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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
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+ **ITA 389/2016**
PR. CIT-1 Appellant
Through: Mr. P. Roy Chaudhary, Senior Standing
counsel.

versus

AVA MERCHANDISING SOLUTIONS PVT. LTD..... Respondent
Through: Mr. P.C. Yadav, Advocate.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE NAJMI WAZIRI

ORDER
% **28.07.2016**

CM No. 25179 of 2016(exemption)

1. Allowed, subject to all just exceptions.

ITA 389 of 2016

2. This appeal by the Revenue is against the order dated 10th February 2016 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No.5528/Del/2013 for the Assessment Year ('AY') 2010-11.

3. The short question sought to be urged by the Revenue is whether the ITAT was correct in upholding the order of the Commissioner of Income Tax (Appeals) ['CIT(A)'] who deleted the additions made by the Assessing Officer ('AO') in the hands of the Assessee company i.e. Ava Merchandising Solutions Pvt. Ltd. ('AMSPL') as 'deemed dividend' under Section 2(22)(e) of the Income Tax Act, 1961 ('Act').

4. The facts in brief are that AMSPL entered into some transactions with Ava Merchandising Pvt. Ltd. ('AMPL') including exchange of cash and/or transfer of assets and inventories. One Mr. Amit Chopra held 38% of the total shares of AMPL and 97.67% shares of AMSPL. The Assessing Officer (AO) concluded that since Amit Chopra had a substantial share in both companies and there was a constant debit balance of AMSPL in the books of AMPL, the peak debit entry of Rs. 2,31,58,498 was taxable in the hands of AMSPL as deemed dividend under Section 2 (22) (e) of the act.

5. The CIT (A) referred *inter alia* to the decision of this Court in ***CIT v. Ankitech (P) Ltd 314 ITR 14 (Delhi)*** in which it was held that and noted observed that deemed dividend under Section 2 (22) (e) of the Act can be brought to tax only in the hands of the registered shareholders of the lender company and not in the hands of a beneficial shareholder. Since AMSPL was not the shareholder of AMPL, the amount of debit balance in the books of AMPL could not be added in the hands of AMSPL as deemed dividend. This view of the CIT (A) was concurred with by the ITAT.

6. Learned counsel for the Revenue has sought to place reliance on the decision of this Court dated 11th July 2011 in ITA No. 223 of 2010 (***Commissioner of Income Tax v. National Travel Services***) and decision dated 29th February 2012 in ITA No.401 of 2011 (***CIT v. Bharti Overseas Trading Co.***). Both these cases dealt with a situation where the shareholding in the lender company was held by the partners of a partnership firm. The question of the Assessee in those cases having a

beneficial interest in the lender was not in doubt. Here factually it has been found that the Assessee itself does not have any substantial or beneficial shareholding in AMPL. Therefore, the aforementioned decisions would not assist the case of the Revenue.

7. The Court is unable to find any legal infirmity in the order passed by the CIT(A) and affirmed by the ITAT.

8. No substantial question of law arises for determination. The appeal is dismissed.

S.MURALIDHAR, J

NAJMI WAZIRI, J

JULY 28, 2016
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