

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "G", NEW DELHI
BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

I.T.A. No. 1450/DEL/2015		
A.Y. : 2012-13		
ACIT, CENTRAL CIRCLE-8, ROOM NO. 333, ARA CENTRE, JHANDEWALAN EXTENSION, NEW DELHI (APPELLANT)	VS.	SANJAY PASSI, 57, GOLF LINKS, NEW DELHI – 110 003 (PAN: AAGPP7032H) (RESPONDENT)

CROSS OBJECTION NO. 280/DEL/2015		
A.Y. : 2012-13		
SANJAY PASSI, 57, GOLF LINKS, NEW DELHI – 110 003 (PAN: AAGPP7032H) (APPELLANT)	VS.	ACIT, CENTRAL CIRCLE-8, ROOM NO. 333, ARA CENTRE, JHANDEWALAN EXTENSION, NEW DELHI (RESPONDENT)

Department by : Sh. S.S. Rana, CIT(DR)
Assessee by : Sh. V.K. Agarwal, A.R.

ORDER

PER H.S. SIDHU : JM

Revenue has filed this appeal and Assessee has filed the Cross Objection which emanate from the order dated 22.12.2014 for A.Y. 2012-13 of the Ld. CIT(A).

2. The Revenue has raised the following grounds:-

"(i) *The order of the Ld. CIT(A) is not correct in law and facts.*

(ii) On the facts and circumstances of the case the Ld. CIT(A) has erred in law in deleting the addition of Rs. 13,88,23,000/- made by the AO u/s. 2(22)(e) of the Income Tax Act, 1961.

(iii) The appellant craves leave to add, amend any / all the grounds of appeal before or during the course of hearing of the appeal.

3. The Assessee has raised the following grounds in the Cross Objection:-

"(i) The Ld. CIT(A) has grossly erred on facts as well as in law in holding that the agreement between the appellant and M/s Robin Software (P) Ltd. cannot be genuine as it was subsequently cancelled.

ii) The Ld. CIT(A) has grossly erred on facts as well as in law in holding that profit of the business accrues from day to day and current year's profit would be includible in the accumulated profits.

REVENUE'S APPEAL

4. The brief facts of the case are that a search and seizure action was conducted on Pasco Group of cases on 17.2.2012 u/s. 132 of the Income tax Act, 1961. The case of the assessee was also covered u/s 132 of the Income Tax Act, 1961. The case of the assessee was centralized by Commissioner of Income Tax, Delhi-XI, New Delhi by virtue of Order u/s 127 of the Income Tax Act, 1961 dated 22.05.2012. Notice u/s. 153A of

the Act was issued to the assessee on 25.10.2012. The assessee had filed his original return of income for the assessment year 2012-13 on 23.09.2012, declaring a total income of Rs.32,97,04,099/-. The return of income was processed u/s 143(1) of the Income Tax Act and the case of the assessee was selected for assessment scrutiny for the assessment year 2012-13. Notice u/s 142(1) of the Income Tax Act, 1961 was issued to the assessee on 07.06.2013 for filing the complete return of income for the assessment year 2012-13. Notice u/s. 143(2) of the Income Tax Act, 1961 was issued to the assessee on 24.07.2013. Detailed questionnaire u/s 142(1) of the Income Tax Act, 1961 was issued on 04.10.2013. In response, the A.R. of the assessee attended the proceedings from time to time, filed necessary details / clarifications. During the course of assessment proceedings, the assessee had filed a letter on 13.03.2014 alongwith the copy of acknowledgement of revised return of income and computation of income. During the course of assessment proceedings, from the perusal of seized / impounded material, it was noticed by the AO that the assessee is holding 99% of shares in M/s Robin Software Pvt. Ltd. The said company was converted into an LLP on 28.3.2012. The perusal of the balance sheet of the company M/s Robin Software Pvt. Ltd. shows that the company has advanced loans of Rs.13,88,23,000/- during the year under consideration till 28.03.2012. These loans have been advanced out of the business proceeds/of the company. The company on the date of conversion i.e. on 28.03.2012 has not recognized any income in its profit and loss a/c. However, the perusal of the Balance Sheet and

Profit and loss a/c of M/s Robin Software LLP shows that the firm has shown profit of Rs.15,67,47,640/- as on 31.03.2012. It is pertinent to mention that the revenue has been recognized out of sale proceeds received. The majority of the proceeds have been received prior to 28.03.2012. An amount of Rs.15,53,594/- only has been received after the conversion of the company into LLP out of the total proceeds of Rs.14,35,25,546/- received during the year. Thus only 1.08% of the revenue has been received after the conversion. When the company was converted into LLP, revenue should have been recognized in the profit and loss a/c of the company. Thus applying the above percentage of 1.08%, out of the total profit of Rs.15,67,47,640/- recognizes by the LLP, profit of Rs.15,50,50,923/- should have been recognized in the hands of the company. The company did not do so to avoid the applicability of the provisions of section 2(22)(e) of the I.T Act, 1961. The assessee was confronted the above facts vide order sheet entry dated 17.02.2014 and, was required to show-cause as to why the amount of Rs.13,88,23,000/- received by the assessee as loan from M/s Robin Software Pvt. Ltd. be not treated as deemed dividend u/s 2(22)(e) of the I.T Act, 1961 and added to the income of the assessee for the year under consideration. Assessee filed its reply dated 21.3.2014 and raised objections. After considering the same, the AO observed that the company of M/s Robin Software Pvt. Ltd. had ceased to exist on 28.03.2012. The company was bound to recognize revenue on that date i.e. 28.03.2012. However the company did not do so, so as to avoid the applicability of section 2(22)(e) of the I.T Act, 1961

in respect of the loan given to the assessee. Hence the amount of Rs.13,88,23,000/- was treated as deemed dividend in the hands of the assessee and added to his taxable income for the year under consideration vide order dated 26.3.2014 passed u/s. 143(3) of the Act and assessed the income of the assessee at 46,85,27,099/-

4.1 Aggrieved by the order of the AO, the assessee preferred an appeal before the Ld. CIT(A) who vide his impugned order dated 22.12.2014 deleted the addition by holding that when AO assess the income of M/s Robin Software Pvt. Ltd. as loss for the same Financial year, there could be no ground available to hold that the said company had accumulated profits at the time of making loans/ advances and accordingly vide his order dated 22.12.2014 has allowed the appeal of the assessee.

5. Aggrieved with the Ld. CIT(A)'s order, the Revenue is in appeal and assessee has filed Cross Objection.

6. Ld. DR relied upon the order of the AO and reiterated the contentions raised in the grounds of appeal. In support of his contention, he filed the Written Submission, which read as under:-

"In the above case, it is humbly submitted as follows:

1. During the year, the assessee received RS.13,88,23,000 from MIs Robin Software P Ltd. in which the assessee was 99% shareholder.

2. *MI's Robin Software P Ltd. earned this amount during F.Y. 2011-12 & hence it constituted reserves of the company as on 28.03.2012 i.e. the date on which it was converted from company to LLP.*
3. *The assessee has claimed that this amount was received on account of sale of his house property. However, only sale agreement has been produced. No sale deed has been produced which shows that it was merely an eye-wash agreement.*
4. *Had this money been transferred to LLP, the assessee could not have withdrawn this amount for the next 5 years.*
5. *Since the assessee has received this money from a company in which he was a substantial shareholder and the company had accumulated reserves during the current financial year, the assessee was liable for tax u/s 2(22)(e) of I.T Act.*

In the above case, it is humbly submitted that the following decisions may kindly be considered with regard to deemed dividend u/s 2(22)(e) of I.T. Act:

1. *CIT v Sunil Chopra [2011] 12 taxmann.com 496 (Delhi)/[2011] 201 Taxman 316 (Delhi)/[2011] 242 CTR 498 (Delhi)*

Tribunal deleted addition accepting assessee's contention that said advances were received against sale of property under terms of agreement dated 18-9-2003 and, therefore, money was taken by assessee in line of his business of real estate. Hon'ble Delhi High Court held that there was great perversity and infirmity in findings and observations of Tribunal and, therefore, impugned order was to be set aside.

2. CIT Vs Prasad Leasing Ltd. [2018] 90 taxmann.com 385 (Delhi)/[2018] 254 Taxman 142 (Delhi)/[2018] 403 ITR 129 (Delhi)/[2018] 301 CTR 526 (Delhi) (Copy Enclosed)

where Hon'ble Delhi High Court held that where 'G' advanced certain sums to assessee to procure import licenses, however, real intent of 'G' in advancing sums was to share its profit, sums so advanced clearly fell within description of 'deemed dividend' under section 2(22). Where guarantee commission fee had not been made for purpose of business, disallowance of guarantee commission was justified

3. CIT Vs Mukundray K. Shah [2007] 160 Taxman 276 (SC)/[2007] 290 ITR 433 (SC)/[2007] 209 CTR 97 (SC) (Copy Enclosed)

A search conducted at assessee's premises led to seizure of a diary, which contained purchasing of nine per cent RBI relief bonds by assessee from funds received from two firms 'B' and

'C' in which he was a partner. Tribunal after examination of cash flow statement held that two firms were used as conduits by assessee; that 'A' had made payments to 'B' and 'C' for benefit of assessee, which enabled him to buy nine per cent RBI Relief Bonds and upheld finding of Assessing Officer. Upheld addition u/s 2(22)(e) of I.T. Act

4. *Puneet Bhagat v. ITO (157 ITD 353)*

Where Hon'ble IT AT Delhi held that deemed dividend-Loans and advances to share holders- Loans received by the company would be treated as deemed dividend in hands of P and S in proportion to their shareholdings.

5. *Sunil Kapoor Vs CIT [2015] 63 taxmann.com 97 (Madras)/[2015] 235 Taxman 279 (Madras)*

where Hon'ble Madras High Court held that where assessee, holding 60 per cent shares of a company, took personal loan from accumulated surplus of said company, said amount would be treated as deemed dividend under section 2(22)(e), after reducing therefrom amount repaid by assessee during year

6. *Shashi Pal Agarwal Vs CIT [2015] 54 taxmann.com 289 (Allahabad) [2015] 229 Taxman 307 (Allahabad)/[2015] 370 ITR 720 (Allahabad) where Hon'ble Allahabad High Court held*

that where lending of money was not part of business of lending companies, loan/advance given to assessee-shareholder would be treated as deemed dividend under section 2(22)(e)."

7. On the contrary, Ld. A.R. of the assessee relied upon the order of the Ld. CIT(A) and filed the written submissions, which read as under:-

"1. In this group, search u/s 132 was conducted on 17/02/2012. The assessment was completed by the Ld. AO u/s 143(3) on 26/03/2014 at an income of Rs. 46,85,27,099/- against the returned income of Rs. 32,97,04,099/- by adding Rs. 13,88,23,000/- u/s 2(22)(e). This amount of Rs. 13,88,23,000/- was received by the assessee from M/s Robin Software Pvt. Ltd. against the sale consideration of Rs. 78,25,00,000/- in respect of house property located at 57-58, Golf Links, New Delhi as per agreement to sell dated 02/04/2010. M/s Robin Software Pvt. Ltd. was converted to LLP on 29/03/2012. 'Since the company did not exist w.e.f. 29/3/2012, the agreement to sell was also terminated by the LLP by mutual consent vide' Termination Agreement dated 29/3/2012.

Nature of Receipt

2. The appellant owns a house property located at 57-58, Golf Links, New Delhi. The appellant entered into an agreement with M/s Robin Software Pvt. Ltd. on 02/04/2010 to sell this property for a consideration of Rs. 78,25,00,000/-. In compliance to this agreement, the company paid Rs. 13,88,23,000/- to the appellant during the F.Y. 2011-12. Therefore, the amount received by the appellant was neither a loan nor an advance but the amount in respect of the transaction relating to sale of house property and hence section 2(22)(e) cannot be invoked. By now it is judicially settled that money received for a transaction relating to sale of property cannot be covered u/s 2(22)(e). Therefore, Ld. CIT (A)'s was justified in deleting the addition. Reliance is placed on the following: -

DCIT vs. Smt. Vaishnavi Tekumalla, ITA No. 493/Bang/2011, Date of order, 13/06/2012

"11. We have considered the submissions of both the parties and carefully gone through the material available on record. In the present case, it is not in dispute that the assessee held 97.83% shares in the company from which advance of Q 1 crore was received

by the assessee against the sale of property belonging to her. The assessee furnished a copy of the agreement to sell before the AO, who did not accept that agreement as genuine for the reason that it was not registered and was also not on the stamp paper, however, nothing was brought on record to substantiate that there was not an agreement between the assessee and the company M/s. Mc Creade Software (Asia) Pvt. Ltd. for the sale of property belonging to the assessee. When there was an agreement between the assessee and the company for sale of property belonging to the assessee, it cannot be said that the agreement was not genuine only for the reason that it was not registered, particularly when the AO did not bring any material on record to substantiate that the said agreement was not a genuine agreement. In the instant case, the assessee received the advance against the sale of property located at No.795, 12th B Cross, 23rd Main, J.P. Nagar 2nd Phase, Bangalore and the agreed price for sale was Q 1,20,00,000 against which the assessee received an advance of Q 1 crore. In our opinion, when the advance received by the assessee from the company in which she is a substantial shareholder, was for a transaction

relating to sale of property, the deeming provisions of section 2(22)(e) of the Act were not applicable "

ACIT vs. C. V. Reddy, TS-924-ITAT-2012 (Bang),

"8. We find that the Tribunal in the case of Smt. T. Vaishnavi Tekumalla, the grand-daughter of the assessee herein, [in ITA No.493/Bang/2011, order dated 13.06.2011] has held that when there was an agreement between the assessee and the company for sale of property belonging to the assessee, it cannot be said that the agreement was not genuine only for the reason that' it was not registered, particularly when the AO did not bring any material on record to substantiate that the said agreement was not a genuine" agreement. It was further held that where advance received by the assessee from the company in which he or she is a substantial shareholder was for a transaction relating to sale of property, the deeming provisions of section 2(22)(e) of the Act are not applicable. As the facts and circumstances in the present case are also similar, respectfully following the decision of the Co-ordinate Bench in the case of Smt. T. Vaishnavi Tekumalla (supra), we see no reason to interfere with the order of the CIT(Appeals)"

Mr MOHANLAL PILLAI vs. ITO, 2011-TIOL-90-ITAT-MUM

"12 Whereas, in the case before us, on 1st April, 1999 itself assessee has sold various assets to M/s. Mech Marine Engineers (P) Ltd. and, therefore, on that date there was a debit balance against the company in the books of the assessee and there would be corresponding credit balance in the books of the company in the name of the assessee on account of such trading transactions. Only after these transactions, the assessee company has made certain payments but in turn assessee has also transferred certain money through other transactions and the net result of the account is that the outstanding loan at the beginning of the year which was at Rs.28,24,700/- got reduced to Rs.25,10,155/-. Therefore, it is clear that all the transactions are mainly trading transactions and in our view provisions of section 2(22)(e) are not applicable even if the money is received against the sale of assets or from other trading transactions. Accordingly, we set aside the order of the Id. CIT[A] and delete the addition on account of deemed dividend."

Accumulated Profit

3. The company prepared its account for the period from 01/04/2011 to 28/03/2012 and filed its return declaring loss of Rs. 1,05,460/-. The company had accumulated profits of Rs. 1,04,029/- as on 31/03/2011 and accumulated losses amounting to Rs. 1,431/- as on 28/03/2012. The assessment of the company was completed at a loss of Rs. 1,05,460/-, i.e., the returned loss. Therefore, without prejudice to the above submissions, since there was no accumulated profit, section 2(22)(e) cannot be invoked. Reliance is placed on the following case laws: -

CIT vs. NITIN SHANTILAL PARIKH, (2009) 319 ITR 437 (Guj)

"Dividend-Deemed dividend under s. 2(22)(e)-Chargeability-In the absence of any finding that payment to assessee was made out of company's accumulated profits or that the company possessed accumulated profits, Tribunal is right in law and on facts in observing that the conditions prescribed under s. 2(22)(e) were not satisfied and thereby deleting the addition made by that AO

Treatment given by Revenue to various entities

4. a) *The Ld. AO has held that revenue has to be recognized on day to day basis for considering accumulated profits on the date of disbursement. Though this observation is not correct as discussed in para 5 below, yet even if it is presumed to be so, the fact remains that the assessment of the company has been completed at a loss of Rs. 1,05,460/- u/s 143(3) by the same AO and on the same date as that of the appellant. Once the company has been assessed at a loss for the whole year, it cannot be said that by bifurcating this loss, there can be accumulated profit of Rs. 13,88,23,000/- for the part period of the year. Hence, even by considering the AO's formula, there were no accumulated profit at the time of reimbursement.*

b) *Further, the facts in brief are that the company has given its land to M/s. Emaar MGF Land Ltd. for development. As per the development agreement the developer was making payments to the company periodically. Since the developer is following percentage completion method as per guidance note issued by the Institute of Chartered Accountants of India on revenue recognition by the real estate developer, the developer recognized the revenue on 31/03/2012. The impugned*

company was accordingly bound to recognize its profits as per the percentage of completion method only after receiving the certificate from the developer. The developer has been issuing a certificate for each financial year clearly indicating the percentage of the project completed and the profits pertaining to the company including the computation. Accordingly, neither the company knew its profit nor it had any right to receive the profits before 31/03/2012. The right to receive the profits accrue only on 31/03/2012 after determination of income by the developer as per the method of accounting being followed by it regularly. Since it was the LLP which existed on 31/03/2012 and not the company, the profits accrued to the LLP only which were duly declared in its IT return and taxed on the returned income by the same AO on the same date.

c) Therefore, the revenue, in fact the same AO on the same date, has taken totally contradictory stand in the case of the appellant. He has' accepted the income of Rs. 23,47,49,071/- through development agreement in the hands of LLP after due deliberations u/s 143(3). He has also accepted the loss of Rs. 1,05,460/- in the hands of the company upto 28/03/2012, i.e., the date on which company was converted into LLP. That being

so, the same profit which was taxed in the hands of the LLP, cannot be migrated to the company to determine the accumulated profit. Therefore, the fallacy in the assessment is obvious and hence the CIT(A) was justified in deleting the addition.

Accumulated Profit do not include current year profit

5. By Now it is also judicially held that the accumulated profits do not include the current year's business profit as it accrues at the end of the year. Profit does not accrue on day to day basis. Reliance is placed on the following case laws: -

CIT vs. ASHOKBHAI CHIMANBHAI, (1965) 56 ITR 42 (SC)

"6. In the gross receipts of a business day after day or from transaction to transaction lies embedded or dormant profit or loss; on such dormant profit or loss undoubtedly taxable profits, if any, of the business will be computed. But dormant profits cannot be equated with profits charged to tax under ss. 3 and 4 of the IT Act. The concept of accrual of profits of a business involves the determination by the method of accounting at the end of the accounting year or any shorter period determined by law. If profits accrue to the assessee

directly from the business the question whether they accrue de die, in diem or at the close of the year of account has at best an academic significance, but when upon ascertainment of profits the right of a person to a share therein is determined, the question assumes practical importance, for it is only on the right to receive profits or income, profits accrue to that person. If there is no right, no profits will be deemed to have accrued "

- *CIT vs. M. B. Stockholding Pvt. Ltd., 2015-TIOL-1139-HC-AHM ++while determining the amount of deemed dividend under Explanation 2 to Section 2(22)(e) of the Act, the current profit was not required to be included to be part of accumulated profit. As such, as observed by the Tribunal, the issue is already settled by the SC against the Revenue in the case of Associated Banking Corporation of Ind. Ltd. V Is. Commissioner of Income-Tax, Bombay reported in (1965) Vo1.56 ITR 1 (SC) by which, the view taken that the profit accrues when the books of account are closed."*

OSERVATIONS OF THE AO

6 (a). The Ld. AO has observed that the agreement to sell the property was only a tax evasion scheme (page 5

of the asstt. Order). In this connection it is submitted that the agreements are genuine and even the Ld. AO has not brought any material on record to disprove the genuineness of the agreement to sell and the termination agreement. Both the agreements were duly signed on the stamp papers in the presence of two witnesses. Under similar circumstances even when the agreement was not on the stamp paper, the Hon'ble ITAT Bangalore, in the case of DCIT vs. Smt. Vaishnavi Tekumalla, ITA No. 493/Bang/2011, has held that the agreement to sell the property is genuine in the absence of any evidence to the contrary. Since the company ceased to exist on 29/3/2012, the agreement had to be terminated. The successor LLP was not ready to enter into such an agreement to sell. Therefore, it cannot be said that there was any intention to evade tax.

(b) The Ld. AO has also observed that the amount received by the appellant was never refunded back (page 6 of the asstt. Order). On termination of the agreement the money received by the appellant was accounted for as Current Capital Account in the LLP being debit balance. Since the amount received was not forfeited and shown as debit balance in the books of

LLP, it cannot be said that the amount was not refunded.

(c) The Ld. AO has also mentioned that current year income has to be part of accumulated profits (page 13 of the asstt. order). The Ld. AO has not appreciated the judgment of Hon'ble Supreme Court in the case Ashokbhai Chimanbhai wherein it was held

"6. In the gross receipts of a business day after day or from transaction to transaction lies embedded or dormant profit or loss; on such dormant profit or loss undoubtedly taxable profits, if any, of the business will be computed. But dormant profits cannot be equated with profits charged to tax under ss. 3 and 4 of the IT Act.". Therefore, the law is well settled that the profits on the company cannot be computed on day to day basis. Accordingly current year income, if any, cannot be part of accumulated profit.

(d) The Ld. AO has also observed that revenue could be recognized during the existence of the company without waiting for the close of the financial year (page 17 of the asstt. order), The facts in brief are that the company has given its land to M/s. Emaar MGF Land Ltd. for development. As per the development

agreement the developer was making payments to the company periodically. Since the developer is following percentage completion method as per guidance note issued by the Institute of Chartered Accountants of India on revenue recognition by the real estate developer, the developer recognized the revenue on 31/03/2012. The appellant company was accordingly bound to recognize its profits as per the percentage of completion method only after receiving the certificate from the developer. The developer has been issuing a certificate for each financial year clearly indicating the percentage of the project completed and the profits pertaining to the company including the computation. Accordingly, neither the company knew its profit nor it had any right to receive the profits before' 31/03/2012. The right to receive the profits accrue only on 31/03/2012 after determination of income by the developer as per the method of accounting being followed by it regularly. Since it was the LLP which existed on 31/03/2012 and not the company, the profits accrued to the LLP only which were duly declared in its IT return and taxed on the returned income. Again the Hon'ble Supreme . Court in the case Ashokbhai Chimanbhai has held "The concept of accrual of profits

of a business involves the determination by the method of accounting at the end of the accounting year or any shorter period determined by law when upon ascertainment of profits the right of a person to a share therein is determined, the question assumes practical importance, for it is only on the right to receive profits or income, profits accrue to that person. If there is no right, no profits will be deemed to have accrued ". Therefore, the law is well settled that the profits will accrue only when there is a right to receive the same. Since the right to receive the profits accrued only on 31/03/2012 when the developer determined the share of profits and the company having been converted into LLP before 31/03/2012, no income could accrue to the company as it did not exist on 31/03/2012.

The Observations of CIT(A)

7. a) The Ld. CIT(A), in para 3.2.16 has held that the fact that the agreement has been subsequently cancelled, would show that the agreement cannot be genuine one. This means that no genuine agreement can be cancelled subsequently. According to him, the moment a genuine agreement is cancelled, it becomes non-genuine. There is no such law in this country.

Agreement is genuine ,or non-genuine by itself and does not depends on its cancellation. Neither the Ld. AO nor the Ld. CIT(A) has brought any material on record to established that the agreement for sale of property is not genuine. Ld. CIT(A) has also admitted that there is no adverse material in respect of sale of property agreement (para 3.2.16 of CIT(A)'s order). Hence what the appellant received from the company was against sale transaction of the property and neither loan nor advance. Therefore, section 2(22)(e) could not be invoked.

b)(i) The Ld. CITCA) has also observed that profits accrue from day to day and not when accounts are prepared at the end of the year. As discussed above, the Hon'ble Supreme Court has already negated such a view.

ii) Otherwise also, as discussed above, the company has been assessed at loss and even if the loss is bifurcated to the period of disbursement, the accumulated profit will remain loss only.

c) Therefore, under the circumstances, there are no accumulated profits to be covered u/s 2(22)(e), of course, this submission is without prejudice to the submissions in sub para (a) above.

Prayer

8. In view of the facts and law as discussed above, the appeal of the revenue may kindly be dismissed and the cross objections filed by the appellant may kindly be allowed."

8. We have heard both the parties and perused the records, especially the impugned order passed by the revenue authorities as well as the case laws relied upon by both the parties. We are of the considered view that Ld. CIT(A) has rightly observed that AO has wrongly made the addition u/s. 2(22)(e) by holding that there are accumulated profits in the hands of M/s Robin Software Pvt. Ltd. Ld. CIT(A) has also noticed that the AO has completed the assessment of M/s Robin Software Pvt. Ltd. for assessment year 2012-13 and no addition has been made in the hands of that company and return of loss has been accepted. Therefore, the Ld. CIT(A) has rightly cancelled the order of the AO by holding that if the AO has accepted the income returned by the said company and not made any changes in the return of income and assessed the income as declared by the said company, he cannot hold that there was accumulated profits for the purpose of section 2(22)(e) of the Act. We further note that Ld. CIT(A) has observed that assessment of M/s Robin Software Pvt. Ltd has been completed vide order of the same Assessing Officer on 26.3.2014 and AO has accepted the returned of loss Rs. 1,05,460/- as on 28.3.2012 of that company. This being so the same AO could not have adopted a different income / profit figure to make addition u/s 2(22)(e). Hence, Ld. CIT(A) noted that when AO assesses the income of M/s Robin Software Pvt. Ltd. as loss for the same financial year, there could be no ground available to hold that the said company had accumulated profits at the time of making loans/advances. Therefore, the addition made as deemed dividend u/s. 2(22)(e) of Rs. 13,88,23,000/- was rightly deleted by the Ld. CIT(A) for want of fulfillment of the required conditions

stipulated under the said section, which does not need any interference on our part, hence, we uphold the action of the Ld. CIT(A) and reject the ground raised by the Revenue. Since there was want of fulfillment of the required conditions stipulated under the said section, as aforesaid, the case laws cited from both the sides are not applicable here. As a result, the Revenue's appeal is dismissed.

ASSESSEE'S CROSS OBJECTIONS:-

9. Since we have already upheld the order of the learned CIT(A) deleting the addition on merit in the Revenues' Appeal, as aforesaid, the Cross Objections filed by the assessee has become infructuous and dismissed as such. As a result, the Cross Objections filed by the assessee stand dismissed.

10. In the result, the Revenue's appeal as well as Assessee's Cross Objection stand dismissed.

Order pronounced on 11-07-2018.

Sd/-
[PRASHANT MAHARISHI]
ACCOUNTANT MEMBER

Sd/-
[H.S. SIDHU]
JUDICIAL MEMBER

Date 11/07/2018
"SRBHATNAGAR"

Copy forwarded to: -

1. Appellant
2. Respondent
3. CIT
4. CIT (A)
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