2025:BHC-OS:13175-

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 669 OF 2003

Shri Jaykumar B. Patil (Deceased)
Through L/H Shri Nitin J. Patil
Kolhapur ***....Appellant***

: Versus :

Joint Commissioner of Income Tax
Special Range-4, Kolhapur ***....Respondent***

Mr. R. S. Padvekar *with Mr. Tanzil Padvekar and Ms. Tejal P. Kharkar, for Assessee-Appellant.*

Mr. Arjun Gupta, *for Revenue-Respondent.*

CORAM : ALOK ARADHE, CJ. &
SANDEEP V. MARNE, J.

DATE : 07 AUGUST 2025

JUDGMENT (*Per Sandeep V. Marne, J.*)**:**

1) By this Appeal filed under the provisions of Section 260A of the Income-tax Act, 1961 **(the Act),** the Assessee challenges Order dated 31 March 2003 passed by the Income-Tax Appellate Tribunal, Pune Bench, Pune **(ITAT)** in ITA No. 49/PN/2002. The ITAT has dismissed the appeal of the Assessee and has confirmed the order of Commissioner of Income-tax (Appeals), Kolhapur **[CIT(A)]** who in turn had upheld the order of the Assessing Officer treating the

2025:BHC-OS:13175-

advance granted to the Assessee by the company as a deemed dividend under Section 2(22)(e) of the Act and brought the same to tax.

2) The issue involved in the present appeal is whether a business advance granted by a Company to its shareholder, who does not actually utilize the said advance for execution of job work for the company can be treated as deemed dividend under Section 2(22)(e) of the Act ?

3) A brief factual background under which the appeal arises is narrated thus :

The Assessee was the Managing Director and a substantial shareholder in Ghatge Patil Industries Limited **(GPIL)**, which is company engaged in the business of manufacturing castings and other components. Tata Engineering and Locomotives Company Limited **(TELCO)** was amongst the major customers of GPIL, who used to place orders on J. B. Patil & Sons (Engineering Division), which was the proprietary concern of the Assessee. According to Assessee, he had a running account with GPIL and there was continuous business transactions between the Assessee and GPIL. GPIL had received a very large order from TELCO exceeding Rs. 9 crores. The value of machining charges and castings to be supplied by the Assessee to GPIL was to the tune of Rs. 5.66 crores and the total value of orders already placed by GPIL with the Assessee was to the tune of Rs. 1.18 crores. According to Assessee, the value of orders outstanding upto 26 December 1997 was Rs. 73,58,973/-.

2025:BHC-OS:13175-

4) The Assessee requested for an advance from GPIL against pending expected orders as he had to meet a deadline for payment of taxes by 30 December 1997. GPIL gave an advance of Rs. 71 lakh to the Assessee on 26 December 1997. It appears that TELCO did not go ahead with the orders placed with GPIL and the said transaction got cancelled. Assessee returned the advance of Rs. 71 lakh to GPIL on 11 February 1998 i.e. in the same financial year. The Assessee claims that the advance was received by him in the course of business and was returned in the same financial year. However, the Assessing Officer made an assessment order under Section 143(3) of the Act on 29 March 2001 treating the advance taken by the Assessee from GPIL as deemed dividend under Section 2(22)(e) of the Act and brought the same to tax. The Assessee preferred appeal before CIT(A) who substantially agreed with views of the Assessing Officer and confirmed treatment of the advance as deemed dividend vide order dated 27 September 2001. The Assessee preferred further appeal before ITAT, which has confirmed the orders of Assessing Officer and CIT(A). The Assessee has accordingly preferred the present appeal which came to be admitted by order dated 22 November 2004 on following substantial question of law :-

> "Whether on the facts and in the circumstances of the case the Appellate Tribunal was right in law in holding that business advance of Rs. 71 lacs against pending orders and repaid within two months constituted "deemed dividend" within the meaning of section 2(22)(e) of the Income Tax Act, 1961?"

5) Mr. Padvekar, the learned counsel appearing on behalf of the Assessee, would submit that the advance taken by the Assessee from GPIL for business purposes cannot be treated as deemed

dividend under provisions of Section 2(22)(e) of the Act. That the order passed by the ITAT acknowledged the position that the advance was taken for business purposes. That such advance taken for business purposes need not be proved to be actually utilized for execution of a particular business transaction. That the Assessee had series of business transactions with GPIL and parties had maintained a running account. That the Assessee was performing job works for GPIL which has not been disputed in any of the impugned orders. That therefore advance paid to the Assessee by the GPIL for business purposes need not be demonstrated to having been spent on execution of any particular job work. That if parties have running business account, even if amount of advance is used for some other purpose, the same would still constitute a business advance and cannot amount to deemed dividend under Section 2(22)(e) of the Act. That once it is accepted that the advance was granted for job work, how it is actually spent is immaterial. That therefore even if, it is assumed that the amount of advance is used for payment of Income-tax, the same would not convert the amount of such advance as deemed dividend. That Section 2(22)(e) applies only when a shareholder, who has no business dealing with the company, receives an advance. That the provision has no application in a case of a shareholder is running business account with the company.

6) Mr. Padvekar would further submit that the present case is squarely covered by the Circular dated 12 June 2017 issued after taking into consideration ratio of several judgments. That Circular provides for exclusion of advances made to shareholders, which are granted for business purposes, from being treated as deemed dividend. Mr. Padvekar would place on record list of transactions

2025:BHC-OS:13175-

between the Assessee and GPIL during 1997-98 to prove as to how the Assessee used to continuously transact business with GPIL. He would submit that the Circular dated 12 June 2017 is beneficial in nature and that the benefit thereof must be extended to the Assessee. In support of his contentions, he would rely upon following judgments:-

(i) ***Commissioner of Income-Tax Versus. Raj Kumar***[1]

(ii) ***Commissioner of Income-Tax Vs. Deepak Vegpro Pvt Ltd.***[2]

(iii) ***CIT Vs. Ambassador Travels P. Ltd.***[3]

(iv) ***CIT-I, Ludhiana Vs. Amrik Singh***[4]

(v) ***CIT-I Vs. Amrik Singh***[5]

(vi) ***CIT Vs. Creative Dyeing and Printing P Ltd.***[6]

(vii) ***CIT, Agra Vs. Atul Engineering Udyog***[7]

7) The appeal is opposed by Mr. Gupta, the learned counsel appearing on behalf of the Revenue. He would submit that the advance granted by GPIL to the Assessee fulfills all the ingredients of Section 2(22)(e). That the Assessee is a substantial shareholder of the Company exceeding 10% of the shares. That he has admitted in the Memorandum of Appeal that the advance was received for payment of taxes. He would submit that the concurrent findings of fact are recorded in all three orders. That the advance was sought and utilized for payment of Income-tax and that the same was not

1 [2009] 318 ITR 462 (Delhi)

2 [2018] 406 ITR 496 (Raj)

3 [2009] 318 ITR 376 (Delhi)

4 [2015] 231 taxman 731 (P&H)

5 [2015] 234 taxman 769 (SC)

6 [2009] 318 ITR 476 (Delhi)

7 [2015] 228 Taxman 295 (Allahabad)

utilized for execution of any job work. That the said advance was thus a personal benefit to the Assessee and not a business transaction between the GPIL and him. That in the light of admission of non-utilization of the advance for execution of any job work, the advance has rightly been treated as deemed dividend under Section 2(22)(e). That mere repayment of the advance in the same financial year makes no difference and in support, he would rely upon judgment of the Apex Court in ***Smt. Tarulata Shyam Versus. Commissioner of Income-tax***[8]. Mr. Gupta would accordingly pray for dismissal of the appeal.

8) Rival contentions of the parties now fall for our consideration.

9) As observed above, the short issue that arises for consideration in the present appeal is whether the advance of Rs. 71 lakh granted by GPIL to the Assessee can be treated as deemed dividend under provisions of Section 2(22)(e) of the Act. Provisions of Section 2(22)(e) of the Act are extracted below for facility of reference :-

> **(22)** 'dividend' includes:
>
> **(e)** any payment by a company, not being a company in which the public are substantially interested, of any sum (whether as representing a part of the assets of the company or otherwise) made after the 31st day of May, 1987, 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

8 [1997] 108 ITR 345 (SC)

2025:BHC-OS:13175-

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;

10) There is no dispute to the position that the Assessee, at the relevant time, was a shareholder of GPIL and a person entitled to beneficial owner of shares and that he held shares in excess of 10% of voting power in GPIL. In fact, there is a specific admission in the Memorandum of Appeal that "*The Appellant was the Managing Director of and a substantial shareholder in Ghatge Patil Industries Ltd. ….*". There is also no dispute to the position that advance of Rs. 71 lakh was requested by the Assessee from GPIL in the name of Assessee's proprietary concern J. B. Patil & Sons (Engineering Division). Such advance was granted by GPIL to the Assessee on 26 December 1997. The said advance has been repaid by the Assessee on following dates :-

8/2/98	Rs. 39,47,200/-
11/2/98	Rs. 29,58,720/-

Total:	Rs. 69,05,920/-

11) The Assessee claims that he had business transactions with GPIL and the concerned advance was taken by him on account of large order received from TELCO in addition to certain outstanding orders pending with the Assessee. It is not disputed that the Assessee had business transactions with GPIL during the relevant point of time. However, the Assessing Officer disagreed with the Assessee that the advance was given for the purpose of business. He recorded following findings :-

> "The contention of the assessee that the advance/loan was given for purpose of business is not borne out of facts. Notwithstanding, as per section 2(22)(e) of the I.T. Act, 1961, if a company makes any payment to any concerned in which the shareholder has substantial interest, then such payment is to be treated as '*dividend*'."

12) The Assessing Officer thereafter took note of payment made by the Assessee towards Income-tax and held as under :-

> "Actually, the fact is that assessee has disclosed some of the disputed additions for A.Y. 1995-96 under Kar Vivad Samadhan Scheme (KVSS) and Rs. 71 lakhs was taken as a temporary loan to pay the taxes due on KVSS declaration. From the bank account, it is seen that assessee has paid Rs. 70,80,000/- on 26/12/1997 towards payment of taxes on KVSS declaration. It is therefore clear that the loan of Rs. 71 lakhs was taken not for any business purpose, but for payment of taxes which is the personal liability of the proprietor. After adjusting nominal bills, the major part of the amount amounting to Rs.69,05,920/- was returned back to GPIL on 8th & 11th February, 1998. Therefore, the payment of Rs. 71 lakhs by GPIL to M/s. J.B. Patil & Sons (Engg. Div.) cannot be said to be business advance as claimed by assessee."

13) The Assessee has not disputed the position that he has utilized the amount of advance for payment of Income-tax under Kar Vivad Samadhan Scheme **(KVSS)**. In fact, the Appeal Memo, Assessee has specifically contended as under :-

> "Since the Appellant had a deadline to meet for payment of taxes by 30/12/1997, he asked for an advance against the pending and expected orders from GPI."

14) In Appeal, CIT(A) refused to believe the story put forth by the Assessee that the advance was received to execute orders received from GPIL for supply of motor parts of TELCO. The CIT(A) has recorded following findings :-

> "21. During the course of appellate proceedings Shri Deshpande and Shri Kulkarni were requested to co-relate the advance given to the appellant by M/s. Ghatge Patil Industries Ltd. Inquires were made by the undersigned with M/s. Ghatge Patil Industries Ltd. and information received from them were furnished to the appellant for his comments also. From the details submitted it appears that the claim that Rs.71,00,000/- were received by him as trade advance is contrary to certain facts of the case. Though the appellant has been doing job work for M/s. Ghatge Patil Industries Ltd. for many years, never before any advance of this magnitude was given to him for executing the job (for this purpose the copy of the account of the appellant with M/s. Ghatge Patil Industries Ltd. for 3 years i.e. FY 1995-96, 1996-97 and 1997-98 were called). The claim of the appellant that the advance was received to execute orders received by M/s. Ghatge Patil Ind. Ltd. for supply of motor parts of Telco also does not appear to be correct. While M/s. Ghatge Patil Ind. Ltd. received bulk-orders from Telco in the month of March and April 1997, which were required to be made through the appellant's Engineering Division, this advance was made only in the month of December, to be exact on 26/12/97. Within a month i.e. on 20/1/1998, this advance was recalled by M/s. Ghatge Patil Ind. Ld. from the appellant. It is difficult to understand as to how the business situation changed so drastically in a span of a month necessitating withdrawal of advance by M/s. Ghatge Patil Ind. Ltd. This was more so because admittedly, recession in automobile industries had set in from December 1996 onwards as per letter dated 20/1/1998 of M/s. Ghatge Patil Ind. Ltd. addressed to the appellant. Similarly, this advance was made in relation to various orders placed by M/s. Ghatge Patil Ind. Ltd. during September October 1997. The copies of the orders supplied by M/s. Ghatge Patil Ind. Ltd. to this office for this period amounted to very mall figures, which did not require advance of s. 71,00,000/-. Even the Assessing Officer has observed that during the entire financial year only Rs. 39,52,376/- have been received as machining charges by the appellant from M/s. Ghatge Patil Ind. Ltd. Moreover, this advance received by the appellant on 26/12/1997 was immediately used for payment of taxes of Rs. 70,80,000/- on the same date under KVSS It has separately been discussed elsewhere that during this period the capital account of the appellant was already running in debit and therefore, cannot be argued by him that the taxes were paid out of his capital."

15) The ITAT has however recorded one finding in favour of the Assessee that the money in question was received as advance in connection with execution of machining job work by the Assessee. However, the ITAT held that the Assessee did not utilize the said

advance for executing the machining job work. The ITAT held as under :-

> "The money in question was received as advance in connection with execution of machining job work by the assessee. It is undisputed that the assessee did not at the time of receipt of advance execute this machining job work. This money which was legally due to the assessee only after execution of the machining job work had been received ahead of the time when it is due tobe paid. The expression 'advance' used in sec. 2(22)(e) would cover an advance of this nature. Therefore, all the conditions laid down u/s. 2(22)(e) are fulfilled in the present case and the revenue authorities were justified in treating the amount in question as dividend in the hands of the assessee."

16) Much is sought to be made out of the finding recorded by the ITAT that the money in question was received as advance in connection with execution of machining job work by the Assessee. It is contended that once the purpose of receipt of advance is accepted as business transaction, such advance cannot be treated as deemed dividend under Section 2(22)(e) of the Act. Reliance is placed on Circular dated 12 June 2017, which reads thus:-

Circular No. 19/2017

F.No.279/Misc./140/2015/ITJ
Government of India
Ministry of Finance
Central Board of Direct Taxes

New Delhi, Dated 12th June, 2017

Sub: Settled View on section 2(22)(e) of the Income Tax Act, trade advances-reg.

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.[9], Delhi High Court)

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)[10].

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 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)[11]

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.

9 [NJRS] 2009-LL-0922-2, ITA No. 250 of 2009
10 [NJRS] 2015-LL-0429-5, ITA No. 347 of 2013
11 [NJRS] 2014-LL-0926-121,ITA No. 223 of 2011

17) In our view, the Circular dated 12 June 2017 applied only in case where the advance/loan is actually utilized for the purpose of job work. The Circular was issued after taking note of judgments in the past holding that trading advances in nature of commercial transactions would not fall within the ambit of provisions of Section 2(22)(e) of the Act. The Circular gives 3 illustrations. The first illustration is about advance made by a company to a sister concern, which is adjusted against the dues for job work done by that sister concern. The second illustration is about advance made by a company to its shareholder to install plant and machinery at shareholder's premises to enable him to do job work for the company, so that the company could fulfill an export order. The third illustration is about the floating security deposit given by a company to its sister concern against the use of electricity generators belonging to the sister concern.

18) The common thread that runs in all three illustrations cited in the Circular dated 12 June 2017 is that the amount of loan/advance is actually utilized by the sister concern/shareholder for execution of the job work, or for installation of plant and machinery, or for actual use of electricity generators. Thus, utilization of advance for execution of a particular business transaction is a *sine qua non* for exclusion of the amount of loan or advance from the ambit of Section 2(22)(e) of the Act. Therefore, the key is not the purpose for which the advance is made. The real key is the purpose for which the advance is utilized. It needs to be demonstrated by the sister concern or shareholder that the advance made for business transaction is actually utilized for execution of such business transaction.

2025:BHC-OS:13175-

19) We cannot accept the contention sought to be raised on behalf of Assessee that advance received for business transaction need not be utilized for business and can be utilized for any other purpose. Such interpretation sought to be canvassed on behalf of the Assessee would lead to absurdity where sister concerns/ shareholders would continue to receive advances from the company and utilize the same for personal purposes of shareholders/ proprietors/directors and seek exemption from payment of Income-tax. In the present case, the Assessee has admittedly utilized the amount of advance for payment of Income-tax under KVSS. He has admittedly not utilized the said advance for execution of any job work for GPIL. In our view, therefore, the amount of the said advance has rightly been treated as deemed dividend under provisions of Section 2(22)(e) of the Act.

20) Mere repayment of the advance within the same financial year does not make the case of the Assessee any better. The Apex Court has dealt with issue of return of advance in same Previous Year in ***Smt. Tarulata Shyam Versus. Commissiober of Income-tax*** (supra). The issue before the Apex Court is formulated in the judgment as under :-

> "Whether any payment by a company not being a company in which the public are substantially interested within the meaning of section 23 A, of any sum by way of advance or loan to a shareholder, not exceeding the accumulated profits possessed by the company is to be deemed as his dividend under section 2(6A)(e) read with section 12(1B) of the Indian Income-tax Act, 1922, even if that advance or loan is subsequently repaid in its entirety during the relevant previous year in which it was taken, is the only question that falls to be determined in this appeal by special leave."

2025:BHC-OS:13175-

21) The Apex Court has answered the question by holding as under :-

> "In our opinion, the Indian legislature has deliberately omitted to use in sections 2(6A)(e) and 12(1B) words analogous to those in the last limb of sub-section (1) of section 108 of the Commonwealth Act. When sections 2(6A)(e) and 12(1B) were inserted by the Finance Act, 1955, Parliament must have been aware of the provision contained in section 108 of the Commonwealth Act. In spite of such awareness, Parliament has not thought it fit to borrow whole hog what is said in section 108(1) of the Commonwealth Act. So far as the last limb of section 108(1) is concerned our Parliament imported only a very restricted version, and incorporated the same as the "fifth condition" in sub-section (1B) of section 12 to the effect, that the "payment deemed as dividend shall be treated as a dividend received by him in the previous year relevant to the assessment year ending on the 31st day of March, 1956, if such loan or advance remains outstanding on the last day of *such* previous year". The word "such" prefixed to the "previous year" shows that the application of this clause is confined to the assessment year ending on March 31, 1956. In the instant case we are not concerned with the assessment year ending March 31, 1956. This highlights the fact that the legislature has deliberately not made the subsistence of the loan or advance, or its being outstanding on the last date of the previous year relevant to the assessment year, a pre-requisite for raising the statutory fiction. In other words, even if the loan or advance ceases to be outstanding at the end of the previous year, it can still be deemed as a "dividend" ifthe other four conditions factually exist, to the extent of the accumulated profits possessed by the company."

22) Reliance by the Assessee on the judgment of Punjab and Haryana High Court in ***CIT-I, Ludhiana Versus. Amrik Singh*** (supra) does not cut any ice. In that case, the Assessee had obtained advances from the company which was utilized for business expediency. The ITAT in that case held that the amount of advance was not utilized by the Assessee for individual benefit nor the business transaction was a smoke screen to cover a benefit obtained by the Assessee from the company. A finding of fact was recorded by the ITAT that the amount of loan was utilized for business expediency. The Punjab and Haryana High Court upheld the order of ITAT by holding that the

Assessee therein had proved a tangible business expediency between the Assessee and the company. On the other hand, the Assessee, himself has admitted in the present case, that he has utilized the amount of advance for payment of Income-tax under KVSS.

23) The Assessee has relied on judgment of Delhi High Court in ***CIT Versus. Creative Dyeing and Printing P. Ltd.*** (supra) in which the amount of advance was utilized for expansion of plant and machinery by the Assessee-Company and in the light of that position, the Delhi High Court held that the transaction in question was a business transaction, which had benefited both the Assessee as well as the Company granting the advance. In the present case, the amount of advance was not utilized for purposes of any job work for GPIL and therefore there is no question for GPIL benefiting from such advance. The advance on the contrary is utilized for discharge of personal liability of Income-tax by the Assessee. The judgment in ***CIT Versus. Creative Dyeing and Printing P. Ltd.***, therefore, has no application to the facts of the present case.

24) We have also gone through the judgments in ***CIT Versus. Raj Kumar*** (supra)**,** ***CIT Versus. Deepak Vegpro Pvt Ltd.*** (supra)**,** ***CIT Versus. Ambassador Travels P. Ltd.*** (supra) and ***CIT Versus. Atul Engineering Udyog*** (supra). We find that in all those cases, the amount of advance was utilized for actual execution of business transaction, which element is absent in the present case.

25) Mere maintenance of running account by the Assessee with the GPIL or demonstration by the Assessee before us of continuous business transactions between the Assessee and GPIL

cannot be a reason enough for drawl of an inference that the amount of advance was actually utilized for execution of business transaction. On the other hand, there is specific admission on the part of the Assessee that the amount of advance was utilized for payment of Income-tax by the Assessee.

26) In our view, all the ingredients of Section 2(22)(e) of the Act are satisfied in the present case. There are concurrent findings of fact recorded in the three orders that the amount of advance was not utilized by the Assessee for execution of any job work for GPIL. We cannot interfere in the said findings of fact in exercise of appellate jurisdiction under Section 260A of the Act.

27) The question of law is accordingly answered against the Assessee and in favour of the Revenue. Resultantly, the appeal stands **dismissed.**

[SANDEEP V. MARNE, J.] **[CHIEF JUSTICE]**