

Shri Raj Kumar regarding Trade Advance and Deemed Dividend u/s 2(22)(e) of Income Tax

Relevant Extracts

"10.7 Importantly, the broad principles which emerge from the judgment of the Supreme Court with regard to the applicability of the said rule of construction are briefly as follows:-

- (i) does the term in issue have more than one meaning attributed to it i.e., based on the setting or the context one could apply the narrower or wider meaning;
- (ii) are words or terms used found in a group totally, "dissimilar" or is there a "common thread" running through them;
- (iii) the purpose behind insertion of the term.

10.8 Let's examine as to whether based on the aforesaid tests the said rule of construction "*noscitur a sociis*" ought to be applied in the instant case.

- (i) the term "advance" has undoubtedly more than one meaning depending on the context in which it is used;
- (ii) both the terms, that is, advance or loan are related to the "accumulated profits" of the company;
- (iii) and last but not the least the purpose behind insertion of the term advance was to bring within the tax net payments made in guise of loan to shareholders by companies in which they have a substantial interest so as to avoid payment of tax by the shareholders;

10.9 Keeping the aforesaid rule in mind we are of the opinion that the word "advance" which appears in the company of the word "loan" could only mean such advance which carries with it an obligation of repayment. Trade advance which are in the nature of money transacted to give effect to a commercial transactions would not, in our view, fall within

the ambit of the provisions of Section 2(22)(e) of the Act. This interpretation would allow the rule of purposive construction with noscitur a sociis,...."