IN THE INCOME TAX APPELLATE TRIBUNAL,
KOLKATA „C" BENCH, KOLKATA

Coram : Shri Mahavir Singh (Judicial Member)
and Shri Abraham P. George (Accountant Member)

I.T.A. No.: 1600/Kol./ 2011
Assessment year : 2008-2009

Deputy Commissioner of Income Tax,.....Appellant
Circle-11, Kolkata,
P-7, Chowringhee Square,
Kolkata-700 069

-Vs.-

M/s. P.C. Chandra Holdings Pvt. Ltd.,.....Respondent
P-24A, CIT Road, Entally,
Kolkata-700 014
[PAN : AABCP 7519 D]

Appearances by:
Shri V. Appala Raju, Addl. CIT, Sr. D.R., for the Department
Shri Ravi Tulsyan, A.R., for the assessee

Date of concluding the hearing : December 12, 2013
Date of pronouncing the order : December 19, 2013

O R D E R

Per Abraham P. Geroge:

1. In this appeal filed by the Revenue, it assails the deletion of an addition of Rs.1,60,00,000/- made by the Assessing Officer under section 2(22)(e) of the Income Tax Act, 1961 (in short "The Act"), vide its Grounds No. 1 & 2.

2. Facts apropos are that assessee engaged in the business of trading in bullion had filed its return for the impugned assessment year declaring an income of Rs.1,62,09,940/-. During the course of assessment proceedings, Assessing Officer noted that assessee was holding 10.03% of equity shares of one M/s. Chandra"s Chemical Enterprises (P) Ltd. and 12% of equity shares of M/s. D.L. Jewels (P) Ltd. Assessee had received

unsecured loans of Rs.1,50,00,000/- from the former and Rs.10,00,000/-from the latter. Assessing Officer was of the opinion that Section 2(22)(e) of the Act was attracted. M/s. Chandra‟s Chemical Enterprises (P) Ltd. was having accumulated profits of Rs.6,59,82,622/- as on 31.03.2008 and M/s. D.I. Jewels (P) Ltd. was having accumulated profit of Rs.17,98,965/-as on 31.03.2008. When put on notice, assessee stated that these were term deposits received by it from the said two companies and was shown as unsecured loan in the Balance-sheet for complying with Schedule VI of the Companies Act, 1956. As per the assessee, deposits were taken in the ordinary course of business. Assessee also produced a legal opinion taken by it from Dr. Debi Prosad Pal, stating that deposits received from the said two companies would come within the exceptions provided on Section 2(22)(e) of the Act. However, Assessing Officer did not accept these contentions. According to him, assessee was not a Banking or non-Banking Financial Institution. It had not taken any permission from RBI to receive any term deposit. Confirmations given by the respective parties reflected that what were received were only unsecured loans. The loans were taken on different dates and hence, could not be considered as deposit. Relying on the decision of Hon‟ble Mumbai Bench of this Tribunal in the case of Oscar Industries (P) Ltd. –vs.- DCIT [98 ITD 339], Assessing Officer came to a conclusion that the amounts received by the assessee from the two companies would fall within the realm of deemed dividend under section 2(22)(e) of the Act. Addition of Rs.1,60,00,000/- was made.

3. Aggrieved, assessee moved in appeal before ld. CIT(Appeals). Argument of the assessee was that what were received from M/s. Chandra‟s Chemical Enterprises (P) Ltd. and M/s. D.I. Jewels (P) Ltd. were only inter-corporate deposits. As per the assessee, unless and until money received was in the nature of a loan or advance, section 2(22)(e) would not be attracted. Inter-corporate deposits received were for specific period with specific interest rates. It was common in the corporate management to keep surplus funds in inter-corporate deposits.

Just because it was placed under the head “loans and advances” in the Balance-sheet for complying with the requirement of Schedule VI of the Companies Act, 1956, would not make it a loan per se.

4. Ld. CIT(Appeals) was appreciative of these contentions. According to him, the sums were for a specific period at specified interest rate. Interest was also paid by the assessee after deducting tax. Relying on the decision of the Hon‟ble Delhi High Court in the case of CIT –vs.- Ankitek Pvt. Ltd. [340 ITR 42], ld. CIT(Appeals) held that deposits received in normal course of business could not be considered as loans and advances for the purpose of application of section 2(22)(e) of the Act. Taking this view, he deleted the addition.

5. Now before us, ld. D.R. strongly assailing the order of ld. CIT(Appeals) submitted that assessee itself had shown the amount as loan in its Balance-sheet. It, therefore, cannot say that such amounts were inter-corporate deposits. Ld. CIT(Appeals) had reached a conclusion without properly appreciating the nature of amounts received. Therefore, according to him, ld. CIT(Appeals) fell in error in deleting the additions under section 2(22)(e) of the Act.

6. Per contra ld. A.R. supported the order of ld. CIT(Appeals). He also relied on the decision of coordinate Bench of this Tribunal in the case of IFB Agro Industries Limited –vs.- JCIT in ITA No. 1721/Kol/2012, order dated 12.03.2013, in support of his contention, that Section 2(22)(e) could not be roped in, to tax on inter-corporate deposits as deemed dividend.

7. We have heard the rival contentions and perused the material available on record. During the course of hearing, assessee produced copies of ledger accounts of M/s. Chandra‟s Chemical Enterprises (P) Ltd. as well as M/s. D.I.
Jewels (P) Ltd. as appearing in its books. Entries in

these ledger marked as Annexure-A & Annexure-B are reproduced hereunder :-

Date	Particulars	Vch Type	Vch No.	Debit	Credit
26.4.2007	Dr Current Account UTI, CIT Road Ch. No. 162667 on Stan-Chart for Rs.20,00,000/- & 412611 on UBI for Rs.30,00,000/- towards ICDS at an interest @ 12% p.a. for 700 days	Receipt	8		50,00,000
23.6.2007	Dr Current Account UTI, CIT Road Ch. No. 224888 on Stan-Chart & Ch. No. 412951 on UBI as ICD at an interest @ 12% p.a. for 900 days	Receipt	48		50,00,000
15.3.2008	Dr Current Account UTI, CIT Road Ch. No. 052511 on Stan-Chart for Rs.40,00,000/- & Ch. No. 335097 on State Bank of India for Rs.10,00,000/- towards ICDS at an interest @ 12% p.a. for	Receipt	196		50,00,000

	650 days				
31.3.2008	Dr Interest on ICDs Being interest for the year from 1.4.2007 to 31.3.2008 on ICD provided	Journal	24		10,50,820
	Cr Current Account UTI, CIT Road Ch. No. 149245 to 149248 towards interest on ICD for FY 07-08 & TDS @ 22.66% deducted	Payment	415	10,50,820	
				1050,820	1,60,50,820
	Cr Closing balance			150,00,000	
				160,50,820	160,50,820

Annexure-B

Date	Particulars	Vch Type	Vch No.	Debit	Credit
16.11.2007	Dr Current Account UTI, CIT Road Ch. No. 756988 on SBI towards ICD against 10% interest per annum for 137	Receipt	139		10,00,000

	days.				
31.3.2008	Dr. Interest on ICDs being interest for the year from 1.4.2007 to 31.3.2008 on ICD provided	Journal	24		37,432
	Cr Current Account UTI, CIT Road Ch. No. 149245 to 149248 towards interest on ICD for FY 07-08 & TDS @ 22.66% deducted	Payment	415	37,432	
				37,432	1037,432
				1000,000	
	Cr Closing Balance			1037,432	10,37,432

It is therefore clear that assessee itself had shown the amounts in its ledger as inter-corporate deposits, with interest rate @ 12% in the case of M/s. Chandra‟s Chemical Enterprises (P) Ltd. and interest rate of 10% from M/s. D.I. Jewels (P) Ltd. The amounts received were all in round sums and not in odd figures. These figures as appearing in the ledger pages have not been disputed by the Revenue. When the amounts were shown in ledger as inter-corporate deposit, just because the assessee in the balance-sheet had put it under the head “loans and advances” would not in our opinion, change the nature of receipt. Primary entries are there

which appear in the ledger and cash/Bank books. Balance-sheet and profit & loss a/c. are secondary records derived from such primary records. Therefore, we are inclined to accept the contention of the assessee that money received from M/s. Chandra"s Chemical Enterprises

(P) Ltd. and M/s. D.I. Jewels (P) Ltd. were in the nature of inter-corporate deposits. The view taken by the Assessing officer that assessee was not recognized NBFC, in our opinion, may not be relevant in so far as acceptance of such inter-corporate deposits is concerned. The Tribunal in the case of IFB Agro Industries Ltd. held as under:-

