IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH, 'A': NEW DELHI

(Through Video Conferencing)

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER AND
SHRI K.N. CHARY, JUDICIAL MEMBER

ITA No.3561/DEL/2016
[Assessment Year: 2011-12]

DCIT, Central Circle-29, Room No.318, 3rd Floor, ARA Centre, Jhandewalan Extn. New Delhi	M/s Gen X Commodities (P) Ltd. FA-45, Shivaji Enclave, New Delhi-110027
	PAN-AAACA2969B
Revenue	Assessee

Revenue by	Sh. Satpal Gulati, CIT-DR
Assessee by	Sh. Ved Jain, Adv, Sh. Aashish Goyal, CA Sh. Akshit Goyal CA

Date of Hearing	**09.06.2021**
Date of Pronouncement	**27.07.2021**

ORDER

PER R.K. PANDA, AM,

This appeal filed by the Revenue is directed against the order dated 30.03.2016 of the learned CIT(A)-30, New Delhi, relating to Assessment Year 2011-12.

2. Facts of the case, in brief, are that the assessee company is engaged in the business of trading of commodities i.e. Silver, Gold, Sugar, etc. A search and seizure action u/s 132 of the Act was initiated in the case of the assessee as part of Jaypee Group on 30.03.2012. In response, to notice u/s 153A of the Act, the assessee filed its return of income on 02.09.2013 declaring total income of Rs.10,02,480/-.

3. During the course of assessment proceedings, the AO observed that the assessee has substantial amount of investment in the shares of companies. The nature of income which can be earned out of such investment is dividend income, which is tax free as per the provisions of the Income Tax Act. Although, the assessee has not earned any exempt income, however, the AO observed that there are investments in the opening and closing balances of the accounts and the income likely to be received from such investment is exempt and interest and other expenses are claimed in the Profit & Loss Account. He, therefore, confronted the same to the assessee and asked the assessee to explain as to why provisions of section 14A r.w.r. 8D should not be applied.

4. The assessee submitted that it has not received any exempt income, therefore, provisions of section 14A r.w.r. 8D are not applicable. However, the AO was not satisfied with the arguments advanced by the assessee and applying the provisions of section 14A of the Act made addition of Rs.1,42,80,173/- to the total income of the assessee.

4.1. The AO observed from the accounts of the assessee company with sister concerns that there are large number of transactions including payment by the sister concern to the assessee. He observed that the group companies are making the payments to each other on regular basis. Further, the companies also are having cross shareholding with each other. From the various details furnished by the assessee, he observed the details of share holding of the companies which are as under:-

(i) Gen-X Commodities Ltd (Formerly Arora Timber Ltd) Percentage of Share Holding

AY	Gaurav Arora	Gaurav Arora(HUF)	Futurtz Next Services Ltd
2006-07	24.67	36.37	
2007-08	24.67	40.16	17.42
2008-09	42.72	46.83	
2009-10	42.72	46.83	
2010-11	42.72	46.83	
2011-12	42.72	46.83	
2012-13	42.72	46.83	

(ii) Futurtz Next Services Ltd (Formerly Jaypee Commodities Ltd) Percentage of Share Holding

AY	Gaurav Arora	Gaurav	Saurabh Arora
2006-07	55.33	36.17	
2007-08	91.49		
2008-09	91.49		
2009-10	91.49		
2010-11	91.49		
2011-12	91.49(Tiil 08.12.2008)		91.49 (After 08.12.2008)
2012-13			91.49

(iii) Jaypee Capital Services Ltd Percentage of Share Holding

AY	Gaurav Arora	Gaurav Arora(HUF)	Futurtz Next Services	Gex X Commodities	Saurav Arora
2006-07	57.59				20.02
2007-08	79				20.02
2008-09	59.20		23.05		14.82
2009-10	42		24.75	22.73	10.52
2010-11	42		33.27	14.20	10.52
2011-12	46.55		40.55	12.59	
2012-13	46.55		40.85	12.59	

5. He, therefore, asked the assessee to explain as to why the provisions of section 2(22)(e) of the Act should not be applied. It was submitted by the assessee that it is operating exchange wise separate bank account based upon the nature of transaction i.e. settlement A/c, dues A/c, client A/c and normal business exchange wise accounts. On the above basis viz, separate bank account of different nature of transactions,

assessee has kept separate accounts of client/transactions with Mr. Gaurav Arora, Gen X Commodities (P) Ltd. and M/s Futurz Next Services (P) Ltd. etc. Since, the assessee has reiterated the reply submitted by the lender companies on this issue, the AO examined the reply of one of the lender company i.e. M/s Jaypee Capital Services Ltd. After analysing the details furnished by the assessee, the AO observed as under:-

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

b. The ledger account submitted by the assessee, consists of large number of transactions in respect of shares transactions done by assessee, as client of *JCPL,* 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.

6. The AO further noted that JCPL, have granted advances in the nature of loan to the assessee, therefore, the payment received from the JCPL by assessee is to be treated as deemed dividend in the hands of the assessee. He accordingly invoking the provisions of section 2(22)(e) of the Act made addition of Rs.91,47,56,196/- to the total income of the assessee. Thus, the AO determined the total income of the assessee at Rs.93,00,38,850/- as against the returned income

of Rs.10,02,480/-.

7. In appeal, the learned CIT(A) deleted the disallowance u/s 14A on the ground that the assessee has not received any exempt income. Similarly addition u/s 2(22)(e) of the Act was also deleted by the learned CIT(A) on the ground 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. According to him these transactions are trading/business transactions, therefore, provisions of section 2(22)(e) will not applicable.

8. Aggrieved with such order of the learned CIT(A), the Revenue is in appeal before the Tribunal by raising the following grounds of appeal:-

a. On the facts and in the circumstances of the case, the Ld. CIT(A) had erred in law and on facts in deleting the disallowance u/s 14A read with rule 8D of the Income Tax Rules ignoring the fact that the provisions of section 14A are mandatory.

b. On the facts and in the circumstances of the case, the Ld. CIT(A) had erred in law and on facts is not appreciating the content of CBDT Circular no. 05/2014 dated 11-02-2014 which clarifies that Rule 8D read with section 14A of the Act provides for disallowance of the expenditure even where taxpayer in particular year has not earned any exempt income.

c. 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. 91,47,56,196/- made on account of deemed dividend u/s 2(22)(e) of the Act.

d. On the facts and in the circumstances of the case, the Ld. CIT(A) had erred in law and on facts by holding that the sale of silver recorded in the diary seized is duly accounted for in the books / cash sale.

e. 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 JCSL by the AO is not correct.

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

g. That the grounds of appeal are without prejudice to each other.

9. Grounds of appeal no. 'a' and 'b' relate to the order of the learned CIT(A) in deleting the disallowance of Rs.1,42,80,173/- u/s 14A of the Act.

10. The learned DR heavily relied upon the order of the Assessing Officer.

11. The learned counsel for the assessee, on the other hand, submitted that the assessee has not earned any exempt income during the year a fact stated during the course of assessment proceedings and also verified by the AO. Referring to various decisions, he submitted that disallowance u/s 14A r.w.r. 8D of the rules cannot be applied if no exempt income is earned during the year. For the above proposition, he relied on

the decision of the Hon'ble Supreme Court in the case of PCIT vs Oil Industries Development Board (2019)103 taxmann.com 326(SC), the decision of the Hon'ble Delhi High Court in the case of Cheminvest Ltd. vs CIT (2015) 378 ITR 33(Del.), the decision of the Hon'ble Supreme Court in the case of CIT vs M/s Chettinad Logistics Pvt. Ltd. [2018] 95 taxmann.com 250(SC), the decision of the Hon'ble Delhi High Court in the case of PCIT vs Mcdonald's India Pvt. Ltd. (ITA No.725 of 2018) and various other decisions.

12. We have considered the rival arguments made by both the sides, perused the orders of the Assessing Officer and the learned CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find the AO in the instant case, invoking the provisions of section 14A r.w.r. 8D, made addition of Rs.1,42,80,173/- on the ground that although the assessee has not earned any exempt income, however, there are investments in the opening and closing balance of the account and the income likely to be received from such investment is exempt and the assessee has claimed interest and other expenses in the profit & loss account. We find the learned CIT(A) deleted

the addition on the ground that no dividend income was received by the assessee during the year and therefore, in view of the decision of the Hon'ble Delhi High Court in the case of CIT vs Holcim India Pvt. Ltd., the disallowance u/s 14A of the Act cannot be sustained.

12.1. We do not find any infirmity in the order of the learned CIT(A) in deleting the addition made by the AO u/s 14A r.w.r. 8D of the Rules. It is an admitted fact that the assessee, during the year under consideration, has not earned any exempt or dividend income. It has been held in various decisions that in absence of any exempt or dividend income received during the year under consideration, no addition can be made u/s 14A r.w.r. 8D of the Rules. The Hon'ble Delhi High Court in the case of Chiminvest Ltd. vs CIT (2015) 378 ITR 33 (Del.) has held that in absence of any exempt income, disallowance u/s 14A of the Act of any amount was not permissible. The Hon'ble Supreme Court in the case of CIT vs M/s Chettinad Logistics Pvt. Ltd. (supra) has held that in absence of any exempt income, no disallowance u/s 14A r.w.r. 8D can be made. The various other decisions relied on by the learned counsel for the assessee also support the case of the

assessee. Since, the assessee in the impugned assessment year has admittedly not received any exempt income or dividend income, therefore, the order of the learned CIT(A) in deleting the disallowance made by the AO u/s 14A r.w.r 8D is upheld and the grounds raised by the Revenue on this issue are dismissed.

13. Ground of appeal no. 'C' relates to the order of the CIT(A) in deleting the addition of Rs.9147,56,196/- u/s 2(22)(e) of the Act.

14. The learned DR heavily relied on the order of the AO. He submitted that the assessee has failed to demonstrate that the money advanced by the companies to it was in the nature of trade advance and therefore the learned CIT(A) was not justified in deleting the addition.

15. The learned counsel for the assessee on the other hand, while supporting the order of the learned CIT(A) submitted that the amount which has been credited and debited in the accounts of the assessee in association with the said party is on account of business transactions and transacted by the assessee being a client and shareholder of the company. Referring to the decision of the Co-ordinate

Bench of the Tribunal in the case of Gaurav Arora, he submitted that the Tribunal vide ITA Nos. 2034, 2035/Del/2016, order dated 17.12.2018 for Assessment year 2011-12 has deleted such addition. He submitted that the Tribunal has upheld the findings of the learned CIT(A) that the transactions in the ledger account of the assessee are in regular course of the business of purchase and sale of the shares/currency/derivates/ commodities etc. and the Ld. DR could not controvert the above factual findings of the learned CIT(A). He submitted that there are two capacity of the assessee i.e. the assessee is surely the shareholder in such companies but at the same point he is their client also. Consequently there are two types of transactions, one business transaction and other transactions which are done in the capacity of shareholder. The transactions carried out between the assessee and the above parties reflect running transactions of debit and credit throughout the year which candidly enumerates that such transactions are on account of regular business transactions only.

15.1. Referring to the CBDT Circular No.19/2017, dated 12.06.2017, he submitted that the CBDT has clarified that the

advances which are in the nature of commercial transactions would not fall within the ambit of the word 'advance' u/s 2(22)(e) of the Act. Relying on various decisions, he submitted that since these transactions are regular and routine transactions, therefore, this cannot be termed as loans and advances in pursuance of sections 2(22)(e) of the Act and the same are to be held as business transaction. He also relied on the following decisions:-

i. CIT vs Sunil Sethi in ITA No.569/2009, dated 03.02.2010 (Del.)
ii. CIT vs Creative Dyeing & Printing Pvt. Ltd. [2009] 318 ITR 476 (Del.)
iii. CIT vs Arvind Kumar Jain in ITA No.589 of 2011, dated 30.09.2011 (Del.)
iv. Krishan Murari Lal Agarwal vs DCIT [2013] 59 SOT 136 (Agra Trib.)

