

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "E": NEW DELHI
BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR US, JUDICIAL MEMBER**

ITA No.2195/Del/2016
(Assessment Year: 2012-13)

Ambey Capital Pvt. Ltd, G-2, Ambey House, 34/1, East Punjabi Bagh, Delhi (Appellant)	Vs.	DCIT, Circle-2(2), New Delhi (Respondent)
---	-----	--

PAN: AABCT6631J

Assessee by :	Shri G. N. Gupta, Adv Ms. Apporva Bardwaj, CA
---------------	--

Revenue by:	Shri Kanv Bali, Sr. DR
-------------	------------------------

Date of Hearing	13/12/2023
Date of pronouncement	11/03/2024

ORDER

PER M. BALAGANESH, A. M.:

1. The appeal in ITA No2195387/Del/2016 for AY 2012-13, arises out of the order of the Commissioner of Income Tax (Appeals)-I, New Delhi [hereinafter referred to as 'Id. CIT(A)', in short] in Appeal No. 136/15-16 dated 02.03.2016 against the order of assessment passed u/s 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 20.03.2015 by the Assessing Officer, DCIT, Circle-2(2), New Delhi (hereinafter referred to as 'Id. AO').
2. The only issue in this appeal to be decided is whether the Id CIT(A) was justified in confirming the addition of Rs. 1,36,95,583/- made by the Id AO on account of deemed dividend u/s 2(22)(e) of the Act in the facts and circumstances of the instant case.

3. We have heard the rival submissions and perused the materials available on record. The assessee company is an investment company engaged in investment activities. The main objects depicted in memorandum of association are as under: -

"1. To carry on the business of acquisition of shares, securities and debentures of the group companies in India or outside India subject to the approval of Reserve Bank of India wherever required.

2. To act as the holding and co-ordinating company for the group companies of which the company is for the time being the holding company and to control and coordinate the administration and operation of the group companies."

4. During the year under consideration, the assessee made an investment in the equity shares of M/s. Ambey Laboratories Pvt. Ltd (ALPL) which is engaged in the business of manufacturing of pesticides and herbicides. The assessee held 15.47% of equity share capital of ALPL. It was submitted that during the Financial Year 2010-11 for the purposes of commercial expediency and strategic business decision particularly with a view to expand the business of ALPL, the assessee company set up two companies as under: -

- i. Ambey Homecare Products; PLC, Ethiopia (AHCP) in order to maximize the sale of products manufactured by ALPL in Ethiopia;
- ii. Laxmi Cement Udyog Pvt. Ltd, Nepal (LCUPL) to sell cattle feed by combining certain chemicals manufactured of ALPL with lime which is key product of Laxmi Cement Udyog Pvt. Ltd.

4.1. The assessee company, ALPL, AHCP and LCUPL are controlled by Shri Anil Gupta, Director and his family member. Since, the assessee company did not have sufficient financial resources for the purpose of making investment in group companies i.e. AHCP and LCUPL, the assessee approached Kotak Mahindra bank which came forward to advance loan of Rs. 10 crores on the strength of collateral security of property of Director of the assessee company and considering the cash flow of ALPL. The property of the Director which was given as collateral security is

situated at A-55, Vasant Marg, Vasant Vihar, New Delhi-110057. Accordingly, the following parties came forward as a borrower:-

- a. Ambey Laboratories Pvt. Ltd (ALPL)
- b. Ambey Laboratories
- c. Ambey Capital Pvt. Ltd (assessee herein)
- d. Mr. Anil Gupta, Director of assessee company
- e. Mrs. Achla Gupta
- f. Mr. Arpit Gupta
- g. Mr. Archit Gupta

5. The entire loan sanction letters of Kotak Mahindra Bank are enclosed at pages 45 to 52 of the paper book. It is pertinent to note that though the aforesaid parties came forward as borrowers, the entire loan and interest was to be repaid by the assessee company and by Shri Anil Gupta as per loan sanction terms. It is the fact that the ALPL is also considered as a primary borrower. The understanding with Kotak Mahindra Bank was that if the installment of loans and interest were not repaid by the assessee company and Shri Anil Gupta, the same would be payable by ALPL. Accordingly, out of sanctioned loan of Rs. 10 crores, Rs. 6 crores was paid to Shri Anil Gupta and family members (Director of the group) and Rs 4 crores was paid to assessee company. Hence, the assessee company as well as Shri Anil Gupta are bound to repay the loan with interest taken from Kotak Mahindra Bank and ALPL would step in only in the event of failure of assessee company and Shri Anil Gupta to pay the dues to Kotak Mahindra Bank. It is not in dispute that Rs. 4 crores borrowed by the assessee company was used for making investment in shares of ALPL and other two companies i.e. AHCP and LCUPL. Since, the entire loan received by the assessee company of Rs. 4 crores was utilized for making investments in the shares of ALPL, AHCP and LCUPL, the assessee did not have the wherewithal to pay the Equated Monthly Instalments (EMIs) to Kotak Mahindra Bank. Accordingly, ALPL came forward to advance inter corporate deposit of Rs. 1,36,50,000/- to the

assessee company on various dates to service EMI to Kotak Mahindra Bank. The assessee as and when it received the money from ALPL, utilized the same only for the purpose of EMI payments by the assessee company and EMI payments by its Director Mr. Anil Gupta, against whose property, the loan per se was granted by Kotak Mahindra Bank. This fact is evident from page 53 of the Paper Book containing the statement of money received from ALPL and utilization of the same thereon. The aforesaid facts are absolutely not in dispute before us.

