

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई  
IN THE INCOME TAX APPELLATE TRIBUNAL, 'C' BENCH : CHENNAI

श्री अब्राहम पी. जॉर्ज, लेखा सदस्य एवं  
श्री धुव्वुरु आर.एल रेड्डी, न्यायिक सदस्य के समक्ष ।  
[BEFORE SHRI ABRAHAM P. GEORGE, ACCOUNTANT MEMBER  
AND SHRI DUVVURU RL REDDY, JUDICIAL MEMBER]

आयकर अपील सं./I.T.A. No.2365/CHNY/2016.

निर्धारण वर्ष /Assessment year : 2012-2013.

M/s. Subhavarsha Infotech, **Vs.** The Deputy Commissioner of  
72/2, Sree Bagya Homes, Income Tax,  
Gajpathy Street, Non Corporate Circle 10(1)  
Shenoy Nagar, Chennai.  
Chennai 600 030.

आयकर अपील सं./I.T.A. No.2805/CHNY/2016.

निर्धारण वर्ष /Assessment year : 2012-13.

The Assistant Commissioner **Vs.** M/s. Subhavarsha Infotech,  
of Income Tax, 72/2, Sree Bagya Homes,  
Non Corporate Circle 10(1) Gajpathy Street,  
Chennai. Shenoy Nagar,  
Chennai 600 030.

(अपीलार्थी/Appellant)

**[PAN ABAFS 0821Q]**  
(प्रत्यर्थी/Respondent)

Assessee by : Shri. M. Karunakaran, Advocate  
Department by : Shri. R. Clement Ramesh Kumar, Addl.CIT.

सुनवाई की तारीख/Date of Hearing : 03-12-2018

घोषणा की तारीख /Date of Pronouncement : 05-12-2018

**आदेश / O R D E R****PER ABRAHAM P. GEORGE, ACCOUNTANT MEMBER**

These are cross appeals filed by the assessee and Revenue respectively, directed against an order dated 28.07.2016 of the Id. Commissioner of Income Tax (Appeals)-12, Chennai.

**2.** Assessee in its appeal has raised eleven grounds, of which ground No.11 is general needing no specific adjudication.

**3.** Grounds two to five concerns disallowance of interest made by the Id. Assessing Officer to the extent such disallowance was sustained by the Id. Commissioner of Income Tax (Appeals). Grounds six to ten of the assessee assails sustenance of deemed dividend of Rs.4,54,00,000/-, out of a total addition of ₹7,54,00,000/- made under Section 2(22) (e) of the Income Tax Act, 1961 (in short 'the Act').

**4.** As against the above, appeal of the Revenue assails the relief given by the Id. Commissioner of Income Tax (Appeals) on the addition made by the Id. Assessing Officer u/s.2(22) (e) of the Act, 1961.

**5.** Since the issue regarding deemed dividend appear in both the appeals, this is considered first.

6. Facts apropos are that assessee engaged in the business of providing software services for telecommunication sector, had filed its return of income for the impugned assessment year disclosing income of ₹2,37,51,370/-. Assessee firm consisted of three partners namely one Shri. T. Padmakumar, one Shri. V. Sundaramoorthy and one Shri. J. Selvakumar with 33% share in the profits. Assessee had received advance aggregating to ₹7,54,00,000/- from a Company called M/s. Symbiotic Infotech P. Ltd. Share holders of this company were the same as the partners of the assessee firm. Each of them held 33.33% of the shares. Id. Assessing Officer was of the opinion that advances received by the assessee, from M/s. Symbiotic Infotech P. Ltd, fell within the meaning of deemed dividend u/s.2(22)(e) of the Act. As per the Id. Assessing Officer each of the partners in the assessee firm, had substantial interest with more than 20% share of profits and they were beneficial owners of the M/s. Symbiotic Infotech P. Ltd with more than 10% share holding. Assessee was put on notice as to why addition under Section 2(22) (e) of the Act should not be made. Reply of the assessee was that advances received from M/s. Symbiotic Infotech P. Ltd were trading advances and Section 2(22) (e) of the Act did not apply. As per the assessee, a part of the such advances, was given as loan to one Smt. Priya Rachel who was the wife of a friend of one of the partners. Assessee relied on a judgment

of Hon'ble Jurisdictional High Court in the case of *CIT vs. Printwave Services P. Ltd, (2015) 373 ITR 665*. Another submission made by the assessee was that the advances could also be considered as inter corporate deposit.

7. However, Id. Assessing Officer was not impressed by the above reply. According to him, assessee had maintained separate trading ledger in the name of M/s. Symbiotic Infotech P. Ltd and had shown trading advances separately. As per the Id. Assessing Officer, the impugned advance was different from what was shown in such trading advances. Further, as per the Id. Assessing Officer, the advances were never adjusted against any services rendered by the assessee. Further, as per the Id. Assessing Officer, judgment of Hon'ble Jurisdictional High Court in the case of *Printwave Services P. Ltd, (supra)* relied on by the assessee was on a different set of facts. In the said case what was considered was advances received by a limited company and not by a partnership firm. Further, as per the Id. Assessing Officer the sums received, were not utilized for any business purpose of the assessee. Relying on the judgment of Hon'ble Apex Court in the case of *National Travel Services vs. CIT (2018) 401 ITR 154*, Id. Assessing Officer held that the sum of ₹7,54,00,000/- received by the assessee as advance from M/s. Symbiotic Infotech P.

Ltd was nothing but deemed dividend u/s.2(22) (e) of the Act. An addition was made accordingly.

**8.** Aggrieved, assessee moved in appeal before Id. Commissioner of Income Tax (Appeals). Submissions made by the assessee before Id. Commissioner of Income Tax (Appeals) were as under:-

*'(i) The intention behind the provisions of section 2(22) (e) is to tax dividend in the hands of shareholder. The deeming provisions as it applies to the case of loans or advances by a company to a concern in which it's shareholder has substantial interest, is based on the presumption that the loan or advances would ultimately be made available to the shareholders of the company giving the loan or . advance. The intention of the legislature is, therefore, to tax the dividend only in the hands of the shareholder and not in the hands of the concern. The appellant submit that the company M/s Symbiotic Infotech Pvt. Ltd. had in fact distributed dividend of Rs.1,80,00,000/- during the year after payment of dividend distribution tax' The said company had distributed similar dividend in the earlier financial years also as per the details below:*

<i>Financial year</i>	<i>Dividend distributed</i>
<i>2010-2011</i>	<i>Rs.2,70,00,000</i>
<i>2009-2010</i>	<i>Rs.1,44,00,000</i>

*Thus, the company had no intention to avoid tax on distribution of dividend and the loan was not given in lieu of distribution of dividend as envisaged in the above intention of the legislature while enacting the provisions of Section 2(22) (e).*

*(ii). It was further submitted that out of the amounts of Rs3,30,00,000/- received by the firm on 22.11.2011 from the company a sum of ₹3,00,00,000/- was advanced on 23.11.2011 and Rs,15,00,000/- was advanced on 13.03.2012 as interest-free loan to Smt. Priya Rachel (wife of one of the partner's/shareholder's close friend). Moreover, the appellant firm had returned the said loan to the company immediately on receipt of the same from Mrs.*

*Priya Rachel in March, 2A12. In support of the above claim, the learned AR submitted copies of the bank account of the appellant with HDFC Bank, Shenoy Nagar Branch, the loan account of smt. Priya Rachel and the statement of account of M/s Symbiotic Infotech P Ltd. The direct nexus between the loaned funds from the company and advance made to Mrs. Priya Rachel was proved beyond doubt by bank entries. The appellant, therefore, pleaded that so far as the sum of Rs.3,00,00,000/- is concerned, it is a loan to a third party and not to the partners and the same was also returned back to the company within a short span of 4 months and, therefore, this sum of Rs.3,00,00,000/-- should not at all be considered as "deemed dividend" as the partners had not utilized the said loan for their personal purpose, nor the firm had used the funds for its business purposes. The company instead of giving the loan by itself has routed the loan through the firm as the partners are the shareholders of the company. According to the AR, in any view of the matter, the sum of Rs.3,00,00,000/- may be excluded from the quantum of "deemed dividend" assessed in the hands of the appellant.*

*(iii) The Learned AR further submitted that the firm is not the shareholder of the company and "deemed dividend" can arise only in the hands of the shareholders of the company, but not in the hands of the firm in which the shareholders are partners. This was so held by the jurisdictional Madras High Court in the decision in the case of CIT Vs. Printwave Services P Ltd. (53 taxmann.com 352). My attention was drawn to the following observation of the Hon'ble Madras High Court;*

*" 8. From a reading of the above provision, it is clear that section 2(22)(e) defines dividend which is a payment by way of advance or loan to a shareholder, being a person who is the beneficial owner of shares 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 substantial interest. In the present case, the assessee is not the beneficial or registered owner at the shareholdings in the company.*

*9. In the light of the above said provision, the findings of the Commissioner of Income-tax (Appeals) as well as the Tribunal that the*

*assessee, not being a registered or beneficial shareholder, is not liable to pay tax, are correct. We find no reason to interfere with the order of the Tribunal."*

Ld. Commissioner of Income Tax (Appeals) after going through the submissions of the assessee, held that the business dealings between the assessee and the company were far and few. However, according to him, out of ₹7,54,00,000/- received by the assessee, from M/s. Symbiotic Infotech P. Ltd, a sum of ₹3,00,00,000/- was given by the assessee as loan to a third party, which was returned in March, 2012. As per the Id. Commissioner of Income Tax (Appeals), assessee immediately on receiving the amount had repaid it to M/s. Symbiotic Infotech P. Ltd. Thus, according to the Id. Commissioner of Income Tax (Appeals) the sum of ₹3,00,00,000/- out of ₹7,54,00,000/- could not be considered as deemed dividend. As per the Id. Commissioner of Income Tax (Appeals), the assessee firm nor its partners had benefited out of former sum. Thus, while upholding the order of Assessing Officer in applying Section 2(22) (e) of the Act, he curtailed the addition to ₹4,54,00,000/-. Thus partial relief was given to the assessee.

**9.** Now before us, assessee is aggrieved that Id. Commissioner of Income Tax (Appeals) did not delete the addition made u/s.2(22) (e)

of the Act in toto. As against this, Department in its appeal is aggrieved on the relief of ₹3,00,00,000/- given by the Id. Commissioner of Income Tax (Appeals).

**10.** Ld. Authorised Representative assailing the order of the Id. Commissioner of Income Tax (Appeals) in so far as he sustained the addition to the extent of ₹4,54,00,000/- u/s. 2(22)(e) of the Act, submitted that the judgment of Hon'ble Apex Court in the case of National Travel Services (supra), though it was in favour of the Revenue, the issue was still to be settled. According to him, preference ought have been given to the judgment of Hon'ble Apex Court in the case of *CIT vs. Madhur Housing and Development Co. (2018) 401 ITR 152*. In any case, according to decision of Id. Commissioner of Income Tax (Appeals) to exclude a sum of ₹3,00,00,000/-, while making the addition could not be faulted. According to him, this amount was advanced by the assessee to Smt. Priya Rachel and there was no benefit to the partners. Thus, according to him, the relief given by the Id. Commissioner of Income Tax (Appeals) was appropriate.

**11.** Per contra, and in support of its own appeal, Id. Departmental Representative submitted that the sum of ₹3,00,00,000/- given by the assessee to Smt. Priya Rachel was nothing but a benefit in the hands of the assessee firm and Section 2(22) (e) of the Act clearly



applied. According to him, there was a direct link between loans given to Smt. Priya Rachel to the assessee on account of her relationship with a partner of the assessee firm. According to him, Id. Commissioner of Income Tax (Appeals) fell in error when he deleted the addition to the extent of ₹3,00,00,000/-.

**12.** Ad libitum reply of the Id. Authorised Representative was that definition of deemed dividend u/s.2(22) ( e) of the Act clearly specified that such loans and advances should result in some individual benefit to the shareholders of the company from which the loans or advances were received. According to him, no such benefit was received by the partners of the assessee firm. Thus, as per the Id. Authorised Representative, Id. Commissioner of Income Tax (Appeals) was fair in giving relief to the assessee.

**13.** We have considered the rival contentions and perused the orders of the authorities below. There is no dispute that a sum of ₹7,54,00,000/- was received by the assessee as advance from M/s. Symbiotic Infotech P. Ltd. There is also no dispute that the said Company had two different accounts in the books of the assessee, one for trading advances and other for non-trading loans/ advances, and the sum of ₹7,54,00,000/- was not a trading advance. It is also not disputed that M/s. Symbiotic Infotech P. Ltd. had accumulated profits

of ₹28,09,06,827/- as on 31.03.2012. Assessee had relied on a judgment of Hon'ble Jurisdictional High Court in the case of Printwave Services P. Ltd (supra). Lower authorities had taken a view that the said judgment applied only to Companies and not to partnership firms, who were the recipients of loans/advances. We are of the opinion that this view taken by the Id. Commissioner of Income Tax (Appeals) cannot be faulted. Hon'ble Supreme Court in the case of *National Travel Services (supra)* while referring a similar issue to a larger Bench had expressed serious doubt on the view taken by the Hon'ble Delhi High Court in the case of *CIT vs. Ankitech Pvt. Ltd (2012) 340 ITR 14* and the judgment of their Lordship in *Madhur Housing and Development Co. (supra)*. Here before us, admittedly, the shareholders were the same as the partners of the assessee firm and the facts are very similar to the one before Hon'ble Apex Court in *National Travel Services (supra)*.

**14.** Coming to the question of relief given to the assessee for the sum of ₹3,00,00,000/- given by the assessee firm to Smt. Priya Rachel, it is an admitted position that Smt. Priya Rachel was the wife of one of friends of a partners. Or in other words, assessee could not have advanced the loan of ₹3,00,00,000/-, if she was not closely related to one of the partners. No doubt, Id. Authorised Representative argued that such loan given to Sm. Priya Rachel did not individually benefit

any partners or firm and hence Section 2(22) (e) of the Act would not apply. However, we are of the opinion that such a narrow definition to the word "individual benefit" cannot be given. The benefit will include direct or indirect things. Partner whose friend's wife received the advance had indirectly benefited from the advance received by the assessee from M/s. Symbiotic Infotech P. Ltd. We are therefore of the opinion that Id. Commissioner of Income Tax (Appeals) fell in error in giving relief of ₹3,00,00,000/- to the assessee. In these circumstances, we dismiss the grounds 6 to 10 of the assessee and allow the appeal of the Revenue.

**15.** This leaves us with grounds 2 to 5 raised by the assessee, which assails sustenance of a disallowance of ₹9,39,438/- out of the total disallowance of ₹22,42,003/- made by the Id. Assessing Officer.

**16.** Facts apropos are that assessee had incurred interest expenditure of ₹30,92,489/- against loan of ₹4,03,07,862/- from M/s. Indian Bank. Id. Assessing Officer noted that capital account of the partners reflected a debit balance of ₹6,07,29,805/-. Thus, according to him, business funds were used for personal use. He calculated interest on ₹6,07,29,805/- at ₹72,87,577/-. However, he restricted the disallowance to the sum of ₹30,92,489/-, which was claimed as interest.

**17.** Aggrieved, assessee moved in appeal before Id. Commissioner of Income Tax (Appeals). Argument of the assessee was that there were two loans raised by it from M/s. Indian Bank, one of which was a cash credit and the other a term loan. In so far as cash credit account was concerned, assessee agreed before the Id. Commissioner of Income Tax (Appeals) for disallowance of interest of ₹8,48,081/- thereon. However, with regard to balance interest of ₹22,44,408/-, contention of the assessee was that this was incurred on a term loan which was utilized for acquiring land at plot No.W-485, Second Avenue, Sector C, Anna Nagar West Extension, Chennai for a cost of ₹5,05,00,000/-. As per the assessee, the term loan having been fully utilized for acquiring immovable property in the name of assessee firm for its business purposes, interest relatable to such loan had to be allowed u/s.36(1) (iii) of the Act. However, Id. Commissioner of Income Tax (Appeals) was not impressed by the above arguments. According to him, partners of the assessee firm had two separate accounts in each of their name in the books of the firm. One was "Capital Account" and the other was "Current Account". If the aggregate of the balances in the current and capital account as on 12.11.2011 were considered, as per the Id. Commissioner of Income Tax (Appeals), it was negative. Summary of these accounts given by

the Id. Commissioner of Income Tax (Appeals) at para 4.9 of his order is reproduced hereunder:-

Sl. No	Name of the partner	Balance in the capital account (Cr) as on 12.11.2011	Balance in the current account (Dr) as on 12.11.2011	Net amount overdrawn (debit balance) as on 12.11.2011
1	Sri. T. Padmakumar	(+)1,43,88,691	(-)1,92,84,246	(-)48,95,555
2	Sri. V. Sundramoorthy	(+)1,45,48,495	(-)1,78,11,996	(-)32,63,502
3	Sri. J. Selvakumar	(+)77,51,845	(-)1,66,61,996	(-)89,10,151
	<b>Total</b>	(+)3,66,89,031	(-)5,37,58,238	(-)1,70,69,208

Thus, according to the Id. Commissioner of Income Tax (Appeals) assessee need not have borrowed at least a sum of ₹1,70,69,208/- from the bank, if there was no net debit balance in the partners accounts. Or in other words, as per the Id. Commissioner of Income Tax (Appeals) assessee could have made good with the loan of ₹2,37,10,792/-. According to him, interest on the latter amount came to ₹13,04,970/. Balance of the addition of ₹17,87,519/- out of ₹30,92,489/- was sustained.

**18.** Now before us, Id. Authorised Representative strongly assailing the disallowance, submitted that entire loan amount of ₹4,07,80,000/- was applied for buying the property. According to him, direct nexus could be established from the bank statement of the

assessee firm with M/s. Indian Bank. A copy of the bank statement of account No.794399598 with M/s. Indian Bank for the period 03.11.2011 to 30.11.2011 was placed on record. According to him, there was no logic in sustaining a disallowance of ₹17,87,519/-.

**19.** Per contra, Id. Departmental Representative strongly supported the orders of the lower authorities.

**20.** We have considered the rival contentions and perused the orders of the authorities below. It is not disputed that there was a net overdraw of ₹1,70,69,208/- in partners accounts, if considered together, as on date of obtaining the loan viz 12.11.2011. It may be true that the loan was immediately put to use for the purpose of acquiring property. However, if the partners had not overdrawn by ₹1,70,69,208/-, assessee could have saved atleast the interest on such amount. In other words, we cannot say that there was full utilization of loans taken by the assessee for the purpose of its business. As already mentioned by us, assessee itself had admitted before Id. Commissioner of Income Tax (Appeals) that cash credit account was not used for the purpose of business. In such circumstances, we are of the opinion that Id. Commissioner of Income Tax (Appeals) was justified in sustaining ₹17,87,519/-. We do not find any reason to interfere with the order of the Id. Commissioner of Income Tax (Appeals).

**21.** In the result, the appeal of assessee stands dismissed whereas that of Revenue is allowed.

Order pronounced on Wednesday, the 5th day of December, 2018, at Chennai.

**Sd/-**

**(धुव्वुरु आर.एल रेड्डी)  
(DUVVURU RL REDDY)**

**न्यायिक सदस्य/JUDICIAL MEMBER**

**Sd/-**

**(अब्राहम पी. जॉर्ज)  
(ABRAHAM P. GEORGE)**

**लेखा सदस्य /ACCOUNTANT MEMBER**

चेन्नई/Chennai

दिनांक/Dated:5th December, 2018.

**KV**

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|--------------------------|------------------------------|-------------------------|
| 1. अपीलार्थी/Appellant   | 3. आयकर आयुक्त (अपील)/CIT(A) | 5. विभागीय प्रतिनिधि/DR |
| 2. प्रत्यर्थी/Respondent | 4. आयकर आयुक्त/CIT           | 6. गार्ड फाईल/GF        |