> *"5. We have considered the rival submissions. At the outset, a perusal of the facts in the assessee"s case clearly show that the dispute in the appeal primarily revolves around the issue as to whether the Intercorporate Deposits received by the assesee from M/s. IFB is a „loan" or „advance" or is a „deposit". Admittedly, the provisions of section 2(22)(e) of the Act refers to only „loans" and „advances" it does not talk of a „deposit". The fact that the term „deposit" cannot mean a „loan" and that the two terms „loan" and the term „deposit" are two different distinct terms is evident from the explanation to section 269T as also section 269SS of the Act where both the terms are used. Further, the second proviso to section 269SS of the Act recognises the term „loan" taken or „deposit" accepted. Once it is an accepted fact that the terms „loan" and „deposit" are two distinct terms which has distinct meaning then if only the term „loan" is used in a particular section the deposit received by an assessee cannot be treated as a „loan" for that section. Here, we may also mention that in section 269T of the Act, the term „deposit" has been explained vide various circular issued by*
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> *CBDT. Thus, the view taken by the Ld. CIT(A) that the Intercorporate deposit is similar to the loan would no longer have legs to stand. A perusal of the decision of Hon"ble Special Bench of this Tribunal in the case of Gujarat Gas & Financial*
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> *Services Ltd. referred to supra, clearly shows that the Hon"ble Special Bench had taken into consideration the decision of the Special Bench of this Tribunal in the case of Housing & Urban Development Corporation Ltd. reported in 102 TTJ (Del.)(SB) 936 to come to the conclusion that loans and deposits are to be taken different and distinct. Further, in view of the decision of Hon"ble Coordinate Bench of this Tribunal in the case of Bombay Oil Industries Ltd., referred to supra, wherein the coordinate bench of this Tribunal has held as follows:*

> *"10. We have heard the rival submissions and perused the material on record. The authorities below have not controverted the claim of the assessee company that the amount received from above three companies is ICDs. The*

AO held against the assessee only on account that it had failed to explain, the investment is neither loan or advance. It is a settled position that deposits cannot be equated with loans or advances. The jurisdictional High Court in the Durga Prasad Mandelia"s case (supra) has noticed the distinction between deposits and loans in the context of s. 370 of the Companies Act. The Court held as under:

> *"There can be no controversy that in a transaction of a deposit of money or a loan, a relationship of a debtor and creditor must come into existence. The terms „deposit" and „loan" may not be mutually exclusive, but nonetheless in each case what must be considered is the intentíon of the parties and the circumstances. In the present case, barring the assertion of the respondent that the moneys advanced by the company to the Associated Cement Companies constitute a loan and offend s. 370 of the Companies Act, there is nothing else to show that moneys have been advanced as a loan. In the context of the statutory provisions, the word „loan" may be used in the sense of a „loan" not amounting to a deposit. The word loan in s. 370 must now be construed as dealing with loans not amounting to deposits, because, otherwìse, if deposìt of moneys with corporate bodies were to be treated as loans, then deposits with scheduled banks would also fall within the ambit of s. 370 of the Companies Act. Therefore, moneys given by the company to the other bodies corporate is a loan within the meaning of s. 370 of the Companies Act must be negatived. Therefore, the petitioners would well be entitled to the relief."*

Sec. 370 of the Companies Act, 1956 was subsequently amended to include deposits ínto its ambit thereby indicating the distinction between deposits and loans/advances. The recent decision of the Tribunal in the case of Gujarat Gas Financial Services Ltd."s case (supra) has elaborately considered the issue whether interest on ICDs is interest on loans or advances and whether the same is exigible to chargeable interest under Interest-tax Act. The Tribunal after considering the entire precedent on the issue though in the context of the Interest-tax Act had categorically held that interest on ICDs is not akin to interest on loans or advances. The relevant portion of the order of the Tribunal cited supra which runs from paras 68 to 74 is reproduced below:

"68. Before the AO the assessee as regards income from ICD the assessee company accepted this interest of Rs. 1,21,54,153 along with interest on bill discountìng Rs. 1,48,74,208 and other interest of Rs. 3,66,184 can be bought under the purview of the Interest-tax Act, 1974. However before CIT(A) it was submitted that these are ìnterest on deposits and the nature is that of the investment and so interest-tax being leviable on loans and advances and not on fixed deposits, the amount was not to be included. The CIT(A) held:

> *"I have carefully considered the matter and find that the definition of interest does not speak of excluding this amount in its definition. Accordingly therefore, the inclusion by the AO of these items is found justified and is upheld."*

69. The submission of the assessee is that these ICDs being neither loans or advances, interest earned on these is not exigibte to interest tax in view of the decision of Ahmedabad Tribunal in the case of Utkarsh Fincap (P) Ltd. vs. ITO (2006) 101 TTJ (Ahd) 210. Reliance is also placed on the decision of Housing & Urban Development Corporation Ltd. vs. Jt. CIT (2006) 102 TTJ (Del) (SB)

936 : (2006) 5 SOT 918 (Del)(SB), Stanrose Holding Ltd. (ITA No. 25/Mum/1966) and Persepolis Investment Co. (P) Ltd. (ITA No. 51/Mum/1997). The Learned Departmental Representative on the other hand supported the decision of the CIT(A) and submitted that when assessee itself had offered it to tax where the question of allowing it as not taxable. He also submitted that it is taxable as hetd in Bajaj Auto Holdings Ltd. vs. Dy. CIT (2005) 96 TTJ (Mumbai)

856 : (2005) 95 ITD 356 (Mumbai).

70. We have heard the parties and considered the riva submissions. It might be true that assessee had offered it to tax initially but he claimed it as not taxable and therefore the matter has to be examined on merits and to determine as to whether it is taxable under the Act. We find it is not taxable in the light of the decision in the case of Utkarsh Fìncap (P) Ltd. (supra) wherein Ahmedabad Bench of the Tribunat after considering the decision in the case of Federation of Andhra Pradesh Chambers of Commerce & Industry & Ors. vs. State of Andhra Pradesh & Ors. (2001) 165 CTR (SC) 672 : (2001) 247 ITR 36 (SC), CIT vs. Sahara India Savings & Investment Corporation Ltd. (2003) 185 CTR (All) 136 : (2003) 264 ITR 646 (All) and following the decisions in the case of Gujarat Industrial Investment Corpn. Ltd. (sic), Oriental Insurance Co, Ltd. vs. Dy. CIT (2004) 82 TTJ (Del) 1084 : (2004) 89 ITD 520 (Del) held that interest

on ICDS are not chargeable to interest-tax, as the deposits are not in the nature of loans or advances. It held as under:

> *"The words „loans and advances" should be understood conjointly and not in isolation. If so read, the advances which are in the nature of loan alone should be covered in the term. Ordinarily an advance is a payment beforehand and it does not connote, the idea of repayment. It is adjusted when the action for which the money is advanced is completed and if not repaid on expiry of the loan like a deposit. The company is not bound to accept the deposit made, if proceedings on the basis of the prospectus a person interest to make a deposit. By issuing prospectus of a company invites offer for making deposit and that is not offer to receive deposit whereas in case of loan the assessee prays for a loan. It offers to borrow money and once that offer is accepted, the lender is bound to give money to the borrower on terms settled. It is also to be noticed that a taxing statute has to be strictly construed and the subject cannot be taxed unless comes within the letter of law. The argument that a particular income falls within the spirit of the law cannot be availed of by the Revenue. It is trite law that no tax can be imposed on the subject without the words in the Act. No tax can be imposed by inference or analogy. The cardinal principle of interpretation of fiscal law is that it should be considered strictly. In view of the above, the interest in ICDS unless they clearly fall within the meaning of interest on loans and advances would not be taxable. ICD can neither be a loan not an advance. Therefore, the AO is directed to exclude the interest on ICD from the assessment of the assessee. Consequently, the levy of penalty made would also not stand.*
> *They are, accordingly deleted."*

71. It has considered the decision of Bajaj Auto Holdings Ltd.s case (supra) referred to by the CIT(A) and distinguished by stating that Mumbai Bench has proceeded on a footing that deposit would be an advance. and would be includible ìn the term with interest on deposit and advance. The Bombay Bench is more persuaded by the reason that the interest on deposit was not excluded from the definition of interest and the term interest on loans and advances was wide enough to include the same. It had not considered that whether it was not a loan nor an advance and as to whether the amended definition of interest under the Act was exhaustive or inclusive. In holding that the ICD is not an advance the Ahmedabad Tribunal also noticed that the meaning

of the term advance as understood in the commercial words and as stated under the title what is advance in the following words :

"It was held in KM. Mohammed Abdul Kadir Rowther vs. S. Muthia Chettiar (1960) 2 Mad. LJ 13 at 15 that advance means literally a payment beforehand; in certain cases it may be a loan but it cannot be said that a sum paid by way of advance is necessarily a loan. In Raja of Venkatagiri vs. Krishnayya Rao Bahadur AIR 1948 PC 150 at p. 155, it was observed that ordinarily and advance does not connote any idea of repayment. It is, therefore, clear that the word advanced used in s. 296 means an advance in the nature of a loan and not merely an advance as is understood in the common parlance in the sense of payment of money beforehand and which is likely to become due at some future time."

72. It has also referred to s. 296 of Companies Act regulating loans to directors for book debt which was in the nature of loans or advances from its inception. 73. In the case of Housing & Urban Development Corporation Ltd. (supra), the Special Bench after considering various decisions and circulars of CBDT held that deposits in the form of securities and bonds cannot be considered as loans and advances and as such interest thereon shall be outside the scope of interest defined under s. 2(7) of the Interest tax Act. Para 22 of the order reads as under:

> *"22. From the foregoing discussion we are of the considered view that despite similarities, the two expressions loans and deposits are to be taken different and the distinction can be summed up by stating that in the case of loan, the needy person approaches the lender for obtaining the loan therefrom. The loan is clearly lent at the terms stated by the lender. In the case of deposit, however, the depositor goes to the depositee for investing his money primarily with the intention of earning interest. In view of this legal position, it has to be held that interest on deposits representing investment of surplus funds would also not fall under the definition of interest as given in s. 2(7) of the Act and as such would not be liable to interest tax. The answer to the question under reference in our humble opinion is that investments made by way of short-term deposits and also in the form of securities and bonds cannot be considered as loans and advances and as such interest thereon shall be outside the scope of „interest" defined under s. 2(7) of the Act."*

74. In these circumstances we hold that interest on ICDs is not an interest on loan or advance therefore would not be includible in the chargeable interest under the Interest tax Act.

From the above it is clear there is distinction between deposits vis-a-vis loans/advances. s. 2(22)(e) enacts a deeming fiction whereby the scope and ambit of the word dividend has been enlarged to bring within its sweep certain payments made by a company as per the situations enumerated in

the section. Such a deeming fiction would not be given a wider meaning than what it purports to do. The provisions would necessarily be accorded strict interpretation and the ambit of the fiction would not be pressed beyond its true limits. The requisite condition for invoking s. 2(22)(e) of the Act is that payment must be by way of loan or advances. Since there is a clear distinction between the ICDs vis-à-vis loans/advances, according to us the authorities below were not right in treating the same as deemed dividend under s. 2(22)(e) of the Act. Since we hold that ICDs do not come within the purview of deemed dividend under s. 2(22)(e) of the Act, the alternative contention of the assessee namely by virtue of s. 2(22)(e)(ii) of the Act, the unsecured loans received by the assessee is not dividend is not adjudicated."

We are of the view that the Inter-corporate deposits cannot be treated as a loan falling within the purview of section 2(22)(e) of the Act.

In view of the decision taken by the coordinate Bench that inter-corporate deposits received cannot be considered as a loan or advance so as to visit an assessee with the hazards of section 2(22)(e) of the Act, Ld. CIT(Appeals) was in our opinion justified in deleting the addition. Grounds No. 1 & 2 of the revenue stand dismissed.

8. Vide its Ground No. 3, revenue is aggrieved that disallowance of expenditure attributable to dividend was restricted to ½% of average value of investment by ld. CIT(Appeals).

9. Assessing Officer for computing the disallowance under section 14A of the Act had applied Rule 8D of the Income Tax Rules. Assessee moved in appeal before ld. CIT(Appeals) since according to it interest earned during the relevant previous year was not at all attributable to investments resulting in dividend income, claimed as exempt. Ld. CIT(Appeals) after verifying the cash flow statement came to a conclusion that loans raised were not used by the assessee for the purpose of any investment earning dividend income claimed as exempt. Disallowance of interest as stipulated in sub-clause (ii) of clause (2) of Rule 8D can be done only when an assessee has incurred expenditure by way of interest which is not directly attributable to any particular income or receipt. Ld.

CIT(Appeals) had given a clear finding after verifying the cash-show that the loan amounts were not used for any investment resulting in the dividend income. Nothing has been brought on record by the Revenue to show that the finding of ld. CIT(Appeals) is not according to facts. We are therefore not inclined to interfere with the order of ld. CIT(Appeals) in this regard. Ground No. 3 of the revenue stands dismissed.

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

Order pronounced in the open court on 19th day of December, 2013.

Sd/- Sd/-

Mahavir Singh Abraham P. George

(Judicial Member) (Accountant Member)

Kolkata, the 19th day of December, 2013

Copies to : (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) The Departmental Representative
(6) Guard File

By order etc

Assistant Registrar
Income Tax Appellate Tribunal
Kolkata benches, Kolkata

Laha/Sr. P.S.