

F.No.279/Misc./140/2015/TTJ
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 fall within the definition of deemed dividend under section 2(22) (e) of the Act. (CIT vs. Creative Dyeing & Printing Pvt. Ltd.¹, 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)².
- iii. A floating security deposit was given by a company to its sister concern against the use of electricity generators belonging to the sister concern. The company utilised gas available to it from GAIL to generate electricity and supplied it to the sister concern at concessional rates. It was held that the security deposit made by the

¹ [NRS] 2009-LL-0922-2, ITA No. 250 of 2009

² [NRS] 2015-LL-0429-5, ITA No. 347 of 2013

Bansal
12/06/17

company to its sister concern was a business transaction arising in the normal course of business between two concerns and the transaction did not attract section 2(22) (e) of the Act. (CIT, Agra vs Atul Engineering Udyog, Allahabad High Court)³

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may not be filed on this ground by Officers of the Department and those already filed, in Courts/Tribunals may be withdrawn/not pressed upon.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

N Bansal
(Neetika Bansal) 12/06/17

Deputy Secretary to Government of India

Copy to:-

1. The Chairperson, Members and officers of the CBDT of the rank of Under Secretary and above.
2. OSD to Revenue Secretary.
3. All Pr. Chief Commissioners of Income-Tax & All Directors General of Income-Tax with a request to bring to the attention of all officers.
4. The Comptroller and Auditor General of India.
5. The Pr. Director General of Income-Tax, NADT, Nagpur.
6. The Pr. DGIT (Systems), ARA Centre, Jhandewalan Extension, New Delhi.
7. The Pr. DGIT (Vigilance), New Delhi.
8. The ADG (PR. PP & OL) for circulation as per usual mailing list.
9. ADG-4 (Systems) for uploading on ITD website.
10. Database Cell for uploading on irsofficersonline.
11. njrs_support@nsdl.co.in for uploading on NJRS.
12. Hindi section for translation in Hindi
13. Guard File

³ [NJRS] 2014-LL-0926-121, ITA No. 223 of 2011