6. The Id AO observed that money received from ALPL by the assessee would be squarely hit by the provisions of section 2(22)(e) of the Act and accordingly, the outstanding balance of Rs. 1,36,96,583/- standing as unsecured loan from ALPL was sought to be added as deemed dividend u/s 2(22)(e) of the Act while completing the assessment. This action of the Id AO was upheld by the Id CIT(A).

7. At the outset, from the aforesaid facts of ALPL as on 31.03.2011, we find that the accumulated profits available as on 31.03.2011 for ALPL was only Rs. 1,24,00,293/-. Hence, in any event, the addition u/s 2(22)(e) of the Act could not have exceed this accumulated profits figure. Further, we find that the purpose of section 2(22)(e) of the Act was to ensure that the share holder of a company is given some benefit by way of receipt of fund from a company in which he is holding more than 10% of voting power which otherwise would be given to such share holder in the form of dividend which would have been liable to tax in the hands of the share holder. Hence, we have to see that the present transaction carried out by the assessee by way of receipt of monies from ALPL could be construed as a transaction of receipt to avoid payment of dividend of ALPL to the assessee. Commercial expediency and business exigency of the receipt of loan from ALPL of the assessee has been already proved hereinabove, that is to say, that the monies borrowed from ALPL were utilized only for the payment of EMIs to Kotak Mahindra Bank. This is done to protect the interest of the property of the Director and also as per sanction terms of the lender bank. Further, the assessee is also one of the co-borrower together with ALPL and directors of the group. Hence, the assessee is also duty bound to repay the loans to the bank. ALPL

would be roped in to pay the dues to Kotak Mahindra Bank only in the event of failure on the party of the assessee company and Mr. Anil Gupta. Hence, the business exigency of the said transaction of receipt of monies from ALPL of the assessee company is proved herein. Hence, the same cannot be construed as a receipt of dividend and taxed as deemed dividend u/s 2(22)(e) of the Act in the hands of the assessee company. It is pertinent to note that the loan from Kotak Mahindra Bank per se was obtained primarily for the benefit of ALPL in view of the fact that two new companies that were set up i.e. AHCP and LUCPL by the assessee would be having trading transactions with ALPL which in turn would benefit ALPL. That is why the monies borrowed from Kotak Mahindra Bank by the assessee were fully utilized for making investment in shares of ALPL, AHCP and LUCIPL. The benefit that would accrue to the assessee would be out of dividend on its investments in ALPL, AHCP and LUCPL which would of course arise in future. Hence, the receipt of monies by the assessee company from ALPL which was utilized for paying EMIs to Kotak Mahindra Bank would be construed as business transaction thereby ensuring the benefit to ALPL as well as to the assessee. Hence, the same would be outside the ambit of provisions of section 2(22)(e) of **the Act. We find that the Hon'ble Jurisdictional High Court in the case of CIT Vs. Ankitech Ltd** reported in 11 taxmann.com 100 (Del) would assist the assessee, wherein it was held that whether loans and advances given in the normal course of business and transaction in question benefits both borrower and payee companies, provisions of section 2(22)(e) of the Act cannot be invoked. We also find that the transaction of the assessee company with ALPL are more in the nature of current account as is evident from the ledger which is enclosed in pages 42 to 43 of the paper book. This also makes the transactions outside the ambit of applicability of provisions of section 2(22)(e) of the Act. Reliance in this regard is **placed on the decision of the Hon'ble Calcutta High Court** in the case of Pradip Kumar Malhotra Vs. CIT reported in 338 ITR 538 (Cal), wherein, it was held that expression **"by way of advance or loan"** which a shareholder enjoys simply on account of being a person who is beneficial owner of shareholding not less than 10% of voting power, but if such loan or advance is given to such shareholder as

a consequence of any further consideration which is beneficial to company received from such a shareholder, such advance or loan cannot be said to be deemed dividend within the meaning of the Act. Further, it was held that when advance was given by the company to assessee-shareholder by way of compensation for keeping his property as mortgage on behalf of company to reap benefit of loan it could not be treated as deemed dividend within the meaning of section 2(22)(e) of the Act.

8. The assessee herein being an investment company, the investment made by it in ALPL, AHCP and LCUPL are made only for the purpose of business of the assessee. Those investments were made out of borrowings made from Kotak Mahindra Bank on the strength of collateral security given by the director of the assessee company and on the strength of strong financials of ALPL. Since, there was no money left with the assessee to repay the loan, the money was borrowed from ALPL and utilized for making payment of EMIs to Kotak Mahindra Bank. Hence, the business nexus for the entire transaction is proved beyond reasonable doubt.

9. In view of the aforesaid observations and respectfully following the judicial precedents relied upon herein above, we have no hesitation to hold that the provision of section 2(22)(e) of the Act per se could not be applied in the peculiar facts and circumstances of the instant case. Accordingly, the ground raised by the assessee is allowed.

10. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 11/03/2024.

-Sd/-
(YOGESH KUMAR US)
JUDICIAL MEMBER

-Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated: 11/03/2024
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi