

## **Dhawani Infrastructure Pvt.Ltd., ... vs Income Tax Officer, Ward-1(1)(4), ... on 25 November, 2021**

IN THE INCOME TAX APPELLATE TRIBUNAL AHMEDABAD - BENCH 'A' BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER AND MS.MADHUMITA ROY, JUDICIAL MEMBER  
./ ITA No.279/Ahd/2016 WITH Cross Objection No.47/Ahd/2016

/Asstt. Year: 2007-08 ITO, Ward-1(1)(4) Vs. M/s.Dhawani Infrastructure P.Ltd. Ahmedabad.  
Iscon House, B/h. Rambardi Building Opp: Associated Petrol Pump Off. C.G.Road, Ahmedabad 380 007.

PAN : AACCD 5791 Q

/ (Appellant)

/ (Respondent)

Revenue by : Shri Bimal P. Srivastava, Sr.DR  
Assessee by : Smt.Nupur Shah, AR

/Date of Hearing : 08/11/2021

/Date of Pronouncement: 25/11/2021

/O R D E R

PER Ms.MADHUMITA ROY, JUDICIAL MEMEBR:

This is Revenue's appeal and assessee's CO; both are directed against order dated 30.11.2015 passed by the Ld.Commissioner of Income-tax (Appeals)-1, Ahmedabad arising out of order dated 11.03.2015 passed by the Ld.Assessing Officer under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as "the Act") for the assessment year 2007-08 whereby and whereunder the addition of Rs.3,53,01,770/- made by the Ld. AO under section 2(22)(e) of the Act, has been deleted.

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2. Assessee is engaged in the business of developing infrastructure for the purpose of industries, residential estate and commercial estate etc. The assessee-company is following mercantile system of accounting. It filed return of income on 18.10.2007 declaring total income at Rs.NIL, which was processed under section 143(1) of the Act. However, the case of the assessee was reopened upon recording of reasons with approval of the Id.CIT, Range-1, Ahmedabad by issuance of notice under section 148 of the Act dated 26.3.2014 followed by notice under section 143(2) dated 25.6.2014. Such reopening of the assessment was done on the basis of information received from the DCIT, TDS Circle, Ahmedabad that one J.P. Iscon Ltd. has provided inter-corporate deposit ("ICD" for short) of Rs.3,53,01,765/- to the assessee-company; there were common share holders in both the

companies viz. Shri Pravin Kotak, and Shri Amit Gupta. The Id.AO has noticed their shareholding ratio in both the companies in the assessment order as follows:

Name	Dhawani Infrastructure Pvt. Ltd.	JP Iscon Ltd.
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Shri Pravin Kotak	90%	27.49%
Shri Amit Gupta	10%	22.38%

3. In response to the notice under section 142(1) dated 19.12.2014 on the issue as to why the amount of Rs. Rs.3,53,01,765/-, as provided by JP Iscon Ltd. should not be treated as deemed dividend under section 2(22)(e) of the Act the assessee replied as under:

"With reference to the above subject- matter, your goodself has given us the opportunity vide letter dated 19/12/2014 in respect of Re- Assessment proceeding for the AY 2007-08 ofM/s Dhvani Infrastructure Private Limited.

In this regard, we would like to produce following details alongwith case laws for your kind perusal.

Relevant Provisions concerning "Deemed Dividend"

Clause (e) of section 2(22) provides as under:-

ITA No.279 AND CO 47/Ahd/2016 "Any payment by a company, not being a company in which the public are substantially interested, of any sum (whether as representing a part of the assets of the company or otherwise) [made after the 31st day of May, 1986, by way of advance or loan to a shareholder, being a person who is the, beneficial owner of shares (not being shares entitled to a fixed rate of dividend whether with or without a right to participate in profits) holding not less than ten per cent of the voting power, or to any concern in which such shareholder is a member or a partner and in which he has a substantial interest (hereafter in this clause referred to as the said concern)] or any payment by any such company on behalf, or for the individual benefit, of any such shareholder, to the extent to which the company in either case possesses accumulated profits".

This Provision further provides six exclusions out of which two are directly related to clause (e) of section 2(22). These two exclusions are set out as under:-but "dividend" does not include -

(ii) Any advance or loan made to a shareholder or the said concern 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;

iii) Any dividend paid by a company which is set off by the company against or any part of any sum previously paid by it and treated as a dividend within the meaning of sub-clause

(e), to the extent to which it /s .s set off:

A cursory glance at the provisions stated above shows their cumbersome nature. In simple Language, as per the provision of section 2(22)(e), following types of payments are treated as "dividend" to the extent of accumulated profits:-

- 1) Loan to a shareholder or payment on behalf of or for the benefit of a shareholder.
- 2) Loan or advance to a concern.

Case (II) scenario discussed Here we are concerned with case (ii) Scenario

(a) Conditions to be satisfied in case(ii) are as under:-

Loan or advance given to a concern (may be HUF/firm/Company/AOP/BOL) is treated as a deemed dividend u/s 2 (22) (e) if the followings conditons are satisfied:-

- (1) Loan or Advance is given by a company in which the public are not substantially interested;
- (2) Loan or Advance is given after Ma.y,31,1987;
- (3) The company should possess accumulated profits (Excluding Capitalized Profit) at the time it makes payment of Loan or Advance; and (4) Loan or Advance is given to a concern(i.e. a Hindu Undivided family or a firm or an association of persons or a body of individuals or a company) in which a shareholder (which is a registered shareholder as well as beneficially holding at least 10 Percent Equity Share Capital) of the company (giving loan or advance) has substantial interest.

ITA No.279 AND CO 47/Ahd/2016 A Person shall be deemed to have a substantial interest in a concern, if he is at any time during the previous year, beneficially entitled to at least 20% of income of such concern (if such concern is a company, then he should beneficially hold at least 20 percent equity share capital of the company).

(b) A Perusal of the above provision read with explanation 3 reveals that the following types of payments by a company are deemed as dividend by way of deeming fiction though in common parlance of the term such payments are not in the nature of "dividend"-

- i) Payment by way of advance or loan to a shareholder a shareholder (holding 10% or more).

(ii) Payments by way of advance or loan to a concern/company in which such shareholder (i.e. who holds 10% or more of voting power of the lender company) also holds 20% or more shares (of the loan recipient company).

It may, however, be noted that in case (ii) scenario, the loan recipient company is not a shareholder of the loan giver company. There is only an indirect linkage through common shareholder.

Further to state your goodself that as per various judgements of the Courts benefit should be passed to the common shareholder to attract section 2(22)(e). In our case even common shareholder are not being individually benefitted from the above transaction.

In this regard, we would like to submit the following facts alongwith Case Laws

1) Dhawani Infrastructure Private Limited is not subsidiary of JP Iscon Ltd. during the financial year 2006-07. Dhawani Infrastructure Private Limited was not holding any shares of JP Iscon Limited from the date of its incorporation.

2) As per the shareholding pattern provided to your goodself, Dhawani Infrastructure Private Limited is neither registered shareholder of JP Iscon Limited nor beneficial owner of shares holding 10% or more of the voting power of the JP Iscon Ltd.

3) As per the shareholding pattern of Dhawani Infrastructure Private Limited, Pravin Kotak and Amit Gupta, shareholder holding 27.49% and 22.38% shares of JP Iscon Limited company were holding 90% and 10% of shares of Dhawani Infrastructure Private Limited respectively from 13th November, 2006 i.e. one of the shareholder was substantially interested.

4) Further to state JP Iscon Limited has advanced Rs. 3,50,00,000/- to Dhawani Infrastructure Private Limited for the purpose of business at interest rate of 12%. Further to state the interest amount was Rs.3,01,765/-.

Further Submissions of related case laws with respect to section 2(22)(e) is enclosed herewith for your kind perusal Sr. Parties High Court/ Year Citation Remarks/ Evidence No. Tribunal ITA No.279 AND CO 47/Ahd/2016 1 Commissioner of Delhi High Court 2011 (2011) 11 taxmann Enclosed Copy of Income Tax V/S 1QQ/(2011) 199 Judgement as Exb.

Ankitech (P) Ltd.

taxmann 341/(2012) 340 1  
ITR 14/(2011) 242 CTR

2.	Assistant Commissioner of Income Tax, Circle - 33, Mumbai V/S Bhaumik Colour(P) Ltd.	ITATMumbni	2009	(2009) 118 ITD 1/(2000) 27 SOT 270/ (2009) 120 TTJ 865	Enclosed Copy Judgement us Exb.2
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3	Commissioner of Income Tax V/S  Promoters(P) Ltd	Delhi High Court	2011	(2011) 16 Tflxmcmn.com 292/(2011) 203 taxman	Enclosed Copy of Judgement as Exb
4	Commissioner of Income Tax V/S MCC Marketing(P)	Delhi High Court	2011	(2011) 16 Taxmann.com 411/(2012) 204 taxmann 56/(2012	Enclosed Copy of Judgement as Exb.
5	Commissioner of Income Tax V/S Impact Containers (P.) Ltd.	High Court of Bombay	2014	(2014) 48 taxmann.com 294 (Bombay)/2014 225 Taxman 322(Bombay)/(2014) 367 ITR 346 (Bombay)(2014) 270 CTR 337 (Bombay)j	Enclosed Copy Judgement as Exb.5
6	Asstt. commissioner of Income Tax V/S Britto Amusement (P.) Ltd.	High Court of Bombay	2014	(2014 ) 49 taxmann.com 256(Bombay)/2014 226 Taxman 45 (Bombay) (MAG.)/[2014J 360 ITR 554	Enclosed Copy Judgement as 6
7	Commisioner of Income Tax  Jignesh P. shah	High Court of Bombay	2015	[2015] toxmann.com	Enclosed Copy Judgement as
8	Commisioner of Income Tax V/S  (P.) Ltd.	High Court of Gujarat	2014	[2013] taxmann.com	Enclosed Copy Judgement as

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In view of the above discussed facts and express provisions of law, Provisions of section 2(22)(e) are not applicable to the assessee in respect of Loan/Advances taken from other concerns. Further to state that assessee has not made any violation of the statutory provision casting obligation to the ex chequer of the government."

4. However, the explanation rendered by the assessee was not accepted by the Id.AO. According to him, ICD given to the assessee- company in which the shareholders have substantial interest and thus, the ICD to the tune of Rs.3,53,01,765/- given by the JP Iscon was treated as deemed dividend

in the hands of the assessee under section 2(22)(e) of the Act, and the same was added to the total income of the assessee. The ld.CIT(A), in appeal, preferred by the assessee, deleted such addition. Hence, instant appeal is before us.

5. Before us, the ld.counsel appearing for the assessee submitted that the ICD has been given by the said JP Iscon to the appellant company in the ordinary course of business and interest has been charged by the company on such ICD. It was further submitted that interest expenditure on the said ICD was charged and necessary TDS has been deducted. It is also the case of the assessee that ICD has been repaid along with interest during the financial year 2008-09. The assessee's ledger accounts in the books of JP Iscon Ltd. for the financial year 2006-07 to 2008-09 have been placed on record. So far as legal point is concerned, it is the case of the assessee that the assessee- company does not hold share in other company, from which it had received ICD, and therefore, the same cannot be treated to be deemed dividend under section 2(22)(e) of the Act as also confirmed by the Ld. AR. Further that, deemed dividend under section 2(22)(e) of the Act can also be assessed in the hands of person who is shareholder of the lender company and not in the hands of person other than shareholder. On this aspect, the appellant, before us, relied on the judgment of the Hon'ble jurisdictional High Court in the case of CIT Vs. Daisy Packers P.Ltd., 40 taxamnn.com 48 (Guj) wherein issue has been decided in favour of the assessee by relying upon the decision passed by the ITA No.279 AND CO 47/Ahd/2016 Hon'ble Delhi High Court in the matter of CIT Vs. Anitech P.Ltd., reported in 340 ITR 14 (Del). Finally, it was submitted by the ld.AR that the issue is squarely covered by the judgment and order dated 11.2.2021 passed in the assessee's own case in ITA No.2232/Ahd/2016 and CO No.157/Ahd/2016 wherein addition of ICD to the tune of Rs.3,30,50,859/- under section 2(22)(e) of the Act has been deleted.

6. On the other hand, the ld.DR relied upon order passed by the Ld. AO. It was contended by him before us that while making addition, the ld.AO applied his mind which is clearly evident from paragraph-5.7 of the order passed by the ld.AO. Payer-company was closely held company; it has accumulated profit on the date of such payment and the payment was made to the appellant-company out of such accumulated profits. Instead of distributing accumulated profits as dividend, the company has distributed the same as loan or advance to the assessee-company, and therefore, provision of section 2(22)(e) of the Act has been rightly invoked by the ld.AO while making addition as the main contention of the Revenue before us.

7. We have heard the rival submissions made by the respective parties. We have also perused the relevant material available on record. We find that while allowing appeal preferred by the assessee, the ld.CIT(A) has observed as follows:

"2.6. I have carefully perused the assessment order and the written submission made by the learned A.Rs. It is observed that it is fact that Shri Prawn Kotak & Shri Amit Gupta were having substantial share holding in both the companies i.e. Giver Company well as the Recipient company. The express provisions of section 2(22)(e) show that there are three limbs of the said section i.e. (I) the payment by a company by way of advance or loan should have been made to a shareholder who is a beneficial owner of the shares and substantial interest.

(ii) or the payment should be made to any concern in which such share holder is a member or partner and in that concern, he should have a substantial interest; & ITA No.279 AND CO 47/Ahd/2016

(iii) or the company makes payment, or on its behalf payment is made for individual benefit of any such shareholder to the extent to which the company in either case possesses accumulated profits.

2.7. In the captioned case, the payment has been made by J. P. Iscon Limited, to the appellant company but the appellant company is not a registered share holder of J. P. Iscon Limited. From the facts, it is seen that appellant is not a shareholder in the lender company however assessing officer treated the same as deemed dividend in hands of appellant company. It is also submitted that the transaction was not in the nature of advance or loan and it was simply inter corporate deposits (ICD). The appellant had provided for the interest expenses on the said ICD borrowed and have deducted the necessary TDS and have also paid back the said ICD along with interest during F. Y 2008-09. Appellant's main objection was that in view of the various decisions including special bench of ITAT Mumbai in the case of Asstt. CIT v/s. Bhumik Colour (P.) Ltd.[2009] 118 ITD 1 (Mum.) (SB) and jurisdictional High Court decision in the case of CIT v/s Daisy Packers (P.) Ltd [2013] 40 taxmann.com 480 (Gujarat) and other decisions (supra), the addition of deemed dividend cannot be made in the hands of the company.

The view taken by the I.T.A.T. Mumbai Special Bench in the case of ACIT Mumbai vs. Bhaumik Colour (P) Ltd has been approved by the Hon'ble Bombay High Court in the case of CIT vs. Universal Medicare Private Limited (2010) 324 ITR 263 (Bom.) The Gujarat High Court in the case of CIT v/s Daisy Packers (P) Ltd decided the issue in favour of the assessee, relying on the decision of the Division Bench of the High Court in CIT v. Ankitech (P.) Ltd. (2012) 340 ITR 14 (Del) wherein it was held that if the assessee-company does not hold a share in other company from which it had received deposit then it cannot be treated to be a deemed dividend under Section 2(22)(e) of the Act. From the reading of the provisions of section 2(22)(e) it is seen that the provision is intended to tax the dividend in the hands of a shareholder and the deeming provision as it applies to the case of loan or advance by a company to a concern in which is shareholder and has substantial interest, is based on the presumption that the loan or advance would ultimately be made available to the shareholder of the company giving loan or advance. Various court decisions e.g. Asstt. " CIT v/s. Bhumik Colour (P.) Ltd.[2009] 118 ITD 1 (Mum.) (SB) & jurisdictional High Court decision in the case of CIT v/s Daisy Packers (P.) Ltd [2013] 40 taxmann.com 480 (Gujarat), support this view that the deemed dividend u/s 2(22)(e) can only be assessed in the hands of the person who is a shareholder of the lender company and not in the hands of a person other than the shareholder. In view of the above facts and on the basis of the above referred decisions (supra), the addition made by the Assessing Officer u/s.2(22)(e) is held to be not justified and the same is deleted. The additions made by the A.O as deemed dividend u/s 2(22)(e) of IT Act for Rs.3,53,01,765/- in the hands of the appellant company is directed to be deleted. The ground of the appellant is dismissed."

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8. Upon careful reading of the order made by the Id.CIT(A), we find that the fact that the assessee is not a shareholder in the lender- company, which is first and foremost condition for application of section 2(22)(e) of the Act, has been duly considered. Further that, the transaction is not in the nature of advance or loan, but simply an ICD and the appellant had further provided for the interest expenditure on the said deposits borrowed, and the fact of deducting necessary TDS was considered. Factum of paying back of said ICD along with interest during the financial year 2008-09 by the assessee to the lender- company which was brought to the notice of the Id.CIT(A), has duly been considered. The judgment on this aspect passed by the Special Bench, ITAT Mumbai Benches in the case of ACIT Vs. Bhaumik Colours P.Ltd., 118 ITD 1 (Mum)(SB), and the judgment of jurisdictional High Court in the matter of CIT Vs. Daisy Packers P.Ltd. (supra) as have been relied upon by the Id.AR before us, have also been duly considered by the Id.CIT(A). In fact, the judgment passed by the Hon'ble Delhi High Court in the case of Anitech P.Ltd. (supra) was also taken into consideration while deleting the addition. We have further considered judgment passed by the Co-ordinate Bench of ITAT, Ahmedabad Benches in the assessee's own case for the Asstt.Year 2008-09 in ITA no.2232 & CO 157/Ahd/2016. Following observation was made by the Ld. ITAT on the issue:

"6. Heard both the sides and perused the material on the record. During the year under consideration, the J. P. Escon Ltd. has given inter corporate deposit to the assessee company. The case of the assessee was reopened for the reasons that J.P. Escon Ltd. had provided loan of Rs. 68,35,2624/- to the assessee company which attracts the provision of section 2(22)(e) of the Act. At the assessment stage, the assessee has categorically explained after referring various judicial pronouncements that the amount received from J.P. Escon Ltd. cannot be taxed as deemed dividend in its hand as it was not the registered share holder of J.P. Escon Ltd. The Assessing Officer after considering the substantial common share holding of Shri Pravin Kotak and Shri Amit Gupta, treated the amount of Rs. 3,30,50,859/- upto the accumulated profit received by the assessee company from J.P. Escon Ltd. as deemed dividend u/s. 2(22)(e) of the act. The Id. CIT(A) has deleted the addition holding that assessee company was not a ITA No.279 AND CO 47/Ahd/2016 registered share holder of J.P. Escon Ltd. after placing reliance on the various judicial pronouncements as elaborated in his findings as cited above in this order. After perusal of the material on record, it is noticed that assessee company was not a registered share holder in J.P. Escon Ltd. who has given inter corporate deposit to the assessee company. The similar issue on identical facts has been adjudicated by the Hon'ble Jurisdictional High Court of Gujarat in the case of Pr. CIT vs. Mahavir Inducto Pvt. Ltd. dated 12th Jan, 2017 on the basis of which the Co- ordinate Bench of the ITAT has decided the issue in favour of the assessee in the case of M/s. Precimetal Cast Pvt. LTD. Vs. ITO dated 16.12.2020 wherein it is held that for the applicability of section 2(22)(e) of the Act it is required that assessee company must be a share holder in the company from whom the loan or advance has been taken. The relevant part of the decision of the Co-ordinate Bench is reproduced as under:-

"7. Heard both the sides and perused the material on record. The Assessing Officer noticed that assessee company has obtained unsecured loan from Gaurav Securities



Pvt. Ltd. wherein one of the main shareholders of the assessee company Shri Umesh Bhatiya was holding substantial shares in Gaurav Securities Pvt. Ltd. Looking to the above facts, the Assessing Officer has made an addition to the extent of Rs. 13,21,198/- being accumulated profit of Gaurav Security Pvt. Ltd. for the reason that section 2(22)(e) prohibits advancing money among entities having common shareholders with substantial interest in the case of closely held company having accumulated profit. After perusal of the judicial pronouncements it is noticed that identical issue on common facts have been adjudicated by the Co-ordinate Bench of the ITAT Ahmedabad in the case of ACIT vs. Leela Ship Recyling Pvt. Ltd. vide ITA No. 1658/Ahd/2012 dated 12th March, 2020 and by the Jurisdictional High Court in the case of Pr. CIT vs. Mahavir Inducto Pvt. Ltd. dated 12-01-2017. With the assistance of ld. representatives, we have gone through the aforesaid two judicial pronouncements, it is noticed that in the case of ACIT vs. Leela Ship Recycling Pvt. Ltd. supra the Co-ordinate Bench of the ITAT has adjudicated the identical issue on same facts as under:-

"4. We have heard the rival contentions, perused the material on record and duly considered facts of the case and the applicable legal position.

5. Learned representatives fairly agree that the issue in appeal is now covered by Hon'ble jurisdictional High Court's judgment in the case of CIT Vs Mahavir Inductomelt Pvt Ltd (TA No. 890 of 2011; judgment dated 13th January 2017) wherein Their Lordships have extensively reproduced from Hon'ble Delhi High Court's judgment in the case of Anitech Pvt Ltd (supra), and concurred with the same. Thus, in a case in which an amount is received from a person other than the ITA No.279 AND CO 47/Ahd/2016 shareholder, as is the admitted position in this case, the provisions of Section 2(22)(e) cannot indeed be invoked. The CIT(A) was thus justified in granting the impugned relief in respect of the addition under section 2(22)(e). We, therefore, approve the conclusion arrived at by the learned CIT(A) in this regard, and decline to interfere in the matter on that count."

We have also through the decision of Hon'ble Gujarat High Court in the case of Pr. CIT vs. Mahavir Inducto Pvt. Ltd. supra wherein the identical issue on same facts was decided in favour of the assessee after following the decision of Bombay High Court in the case of CIT vs. Impact Containers Pvt. Ltd. and others vide IT Appeal No. 114 of 2012 and the decision of Delhi High Court in the case of CIT vs. Ankitech Pvt. Ltd. Ltd. reported in 340 ITR 14 Delhi. The relevant part of the decision is reproduced as under:-

"50. Identical question came to be considered by the Division Bench of this Court in Tax Appeal No. 253 of 2015. After considering the decision of the Bombay High Court in the case of CIT vs. Impact Containers Private Limited & ors rendered in ITA No. 114 of 2012 and the decision of the Delhi High Court in the case of CIT vs. Ankitech Pvt Ltd reported in 340 ITR 14 (Del) and on interpreting Section 2 (22)(e), in para 4 has observed and held as under:

"4.Shri Bhatt, learned Counsel appearing on behalf of the revenue has as such tried to justify the decision of the Delhi Court in the case of Ankitech Pvt. Ltd. (Supra) and has vehemently submitted that the Delhi High Court has not considered the third category i.e. shareholder in the assessee Company holding not less than 10% of the voting power in the Company from whom the loan or advance is taken. However, on considering Section 2(22)(e) of the Act, we are not at all impressed with the aforesaid. If the contention on behalf of the revenue is accepted, in that case, it will be creating the third category / class, which is not permissible. What is provided under Section 2(22)(e) of the Act seems to be that the assessee HC-NIC Page 4 of 5 Created On Sat Aug 12 04:34:00 IST 2017 O/TAXAP/891/2016 JUDGMENT Company must be a shareholder in the Company from whom the loan or advance has been taken and should be holding not less than 10% of the voting power. It does not provide that any shareholder in the assessee- Company who had taken any loan or advance from another Company in which such shareholder is also a shareholder having substantial interest, Section 2(22)(e) of the act may be applicable.

