

**IN THE INCOME TAX APPELLATE TRIBUNAL
 "D" BENCH, AHMEDABAD
 [CONDUCTED THROUGH VIRTUAL AT AHMEDABAD]
 BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER &
 Ms. MADHUMITA ROY, JUDICIAL MEMBER**

I . T . A . No . 220/Ahd/2015
 (Assess me nt Y ea r: 2007 - 08)

Deputy Commissioner of Income - tax, TDS Circle, Ahmedabad - 380014	Vs.	M/s J . P . Iscon Ltd . (formerly known as J . P . Infrastructure Ltd .) "Iscon House", B/h Rebrandt Building, Opp . As sociated Petrol Pump, Off C . G . Road, Ahmedabad - 380014
[PAN No . AABCJ4 936C]		
(Appellant)	..	(Respondent)

C . O . No . 24/Ahd/2016
 (in ITA No . 220 /Ahd/2015)
 (Assess me nt Y ea r: 2007 - 08)

M/s J . P . Iscon Ltd . (formerly known as J . P . Infrastructure Ltd .) "Iscon House", B/h Rebrandt Building, Opp . As sociated Petrol Pump, Off C . G . Road, Ahmedabad - 380015	Vs .	Deputy Commissioner of Income - tax, TDS Circle , Ahmedabad - 380014
[PAN No . AABCJ4 936C]		
(Appellant)	..	(Respondent)

I . T . A . No . 421/Ahd/2017
 (Assess me nt Y ea r: 2008 - 09)

Assistant Commissioner of Income - tax, TDS Circle, Ahmedabad - 380014	Vs.	M/s . J . P . Iscon Ltd . (formerly known as J . P . Infrastructure Ltd .) "Iscon House", B/h Rebrandt Building, Opp . As sociated Petrol Pump, Off C . G . Road, Ahmedabad - 380014
[PAN No . AABCJ4 936C]		
(Appellant)	..	(Respondent)

ITA No.220/Ahd/2015 & CO No. 24/Ahd/2016
ITA No. 421/Ahd/2017 & C.O. No. 54/Ahd/2017
Asst. Year –2007-08 & 2008-09

- 2 -

C . O . N o . 54/A hd/2 017
(in ITA No . 421 /Ah d/2017)
(Assess me nt Y ea r: 2008 - 09)

M/s J . P . Iscon Ltd . (formerl y know n a s J . P . Infrastru ctu re Ltd .) “ Isc on House”, B/h Re mbrandt Building, Op p . As sociate d Petrol Pu mp, Off C . G . Roa d, A hmedaba d - 38 0015	Vs .	As sis ta nt Commissioner of Income - ta x, TDS Circle , Ahmedabad - 3 80014
[PAN No . AABCJ4 936C]		
(Appellant)	..	(Respondent)

Revenue by	: Shri Mohd. Usman, CIT DR & Shri Purushottam Kumar, Sr. DR
Assessee by	: Smt. Nupur Shah, AR

Date of H earing	18.11.2021
Date of Pronounce me nt	07.02.2022

ORDER

PER Ms. MADHUMITA ROY - JM:

Both the two appeals and the Cross Objections filed by the Revenue and the assessee are directed against the order dated 05.11.2014 & 30.12.2016 passed by the Ld. CIT(A)-XXI & CIT(A)-8, Ahmedabad arising out of the order dated 28.03.2013 & 27.03.2015 passed by the ITO, TDS-2, Ahmedabad & DCIT, TDS Circle, Ahmedabad under Section 201(1) & 201(1A) of the Income Tax Act, 1961 (hereinafter referred as to “the Act”) for A.Ys. 2007-08 & 2008-09 respectively.

ITA No. 220/Ahd/2015 (A.Y. 2007-08):-

2. Allowing the appeal of the assessee by the Ld. CIT(A) holding that no TDS has to be made under Section 194A on loan of Rs. 19,56,37,008/-

advanced by the assessee company to the other group companies has been mainly challenged before us.

3. The brief facts leading to the case is this that the assessee had given inter-corporate deposit to six subsidiaries companies namely Dhanlaxmi Infrastructure Pvt. Ltd., Amit Intertrade Pvt. Ltd., Dhvani Infrastructure Pvt. Ltd., Rich Infrastructure Pvt. Ltd., Gujarat Mall Management Co. Pvt. Ltd. & Palitana Sugars Mills Pvt. Ltd. for business purposes. The lender company was closely held company in which public held no substantial interest. According to Revenue the above loans are deemed dividend as per Section 2(22)(e) and the appellant is required to deduct TDS under Section 194 of the Act. The four directors of the appellant company namely Mr. Pvaveen T. Kotak, Mr. Jayesh T. Kotak, Mr. Jatin M. Gupta & Mr. Amit M. Gupta are the common and beneficial shareholder in the assessee company as well as subsidiary companies. The case of the Revenue is this that the payment by way of loans or advances to the shareholders having, substantial interest in a company to the extent of which the company posses accumulated profits is to be treated as dividend as the resultant effect tax is required to be deducted under Section 194 of the Act for the year under Consideration. The accumulated profit in terms of reserve and surplus is of Rs. 20,65,96,153/- and the assessee company has advanced loan 19,56,37,008/- on which the assessee is required to deduct tax at 20%. The Assessing Officer after considering the substantial common shareholding of Shri Pravin T Kotak, Shri Jayesh T Kotak, Mr. Jatin M Gupta and Mr. Amit M Gupta treated the amount of Rs. 19,56,37,008/- up to the accumulated profit received by the assessee company namely J. P. Iscon Ltd. as deemed dividend under Section 2(22)(e) of the Act which was, in turn, deleted by the Ld. First Appellate Authority holding that

the payee company is not the registered shareholder of the appellant company relying upon various judicial pronouncements made by different forums. Hence, the instant appeal filed by the Revenue before us.

4. We have heard the respective parties, we have also perused the relevant materials available on record.

5. It appears from the orders passed by the Ld. CIT(A) the following is the shareholding pattern of the appellant company and the six loan receiving companies:

Details of registered shareholder of appellant company during financial year 2006-07:

Name of shareholder	Number of shares held during 1.4.2006 to 28.06.2006	Percentage of holding	Number of shares held during 29.06.2006 to 14.02.2006	Percentage of holding	Number of shares held during 15.2.2007 to 31.03.2007	Percentage of holding
Mr Praveen T. Kotak	0	0	4,50,000	22.38	5,52,750	27.49
Mr Jayesh T. Kotak	5,000	50.00	4,55,000	22.63	5,52,750	27.49
Mr Jatteen M. Kotak	5,000	50.00	4,55,000	22.63	4,02,000	20.00
Mr Amit M. Gupta	0	0	4,50,000	22.38	4,20,000	20.00
Mr Yogesh Pujara	0	0	1,00,000	4.98	1,00,500	5.00
Mrs Sarasvati Kotak	0	0	1,00,000	4.98	0	0.00
Others collectively holding less than 1% Total	0	0	450	0.02	450	0.02
	10,000	100	21,10,450	100	20,10,450	100

Shareholding pattern of the six companies to whom loans and advances are given during financial year 2006-07:

(i) *Dhanlaxmi Infrastructure Pvt. Ltd.:*

Name of shareholder	Number of shares held upto 26.03.2007	Number of shares after upto 27.03.2007	Percentage of holding after 27.03.2007
Mr Mukesh Shah	2,500	0	0
Mr Prakash Rehvar	7,500	0	-
JP Infrastructure Pvt. Ltd.	0	2,500	25
Mr Jateen M. Gupta	0	7,500	75
Total	10,000	10,000	100

(ii) *Amit intertrade Pvt. Ltd. (Date of incorporation 03.07.2006):*

Name of shareholder	Number of shares held during 03.07.2006 to 31.03.2007	Percentage of holding
Mr Amit M. Gupta	5,000	50
Jateen M. Gupta	5,000	50
Total	10,000	100

(iii) *Dwani Infrastructure Pvt. Ltd. (Date of incorporation : 13.11.2006):*

Name of shareholder	Number of shares held during 13.11.2006 to 31.03.2007	Percentage of holding
Mr Pravin T. Kotak	9,000	90
Mr Amit M. Gupta	1,000	10
Total	10,000	100

(iv) *Rich Infrastructure Pvt. Ltd. (Date of incorporation : 13.11.2006):*

Name of shareholder	Number of shares held during 13.11.2006 to 31.03.2007	Percentage of holding
Mr Jateen M. Gupta	9,000	90
Mr Amit M. Gupta	1,000	10
Total	10,000	100

(v) *Gujarat Mall Management Pvt. Ltd. (Date of incorporation : 20.07.2006) :*

Name of Shareholder	Number of shares held during 20.07.2006 to 31.03.2007	Percentage of holding
Mr Jateen M. Gupta	5,000	50
Mr Jayesh T. Kotak	5,000	50
Total	10,000	100

(vi) Share holding pattern of Palitana Sugar Mills Pvt. Ltd. :

Name of shareholder	Number of shares held during 12.10.2006 to 31.03.2007	Percentage of holding
J. P. Infrastructure Ltd.	1,000	100
Total	1,000	100

6. The case of the assessee is this that invocation to Section 2(22)(e) is wrong since the subsidiary companies are not the registered shareholder of the appellant company. Further that there is no findings by the Ld. AO that common directors have withdrawn any amount from the recipient companies for their personal benefits. In addition to that the amount given to these companies are not income in their hands and therefore, there is no obligation on the part of the appellant to tax deduct at source from such payments. Before the Ld. CIT(A), as it appears from the order impugned, that the actual amount of inter-corporate deposit to these companies during which there has been a common shareholder was only Rs. 13,09,57,700/- and not Rs. 19,56,37,008/- as considered by the Ld. ITO(TDS). The breakup of actual loan and/or inter-corporate deposit of Rs. 13,09,57,700/- as against the alleged loan or inter-corporate deposit of Rs. 19,56,37,008/- is as follows:

Name of Company	Actual amount of loan or advance (Rs.)	Reference of Para
Dhanlaxmi Infrastructure Pvt. Ltd.	1,00,000	15.16.a
Amit Intertrace Pvt. Ltd.	8,75,00,000	15.16.b
Dhwani Infrastructure Pvt. Ltd.	3,50,00,000	15.16.c
Rich Infrastructure Pvt. Ltd.	8,60,000	15.16.d
Gujarat Mall Management Co. Pvt. Ltd.	74,97,700	15.16.e
Palitana Sugar Mills Pvt. Ltd.	0	15.16.f
Total	13,09,57,700	

7. It is the case of the assessee that none of the loans and advances has been given to any shareholders and, therefore, Section 194 is not applicable meaning thereby since the company to whom amount was advanced by the

appellant are not the shareholder of the appellant and as such provision of Section 2(22)(e) would not apply. Apart from that there is no finding by the Ld. AO that common directors have withdrawn any amount from the recipient company for their personal benefit.

8. It is an undisputed fact that loan has been advanced by the appellant company to six group company which are not shareholder of the appellant company.

9. While allowing the appeal preferred by the assessee the First Appellate Authority observed as follows:

"6.3.2 As per the submissions made by the appellant, there are common shareholders holding more than 10% share in all the six companies and the appellant company and the loans and advances given during the period is Rs. 13,09,57,700/-, not Rs. 19,56,37,008/-. In view of the above submission, a remand report: was called for from the ITO (TDS). The ITO (TDS) has forwarded the same to the DCIT (TDS) who has submitted remand report through the Addl. CIT (TDS). The DCIT (TDS) has examined share holdings of all the seven companies and the loan extended by the appellant company to various group companies and has confirmed that out of total loan of Rs.203077700/- extended to these companies during financial year 2006-07, only Rs.13,09,57,700/- qualify for deemed dividend u/s 2(22)(e).

6.3.3 Now the issue to be decided Ls whether on the loan of Rs.13,09,57,700/- qualifying for deemed dividend, TDS is required to be made u/s 194. Section 194, for the purpose of clarity, is reproduced as under:

"194. The Principal Officer of an Indian company or o company which has made the prescribe arrangements for the declaration and payment of dividends (including dividends on preference shares) within India, shall, before making any payment in cash or before issuing any cheque or warrant in respect of any dividend or before making any distribution or payment to a shareholder, [who is resident in India] of any dividend within the meaning of sub-clause (a) or sub-clause (b) or sub-clause (c) or sub-clause (d) or sub-clause (e) of clause (22) of Section 2, deduct front the amount of such dividend, income-tax at the rates in force."

6.3.4 Section 194 casts duty on the Principal Officer of a company to deduct TDS before making any payment in cash or before issuing any cheque warrant in respect of any dividend or before making any distribution or payment to a shareholder. It is undisputed fact that loan has been advanced by the appellant company to six group companies which are not shareholders of appellant company. This issue on identical facts whether TDS is to be made where loan has been advanced by one company to

other group company in which there are common share holders has been decided by Hon'ble Jaipur Bench of ITAT in the case of ANZ Reality (P) Ltd. Vs. ITO (2009) 26 SOT 61 (JP) [URO]. The Hon'ble Tribunal has held that TDS u/s 194 is not required to be made, unless the loans/advances are given to a share holder as under:

"6. We have heard the rival contentions and perused the facts of the case. The arguments made by Shri Rajeev Sogani, learned Authorized Representative, appear to be convincing that section 194 casts obligation for TDS only when payment is made to a shareholder. It is undisputed fact in the present case that the funds have been advanced by the assessee company to the following companies which are not shareholders of the assessee company:

- (1) M/s. Citybuild Realtors (P.) Ltd.*
- (2) M/s. Indiana Classic Realtors (P.) Ltd.*
- (3) M/s. Minu Constructions (P.)Ltd.*

The shareholders of the assessee company are Shri Mohd. Raft Bagdia - 50 per cent and Shri Tehsin Rafi Bagdia - 50 per cent. The complete picture is depicted in the chart placed on record. The legislature have rightly restricted the TDS requirement only when payment is made to shareholders. Under the provisions of the Companies Act, 1956, every company is expected to maintain a register of shareholders under section 150 of the Companies Act, 1956. Company is not obliged to maintain any register wherein details of such concerns may be maintained to which provisions of section 2(22)(e) of the Income-tax Act, 1961 or not. Therefore, in this view of the matter, law does not expect the payer company to deduct TDS when payment is made to a non-shareholder. This is the reason the law expressly provides for TDS requirement only when payment is made to a shareholder. Thus, section 194 requires TDS only when payment is made to a shareholder. Payments to shareholder will cover both types of dividends i.e., normal dividend as well as deemed dividend. Otherwise, also, deemed dividend will be taxed in the hands of the shareholder and not in the hands of non-shareholder payee. Therefore, section 194 does not require TDS when payment is made to non-shareholder. Also, under section 206 of the Companies Act, 1956, the dividend can be paid to a registered shareholder only. Therefore, section 194 of the Income-tax Act, 1961 is synchronized with the requirement of the Companies Act, 1956 contained in sections 150 and 206 of the Companies Act, 1956.

7. In view of the above, since there is no requirement of TDS in the present case under section 194 of the Income-tax Act, 1961, the assessee company cannot be held assessee in default under section 01 of the Income-tax Act, 1961. Thus, ground No.2 of the assessee is allowed.

6.3.5 The above ratio has been followed by Hon'ble "A" Bench of ITAT Hyderabad in the case of Jaypeem Granites (P.) Ltd. Vs. Income-tax Officer, Ward 14(3), Hyderabad, (2012) 25 Taxmann.com 231 (Hyd.)

6.3.6 *In view of the above, I hold that the ITO (TDS) is not justified to hold that appellant company were required to make TDS u/s 194 on the loan of Rs. 19,56,37,008/-."*

10. On this issue we have further considered the judgment relied upon by the Ld. Counsel appearing for the assessee in the matter of Vidhi Infrastructure Pvt. Ltd. in ITA No. 554/Ahd/2017 & C.O. No. 71/Ahd/2017 passed by the Coordinate Bench in the said Vidhi Infrastructure is one of the companies where the appellant had given inter-corporate deposit. The Coordinate Bench was pleased to hold that such inter-corporate deposit is not deemed dividend. While doing so the Coordinate Bench was pleased to observe as follows:

"10. In this case, there are common share holder between JIPL (IDC giver) and the appellant company (ICD receiver) having Shri Amit Gupta as common share holders during the year and as on 31/03/2008 the appellant company is 100% subsidiary company of JPIL (ICD giver).

11. *The appellant has contended that it has received an inter-corporate loan for a sum of Rs.3,45, 59,000/- from M/s. JP Iscon Limited. The appellant company is not a subsidiary and was neither holding any shares of JP Iscon Limited. The appellant company is neither a registered shareholder of JP Iscon Limited nor beneficial owner of the shares, holding 10% or more of the voting power of JP Iscon Ltd. The appellant company had accepted ICDs which were used for the purpose of its business. Instead of takings ICDs from unknown corporate bodies, the appellant company had taken ICDs from known corporate bodies/group companies. The copy of the ledger account as well as the contra confirmation is submitted.*

12. *The requisite condition for invoking section 2(22)(e) of the Act is that the payment must be by way of loan or advance. "Loans/Advances carries different connotation than deposits in commercial parlance. And the ICD is ordinarily for an agreed period with an agreed interest. Hence there is a clear distinction between ICD vis a vis loans/advances and as the ICD does not fall within the purview of section 2(22)(e). In the present case, there is no case of deemed dividend."*

We have further considered the judgment passed by the Hon'ble SMC Bench in the case of M/s. Precimetal Cast Pvt. Ltd. vs. ITO in ITA No. 3499/Ahd/2015 for A.Y. 2012-13 where it has been held that for the applicability of Section 2(22)(e) it is required that assessee must be a shareholder in the company from whom the loan or advances has been taken

and it does not provide that any shareholder of the assessee company who had taken any loan or advances from another company in which such shareholder is also a shareholder having substantial interest. The relevant portion whereof is as follows:

“7. Heard both the sides and perused the material on record. The Assessing Officer noticed that assessee company has obtained unsecured loan from Gaurav Securities Pvt. Ltd. wherein one of the main shareholders of the assessee company Shri Umesh Bhatiya was holding substantial shares in Gaurav Securities Pvt. Ltd. Looking to the above facts, the Assessing Officer has made an addition to the extent of Rs. 13,21,198/- being accumulated profit of Gaurav Security Pvt. Ltd. for the reason that section 2(22)(e) prohibits advancing money among entities having common shareholders with substantial interest in the case of closely held company having accumulated profit. After perusal of the judicial pronouncements it is noticed that identical issue on common facts have been adjudicated by the Co-ordinate Bench of the ITAT Ahmedabad in the case of ACIT vs. Leela Ship Recycling Pvt. Ltd. vide ITA No. 1658/Ahd/2012 dated 12th March, 2020 and by the Jurisdictional High Court in the case of Pr. CIT vs. Mahavir Inducto Pvt. Ltd. dated 12-01-2017. With the assistance of Id. representatives, we have gone through the aforesaid two judicial pronouncements, it is noticed that in the case of ACIT vs. Leela Ship Recycling Pvt. Ltd. supra the Co-ordinate Bench of the ITAT has adjudicated the identical issue on same facts as under:- “4. We have heard the rival contentions, perused the material on record and duly considered facts of the case and the applicable legal position. 5. Learned representatives fairly agree that the issue in appeal is now covered by Hon'ble jurisdictional High Court's judgment in the case of CIT Vs Mahavir Inductomelt Pvt Ltd (TA No. 890 of 2011; judgment dated 13th January 2017) wherein Their Lordships have extensively reproduced from Hon'ble Delhi High Court's judgment in the case of Anitech Pvt Ltd (supra), and concurred with the same. Thus, in a case in which an amount is received from a person other than the shareholder, as is the admitted position in this case, the provisions of Section 2(22)(e) cannot indeed be invoked. The CIT(A) was thus justified in granting the impugned relief in respect of the addition under section 2(22)(e). We, therefore, approve the conclusion arrived at by the learned CIT(A) in this regard, and decline to interfere in the matter on that count.” We have also through the decision of Hon'ble Gujarat High Court in the case of Pr. CIT vs. Mahavir Inducto Pvt. Ltd. supra wherein the identical issue on same facts was decided in favour of the assessee after following the decision of Bombay High Court in the case of CIT vs. Impact Containers Pvt. Ltd. and others vide IT Appeal No. 114 of 2012 and the decision of Delhi High Court in the case of CIT vs. Ankitech Pvt. Ltd. Ltd. reported in 340 ITR 14 Delhi. The relevant part of the decision is reproduced as under:- “50. Identical question came to be considered by the Division Bench of this Court in Tax Appeal No. 253 of 2015. After considering the decision of the Bombay High Court in the case of CIT vs. Impact Containers Private Limited & ors rendered in I TA No. 114 of 2012 and the decision of the Delhi High Court in the case of CIT vs. Ankitech Pvt Lt d reported in 340 ITR 14 (Del) and on interpreting Section 2(22)(e), in para 4 has observed and held as under: “4. Shri Bhatt, learned Counsel appearing on behalf of

the revenue has as such tried to justify the decision of the Delhi Court in the case of Ankitech Pvt. Ltd. (Supra) and has vehemently submitted that the Delhi High Court has not considered the third category i.e. shareholder in the assessee Company holding not less than 10% of the voting power in the Company from whom the loan or advance is taken. However, on considering Section 2(22)(e) of the Act, we are not at all impressed with the aforesaid. If the contention on behalf of the revenue is accepted, in that case, it will be creating the third category / class, which is not permissible. What is provided under Section 2(22) (e) of the Act seems to be that the assessee HC-NIC Page 4 of 5 Created On Sat Aug 12 04:34:00 IST 2017 O/TAXAP/891/2016 JUDGMENT Company must be a shareholder in the Company from whom the loan or advance has been taken and should be holding not less than 10% of the voting power. It does not provide that any shareholder in the assessee Company who had taken any loan or advance from another Company in which such shareholder is also a shareholder having substantial interest, Section 2(22)(e) of the act may be applicable. 5.1. Considering the aforesaid decision of the Division Bench of this Court and the facts narrated herein above, more particularly, considering the fact that the assessee was not share holder of Mahavir Rolling Mills Pvt Ltd to whom loan was given, it cannot be said that the learned Tribunal has committed any err or in deleting the addition made by the Assessing Officer on deemed dividend.” In view of the findings as supra Hon’ble Jurisdictional High Court wherein it is held that for the applicability of section 2(22)(e), it is required that the assessee company must be a shareholder in the company from whom the loan or advance has been taken and it does not provide that any shareholder in the assessee company who had taken any loan or advance from another company in which such shareholder is also a shareholder having substantial interest. Since the facts of the case of the assessee are squarely covered by the aforesaid decisions of Hon’ble High Court and Coordinate Bench of the ITAT, the impugned addition is deleted. Accordingly, this ground of the assessee is allowed.”

11. The judgment passed by the Hon’ble Rajasthan High Court as relied upon by the Ld. AR in the matter of CIT vs. Sunny Developers Pvt. Ltd. in ITA No. 619 to 621 of 2009 has been considered by us wherein it has been held that the taxes not liable to be deducted at source under Section 194 of the Act on deemed divided to a concern in which shareholder of the assessee company is a member as a partner and in which he has substantial interest as per provision of Section 2(22)(e) of the Act invocation of Section 194 is not warranted. The relevant portion made by the Hon’ble Rajasthan High Court is as follows:

“14. In that view of the matter, we are of the opinion that issue is required to be answered in favour of the assessee. The tax is not liable to be deducted at source u/s Section 194 of the Income Tax Act on deemed dividend to a concern in which

shareholder of assessee company is a member as a partner and in which he has substantial interest as per provisions of Section 2(22)(e) of the Act. It can't be covered u/s 194."

12. It appears that the Ld. CIT(A) has called for a remand report from the ITO(TDS) on the actual amount of loan and advances given during the period to the six subsidiaries by the appellant company and ultimately it was submitted by the ITO that out of the total loan of Rs. 203077700/- the appellant company extended to the six subsidiaries only Rs. 13,09,57,700/-during the F.Y. 2006-07. It is also admitted position that ICD/loan has been advanced by the appellant company to the six group companies which are not shareholder of the appellant company. On the identical facts as to whether TDS is to be made where loan has been advanced from one company to other group company in which there are common shareholders has been decided by the Hon'ble Jaipur Bench in the case of ANZ Reality Pvt. Ltd. vs. ITO (2009)

26 SOT 61 (JP) (URO) holding that TDS under Section 194 is not required to be made unless the loan and advances are given to shareholder.

13. Further that, law does not expect the payer company to deduct TDS when the payment is made to a non-shareholder. The Section 194 requires TDS when payment made to a registered shareholder only. We have further considered the alternative plea made by the appellant before us that the observation of the ITO to this effect that the appellant company hold 10% share in Amit Intertrace Pvt. Ltd., Dhanlaxmi Infrastructure Pvt. Ltd. and Palitana Sugar Mills Pvt. Ltd. whom loans and advances were given is deemed dividend is wrong per se. The same is factually incorrect since the appellant company does not owned 100% share in these companies and even if, the appellant company hold 100% shares in these companies the deemed dividend would arise when these companies give loans to the appellant holding

company and not other way around when holding company gives loan to subsidiary company. Thus, we find the observation made hereinabove by the ITO(TDS) is not on the correct proposition of law.

14. Taking into consideration the entire aspect of the matter the order passed by the different Coordinate Benches and the Hon'ble Rajasthan High Court as discussed hereinabove and relying upon the ratio laid down therein we, therefore, find no justification in interfering with the order passed by the Ld. CIT(A) in deleting such addition made by the Ld. AO holding that under this particular facts and circumstances of the matter under Section 194 is not required to be made by the assessee. The order seems to be without any ambiguity so as to warrant interference. The ground of appeal found to be devoid of any merit and hence dismissed.

15. Deletion of the order passed under Section 201(1) and interest charged under Section 201(1A) of the Act to the tune of Rs. 4,39,00,943/- and Rs. 3,64,37,782/- respectively for A.Y. 2007-08 has been challenged before us.

16. The order passed under Section 201 and interest charged under Section 201(1A) is the consequential order of making addition holding the inter-corporate deposit to the tune of Rs. 19,56,37,008/- is deemed dividend and TDS is liable to be deducted under Section 194A of the Act. Since we have already decided that the inter-corporate deposit of Rs. 19,56,37,008/- is not deemed dividend and, therefore, TDS is not liable to be deducted by the assessee herein. The question of order passing under Section 201/201(1A) is infructuous and no order is required to be passed.

C.O. No. 24/Ahd/2016(A.Y. 2007-08):-

17. The Cross Objection has been filed by the assessee only supporting the order of Ld. CIT(A) vide which the impugned addition on account of deemed dividend under Section 2(22)(e) of the Act was deleted. Since vide ITA No. 220/Ahd/2015 we have dismissed the appeal of the Revenue, therefore, this Cross Objection has become infructuous and the same is dismissed.

ITA No. 421/Ahd/2017 (A.Y. 2008-09):-

18. The identical issue involved in the case has already been dealt with by us in ITA No. 220/Ahd/2015 for A.Y. 2007-08 and in the absence of any changed circumstances the same shall apply mutatis mutandis. Hence, the appeal preferred by the Revenue is dismissed.

C.O. No. 54/Ahd/2017(A.Y. 2008-09):-

19. The Cross Objection has been filed by the assessee only supporting the order of Ld. CIT(A) vide which the impugned addition on account of liability under Section 201(1) TDS under Section 194 of the Act and interest under Section 201(1A) of the Act was deleted. Since vide ITA No. 220/Ahd/2015 we have dismissed the appeal of the Revenue, therefore, this Cross Objection has become infructuous and the same is dismissed.

20. In the combined results, the appeals preferred by the Revenue are dismissed and C.O. preferred by the assessee are dismissed.

This Order pronounced in Open Court on	07/02/2022
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Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER
Ahmedabad;Dated 07/02/2022
TANMAY, Sr. PS TRUE COPY

Sd/-
(Ms. MADHUMITA ROY)
JUDICIAL MEMBER

ITA No.220/Ahd/2015 & CO No. 24/Ahd/2016
ITA No. 421/Ahd/2017 & C.O. No. 54/Ahd/2017
Asst. Year –2007-08 & 2008-09

-15-

आदेश क त ल प अ ेषत/Copy of the Order forwarded to :

1. अपीलार्थ / The Appellant
2. यथ / The Respondent.
3. संबंधित आयकर आय तु / Concerned CIT
4. आयकर आय त(अपील)ु / The CIT(A)-
5. वभागीय त न ध, आयकर अपीलार्थ अ धकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गाड' फाईल/ Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार(Dy./Asstt. Registrar)

आयकर अपील य अ धकरण, अहमदाबाद / ITAT, Ahmedabad