IN THE INCOME TAX APPELLATE TRIBUNAL, AHMEDABD
BENCHES "A" BENCH AHMEDABAD
BEFORE SHRIO. P. MEENA, ACCOUNTANT MEMBER
AND MRS. MADUMITA ROY, JUDICIAL MEMBER

I.T.A. No. 29/AHD/2019: Assessment Year: 2015-16

Mohan BhagwatprasadAgrawal **4th Floor, Shopper Plaza-II,** **C G Road, Ahmedabad.** **PAN: AAOPA4030C**	**Vs.**	**Deputy Commissioner of Income-Tax, Circle -4(2),** **Ahmedabad.**
Appellant		**Respondent**

Assessee by	**ShriHardikVora, AR**
Revenue by	**Shri B. P. Shrivastava, Sr. Dr.**
Date of hearing	**10.04.2019**
Date of pronouncement	**12.04.2019**

ORDER

PER O. P. MEENA, AM

This appeal by the assesseeis directed against the order of learned Commissioner of Income tax (Appeals)-4, Ahmedabad (in short "the CIT (A)") dated 30.11.2018 pertaining to Assessment Year 2015-16, which in turn has arisen from the assessment order passed under section 143 (3) dated 26.12.2017 of Income Tax Act,1961 (in short 'the Act') by the Deputy Commissioner of Income-Tax, Circle – 4(2) Ahmedabad (in short "the AO").

2. The grounds of appeal raised by the assessee are as under:

"1. On the facts and circumstances of the case as well as law on the subject, the Ld. Commissioner of Income Tax (Appeals) has erred in confirming addition by applying provisions of section 2(22)(e) for the additional amount of credit transactions from following two companies.

i. Shreem Design & Infrastructure Pvt. Ltd. amounting to Rs. 2,50,80,923/- and

ii. Aatrey Infrastructure Pvt. Ltd. amounting to Rs. 76, 53,711/-.

1.1 On the facts and circumstances of the case as well as law on the subject, the Ld. Commissioner of Income Tax (Appeals) has erred in confirming addition by applying provisions of section 2(22)(e) of the Act ignoring exemption in sub clause (ii) of S. 2(22)(e).

1.2 On the facts and circumstances of the case as well as law on the subject, the Ld. Commissioner of Income Tax (Appeals) has erred in confirming addition by applying provisions of section 2(22)(e) ignoring the fact that lending of money is substantial part of business of both the companies, and advances are in ordinary course of their business.

1.3 On the facts and circumstances of the case as well as law on the subject, the Ld. Commissioner of Income Tax (Appeals) has erred in confirming addition by applying provisions of section 2(22)(e) ignoring transactions in the nature of current accounts.

1.4 On the facts and circumstances of the case as well as law on the subject, the Ld. Commissioner of Income Tax (Appeals) has erred in confirming addition by applying provisions of section 2(22)(e) ignoring that the appellant has paid interest on excess credit amount and not had any individual benefit."

3. The above grounds of appeal pertains to confirmation of deemed dividend u/s. 2(22)(e) of Rs. 2,50,80,923 from M/s. Shreem Design & Infrastructure Pvt. Ltd.(SDIPL) and Rs. 76,53,711 from Aatrey Infrastructure Pvt. Ltd. (AIPL),hence, being dealt with together.

4. Briefly stated facts of the case are that it was found that the assessee was having 11.61% of shares holding in the Shreem Design & Infrastructure Pvt. Ltd. (SDIPL) and 22.81% shareholding in the Aatrey Infrastructure Pvt. Ltd. (AIPL), the companies in which public are not substantially interested. Therefore, the AO hold that provisions of section 2(22) (e) of the Act are applicable as the assessee has received loans and advances from the aforesaid companies. The assessee has taken loan from SDIPL amounting to Rs. 6,76,65,000/- during the year under

consideration, the accumulated profit of the said company was at Rs. 2,50,80,923/- (the accumulated profit of the company). Therefore, the assessee was asked to show-cause as to why the amount should not be treated as deemed dividend within the meaning of sec. 2(22)(e) of the Act. Similar show-cause notice has also issued in respect of AIPL from whom the assessee has taken loan and advances of Rs. 4,13,32,960/- of the accumulated profit was at Rs.76,53,711/-. The assessee has repliedSDIPL and AIPL are covered by a specific exemption given in sub-clause (ii) of sec. 2(22)(e) of the Act, in which it has been provided that any advance or loan made to a share holder (or the said concerns) given by a copy to a shareholder in the ordinary course of its business, where the lending of money is a substantial part of the business of the company would be excluded. It was stated that money lending business is authorized in Memorandum of Association in page 2 para 6 and page 4 para 20. However, the examination of Memorandum of Association revealed that the main object of the company was to carry on business of builder, masons and general construction, industrial construction, etc and to carry out the construction business of property, lands, flats, houses, shops, offices, industrial estates etc. However, the other object the incidental or ancillary to the attainment of the main object. Regarding money lending business it was not stated that the object of incidental or ancillary to the main object that the money lending business is also object incidental to the main business but simply stated that investment in

any surplus money of the company not immediately required for purpose of main business of construction. Nor the assessee has obtained license, which is necessary to carry out money lending business. Therefore, the AO was of the view that companies are not engaged in the business of money lending for the year under consideration and hence assessee`s case is not covered by the exemption provided under sub-clause (ii) of sec. 2(22)(e) of the Act. Since the assessee has received the loan from lending company SDIPL of Rs. 6,76,65,000/- during the year under consideration and the accumulated profit of lending company was at Rs. 2,50,80,923/-,therefore, the amount of Rs. 2,50,80,923/- to the extent of accumulated profit was treated a deemed dividend u/s. 2(22)(e) of the Act and the same was added to the total income of the assessee.Similarly, The assessee has received loans and advances of Rs. 4,13,32,960 loans received during the year from AIPL who had reserve and surplus of Rs. 76,53,711/-. Hence, it was treated as deemed dividend u/s. 2(22)(e) of the Act.

5. Being aggrieved, the assessee has carried the matter before the CIT(A) wherein it was contended that the AO was totally incorrect considering the facts of the case. The appellant has given various working to prove that money lending business wasa substantial part of the business of the lending companies. On the basis of Audit Report for F.Y. 2014-15 in respect of SDIPL, it was explained that the ratio of loan and advances given to unsecured loan taken comes to 105.25%,

percentage of Net Interest Income to Profit comes to 30.67%, percentage of Loan and Advances to Total fund available comes to 79.37%, percentage of Loan and Advances to Total Assets of company comes to 69.71%. It was further contended that the contention of the AO that main object of the company does not cover money lending business and no license for money lending business is obtained by the company is totally incorrect as exemption provided in sub-clause (ii) sec. 2(22)(e) does not require such conditions. It was further shown by filing of a copy of ledger account of SDIPL,that the appellant had paid interest @9% of Rs. 37,40,062/- and has deducted tax deducted at source @ 10% u/s. 194A of Rs. 3,74,062/- thereon. Hence, the assessee has not received any individual benefit out of the said loan, but has compensated the company by way of paying interest of Rs. 37,40,625/-. It was further contended that the money lending business was a substantial part of its business, the net interest income constitutes 30.67% of its profit for the year and total loans and advances are 69.71% of its total assets. Hence, exclusionary condition under clause (ii) of sec. 2(22)(e) are fully satisfied.

6. With regard to AIPL, it was submitted that the AO has not accepted the submission of the appellant and concluded that AIPL. The AO observed that the percentage of total fund deployed in loans and advances by AIPL were at 35.65%which is less than 50%, hence exception provided in clause (ii) to section 2(22)(e) is not applicable. However, The assessee contended that the "substantial

part" of business has not been defined under the Income Tax Act, but the same can be derived as defined in explanation 3(b) to sec. 2(22)(e) which says not less than 20% of the income of such concern. Therefore, it was submitted that if the income from money lending is 20% or more of the total income of closely held company and the turnover of the loan to total fund of the company is about 20% than any loan or advance made by said companies to its shareholders cannot be deemed to dividend. The reliance was also placed on the following case laws:-

"a)M/s. RekhaModi vs. ITO(2007) (13SOT512)
b)CIT vs. Parle Plastics ltd. (2011) 332 ITR 63(Bom.)
c)CIT vs. Venkateshwara Hatcheries (237 ITR 174)
d)CIT vs. Shree Balaji Glass Manufacturing (P) Ltd. High Court of Calcutta
e)Ravi Agrawal vs. ACIT High Court of Allahabad
f)ITO vs. Krishnonics Ltd. ITAT, Ahmedabad 'C' Bench
g)CIT vs. Jayant H. Modi High Court of Bombay
(3)when interest is paid by shareholder, provision of sec. 2(2)(e) is not applicable:
We rely on following case laws wherein it is held that when interest is paid by shareholder, Provision of sec. 2(22)(e) is not applicable.
(a) Pradip Kumar Malhotra vs. CIT Act, West Bengal- V I.T.A. No. 219 of 2003
(b) Zenon(India) Pvt. Ltd., Kolkata vs. Department of Income Tax on 29 June, 2015 I.T.A. No.1124/Kol/2012 A.Y. 2006-07
(c) Sangita Jain, Kolkata vs. Assessee on 11 March, 2016 I.T.A. No. 1817/Kol/2009 A.Y. 2006-07"

7. However, the CIT (A) observed that the appellant has tried to explain through Memorandum of Association of AIPL and SDIPL claim that money-lending business has been stated in the Memorandum of Association. The CIT(A) has referred Part (A) of Memorandum of Association and reproduce the same in the appellate order and also reproduce Part (B) of the Memorandum of Association

and observed that it could be seen from the Part (A) & (B) of the Memorandum of Association that the money lending business is nowhere specified in the main object and it is only mentioned in incidental and ancillary objects. Further, clause 6 of incidental or ancillary object is also not helping the appellant, as he is neither company not corporation nor trust nor institutions. The CIT (A) noted that the AR has referred clause no. (20) of incidental or ancillary to contend that object says that to lend surplus money. However, this argument was not found acceptable by the Ld. CIT(A). Further, the CIT (A) observed that the case law relied by the assessee are not applicable as money lending business of the lender companies is not proved. Therefore, the CIT(A) observed there is no money lending business as no such amount are given or taken to general public though illegal without approval from RBI or other departments etc. It is large amount taken from the companies by the promoter/dominant shareholder of both the companies. Therefore, the appellant has hugely got benefitted by maneuvering the financial decisions of these two closely held the companies.The CIT(A) further observed that the appellant has relied on certain judgments on interest payment by claiming that when the assessee has paid interest on loan taken, then provisions of section 2(22)(e) are not applicable. However, CIT (A) observed that these decisions are not from jurisdictional High Court except the case of CIT(TDS) vs. SchutzDishman Bio Tech Pvt. Ltd. Appeal No. 958 to 959 of 2015 (Gujarat High

Court) hence, not applicable and distinguishable, hence, the action of the AO was upheld.

8. Being aggrieved, the assessee filed this appeal before the tribunal. The Ld. Counsel for the assessee has referred page 3 of the assessment order and submitted that as per the chart reproduced thereon, the SDIPL& AIPL have given loan and advances to the assessee in the ordinary course of its business of lending of money, which is a substantial part of its business. The ratio of loan and advance given by SDIPL to unsecured loan taken by the SDIPL is 105.25%, percentage of loan and advances to total fund available to company comes to 79.37% and percentage ratio of loan and advances to total assets comes to 69.71%.Similarly, the ratio of loan and advance given by AIPL to unsecured loan taken by the AIPL is 56.29%, percentage of loan and advances to total fund available to company comes to 35.66% and percentage ratio of loan and advances to total assets comes to 32.45%. The learned counsel for the assessee has contended that the term substantive part of its business is defined in clause (b) of Explanation-3 to sec. 2(22)(e) to which not less than 20% of the income of such concerned would be deemed to substantial interest in a concern. Similarly, as per, definition provide u/s. 2(32) of the Act, a person who has a substantial interest in the company in relation to a company means a person who is the beneficial owner of shares not being share entitled to a fix rate of dividend where with or without a right to participate in profit carrying

not less than 20% of the voting power. The Ld. Counsel further referred the decision of Hon'ble Supreme Court in the case K. N. Guruswamy vs. State of Mysore AIR 1954 SC 592 (PP1-7) and contended that the word appearing in the section and rules must be given the same meaning unless there is nothing to indicate the contrary. Therefore, the Ld. Counsel contended that where SDIPL is money lending business ratio to total loans and advances are 69.71% and AIPL ha 35.66% percentage of total assets then the lending company has money lending business has a substantial part of its business. Thus, the funds deployed in loans and advances at 69.71% by SDIPL and 35.65% By AIPL which is more than 20% of from money lending business, hence the exception provide in sub-clause (ii) of sec. 2(22)(e) are applicable. The learned counsel for the assessee has placed reliance on this decision of Hon'ble Bombay High Court in the case of CIT vs. Parley Plastics Ltd. (2011) 332 ITR 63 (Bom), wherein referring to para 10 of the said order it was submitted that the ITAT has noted that 42% of the total asset of AIPL as on 31.03.1996 and 39% of total asset of AMPL as on 31.03.1997 were deployed out of total loans and advances. By no means, the deployment of about 40% of the total asset into the business lending could be regarded as an insignificant part of the business of AMPL and held that by way of 30% of the turnover as well as profit of the company would be a substantial part of business of the company. Therefore, wherethe lender companies have deployed69.71% in

SDIPL and 35.65% in AIPL which more than 30%. Therefore, the companies are having substantial part of its business from money lending. Accordingly, the loans and advances given to the assessee by these companies are in the nature of ordinary course of carrying on money lending business. The Ld. Counsel further submitted that the assessee has paid the interest @ 9% on the loan and advances taken from the aforesaid companies and deducted TDS @ 10% 194A of the Act. The Ld. Counsel further placed reliance on the decision of Hon'ble Delhi High Court in the case of CIT vs. Bharat Hotels Ltd. [2019] 103 taxmann.com 295 (Delhi) wherein it was held that where assessee received loan from two companies which was substantially involved in money lending business, tribunal rightly concluded that sub-clause (ii) to sec. 2(22)(e) would apply to assessee's case and addition of deemed dividend made to assessee's income was to be deleted.

9. The Ld. Counsel as an alternate argument submitted that the loan taken from the SDIPL and AIPL were compensated by way of interest paid by the assessee on loan, therefore, the assessee in real sense did not derive any benefit of the company so as to the provisions (ii) of sec. 2(22)(2) of the Act. The learned counsel for the assessee relied in the case of ACIT vs. M/s. Zenon (India) Pvt. Ltd. ITA No. 1124/Kol/2012 (Paper Book 38 to 43 and Smt. Sangita Jain vs. ITO ITA No. 1817/Kol/2009 (Paper Book 44 to 51) in respect of its contention. The learned counsel for the assessee placed reliance in the case of Shri Pradip Kumar Malhotra

v. CIT [I.T.A.No. 219 of 2013 dated 02.08.2011 of Hon`ble Calcutta High Court] [PB-24-37]. It was held by the Honourable Calcutta High Court that phrase " by way of advance or loan" appearing in section 2(22)(e) must be construed to mean those advances or loans, which is shareholder enjoys for simply on account of being a Partner, who is the beneficial owner of shares, but if such loan or advance is given to such shareholder as a consequence of any further consideration, which is beneficial to the Company, received from such shareholder, in such a case, such advance or loan cannot be said to be deemed dividend within the meaning of the Act. It was held that gratuitous loan or advance given by a company to those classes of shareholders thus, would come within the purview of section 2(22)(e) but not the cases where the loan or advance is given in return to an advantage conferred upon the company by such shareholder.

10. On the other hand, the ld. Sr. D.R. submitted that the AO has considered all the details during the scrutiny assessment and found that the condition of the provisions of section 2(22)(e) are attracted and therefore loan and advances received during the year have been treated as deemed dividend u/s. 2(22)(e) of the Act. The ld. Sr. D.R. further referred page 8 of the assessment order and submitted that the AO has clearly observed that the main object of the lender companies was to carrying on business of builder, mason, and the general construction as well as industrial construction etc. The other objects of the lender companies are incidental

to main object. Further, the assessee has not obtained any licence for carrying on moneylending business from RBI. Therefore, it was contended that there is no specific mention regarding moneylending business as either the main object or the incidental or ancillary object to the main object. The case laws relied by the assessee having duly considered by the CIT (A), hence, same are not applicable to the facts of the case.

11. In rejoinder to the above arguments of the ld. Sr. D.R., the learned counsel for the assessee submitted that memorandum of Association does not the specified moneylending activity but the ancillary object of the company specifically says lending of surplus money, mean money lending business. Further, the lender companies have carried out substantial part of moneylending activity. The assessee has also compensated by paying interest at the rate of 9% (which is market rate) to the lender companies. The learned Counsel has supported his argument by placing reliance on the decision of Tribunal in the case of Smt. Sangita Jain v. ITO Ward 36(3) Kolkata [I.T.A.No. 1817/KOL/2009 /A.Y. 06-07 Dated 11.03.2016, wherein by placing reliance on the decision of Honourable Calcutta High Court in the case of Pradip Kumar Malhotra v. CIT [I.T.A.No. 219 of 2013 dated 02.08.2011 of Hon`ble Calcutta High Court] . It was held that where the lender company was compensated by the of interest paid by the assessee on loans, the assessee in real sense, did not derive any benefit from the funds of the company so as to attract the

provisions of section 2(22)(e) of the Act. Further, the ld. Sr. D.R. has not given any proposition against the decision of Tribunal and Hon`ble High Courts relied by the assessee.

12. We have heard the rival submissions and perused the material available on record. We find that the AO has made addition on account of loans and advances taken from M/s. SDIPL and M/s. AIPL being Rs. 2,50,80,923 and Rs. 76,53,711 respectively being accumulated profit as the conditions laid down u/s. 2(22)(e) are satisfied. The claim of the assessee that the loans and advances were obtained in ordinary course of business of money lending on which interest was paid at market rate @9% and Moneylender Company's substantial part of money lending business was not accepted on the ground that the main object of the lender companies was not carrying on money lending business.The perusal audit report for assessment year 2014-15 shows that SDIPL has done moneylending business which constitutes substantial part of its business as the percentage ratio of loan and advances to total funds available comes to 79.37% and percentage of loan and advances to total assets of the company comes to 69.71%. The ratio of loans and advances given to unsecured loan was at 105.25%. Similarly, AIPL percentage ratio of loan and advances to total funds available comes to 35.66% and percentage of loan and advances to total assets of the company comes to 32.45%. The ratio of loans and advances given to unsecured loan was at 56.29%.We further observe that

though the memorandum of article of the Association of the company does not authorized money lending business as main object, but page 2 paragraphs 6 and at page 4 para 20 authorized the lending of surplus money by these companies.The perusal of sub clause (ii) of section 2 (22) (e) shows that it does not envisaged such acondition of authorization. In order to appreciate that there is no requirement of main object as of money lending business, it would be relevant to reproduced the sub clause (ii) of section 2(22)(e) which read as under:- "Any advance or loan made to shareholder (or the said concern) by a company in the ordinary course of its business, where the lending of money is **substantial part of business** of the company." (bold letter emphasized by us). Thus, the provision makes it clear that there is no specific requirement that MOA of company specifically mention in mainobject as money lending business and it is not necessary for license. Now coming to term substantial part of the company business, which has not been defined specifically, but same can be understood from Explanation 3 (b) to section 2(22)(e) which is as follows: ***"Explanation 3(b)- a person shall be deemed to have substantial interest in a concern, other than a company, if he is, at any time during the previous year, beneficially entitled to not less than twenty percent of the income of such concern."*** Similar, definition is given in section 2(32) of the Act which read as under:-"A person who has substantial interest in the company" in relation to a company, means 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, carrying not less than twenty percent of the voting power." Thus, as per definition as given in above sections, the word used as "substantial" would mean where the assessee company has carried on money lending business of more than 20% or more of the total income of closely held company and turnover of loans funds to total fund of the company is above 20% , then any loan or advances made by the said company to its shareholders cannot be deemed dividend asper exclusion clause (ii) to section 2(22)(e) of the Act. The learned counsel for the assessee supported his view by placing reliance on the decision of Hon'ble Supreme Court in the case K. N. Guruswamy vs. State of Mysore AIR 1954 SC 592 (PP1-7) and contended that the word appearing in the section and rules must be given the same meaning unless there is nothing to indicate the contrary. Since, SDIPL has carried out money lending business in the percentage ratio of loan and advances to total funds available comes to 79.37% and percentage of loan and advances and M/s. AIPL has carried out its money lending business in thepercentage ratio of 35.65% of loans and advances of total available, which is more than twenty percent as mentioned in Explain (b) to section 2(22)(e) and section 2(32) of the Act. Further, the Hon`ble Bombay High Court in the case of CIT v. Parley Plastics Ltd. [2011] 332 ITR 63 (Bombay) held as follows "**12.** Applying these tests to the present case, we do not find that the ITAT has

committed any error in coming to the conclusion that lending of money was a substantial part of the business of AMPL. The ITAT has noted that 42% of the total assets of AMPL as on 31.3.1996 and 39% of the total assets of AMPL as on 31.3.1997 were deployed by it by way of total loans and advances. By no means, the deployment of about 40% of the total assets into the business of lending could be regarded as an insignificant part of the business of AMPL. The ITAT has also held that the income AMPL had received by way of interest of Rs.1,08,18,036/- while it's total profit was Rs.67,56,335. Excluding the income earned by AMPL by way of interest, the other business had resulted into net loss. In our view, the ITAT has taken into consideration the relevant factors and has applied the correct tests to come to the conclusion that lending of money was substantial part of the business of the AMPL. Since lending of money was a substantial part of the business of AMPL, the money given by it by way of advance or loan to the assessee could not be regarded as a dividend, as it has to be excluded from the definition of "dividend" by virtue of clause (*ii*) of Section 2(*22*) of the Act. Hence, question No.2 is answered in favour of the assessee and against the Revenue."

13. In the present case, we observe that 69.71% of the total assets ofSDPL as on 31.3.2015 and 32.45% of the total assets of AIPL as on 31.3.2015 were deployed by the above lender companies by way of total loans and advances. By no means, the deployment of about 69.71% and 32.45% of the total assets into the business of

lending could be regarded as an insignificant part of the business of SDPL and AIPL. We find that find that the SDPL had received by way of interest of Rs.1,67,16,067 while its total profit was Rs. 50,48,266 excluding interest income earned by SDPL by way of interest, Similarly AIPL has earned interest income of Rs. 17,68,467 and other business had resulted into insignificant income. Therefore, we are of the considered opinion that considering the relevant factors and as ratio laid down by Hon`ble Bombay High Court in above cited decision, the lending of money was substantial part of the business of the both lender companies under consideration from whom the assessee has received loans and advances. The learned counsel for the assessee has relied on the decision of Hon`ble Delhi High Court in the case of CIT v. Bharat Hotels Ltd. [2019] 103 taxmann.com 295 (Delhi) wherein it was held that where assessee received loan from two companies which were substantially involved in money lending business, Tribunal rightly concluded that proviso (ii) to section 2(22)(e) would apply to assessee1s case and addition of deemed dividend made to assessee`s income was to be deleted. Since lending of money was a substantial part of the business of SDIPL and AIPL, the money given by it by way of advance or loan to the assessee could not be regarded as a dividend, as it has to be excluded from the definition of “dividend” by virtue of clause (*ii*) of Section 2(*22*) of the Act. We therefore, hold accordingly.

14. We further find that the loan taken from the SDIPL and AIPL were compensated by way of interest @9% being market rate paid by the assessee on loan, therefore, the assessee in real sense did not derive any benefit of the company so as to the provisions (ii) of sec. 2(22)(2) of the Act. The learned counsel for the assessee relied in the case of ACIT vs. M/s. Zenon (India) Pvt. Ltd. ITA No. 1124/Kol/2012 (Paper Book 38 to 43 and Smt. Sangita Jain vs. ITO ITA No. 1817/Kol/2009 (Paper Book 44 to 51) which supports his contentions. The learned counsel for the assessee placed reliance in the case of Shri Pradip Kumar Malhotra v. CIT [I.T.A.No. 219 of 2013 dated 02.08.2011 of Hon`ble Calcutta High Court] [PB-24-37]. Wherein it was held by the Honourable Calcutta High Court that phrase " by way of advance or loan" appearing in section 2(22)(e) must be construed to mean those advances or loans, which is shareholder enjoys for simply on account of being a Partner, who is the beneficial owner of shares, but if such loan or advance is given to such shareholder as a consequence of any further consideration, which is beneficial to the Company, received from such shareholder, in such a case, such advance or loan cannot be said to be deemed dividend within the meaning of the Act. It was held that gratuitous loan or advance given by a company to those classes of shareholders thus, would come within the purview of section 2(22)(e) but not the cases where the loan or advance is given in return to an advantage conferred upon the company by such shareholder. Since, the assessee

has paid interest on loans and advances taken from SDIPL and AIPL, hence, he has compensated and no benefit has been derived. Therefore, applying the ratio of Hon`ble Calcutta High Court as quoted above, and Co-ordinate Bench decisions ACIT vs. M/s. Zenon (India) Pvt. Ltd. ITA No. 1124/Kol/2012 (Paper Book 38 to 43 and Smt. Sangita Jain vs. ITO ITA No. 1817/Kol/2009 (Paper Book 44 to 51), the loans and advances taken by the assessee are not covered by the provisions of section 2(22)(e) of the Act. Thus, considering the totality of facts and judicial decision as discussed above , we hold that the AO was not justified in making addition on account of deemed dividend of Rs. 2,50,80.923 from SDIPL and Rs. 76,53,711 from AIPL. Hence, same are directed to be deleted. Accordingly, grounds of appeal raised by the assessee are allowed.

15. In the result, the appeal of the assessee is allowed.

16. The order pronounced in the open Court on 12.04.2019.

Sd/-	Sd/-
(MADHUMITA ROY)	**(O.P.MEENA)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

TRUE COPY

Ahmedabad: Dated: 12th April, 2019/opm

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/Guard file of ITAT.

TANMAY

By order

Assistant Registrar, Ahmedabad