IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.01.2026

CORAM :

THE HONOURABLE DR.JUSTICE ANITA SUMANTH
and
THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

T.C.A.No.303 of 2011

Commissioner of Income Tax – I,
Chennai.

.. Appellant

vs

M/s. Ready Test Go Pvt. Ltd
(Now C.S.S. Corp. P.Ltd)
No.38, North Boag Road,
T.Nagar,
Chennai - 600 018

.. Respondent

Prayer : Appeal filed under Section 260A of the Income-Tax Act, 1961 against the order of the Income-Tax Appellate Tribunal, Chennai 'C' Bench dated 10.02.2011 made in ITA 1016/Mds/2010 for assessment year 2006 – 07.

For Appellant	:	Ms.Harshini For Mrs.V.Pushpa Senior Standing Counsel
For Respondent	:	Mr.Vijaya Raghavan for M/s. Subbaraya Aiyar Padmanabhan

JUDGMENT

(Delivered by Dr. ANITA SUMANTH.,J)

This is a Tax Case (Appeal) filed by the Revenue for assessment year 2006 – 07 and has been admitted on 17.08.2011 on the following two questions of law:-

> (i) *Whether on the facts and circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the advance of Rs.8,32,31,520/- received by the assessee from its sister concern in which the Directors of the assessee company were substantially interested would not amount to deemed dividend within the meaning of Section 2(22)(e) of the Act?*
>
> *(ii) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that such advances could not be treated as loan/advance within the meaning of section 2(22){e) on the ground that they were made in the ordinary course of business, without appreciating that there was no such exclusion from the meaning of "advance" occurring in Section 2(22) (e) of the Act for amount paid to the assessee far ahead of the time at which the amounts were due to be paid?*

2. The assessee/respondent had filed a return in time. While completing the assessment, the assessing authority noted that the assessee had received a sum of Rs.8,32,31,520/- from its sister concern Cybernet Software Systems (CSS) and proposed to bring the same to tax as deemed dividend under Section 2 (22) (e) of the Income-Tax Act, 1961 (Act).

3. The contentions of the assessee / respondent were two fold;

firstly, that the company was not a shareholder in CSS and secondly, that the amounts were received in the course of business and hence would not come within the ambit of Section 2(22)(e), which specifically addresses the receipt of only deemed dividend.

4. Overriding the submissions of the assessee, an order of assessment came to be passed on 02.12.2008, as against which, a first appeal has been filed. The Commissioner of Income Tax (Appeals) accepted the second argument relating to the amounts having been paid in the course of business. Relying upon the decision of the Delhi High Court in *CIT v Ambassador Travels P Ltd*[1] and *CIT v Vikramjit Sen and Rajiv Shakdher*[2], the CIT (Appeals) took the view that the provisions of Section 2(22)(e) of the Act were not applicable in cases of consideration paid on account of normal business transactions.

5. There is a specific finding in the first appellate order to the effect that the amounts in question had been advanced by CSS to the assessee towards software testing and development and had subsequently been adjusted against bills raised by the assessee. Hence, and as such mutual payments constituted normal incidents of business, the finding of fact is that the payments were towards pure business / trading transactions, and the provisions of Section 2(22)(e) of the Act would not stand attracted.

1 173 Taxman 407 (Delhi)
2 181 Taxman 155

6. Aggrieved by the aforesaid order, an appeal was filed by the Revenue before the Income-Tax Appellate Tribunal (Tribunal / ITAT), which confirmed the order of the CIT (Appeals) finding support from the decision of the Bombay High Court in the case of *CIT v Universal Medicare Pvt Ltd*[3] and a decision of the Special Bench of the Tribunal to the effect that the provision of Section 2(22)(e) would not stand attracted when the assessee is not a shareholder in the other company.

7. The Tribunal further confirms the factual finding of the CIT(Appeals) to the effect that the transactions, on account of which the amounts were paid, comprised regular business transactions, made in the ordinary course of business and did not constitute a loan or advance to bring the amounts within the sweep of Section 2(22)(e) of the Act.

8. The order of the CIT(Appeals) was thus confirmed, as against which, the present appeal has been filed by the Revenue raising the questions of law admitted as per paragraph 1 supra.

9. Before us, no material is brought on record by the Revenue to dislodge the factual findings that have been concurrently rendered both by the CIT(Appeals) as well as by the Tribunal. It is a settled position of law that normal business transactions giving rise to payments inter se business entities would not come within the ambit of Section 2 (22)(e) of

3 324 ITR 263

the Act as they are neither in the nature of loan nor advance, even as per the accounts of the respective companies. In fact, the Central Board of Direct Taxes, vide Circular No.19/2017 dated 12.06.2017, has clarified that Section 2(22)(e) would not apply in respect of trade advances or commercial transactions.

10. The Board notes that the orders of various Courts expressing the above view have attained finality, and the Circular is extracted below:-

Circular No.19/2017 [F.No.279/MISC./140/2015/ITJ] dated 12.06.2017

Section 2(22) clause (e) of the Income Tax Act, 1961 (the Act) provides that "dividend" includes any payment by a company, not being a company in which the public are substantially interested, of any sum by way of advance or loan to a shareholder, being a person who is the beneficial owner of shares (not being shares entitled to a fixed rate of dividend whether with or without a right to participate in profits holding not less than ten per cent of the voting power, or to any concern in which such shareholder is a member or a partner and in which he has a substantial interest (hereafter in this clause referred to as the said concern) or any payment by any such company on behalf, or for the individual benefit, of any such shareholder, to the extent to which the company in either case possesses accumulated profits.

2. The Board has observed that some Courts in the recent past have held that trade advances in the nature of commercial transactions would not fall within the ambit of the provisions of section 2(22) (e) of the Act. Such views have attained finality.

2.1 Some illustrations/examples of trade advances/commercial transactions held to be not covered under section 2(22) (e) of the Act are as follows:

i. Advances were made by a company to a sister concern and adjusted against the dues for job work done by the sister concern. It was held that amounts advanced for business transactions do not to fall within the definition of deemed dividend under section 2(22) (e) of the Act. (CIT vs. Creative Dyeing & Printing Pvt. Ltd. Delhi High Court[ITA No. 250 of 2009]).

ii. Advance was made by a company to its shareholder to install plant and machinery at the shareholder's premises to enable him to do job work for the company so that the company could fulfil an export order. It was held that as the assessee proved business expediency, the advance was not covered by section 2(22)(e) of the Act. (CIT vs Amrik Singh, P&H High Court[ITA No.347 of 2013]).

iii. A floating security deposit was given by a company to its sister concern against the use of electricity generators belonging to the sister concern. The company utilised gas available to it from GAIL to generate electricity and supplied it to the sister concern at concessional rates. It was held that the security deposit made by the 1 [NJRS] 2009-LL-0922-2, ITA No. 2500[2009 2 [NJRS] 2015-LL-0429-5, ITA No. 3470[2013 company to its sister concern was a business transaction arising in the normal course of business between two concerns and the transaction did not attract section 2(22) (e) of the Act. (CIT, Agra vs Atul Engineering Udyog, Allahabad High Court).

3. In view of the above it is, a settled position that trade advances, which are in the nature of commercial transactions would not fall within the ambit of the word 'advance' in section 2(22)(e) of the Act. Accordingly, henceforth, appeals may not be filed on this ground by Officers of the Department and those already filed, in Courts/Tribunals may be withdrawn/not pressed upon.

4. The above may be brought to the notice of all concerned.

11. In light of the admitted factual position that the amounts were paid towards software testing and development, in the regular course of business, the questions raised are answered in favour of the assessee, and this tax case (appeal) is dismissed. No costs.

[A.S.M, J.] [M.S.K, J.]
20.01.2026

Index:Yes
Neutral Citation:Yes
ssm

To

1.The Commissioner of Income Tax – I,
Chennai.

2.The Income-Tax Appellate Tribunal, Chennai 'C' Bench, Chennai.

DR. ANITA SUMANTH,J.
and
MUMMINENI SUDHEER KUMAR,J.

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