16. We have considered the rival arguments made by both the sides, perused the orders of the Assessing Officer and the learned CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find the AO in the instant case made addition of Rs.91,47,56,196/- u/s 2(22)(e) for the following reasons:

a) The companies namely M/s Jaypee Capital Services Pvt. Ltd.(JCPL), and M/s Gen X Commodities Ltd.(GCL), are closely held companies. The assessee has substantial

holding in JCPL. There are large number of transactions including payments by the JCPL to the assessee. Further, the group companies are also making the payments to each other regularly as per the ledger account submitted.

b) The ledger account submitted by the assessee, consists of large number of transactions in respect of shares transactions done by assessee, as client of *JCPL,* 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.

c) The *JCPL,* have granted advances in the nature of loan to the assessee. The payment received from the *JCPL* by assessee is to be treated as deemed dividend in the hands of the assessee.

17. We find, in appeal, the learned CIT(A) deleted the addition by observing as under:-

9.4. 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 Rs. 91,47,56,196/- u/s 2(22)(e), for the following reasons:

(i) The companies namely M/s Jaypee Capital Services Pvt. Ltd.(JCPL), and M/s Gen X Commodities Ltd.(GCL), are closely held companies. The assessee has substantial holding in JCPL. There are large number of transactions including payments by the JCPL 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 *JCPL,* 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 *JCPL,* have granted advances in the nature of loan to the assessee. The payment received from the *JCPL* 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 ***JCPL,*** is share/currency/derivatives brokers, with whom the appellant and the groupconcerns 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 he is substantially interested, with ***JCPL.*** are not in the nature of advance or loan. Therefore, it is claimed that these accounts relates 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 special auditor as well as the A.O., have extracted the alleged account and re-casted 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 ***JCPL.*** 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 ***JCPL*** 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 special auditor and 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. 91,47,56,196/-, computed by the A.O. in the case of ***JCPL*** 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.

(c) It has been further submitted that the even alleged account prepared by the special auditor (in case of JCPL), 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 ***JCPL*** 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/group concerns with ***JCPL,*** which are relating to share/currency/derivatives 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 u/s 2(22)(e) of the Act.

(iii) It is further submitted by the appellant that the ledger account maintained in the books of accounts of ***JCPL,*** 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 emerges:

(a) The transactions of cheques received and paid from/to the broker company ***JCPL,*** 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 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 company ***JCPL*** 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. The 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 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, 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, 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 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 material 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 M'hat 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 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), 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. 91,47,56,196/-, is hereby deleted."

18. We do not find any infirmity in the order of the learned CIT(A) on this issue. We find an identical issue had come up before the Tribunal in the case of the related party namely Mr. Gaurav Arora (supra), wherein the Tribunal on identical facts and circumstances has deleted the addition made by the AO by observing as under:-

"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 Rs. 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 re-casted 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 Rs.7,43,00,000/-, computed by the A.O. in the case of JCPL and Rs.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' mayor 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 Rs. 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."

19. Since, the facts of the present appeal are identical to the facts of the related party decided by the Tribunal in the case of Gaurav Arora (supra), therefore, respectfully following the same we hold that regular/routine transactions cannot be termed as loans and advances so as to attract the provisions of section 2(22)(e) of the Income Tax Act, 1961. Since, the learned CIT(A) while deleting the addition has thoroughly discussed the

issue and has given a finding that these are trading/business transactions, therefore, in absence of any contrary material brought to our notice by the learned DR against the factual finding given by the learned CIT(A) as above, we do not find any infirmity in his order. Accordingly, the same is upheld and the grounds raised by the Revenue on this issue are dismissed.

20. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in the open Court on 27/07/2021.

Sd/-	Sd/-
[K.N. CHARY]	**[R.K.PANDA]**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Delhi; Dated: 27/07/2021.

Shekhar, Sr. P.S

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi