabha AIR 1960 SC 610." (p. 165)

12. Therefore, we hold that the Tribunal was correct in holding that the amounts advanced for business transaction between the parties, namely, the assessee company and M/s. Pee Empro Exports (P) Ltd. was not such to fall within the definition of deemed dividend under section 2(22)(e). The present appeal is therefore dismissed

In view of the above, I hold that the transactions in the client ledger accounts, are transactions entered in the ordinary course of business and are relating to sale/purchase of share/currency/derivatives/commodities only. Therefore, I further hold that since these transactions are trading/business transactions, accordingly, provisions of section 2(22)(e), do not apply to the facts of the case of the appellant.

Accordingly, the addition made by the A.O. on account of deemed dividend of ₹ 7,88,99,522/-, is hereby deleted.

9. The ground no. 15, is relating to charging of interest u/s 234A, 234B, 234C and 234D of the Act. This ground is consequential in nature. Accordingly, A.O. is directed to charge interest u/s 234A, 234B, 234C and 234D as per provision of the Act, on total income after giving effect to this order. Therefore, for statistical purposes, ground no. 15, is treated as allowed.

10. In the result, the appeal is partly allowed."

5. The Ld. CIT(A) has observed that the transactions in the ledger account of the assessee are in regular course of the business of

purchase and sales of the shares/currency/derivatives/commodities etc. The Ld. DR could not controvert the above factual findings of the Ld. CIT(A) before us. In view of the above facts, the Ld. CIT(A) is justified in holding that the transactions between the assessee and those companies are in the nature of trading transactions which are beyond the ambit of deemed dividend in view of the decisions of the Hon'ble Jurisdictional High Court in the case of CIT vs. Creative Dyeing & Printing (P.) Ltd. (Supra). The Ld. CIT(A) has followed the above decision of the Hon'ble Delhi High Court. In our opinion, the Ld. CIT(A) has not committed any error in following the above decision of the Hon'ble Delhi High Court. Accordingly, we uphold the same. The ground of appeal of the Revenue is dismissed.

6. Similarly, in the assessment year 2012-13 also similar grounds have been taken and therefore, our directions in the above appeal will apply for 2012-13 also. Accordingly, both the appeals of the revenue are dismissed.”

- 11 Thus, we respectfully following the decision of the coordinate bench in case of Mr. Gaurav Arrora, confirm the order of the ld CIT (A) and dismiss ground no 3 of the appeal of AO.
- 12 In the result, appeal of ld AO is dismissed.
- 13 Now we come to the appeal of the assessee against the confirmation of addition of Rs.29,63,061/- of excess depreciation on building. During the course of assessment proceedings, as per information in ITS data the Assessing Officer found that assessee has sold a property in which large difference was noted for sale as per Stamp value and sale consideration. It was found that the assessee has sold property No. 1301, Arcadia Premises, Nariman Point, Mumbai, as per sale deed dated 12.07.2012 for Rs. 2 crores. As the title of the property was not clear, it was mortgaged to Dena Bank. Thus, the physical possession of the property was not given. Therefore, the assessee did not record sales of the above property in the books of accounts. The Assessing Officer noted that property was sold for Rs. 2 crores. However, the Stamp Duty value of the same is Rs. 2,87,14,500/-. He thus noted that assessee as opening written down value of the building block is of Rs. 3,51,97,290/- and the full value of the consideration of the property sold is Rs. 2,87,14,500/-. Therefore, on difference of Rs. 64,82,790/- on which assessee is eligible for depreciation @ 10% amounting to Rs.6,48,279/-. The assessee has claimed depreciation of Rs. 3519729/- on

building and, therefore, excess depreciation claim of Rs.29,63,061/- was disallowed.

- 14 On appeal before the learned CIT (Appeals) he noted that assessee has received the full value of the consideration before the Sale Deed was executed on 12.07.2012. He further held that merely some defect in the title or irregularities at the time of execution of the Sale Deed, which are later on rectified. He, therefore, held that the transfer and the possession of the property has taken place in Financial Year 2012-13 and, therefore, he confirmed the disallowance of excess depreciation.
- 15 The learned Authorized Representative reiterated the same facts as stated before the learned CIT (Appeals) at para 6.2 of his order. In the alternative, he also submitted that while calculating the depreciation the provisions of Section 50C of the Act does not apply, but the actual value of consideration received of Rs. 2 crores can only be considered.
- 16 The learned Departmental Representative vehemently supported the orders of the lower authorities.
- 17 We have carefully considered the rival contentions and perused the orders of the lower authorities. On careful consideration, the fact that emerges that during the year the assessee has received the total sale consideration of ₹ 2 crores only 11/7/2012 and five shares of that society has also been transferred prior to execution of the sale deed. The sale deed was executed on 12/7/2012. Thus it is apparent that full value of the consideration was received by the assessee before executing sale deed on 12/7/2012. Merely because the seller agreed to pay and discharge the outstanding dues and liabilities in respect of the share in the premises, it does not amount that the assessee has not transferred/sold the property during the year. Now issue here is the claim of the depreciation on the block of the 'building' owned by the assessee and used for the purposes of the business of the assessee on which depreciation is claimed. Depreciation is allowable to the assessee on the written down value which is defined under section 43 (6) of the act. According to the subsection 43(6)(C) (i)(b) the block of the assets is to be reduced by the monies payable in respect of any asset falling within that block which is sold or discarded or demolished or destroyed

during the previous year. Therefore, definitely assessee has sold during the year this immovable property by which the written down value of the block of the asset should be reduced. Now the question is whether it should be reduced by the value as determined under section 50C of the act or actual money received by the assessee. The provisions of section 50C cannot be incorporated in the computation of block of the assets for the simple reason that it only substitutes the 'full value of the consideration received or accruing as a result of transfer for the purposes of section 48' only. Therefore, we direct the learned assessing officer to reduce the written down value of the asset only by Rs 2 crores, which has been received by the assessee on sale of the above property. Accordingly ground number 2 and 3 are disposed off holding that assessee has requested to reduce Written down value of Building block by ₹ 2 crores being the actual sale consideration instead of ₹ 2 8714500 being the Stamp duty value of the property is acceded to. Thus, opening double DVD of the block building stood at ₹ 3 5197290/- is required to be reduced by ₹ 2 crores only, thereby the WDV remains of ₹ 1, 51,97,290/- on which the assessee would be entitled to the depreciation @ 10 % amounting to Rs. 15,19,729/-, against which the assessee has claimed depreciation of Rs. 35,19,729/- therefore difference of the depreciation excess claimed by the assessee is Rs. 20 lakhs instead of Rs 2963061/-. Thus excess depreciation disallowance of Rs 20 lakhs is confirmed. Accordingly ground number two and three of the appeal of the assessee is partly allowed

18 In the net result, the appeal of the assessee is partly allowed.

19 Thus, the appeal of the Assessing Officer is dismissed and appeal of the assessee is partly allowed.

Order pronounced in the open court on : **02/06/2020**.

-Sd/-
(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER

-Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated : **02/06/2020**

MEHTA

Copy forwarded to

1. Appellants
2. Respondents
3. CIT
4. CIT (Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi