

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

INCOME TAX APPEAL NO. 2255 OF 2013

The Commissioner of Income Tax-2 .. Appellant

v/s.

M/s. Alfa Sai Minerals Pvt. Ltd. ..Respondent

Mr. Suresh Kumar a/w Ms. Samiksha Kanani for the appellant
Mr. Sameer Dalal for the respondent

**CORAM : M.S. SANKLECHA &
A.K. MENON, J.J.**

DATED : 28th MARCH, 2016.

PC.

1. This Appeal under Section 260-A of the Income Tax Act, 1961 (the Act) challenges the order dated 3rd May, 2013 passed by the Income Tax Appellate Tribunal (the Tribunal). The impugned order is in respect of Assessment Year 2005-06.

2. This appeal raises following question of law for our consideration:-

“(i) Whether on the facts and in the circumstances of the case and in law, the Tribunal was correct in holding that the amount received by the assessee company from Alfa Distilleries P. Ltd. and Vulcan Distilleries P. Ltd. did not attract the

provisions of Section 2(22)(e) of the Income Tax Act, 1961?

2. The respondent assessee during the subject assessment year obtained loans and advances from M/s. Alfa Distilleries P. Ltd. and M/s. Vulcan Distilleries P. Ltd. One Captain Pramod Salvi, who was the Director of the respondent assessee and had 79.92% shareholding in it. Further, Capt. Salvi also had 77.11% shareholding in M/s. Alfa Distilleries P. Ltd. and 63.39% shareholding in M/s. Vulcan Distilleries P. Ltd. The Assessing Officer held that the funds received by the respondent assessee from the above two companies were required to be added to the income of the respondent assessee as deemed dividend under Section 2(22)(e) of the Act.

3. It is not the case of the Revenue that the respondent assessee company is a mere shell and Capt. Salvi and company are one and the same. In fact, the Assessing Officer proceeds on the basis that as the assessee company and M/s. Alfa Distilleries P. Ltd. and M/s. Vulcan Distilleries P. Ltd. had common shareholders, therefore, the amounts received by the respondent assessee as loans and advances from the two companies are to be considered as deemed dividend under Section 2(22)(e) of the Act.

4. The Tribunal in the impugned order has held that as the respondent assessee is not shareholder of M/s. Alfa Distilleries P. Ltd. and M/s. Vulcan Distilleries P. Ltd. who had advanced loans to the respondent assessee. Therefore, the amount of loans made to the respondent assessee cannot be taxed in the hands of the respondent assessee as it is not a shareholder of M/s. Alfa Distilleries P. Ltd. and M/s. Vulcan Distilleries P. Ltd. It is an undisputed position as fairly submitted by Mr. Suresh Kumar that the question raised herein is concluded against the Revenue and in favour of the respondent assessee by the decisions of this Court in *Commissioner of Income Tax Vs. Universal Medicare Pvt. Ltd.* 324 ITR 263 and *Commissioner of Income Tax Vs. Impact Containers (P) Ltd.* 367 ITR 346 that deemed dividend has to be taxed in the hands of the shareholder of the company giving the loans and / or advance. In this case, admittedly, the respondent assessee is not a shareholder of the two companies i.e. M/s. Alfa Distilleries P. Ltd. and M/s. Vulcan Distilleries P. Ltd.

5. In the above view, the question as formulated does not give rise to any substantial question of law. Thus, not entertained.

6. The appeal is dismissed. No order as to costs.

(A.K. MENON, J.)

(M.S. SANKLECHA, J.)