5.1. Considering the aforesaid decision of the Division Bench of this Court and the facts narrated herein above, ITA No.279 AND CO 47/Ahd/2016 more particularly, considering the fact that the assessee was not share holder of Mahavir Rollin g Mills Pvt Ltd to whom loan was given, it cannot be said that the learned Tribunal has c ommitted any error in deleting the addition made by the Assessing Officer on deemed dividend."

In view of the findings as supra Hon'ble Jurisdictional High Court wherein it is held that for the applicability of section 2(22)(e), it is required that the assessee company must be a shareholder in the company from whom the loan or advance has been taken and it does not provide that any shareholder in the assessee company who had taken any loan or advance from another company in which such shareholder is also a shareholder having substantial interest. Since the facts of the case of the assessee are squarely covered by the aforesaid decisions of Hon'ble High Court and Co-ordinate Bench of the ITAT, the impugned addition is deleted. Accordingly, this ground of the assessee is allowed."

After taking into consideration, the aforesaid facts and judicial findings as referred above, it is undisputed fact that assessee company was not a registered share holder in J.P. Escon Ltd. from whom it has obtained loan during the year under consideration. Therefore, the addition made by the Assessing Officer as deemed dividend u/s. 2(22)(e) of the Act is not justified. In the light of the above facts and findings, we do not find any infirmity in the decision of ld. CIT(A), therefore, this appeal of the revenue is dismissed."

9. We have also perused the judgments passed by different judicial forums as relied upon by the Ld. AR. The ratio laid down therein is that, in a case, in which an amount is received from a person, other than the shareholder, provision of section 2(22)(e) of the Act cannot indeed be invoked. In the instant case, the appellant company was not a registered shareholder of the lender-company viz. JP Iscon Ltd. from which the assessee-company has obtained ICD during the year under consideration,

and therefore, the addition made by the Ld. AO by invoking provisions of section 2(22)(e) of the Act, has rightly been deleted by the Id.CIT(A) without any ambiguity so as to warrant interference. Hence, appeal preferred by the Revenue is found to be devoid of any merit and thus stands dismissed.

10. So far as assessee's CO is concerned, the same is merely in support of the order of the Id.CIT(A), which we upheld as per the ITA No.279 AND CO 47/Ahd/2016 observations and finding recorded by us in the foregoing paragraphs. Hence the CO of the assessee is dismissed for want of prosecution.

11. In the result, appeal of the Revenue is dismissed, whereas CO of the assessee is dismissed for want of prosecution.

Order pronounced in the Court on 25th November, 2021 at Ahmedabad.

Sd/-  
(PRADIP KUMAR KEDIA)  
ACCOUNTANT MEMBER

Sd/-  
(Ms.MADHUMITA ROY)  
JUDICIAL MEMBER

Ahmedabad;

Dated

25/11/2021

TRUE COPY

' ( ) \* ) /Copy of the Order forwarded to :

1. / The Appellant

2. + / The Respondent.

3. -

/ Concerned CIT

4. -

( ) / The CIT(A)

5.) i ' ' , / DR, ITAT,

6. i ¢1 £ / Guard file.

/ BY ORDER, □ /  
/ ITAT, Ahmedabad

¥ (Dys./Asstt.Registrar),

1. Date of dictation : 10-11-2021

2. Date on which the typed draft is placed before :

the Dictating Member.

3. Date on which the approved draft comes to the :

Sr.P.S./P.S

4. Date on which the fair order is placed before the :

Dictating Member for pronouncement.

5. Date on which fair order placed before Other :

Member

6. Date on which the fair order comes back to the :

Sr.P.S./P.S.

7. Date on which the file goes to the Bench Clerk. : 25.11.2021

8. Date on which the file goes to the Head Clerk. :

9. The date on which the file goes to the Assistant :

Registrar for signature on the order.

10. Date of Despatch of the Order :