Tax Review/Taxation
Daily Alert Service

Huzaima & Ikram
December 31, 2013

This special email service from Monday to Friday, part of subscription package, is aimed at keeping you informed about tax and fiscal matters. It contains news, legislative changes, case-law, in-depth articles and analyses covering all areas of taxes at domestic and international level. On every Saturday evening, we email weekly compilation of the entire material. Every month, ***Taxation*** in printed form, is sent through post and digital version of ***Tax Review International*** is made available for download at www.huzaimaikram.com.

For subscription, please visit our website or contact offices mentioned below.

This service is available *only* for paid subscribers. If you are a subscriber of *Law and Practice of Income Tax* (LPIT), *Law and Practice of Sales Tax* (LPST), *Taxation* or *Tax Review International* but not receiving this service, please send your email address at sales@aacp.com.pk quoting subscription number.

This issue contains:

Kind Regards,

Huzaima Bukhari
Editor

Online Update is a special e-mail service that is part of your online subscription

AA Consultants & Publishers
Suite # 14, 2nd Floor, Sadiq Plaza, Regal Chowk, Mall Road,
Lahore, Pakistan
Phone. 042-36365582 & 042-36280015 Fax 042-35310721
Email: sales@aacp.com.pk website: http://aacp.com.pk

France

Hollande secures approval for 75 percent tax rate

Re-engineered proposals from France to slap a 75 percent income tax on individuals with salaries exceeding EUR1m (USD1.3m) received a green light from the nation's highest court, the Constitutional Council, on December 29, 2013.

The revised proposals – drafted to bypass the Council's previous constitutional objections aired in December 2012 – require that French companies shoulder the bulk of the tax burden. The 75 percent income tax rate will have retroactive effect on remuneration paid to French residents during 2013 and 2014. Two-thirds of this tax will be paid by employers. As a concession, tax payable will be capped at 5 percent of the company's annual turnover.

The ruling represents a u-turn from the Council following its December 2012 rejection of the proposal in which it stated that a 66 percent levy, incurred solely by an individual, should be the absolute statutory maximum.

French President Francois Hollande has attempted to defend the measure, condemned by France's most affluent taxpayers as excessive. Rebuffing suggestions of a mass exodus by the country's affluent, Hollande has underscored that the "millionaire tax" will be temporary, repealed from 2015 when the personal income tax burden will be reset and stable. Against the backdrop of rapidly declining support for Hollande's policies in public opinion polls, French taxpayers – on balance – have generally voiced support for the levy.

Overseas the Council's ruling will be well received; the United Kingdom's Prime Minister David Cameron quipped when France first announced the proposals that the nation would roll out the red carpet for France's wealthy should the nation push ahead with the 75 percent tax. Anticipating that the hike might go through, a number of France's wealthy have already relocated to lower tax states, such as actor Gérard Depardieu who returned his passport and publicly scolded the Government. Many more are expected to follow. – *Courtesy tax-news.com*

Ireland

Ireland considering USC cuts

Reports suggest that Ireland's Finance Department is considering cuts to the Universal Social Charge (USC) during preparations for the 2015 Budget.

Junior Finance Minister Brian Hayes has been saying that he would like to remove the charge in support of heavily-taxed workers.

On any income above EUR32,800, a single worker in Ireland pays an income tax rate of 42 percent, plus 4 percent Pay Related Social Insurance and the 7 percent USC.

Hayes says that the combined marginal tax rate of 52 percent is "scandalous."

The 2014 budget, announced last October, did not include any increases to the main tax rates, although DIRT was increased to 41 percent. More recently, Finance Minister Michael Noonan hinted that he may cut income tax rates if and when the Government has the resources to do so.

Ireland exited its troika bailout program last week. Tax revenues for the year to date are ahead of target and up EUR1.4bn (USD1.9bn) on 2012. The tax base has been broadened and moved away from transaction-based taxes, toward more sustainable forms of revenue generation.

Mr Hayes also said that he does not expect local authorities to increase the rate of property tax paid by householders once they are given the discretion to do so in 2015.

The Finance Department's recently issued a medium-term "Strategy for Growth" paper, which covers the period from 2014 to 2020. The document's purpose is to "point the way to a stable and prosperous future, and away from the failed policies of boom and bust that have cost us so dearly."

It makes clear that, within "strict overall budgetary constraints, taxation and expenditure policy must be oriented to continue to support economic growth and job creation." Significantly, it also hints that the Government may be able to achieve a combination of tax cuts and increased spending if revenue growth is reasonable.

The Government expects a deficit of 4.8 percent in 2014, well down from the outturn of 7 percent expected for 2013 but still well above the Maastricht target of 3 percent. – *Courtesy tax-news.com*

United Kingdom

Gauke explains UK tax inspection system

The UK's Exchequer Secretary to the Treasury has offered an update on the cases featured in HM Revenue and Customs' (HMRC) "Most Wanted Campaign."

David Gauke provided the information in a written parliamentary response earlier this month. The list was launched in August, 2012, when 20 photographs were issued to the UK press, along with a brief outline of each case. It was expanded to include 30 individuals this August.

According to Gauke, "HMRC continues to work towards bringing all current HMRC fugitives (including those featured in the Most Wanted Campaign) before the UK Courts. HMRC uses all available systems and resources to locate and trace individuals. This includes working closely with HMRC's fiscal liaison officers based overseas, Crown Prosecution Service, National Crime Agency, Interpol, and other international partners."

Proceedings have been launched in seven cases, but the lack of extradition treaties in six instances mean that similar action is not possible. European Arrest Warrants (EAWs) are nevertheless in place for two individuals, and HMRC is considering one further EAW. 11 fugitives have yet to be located, and HMRC is awaiting a legal decision in two further cases.

Gauke added that HMRC "continues to receive information concerning fugitives from the Most Wanted Campaign, both from the UK and from overseas. This information is analysed with the aim of supporting further arrests and successful extraditions from the European Union and elsewhere."

Gauke has also provided further details on the operation of HMRC's Fugitive Unit team. A separate written statement notes that the team "consists of one higher officer and two officers managed by one senior investigation officer." It shares information with the aim of tracking down tax fugitives, and "when an extradition is arranged the team are able to call on a cadre of HMRC officers specifically trained to handle extraditions from overseas."

At present, there are 124 HMRC fugitives, including those covered by the Most Wanted campaign. As Gauke explained, the Unit's role is "to review, trace and locate, and where possible, extradite all current HMRC fugitives (including those featured in the Most Wanted campaign) and bring them before the UK court specified in the First Instance or Failure to Appear Warrant."

"HMRC staff (including the Fugitive Unit) use all available systems and resources to carry out this work. This includes working closely with HMRC's fiscal liaison officers based overseas,

Crown Prosecution Service, National Crime Agency, Interpol, and other international partners."

Reacting to the figures, Gauke's opposite, the Shadow Exchequer Secretary Shabana Mahmood, warned that "People will astonished at the revelation that just four tax inspectors are chasing 124 tax fugitives despite [Chancellor] George Osborne claiming this to be a priority."

Mahmood accused Prime Minister David Cameron's Government of "totally failing to tackle tax avoidance and evasion or give it the priority it needs." – *Courtesy tax-news.com*

Privatisation of state units: Drain on resources – the same old reason

We are in for another round of privatisation of state assets. PIA could be the first institution to go. The reason given, for the public, is that it is a drain on the public exchequer.

Well, this reason is not new and has been floated whenever such decisions are made. It is so easy for the government to admit its inability to revive state assets or put in place systems in public organisations. It wants to spin off non- productive state-owned enterprises, without considering who was the sponsor of such institutions?

Unfortunately, the poor who financed these institutions for the rich to use this mode of transport, have no say in this or any other such decision. More than 80% of the population are not supposed to pay any income tax but are forced to pay indirect taxes because the government does not have the ability to tax the rich.

If the loss-making argument holds true, then why we have not heard that all non-performing state departments will be privatised. What are the achievements of Pakistan Customs, Federal Board of Revenue and other departments.

Have we heard that the FBR should be handed over to a private-public partnership. How much public money was spent on setting up the customs department and yet it is a failure. The personnel heading the department have ever thought why there is a gap of more than $5 billion between the books of Pakistan and China in export and import figures.

Finding the reason for this massive evasion is so hard that it is better to hide your head in the sand. It is an open secret as to who have been the beneficiaries of this corruption.

As always, the baboos, along with investors, are trying to portray that privatisation will help the poor as more funds for development will be available. Before taking the decision, did we think what happened when the cement industry was given in the hands of private sector.

It was said that once privatised, efficiency of cement plants would increase and that would lead to a decline in cement prices in the market. However, once it was done, cartels were formed and prices doubled within two years.

It is exactly the same in the case of banks. International practices are only applicable to administrative expenses. No one has time to

look into the international practice on the spreads. Privatised banks are making money at the expense of the industry.

In the case of PIA, has anyone thought of reviving this enterprise and what are the reasons for the losses? Can we reduce losses and make this organisation profitable if the hub is shifted to where all the traffic terminates (Lahore). Is it possible to have aircraft of only one manufacturer (either Boeing or Airbus) to make it easier to deal with inventory and other related issues like crew and engineering departments?

Can we have better flight management? For instance, flights going to China and Spain have a stay of more than five days and the airline bears the cost of all crew members for these days.

The same holds true for Pakistan Railways as well. Here again, the private sector is ready to swallow the organisation funded by the poor. Soon, we will hear a cabinet decision that it is imperative to privatise this state asset too.

The government estimates that it spends Rs500 billion to cover the losses suffered by state assets and its financial wizards insist that if such assets are liquidated there will at least be a saving of Rs500 billion. So far so good.

Have they ever thought of adding the cost of their inefficiency in just one department, the FBR. Is privatisation of this department also a possibility since the government has been unable to control the losses?

The writer is an engineer and business graduate and is working in the industry – *Courtesy The Express Tribune*

PM asks FBR to facilitate taxpayers through efficient reforms

Prime Minister Muhammad Nawaz Sharif on Monday said that Federal Board of Revenue (FBR) should reform the taxation system so as to facilitate the taxpayers.

Chairing a meeting on reforms in FBR and measures to provide relief to the taxpayer held here in at the PM's House. The Prime Minister also directed to decrease the rates of Income tax, Sales tax and other duties. The Prime Minister directed that a comprehensive reform package should be introduced in FBR which should simplify the procedures and enhance the tax returns. He stressed a tax regime to help the businesses grow.

In order to simplify the procedures and provide swift services to the taxpayer, the Prime Minister urged to introduce new technology and tracking system to minimize the discretion of the tax officer.

He stressed that FBR should come up with reform package in one month.

He directed that the Income Tax, GST and Customs slabs should be rationalized and simplified so that it leads to increase in income of the government.

The Prime Minister observed that corruption was the root cause of all problems and it had affected the economy. He asked the management of FBR to observe zero tolerance towards corruption.

The meeting was attended by Minister for Defense Khawaja Asif, Minister for Finance Ishaq Dar, Minister for Interior Ch Nisar, Minister for Petroleum Shahid Khaqan Abbasi, Minister for Railways Khawaja Saad Rafique and other senior government officials. – *Courtesy The Nation*

Assigned export quota: FED on sugar reduced to 0.5 percent

The government has announced tax incentive on the export of sugar by drastically reducing Federal Excise Duty (FED) from 8 percent to 0.5 percent on local sale of sugar equivalent to additional quantity (500,000 tons) actually exported by the sugar mills as per assigned export quota. The Federal Board of Revenue has issued SRO.1072(I)/2013 to this effect here, on Monday.

Sources said the concession would only be available to the mills engaged in export of additional quantity of 500,000 tons sugar as per specified quota. The reduced rate of duty shall only be applicable on the quantity of local sale of sugar equivalent to the quantity actually exported by the sugar manufacturers as per the export quota allotted and shall be available on submission of proof of such export.

According to the notification, the rate of duty shall only be applicable on the quantity of local supply of sugar equivalent to the quantity actually exported by the sugar manufacturer, in accordance with the export quota allocated in pursuance of the decision of the ECC in its meeting held on January 10, 2013 and decision of the ECC in its meeting held on September 7, 2013

whereby a maximum of 500,000 tons of sugar was allowed to be exported.

If a sugar manufacturer actually exports any quantity of sugar, only then the sugar manufacturer is allowed to charge the FED on equivalent quantity of local sale of sugar on supplies made in the three tax periods succeeding the tax period in which the export took place, it added.

However, sugar manufacturer will present the proof of such export to the concerned Commissioner of Inland Revenue along with the return for the tax period following the tax period in which such export took place. This is subject to the condition that the quantity exported does not exceed the quota allotted in pursuance of the aforesaid decision of the ECC. The benefit will not be admissible in respect of exports by land routes to Afghanistan of the ECC.

Following is the text of the notification issued on Monday: In exercise of the powers conferred by sub-section (4) of section 3 of the Federal Excise Act, 2005, the Federal Government is pleased to direct that the following amendments shall be made in its Notification No SRO 77(1)/2013, dated the February 7, 2013, namely:

In the aforesaid Notification, In condition (a), after the figure "2013" the words, comma and figures "and decision of the ECC in its meeting held on September 7, 2013 whereby a maximum of five hundred thousand metric tons of sugar was allowed to be exported" shall be added, and In explanation, for the words "tax period", occurring for the first time, the words "three tax periods" shall be substituted. – *Courtesy Business Recorder*

ADRC recommendations rejected: PSF manufacturer disallowed input claim

The Federal Board of Revenue has rejected the recommendations of the Alternative Dispute Resolution Committee (ADRC) constituted to resolve tax dispute of a leading manufacturer of polyester staple fiber (PSF) and disallowed input claim of Rs 15,053,869 on the diesel used during the manufacturing process of PSF.

Sources told here on Monday that the ADRC has recommended to the FBR to accept input tax adjustment claim, as the clarification issued by FBR and the reports of fact-finding survey teams are unanimous. The company is entitled to input tax adjustment,

ADRC recommendations added. On the other hand, FBR ruled that the committee has made recommendations in violations of the law. The ADRC has not worked out the apportionment of input tax on taxable and exempt supplies. ADRC cannot make recommendations in violation of the then prevalent law. The recommendation of ADRC to allow input tax adjustment and refund is in violation of SRO 578(I)/98. Thus, the Board in exercise of the powers conferred under section 47A (4), read with section 74 of the Sales Tax Act, 1990 rejects the recommendations of ADRC in the instant case, FBR added. Now, the rejection of ADRC recommendations would result in further litigation between the company and the FBR, sources said.

Details of the case revealed that the FBR on the request of the taxpayer constituted the Alternative Dispute Resolution Committee under section 47A of the Sales Tax Act, 1990 vide Order dated 23.08.2006 and same was reconstituted on 27.05.2013 in respect of the dispute raised by the applicant regarding addition of item No 11 in SRO 578(I)/98 through SRO 926(I)/99. The reconstituted ADR Committee comprised Chartered Accountant, Islamabad, (Chairman), former President RCCI, (Member) and Commissioner Inland Revenue, LTU, Islamabad, (Member).

Brief facts of the case are that the applicant claimed being the manufacturer of the PSF, the nature of Applicant's plant and technology requires High Speed Diesel & Light Diesel Oil for the purposes of firing up the furnaces which in turn provides the induction heat required for the complicated manufacturing process of PSF. Kerosene Oil is also utilised for similar purpose apart from its use as thinner for the furnace oil. Moreover, a major portion of HSD is also utilised for in-house captive power generation utilised in manufacture of the taxable supply as the applicant has no electricity connection of Wapda. Kerosene oil is also used at powerhouse for preventive cleaning, as well as air coolers of diesel engines, which are choked due to carbon deposits.

In this backdrop, the applicant claimed input of Rs 15,053,869 on HSD & LDO which was not accepted by the department. The applicant challenged the addition of item No 11 in SRO. 578(I)/98 before the Lahore High Court through Writ Petition No 11791/2000 which was disposed off by order dated 14.2.2002 with the direction to the petitioners to approach the competent authority appointed under section 30 and 45 of the Sales Tax Act, 1990. The department filed an appeal before the Supreme Court of

Pakistan against the orders of the Lahore High Court, Lahore. However both parties before the SC appeared with a consensus that ADRC forum will be used to dispose of the matter.

Sources said the recommendations submitted by the ADRC said that the FBR subsequently issued clarification C.No 3(27)S(Legal)/04 dated 12.2.2008 that input tax paid on diesel used in generation of electricity is to be considered as stock in trade in terms of SRO 578(I)/98 and input tax adjustment was admissible on the same if it was used in generation of taxable electric power or the power so generated was used in the manufacture of taxable goods. There does not appear to be any dispute about the purchase of subject diesel from a registered taxpayer while the two Survey Teams presumably constituted under section 47A(3) of the Sales Tax Act, 1990 read with Rule 67 of the Sales Tax Rules, 2006 by RTO Abbottabad and RTO Rawalpindi in their reports dated 25.9.2008 and 13.11.2012 confirmed consumption of diesel for power generation at Rs 14,529,054/- as against claim of Rs 15,053,869/-.

ADRC further recommended that a representative of the Collector of Sales Tax and Federal Excise, LTU, Islamabad did not appear before the committee while the member representing the department has been kind to confirm the availability on Departmental records of the aforesaid documents. That even, otherwise, the Committee finds support from the Lahore High Court order dated 14.2.2002, FBR clarification dated 12.2.2008, decision of the Appellate Tribunal, Faisalabad in the case of Nishat Mills Ltd and the reports of survey teams to finalise the recommendations.

The committee, in view of the discussion, based on the provisions of the law, elaborated by the case law, the clarification issued by FBR and the reports of fact-finding survey teams, is unanimous in recommending that the applicant is entitled to input tax adjustment of Rs 14,529,054/-.

While rejecting the recommendations of the ADRC, sources said that the FBR has given observations. As per FBR, while requesting for creation of ADRC, the applicants admitted in writing that they were unable to produce show cause notice, Order-in-Original and Order-in-Appeal pertaining to the case. It is not understood how the ADRC has decided the case without considering these important documents. It is also not understood how the applicant was able to produce documents showing diesel

purchase and consumption but could not produce the Orders passed against it.

The ADRC has omitted to mention that the then Collector, Sales Tax & Federal Excise, RTO, Rawalpindi had reported that the first team of senior auditors deputed to visit the unit was informed by the applicant's representatives that they had not retained old record relating to the period when the unit was under the control of another company of Hattar. However, the subsequent team visiting in 2008 was shown the record pertaining to 1999-2000, which creates doubts regarding authenticity of such record, FBR said.

The ADRC has also failed to consider the aspect regarding exemption of sales tax on finished product. In the letter dated 13.4.2011, the applicants have themselves mentioned that under SRO 580(I)/91 dated 27.6.1991, they enjoyed exemption for a period of five years from the date of setting up of industry. Thus, Unit I, which commenced production on 01.01.992 was eligible for exemption tilt December 1996, while Unit II commenced production on 14.06.1995, and thus entitled to exemption till 14.06.2000. No input tax adjustment is admissible against exempt supplies. The ADRC has not worked out the apportionment of input tax on taxable and exempt supplies.

On the request of the Collector ST&FE, RTO Rawalpindi, the Board authorised a team of auditors to visit the factory premises and verify from record whether the diesel on which input tax was claimed was used for power generation and for manufacturing of taxable goods. No report of the said team was received even till October 2012.

The FBR was of the view that the ADRC cannot make recommendations in violation of the then prevalent law. The legal position is that during the period in question, item No 11 remained inserted in SRO 578(I)/98 dated 12.06.1998 by SRO 926(I)/99 dated 16.08.1999, which barred input tax adjustment against diesel (whether used in taxable goods or not). The Order of the Lahore High Court dated 14.02.2002 did not strike out that entry, but merely directed the petitioner to approach the concerned officer. This was not done and the LHC order now stands surpassed by the Supreme Court Order dated 23.02.2006. As such, the recommendation of ADRC to allow input tax adjustment and refund is in violation of SRO 578(I)/98.

In view of the above stated facts and observations , the Board in exercise of the powers conferred under section 47A (4), read with section 74 of the Sales Tax Act, 1990 rejects the recommendations of ADRC in the instant case, the FBR added. – *Courtesy Business Recorder*

S.R.O. 1072(I)/2013, Islamabad, the 27th December, 2013.– In exercise of the powers conferred by sub-section (4) of section 3 of the Federal Excise Act, 2005, the Federal Government is pleased to direct that the following amendments shall be made in its Notification No. SRO 77(I)/2013, dated the 7th February, 2013, namely:–

In the aforesaid Notification,-

(i) In condition (a), after the figure "2013", the words, comma and figures "and decision of the ECC in its meeting held on 7th September, 2013 whereby a maximum of five hundred thousand metric tons of sugar was allowed to be exported" shall be added; and

(ii) In explanation, for the words "tax period", occurring for the first time, the words "three tax periods" shall be substituted.

No.SRB-3-4/MTP/47/2012/10202 Karachi, the 30th December, 2013

SINDH REVENUE BOARD CIRCULAR NO. 10/2013

Subject: **Direct debit e-payment facility for SRB taxpayers – implementation on e-SRB system.**

An IT system for on-line sales tax deposit and transfer of funds has been developed and implemented, in association with National Bank of Pakistan, on e-SRB Portal system. This facility is available for such of the SRB taxpayers who have their bank accounts in any of the non-line branches of NBP in Pakistan which shall transfer the funds (amounts and/or withheld amounts of Sindh sales tax) directly in Sindh Government's head of account "B-02384". Such of the taxpayers, using the facility, shall also receive, directly, the electronically generated CPRs from NBP.

2. The SRB taxpayers, desirous of availing of the Direct Debit e-Payment Facility are advised to visit the details and procedure of the facility on SRB website www.srb.gos.pk under its "User Guide" panel.

3. In case any taxpayer has any problem in understanding this Direct Debit Facility and/or in case he has any query to make or any clarification to seek, he may call SRB helpline (021) 111-778-000 or visit SRB helpdesk at the 9th Floor of Shaheen Complex, M.R. Kayani Road, Karachi, or contact SRB at info@srb.gos.pk or at e-support@srb.gos.pk at his convenience.

2013 TRI 2122 (Trib. Ind.)

INCOME TAX APPELLATE TRIBUNAL
KOLKATA "B" BENCH, KOLKATA

P. K. Bansal, Accountant Member and George Mathan, Judicial Member

FACTS/HELD

Section 2(22)(e): Inter-corporate deposits ("ICDs") are not "loans and advances" and are not assessable to tax as "deemed dividend"

1. The assessee received an inter-corporate deposit of Rs.11.20 cr from IFB Automotive Pvt. Ltd, a company in which it held 18% of the shares. The AO and CIT(A) held that the said ICD constituted "loans and afadvances" and was assessable as "deemed dividend" in the assessee's hands u/s 2(22)(e). On appeal by the assessee to the Tribunal HELD allowing the appeal:

> S. 2(22)(e) refers to 'loans' and 'advances' and does not refer to a 'deposit'. The fact that the term 'deposit' does not mean a 'loan' and that the two terms are two different & distinct terms is evident from the Explanation to S. 269T and S. 269SS of the Act where both the terms are used. Further, the second proviso to S. 269SS recognises the term 'loan' taken or 'deposit' accepted. Once it is accepted that the terms 'loan' and 'deposit' are two distinct terms which have distinct meaning then if only the term 'loan' is used in a particular section the 'deposit' received by an assessee cannot be treated as a 'loan' for that section. The Companies Act, 1956 also makes a distinction between a "loan" and a "deposit" in s. 58A, 269 & 370. The distinction between a "loan" and a "deposit" is that in the case of a "loan", the needy person approaches the lender for obtaining the loan. The loan is lent at the terms stated by the lender. In the case of a "deposit", the depositor goes to the depositee for investing his money primarily with the intention of earning interest. Also, s. 2(22)(e) enacts a deeming fiction and cannot be given a wider meaning than what it

purports to cover. It has to be interpreted strictly. Thus, the view of the AO & CIT(A) that an Inter-corporate deposit is similar to a loan is not correct (Gujarat Gas & Financial Services 115 ITD 218 (Ahd)(SB), Housing & Urban Development Corp 102 TTJ (Del)(SB) 936 & Bombay Oil Industries 28 SOT 383 (Bom) followed)

Order accordingly.

I.T.A No. 1721/Kol/2012 (Assessment Years: 2009-10) and I.T.A No. 114/Kol/2013 (Assessment Years: 2009-10).

Heard on: 12th March, 2013.

Decided on: 12th March, 2013.

Present at hearing: S.K. Tulsiyan, Advocate, for Appellant. Ajoy Kr. Singh, CIT (DR), for Respondent in I.T.A No. 1721/Kol/2012. Ajoy Kr. Singh, CIT (DR), for Appellant. S.K. Tulsiyan, Advocate, for Respondent in I.T.A. No. 114/Kol/2013.

JUDGMENT

Per George Mathan:– (Judicial Member)

ITA No. 1721/K/2012 is an appal filed by the assessee and ITA No. 114/Kol/2013 is an appeal filed by the revenue against the order of Ld. CIT(A), Central-VI, Kolkata in Appeal No. 173/CIT(A)-VI/R-6/11-12/Kol dated 25.10.2012 for the AY 2009-10.

2. Shri S. K. Tulsiyan, Advocate, Advocate represented on behalf of assessee and Shri Ajoy Kr. Singh, CIT (DR) represented on behalf of revenue.

3. In the assessee's appeal the assessee has raised following grounds:

"1. That, the Ld. CIT(A) erred in retaining addition of Inter-corporate Deposit (ICD) of Rs.11.20 crs. received by the appellant from M/s IFB Automotive Pvt. Ltd. out of total addition of Rs.19.00 crs. made by the Ld. A.O. treating the same as deemed dividend u/s.2(22)(e) of the I.T. Act.

1 (a). That, while retaining the addition of Inter-corporate Deposit (ICD) of Rs. 11.20 crs., the Ld.CIT(A) failed to consider that Sec.2(22)(e) of the I.T. Act contained a deeming provision and therefore its terms and conditions were required to be interpreted strictly.

1(b). That, both the Ld. A.O. and the CIT(A) erred in equating lnter-corporate Deposits (ICD) with loans as mentioned in Sec.2(22)(e) of the I.T. Act.

1(c). That, while adding the Inter-corporate Deposit (ICD) received by the appellant from M/s IFB Automotive Pvt. Ltd.,

both the Ld. A.O. and the Ld. CIT(A) failed to examíne the matter in the light of the legislative intention of enacting Sec.2(22)(e) of the I.T. Act.

1(d). That, since the Inter-corporate Deposit (ICD) was received by the assessee from M/s IFB Automotive Pvt. Ltd. not for its own benefit, no addition u/s.2(22)(e) of the I.T. Act was called for.

2. That, both the Ld. A.O. and the Ld. CIT(A) erred in omputing the expenses attributable to the earning of the assessees exempt dividend income of Rs. 1,93,569 at Rs.7,28,706 in terms of Sec. 14A/RuIe-8D of the I.T. Rules.

2(a). That, since the assessees dividend income of Rs.1,81,065 received at the time of the redemption of 29,98,000 units of Birla Sun Life Liquid Plus arose out of its investment of Rs.3,00,00,000 which was paid out of its own fund, both the Ld. A.O. and the CIT(A) erred in disallowing proportionate interest expenses of Rs.5,74,371 in terms of Rule- 8D(2)(ii) of the l.T. Rules.

2(b). That, both the Ld. A.O. and the CIT(A) erred in computing the average investment for the purpose of Rule-8D(2)(iii) of the I.T. Rules at Rs.3,08,67,000 by taking into account all investments of the assessee as per its Balance Sheet instead of only the dividend yielding investments.

3. That, both the Ld. A.O. and the CIT(A) erred in disallowing the loss of Rs.10,84,000 arising to the assessee on account of fluctuation of foreign exchange rates on the ground that as the said loss was not actually paid by it, it was only a notional Ioss.

4. That, the appellant craves leave to alter, amend, rescind and substitute any of the abovementioned grounds and add any further grounds before or at the time of hearing of the appeal."

And in revenue's appeal, the revenue has raised following grounds:

"1. Whether on the facts and circumstances of the case, Ld. CIT(A) erred in Iaw in holding that loan granted by M/s IFB Automotive Pvt Ltd. be not treated as deemed dividend within the meaning of Sec 2(22)(e) of the IT Act,1961.

2. Whether on the facts and circumstances of the case, Ld. CIT(A) erred in law in holding that bad debt claimed by the assessee is allowed even when conditions laid down as per Sec 36(1)(vi) is not fulfilled.

3. Whether on the facts and circumstances of the case, Ld. CIT(A) erred in law in deleting the addition made u/s 43B even when the amount was not paid within due date.

4. Whether on the facts and circumstances of the case, Ld. CIT(A) erred in law in deleting the addition made on account of excessive and unjustified business expenditure.

5. Whether on the facts and circumstances of the case, Ld. CIT(A) erred in law in deleting the addition made on account of notional loss due to foreign exchange fluctuation.

6. That the appellant craves for Ieave to add, delete or modify any of the grounds of appeal before or at the time of hearing."

4. First we take up ITA No. 1721/K/2012 (Assessee's appeal). In the assessee's appeal in regard to ground no. 1 to 1(d) the assessee has challenged the action of CIT(A in retaining the addition of the Intercorporate deposits of an amount of Rs.11.20 cr. received by the assessee from M/s. IFB Automotive Pvt. Ltd. (M/s. IFB) out of the total addition of Rs.19 cr. made by AO by treating the same as deemed dividend u/s. 2(22)(e) of the Act. It was submitted by the Ld. AR that the assessee is a company which is doing the business of manufacture of rectified spirit and IMFL, marine products and trading of feed and beer. It was the submission that the assessee had received Inter-corporate deposits from M/s. IFB. It was the submission that the assessee held 18.82% of the shares of M/s. IFB. It was the submission that the Inter corporate deposits received by the assessee had been treated by the AO as a loan received by the assessee from M/s. IFB. It was the submission that consequent to the treatment of the Inter-corporate deposits as a loan the AO had invoked the provisions of section 2(22)(e) of the Act and had made the addition of the total of the Inter corporate deposit received. It was the submission that the Ld. AR had filed a detailed written submission running into 18 pages. It was the submission that though the AO had taken the figure of Rs.19 cr. in fact the assessee had received the Inter corporate deposits of only an amount of Rs.11.20 cr. The Ld. AR drew our attention to the letters from M/s. IFB at pages 187 to 201 of the papr book, wherein it was mentioned by M/s. IFB that they were interested in placing the Inter corporate deposit with the assessee as banks would not be interested in taking short term deposit. It was further shown that an amount of Rs.17.5 cr. had deposited by M/s. IFB through RTGS in the bank account of the assesee but Rs.12 cr. out of the same was immediately returned as it was deposited without the assessee's permission. It was further submission that on appeal the Ld. CIT(A) had accepted the contention of the assessee that the Inter corporate deposit was only to an extent of Rs.11.20 cr. It was the submission that even the Ld. CIT(A) had treated the Inter corporate deposits as a loan and had consequently treated the amount of Rs.11.20 cr. as deemed dividend u/s. 2(22)(e) of the Act. The Ld. AR drew our attention to the order of Ld. CIT(A), wherein the Ld. CIT(A) had asked for certain clarifications and which were answered by the assessee, the same was found in pages 11 to 14 of the order of the Ld. CIT(A) in para 6 of his order. It was the

submission that the Inter corporate deposits were not in the nature of loan and the assessee had never asked M/s. IFB for any loan. The Ld. AR drew our attention to para 24 of the order of Ld. CIT(A) at page 22 of his order, wherein the Ld. CIT(A) has on the ground that the word "Inter-corporate deposit" was very limited to Companies and was synonymous with the term loan as also on the ground that Inter corporate deposit is not a legal word in the I. T. Act nor used any where in the Act to make it different from loans or advances held the same to be a loan for the purpose of invoking the provisions of section 2(22)(e) of the Act. It was the further submission by the Ld. AR that the decisions relied on by the Ld. CIT(A) were clearly in respect of those companies where a loan had been taken, it was not a case where Inter corporate deposits were taken. It was the further submission that the issue in the assessee's case was squarely covered by the decision of the Coordinate Bench of this Tribunal, Bombay Bench in the case of Bombay Oil Industries Ltd. reported in (2009) 28 SOT 383 (Bom), wherein it had been held that Intercorporate deposits were different from loans and advances and the same would not come within the purview of deemed dividend. It was the submission that the Ld. CIT(A) in para 23 of his order did refer to the decision in the case of Bombay Oil Industries Ltd. (supra), but, however, wrongly interpretated the said decision to be a case where the issue was whether interest on deposits representing investment of surplus fund would fall or not under the definition of Interest as given in section 2(7) of the Interest Tax Act, 1974. The Ld. AR further drew our attention to the decision of the Hon'ble jurisdictional High Court of Calcutta in the case of *Pradip Kr. Malhotra vs. CIT* reported in 338 ITR 538, wherein it has been categorically held that a gratuitous loan or advance given by a company to those classes of shareholders would not come within the purview of section 2(22)(e) of the Act but not cases where the loan or advance is given in return to an advantage conferred upon the company by such shareholders. The Ld. AR further drew our attention to the decision of the Special Bench of this Tribunal in the case of *Gujarat Gas & Financial Services Ltd.* reported in 115 ITD 218 (Ahd)(SB), wherein in para 68 of the said order, the Special Bench has considered the issue whether the interest on Inter-corporate deposits is interest on loans or advances and had come to a conclusion that the two expressions loans and a deposit are to be taken different and distinction can be summed up by stating that in the case of loan the needy person approaches the lender for obtaining the loan therefrom. The loan is clearly loan at the terms stated by the lender. In the case of deposits, however, the depositor goes to the depositee for investing his money primarily with the intention of earning interest. Consequently, the Special Bench had held that investments made by way of short term deposits cannot be considered as loans and advances. It was the submission that in view of the decision of the Coordinate Bench of this Tribunal in the case of Bombay Oil Industries Ltd. (supra) as also the decision of the Special Bench in the case of Gujarat Gas & Financial

Services Ltd. (supra) as also the dsecision of the Hon'ble jurisdictional High Court of Calcutta in the case of Pradip Kr. Malhotra (supra), the addition as sustained by the Ld. CIT(A) by applying the provisions of section 2(22)(e) of the Act was liable to be deleted in so far as the assessee had not taken any loans from M/s. IFB, but M/s. IFB had placed the Intercorporate deposits with the assessee. In reply, the Ld. CIT(DR) drew our attention to the order of the Ld. CIT(A) in para 6 referred to supra, wherein the Ld. CIT(A) had asked for certain clarifications from the assessee. He further drew our attention to para 8 of the order of CIT(A) to submit that the documents as produced before the Ld. CIT(A) representing the Director's Minutes Book resolutions passed by the Board of Directors could be a fabricated document in sofar as the documents were not serially numbered. It was the submission that the term Intercorporate Deposit had been rightly treated by the Ld. CIT(A) and the AO to be a loan or advance to which the provisions of section 2(22)(e) of the Act applied. The Ld. CIT(DR) vehemently supported the orders of the lower authorities and further relied on the decision of the Hon'ble Bombay High Court in the case of Star Chemicals Pvt. Ltd. reported in 203 ITR 11, wherein it has been held that a loan to a shareholder to the extent to which the company process accumulated profits was liable to be treated as deemed dividend. It was the submission that the assessee having taken the loan from M/s. IFB under whatever name called the same was liable to be treated as a deemed dividend u/s. 2(22)(e) of the Act.

5. We have considered the rival submissions. At the outset, a perusal of the facts in the assessee's case clearly show that the dispute in the appeal primarily revolves around the issue as to whether the Intercorporate Deposits received by the assesee from M/s. IFB is a 'loan' or 'advance' or is a 'deposit'. Admittedly, the provisions of section 2(22)(e) of the Act refers to only 'loans' and 'advances' it does not talk of a 'deposit'. The fact that the term 'deposit' cannot mean a 'loan' and that the two terms 'loan' and the term 'deposit' are two different distinct terms is evident from the explanation to section 269T as also section 269SS of the Act where both the terms are used. Further, the second proviso to section 269SS of the Act recognises the term 'loan' taken or 'deposit' accepted. Once it is an accepted fact that the terms 'loan' and 'deposit' are two distinct terms which has distinct meaning then if only the term 'loan' is used in a particular section the deposit received by an assessee cannot be treated as a 'loan' for that section. Here, we may also mention that in section 269T of the Act, the term 'deposit' has been explained vide various circular issued by CBDT. Thus, the view taken by the Ld. CIT(A) that the Intercorporate deposit is similar to the loan would no longer have legs to stand. A perusal of the decision of Hon'ble Special Bench of this Tribunal in the case of Gujarat Gas & Financial Services Ltd. referred to supra, clearly shows that the Hon'ble Special Bench had taken into consideration the decision of the Special Bench of this Tribunal in the

case of Housing & Urban Development Corporation Ltd. reported in 102 TTJ (Del.)(SB) 936 to come to the conclusion that loans and deposits are to be taken different and distinct. Further, in view of the decision of Hon'ble Coordinate Bench of this Tribunal in the case of Bombay Oil Industries Ltd. , referred to supra, wherein the coordinate bench of this Tribunal has held as follows:

> *"10. We have heard the rival submissions and perused the material on record. The authorities below have not controverted the claim of the assessee company that the amount received from above three companies is ICDs. The AO held against the assessee only on account that it had failed to explain, the investment is neither loan or advance. It is a settled position that deposits cannot be equated with loans or advances. The jurisdictional High Court in the Durga Prasad Mandelia's case (supra) has noticed the distinction between deposits and loans in the context of s. 370 of the Companies Act. The Court held as under:*
>
> > *"There can be no controversy that in a transaction of a deposit of money or a loan, a relationship of a debtor and creditor must come into existence. The terms 'deposit' and 'loan' may not be mutually exclusive, but nonetheless in each case what must be considered is the intentíon of the parties and the circumstances. In the present case, barring the assertion of the respondent that the moneys advanced by the company to the Associated Cement Companies constitute a loan and offend s. 370 of the Companies Act, there is nothing else to show that moneys have been advanced as a loan. In the context of the statutory provisions, the word 'loan' may be used in the sense of a 'loan' not amounting to a deposit. The word loan in s. 370 must now be construed as dealing with loans not amounting to deposits, because, otherwìse, if deposìt of moneys with corporate bodies were to be treated as loans, then deposits with scheduled banks would also fall within the ambit of s. 370 of the Companies Act. Therefore, moneys given by the company to the other bodies corporate is a loan within the meaning of s. 370 of the Companies Act must be negatived. Therefore, the petitioners would well be entitled to the relief."*
>
> *Sec. 370 of the Companies Act, 1956 was subsequently amended to include deposits ínto its ambit thereby indicating the distinction between deposits and loans/advances. The recent decision of the Tribunal in the case of Gujarat Gas Financial Services Ltd.'s case (supra) has elaborately considered the issue whether interest on ICDs is interest on loans or advances and whether the same is exigible to chargeable interest under Interest-tax Act. The Tribunal after considering the entire*

precedent on the issue though in the context of the Interest-tax Act had categorically held that interest on ICDs is not akin to interest on loans or advances. The relevant portion of the order of the Tribunal cited supra which runs from paras 68 to 74 is reproduced below:

> *"68. Before the AO the assessee as regards income from ICD the assessee company accepted this interest of Rs. 1,21,54,153 along with interest on bill discountìng Rs. 1,48,74,208 and other interest of Rs. 3,66,184 can be bought under the purview of the Interest-tax Act, 1974. However before CIT(A) it was submitted that these are ìnterest on deposits and the nature is that of the investment and so interest-tax being leviable on loans and advances and not on fixed deposits, the amount was not to be included. The CIT(A) held:*
>
> > *"I have carefully considered the matter and find that the definition of interest does not speak of excluding this amount in its definition. Accordingly therefore, the inclusion by the AO of these items is found justified and is upheld."*
>
> *69. The submission of the assessee is that these ICDs being neither loans or advances, interest earned on these is not exigibte to interest tax in view of the decision of Ahmedabad Tribunal in the case of Utkarsh Fincap (P) Ltd. vs. ITO (2006) 101 TTJ (Ahd) 210. Reliance is also placed on the decision of Housing & Urban Development Corporation Ltd. vs. Jt. CIT (2006) 102 TTJ (Del) (SB) 936 : (2006) 5 SOT 918 (Del)(SB), Stanrose Holding Ltd. (ITA No. 25/Mum/1966) and Persepolis Investment Co. (P) Ltd. (ITA No. 51/Mum/1997). The Learned Departmental Representative on the other hand supported the decision of the CIT(A) and submitted that when assessee itself had offered it to tax where the question of allowing it as not taxable. He also submitted that it is taxable as hetd in Bajaj Auto Holdings Ltd. vs. Dy. CIT (2005) 96 TTJ (Mumbai) 856 : (2005) 95 ITD 356 (Mumbai).*
>
> *70. We have heard the parties and considered the riva submissions. It might be true that assessee had offered it to tax initially but he claimed it as not taxable and therefore the matter has to be examined on merits and to determine as to whether it is taxable under the Act. We find it is not taxable in the light of the decision in the case of Utkarsh Fìncap (P) Ltd. (supra) wherein Ahmedabad Bench of the Tribunat after considering the decision in the case of Federation of Andhra Pradesh Chambers of Commerce & Industry & Ors. vs. State of Andhra Pradesh & Ors. (2001) 165 CTR (SC) 672 : (2001)*

247 ITR 36 (SC), CIT vs. Sahara India Savings & Investment Corporation Ltd. (2003) 185 CTR (All) 136 : (2003) 264 ITR 646 (All) and following the decisions in the case of Gujarat Industrial Investment Corpn. Ltd. (sic), Oriental Insurance Co, Ltd. vs. Dy. CIT (2004) 82 TTJ (Del) 1084 : (2004) 89 ITD 520 (Del) held that interest on ICDS are not chargeable to interest-tax, as the deposits are not in the nature of loans or advances. It held as under:

> *"The words 'loans and advances' should be understood conjointly and not in isolation. If so read, the advances which are in the nature of loan alone should be covered in the term. Ordinarily an advance is a payment beforehand and it does not connote, the idea of repayment. It is adjusted when the action for which the money is advanced is completed and if not repaid on expiry of the loan like a deposit. The company is not bound to accept the deposit made, if proceedings on the basis of the prospectus a person interest to make a deposit. By issuing prospectus of a company invites offer for making deposit and that is not offer to receive deposit whereas in case of loan the assessee prays for a loan. It offers to borrow money and once that offer is accepted, the lender is bound to give money to the borrower on terms settled. It is also to be noticed that a taxing statute has to be strictly construed and the subject cannot be taxed unless comes within the letter of law. The argument that a particular income falls within the spirit of the law cannot be availed of by the Revenue. It is trite law that no tax can be imposed on the subject without the words in the Act. No tax can be imposed by inference or analogy. The cardinal principle of interpretation of fiscal law is that it should be considered strictly. In view of the above, the interest in ICDS unless they clearly fall within the meaning of interest on loans and advances would not be taxable. ICD can neither be a loan not an advance. Therefore, the AO is directed to exclude the interest on ICD from the assessment of the assessee. Consequently, the levy of penalty made would also not stand. They are, accordingly deleted."*

71. It has considered the decision of Bajaj Auto Holdings Ltd.s case (supra) referred to by the CIT(A) and distinguished by stating that Mumbai Bench has proceeded on a footing that deposit would be an advance. and would be includible ìn the term with interest on deposit and advance. The Bombay Bench is more persuaded by the reason that the interest on deposit was not excluded from the definition of interest and

the term interest on loans and advances was wide enough to include the same. It had not considered that whether it was not a loan nor an advance and as to whether the amended definition of interest under the Act was exhaustive or inclusive. In holding that the ICD is not an advance the Ahmedabad Tribunal also noticed that the meaning of the term advance as understood in the commercial words and as stated under the title what is advance in the following words:

> *"It was held in KM. Mohammed Abdul Kadir Rowther vs. S. Muthia Chettiar (1960) 2 Mad. LJ 13 at 15 that advance means literally a payment beforehand; in certain cases it may be a loan but it cannot be said that a sum paid by way of advance is necessarily a loan. In Raja of Venkatagiri vs. Krishnayya Rao Bahadur AIR 1948 PC 150 at p. 155, it was observed that ordinarily and advance does not connote any idea of repayment. It is, therefore, clear that the word advanced used in s. 296 means an advance in the nature of a loan and not merely an advance as is understood in the common parlance in the sense of payment of money beforehand and which is likely to become due at some future time."*

72. It has also referred to s. 296 of Companies Act regulating loans to directors for book debt which was in the nature of loans or advances from its inception.

73. In the case of Housing & Urban Development Corporation Ltd. (supra), the Special Bench after considering various decisions and circulars of CBDT held that deposits in the form of securities and bonds cannot be considered as loans and advances and as such interest thereon shall be outside the scope of interest defined under s. 2(7) of the Interesttax Act. Para 22 of the order reads as under:

> *"22. From the foregoing discussion we are of the considered view that despite similarities, the two expressions loans and deposits are to be taken different and the distinction can be summed up by stating that in the case of loan, the needy person approaches the lender for obtaining the loan therefrom. The loan is clearly lent at the terms stated by the lender. In the case of deposit, however, the depositor goes to the depositee for investing his money primarily with the intention of earning interest. In view of this legal position, it has to be held that interest on deposits representing investment of surplus funds would also not fall under the definition of interest as given in s. 2(7) of the Act and as such would not be liable to interest tax. The answer to the question under reference in*

our humble opinion is that investments made by way of short-term deposits and also in the form of securities and bonds cannot be considered as loans and advances and as such interest thereon shall be outside the scope of 'interest' defined under s. 2(7) of the Act."

74. In these circumstances we hold that interest on ICDs is not an interest on loan or advance therefore would not be includible in the chargeable interest under the Interesttax Act.

From the above it is clear there is distinction between deposits vis-a-vis loans/advances. s. 2(22)(e) enacts a deeming fiction whereby the scope and ambit of the word dividend has been enlarged to bring within its sweep certain payments made by a company as per the situations enumerated in the section. Such a deeming fiction would not be given a wider meaning than what it purports to do. The provisions would necessarily be accorded strict interpretation and the ambit of the fiction would not be pressed beyond its true limits. The requisite condition for invoking s. 2(22)(e) of the Act is that payment must be by way of loan or advances. Since there is a clear distinction between the ICDs vis-à-vis loans/advances, according to us the authorities below were not right in treating the same as deemed dividend under s. 2(22)(e) of the Act. Since we hold that ICDs do not come within the purview of deemed dividend under s. 2(22)(e) of the Act, the alternative contention of the assessee namely by virtue of s. 2(22)(e)(ii) of the Act, the unsecured loans received by the assessee is not dividend is not adjudicated."

We are of the view that the Intercorporate deposits cannot be treated as a loan falling within the purview of section 2(22)(e) of the Act.

6. Admittedly, the Ld. CIT(A) has also accepted the fact that what the assessee has received is Intercorporate deposits, this fact remains unchallenged. The Ld. CIT(A) has, after accepting that this is intercorporate deposit proceeded to hold that the term intercorporate deposit was synonymous of loan. At this point, the Ld. CIT(A) fell into error as an intercorporate deposit is not a loan but a deposit which has a meaning different from the term loan. The decisions as relied on by the Ld. CIT(A) as also by the Ld. CIT(DR), admittedly, are on 'loans'. None of the decisions referred to by the Ld. CIT(A) or the Ld. CIT(DR) discusses anywhere that deposits are to be treated as loans. Consequently, respectfully following the decision of the coordinate bench of this Tribunal in the case of Bombay Oil Industries Ltd. referred to supra, the addition representing intercorporate deposits treated as loan by the AO and as confirmed by the Ld. CIT(A) stands deleted.

7. In regard to ground nos. 2 to 2(b) of the assessee's appeal which was against the action of Ld. CIT(A) in computing the expenses attributable to the earning of the assessee's exempt dividend income, it was submitted by the Ld. AR that the issue is covered by the decision of the Hon'ble Bombay High Court in the case of *Godrej & Boycee Mfg. Co. Ltd. vs. DCIT* reported in 328 ITR 81. It was the submission that the assessee itself had invoked the provisions of section 14A of the Act and had disallowed the expenditure attributable to the earning of the dividend income. It was the submission that the assessee had a share capital of Rs.8 cr. and had reserves and surplus at Rs.56 cr. It was the submission that the investments were only Rs.2,96,17,000/-. It was the submission that as per the decision of Godrej & Boycee Mfg. Co. Ltd., referred to supra, there must be a proximate relationship between the expenditure and the income which does not form part of the total income. It was the submission that the AO had not shown how the expenditure as disallowed by him had any proximate relationship to the income which does not form part of the total income. In reply, the Ld. DR vehemently supported the order of AO. It was the submission that as the assessee had not given any convincing reply before the AO, the AO had made the said addition. It was the submission that the issue can be restored to the file of the AO for readjudication in line with the decision of the Hon'ble Bombay High Court in the case of Godrej & Boycee Mfg. Co. Ltd., referred to supra,.

8. We have considered the rival submissions. A perusal of the order of the Ld. CIT(A) shows that the Ld. CIT(A) in para 36 of his order states that the assessee has not been able to establish with sufficient material the manner of calculating the amount disallowable for earning the exempt income. However, a perusal of the decision of the Hon'ble Bombay High Court in the case of Godrej & Boycee Mfg. Co. Ltd., referred to supra, shows that this is not what the said decision directs. Under these circumstances, this issue is restored to the file of the AO for readjudication in line with the decision of the Hon'ble Bombay High Court in the case of Godrej & Boycee Mfg. Co. Ltd., referred to supra.

9. In regard to ground no.3 of assessee's appeal, which was against the action of the Ld. CIT(A) in disallowing the loss of Rs.10,84,000/- arising to the assessee on account of the fluctuation of foreign exchange rate, it was submitted by the Ld. AR that the issue was squarely covered by the decision of the Hon'ble Supreme Court in the case of CIT Vs. Woodward Governor India (P) Ltd. reported in 312 ITR 254. It was the submission that the assessee had taken a working capital loan. It was the submission that this issue can be restored to the file of the AO for readjudication in line with the decision of the Hon'ble Supreme Court in the case of Woodward Governor India (P) Ltd., referred to supra. It was the further submission that in the immediately subsequent assessment year the assessee had shown a profit of Rs.4,93,000/- and the same had

also been offered to tax. In reply, the Ld. DR submitted that the issue can be restored to the file of AO for readjudication.

10. We have considered the rival submissions. A perusal of the order of the AO clearly shows that the AO has not taken into consideration the decision of the Hon'ble Supreme Court in the case of Woodward Governor India (P) Ltd., referred to supra, when making the said disallowance. Under these circumstances, this issue is restored to the file of the AO for readjudication after granting the assessee adequate opportunity to substantiate its case as also to take into consideration the decision of the Hon'ble Supreme Court in the case of Woodward Governor India (P) Ltd., referred to supra. This ground of appeal of assessee is allowed for statistical purposes.

11. Ground No. 4 of the assessee's appeal is general in nature.

12. Now, we are coming to revenue's appea i.e. ITA No.114/K/2013. In regard to the revenue's appeal in ground no. 1, which was against the action of CIT(A) in holding that the loan granted by M/s. IFB was not to be treated as deemed dividend. The Ld. CIT(DR) submitted that the submissions in regard to ground no.1 to 1(d) of assessee's appeal was applicable to this ground also. The Ld. AR in reply, reiterated the stand in regard to the said grounds in the assessee's appeal.

13. We have considered the rival submissions. At the out set, a perusal of the order of CIT(A) clearly shows that the Ld. CIT(A) has not held that the loan granted by M/s. IFB was not deemed dividend within the meaning of section 2(22)(e) of the Act. Consequently, it is noticed that the ground as raised by the revenue is misconcieved and the same is dismissed.

14. In regard to ground no.2 of revenue's appeal, which was against the action of Ld. CIT(A) in holding that the bad debts claimed by the assessee was allowable even though the conditions laid down in section 36(i)(vi) of the Act is not fulfilled, it was submitted by the Ld. DR that the assessee had not satisfied the condition that the debt had earlier been taken in computing the assessabe income. The Ld. CIT(DR) vehementy supported the order of the AO. The Ld. AR submitted that the amount was a trading loss and was directly connected to the assessee's business. It was the submission that this amount had been shown as income in the year of sale. The trading loss in a business was deductible in computing the profits of the business. It was the submission that the copies of the ledger account of M/s. Satya Sai Sea Food and M/s. Amriteesh Enterprises were not also sent to the AO by CIT(A) and it was only after verifying the same, the addition as made by AO have been deleted.

15. We have considered the rival submissions. A perusal of the order of the Ld. CIT(A) in para 58 of his order clearly shows that the ledger account of M/s. Satya Sai See Food and M/s. Amriteesh Enterprises was sent by the Ld. CIT(A) to the AO. No defect in the same had been pointed

out. Further, a perusal of the ground as raised by the revenue clearly shows that the revenue is against the action of the ld. CIT(A) in deleting the addition by accepting a claim of bad debt whereas Ld. CIT(A has categorically held that it was a business loss having nexus with the business dealing with the assessee. Consequently, here also, it is noticed that the ground as raised by the revenue is misconcieved as the Ld. CIT(A) has not held that the bad debt is allowable but the loss is allowable as a trading loss. Consequently, the said ground stands dismissed.

16. In regard to ground no. 3 of revenue's appeal, which is against the action of Ld. CIT(A) in deleting the addition made by the AO u/s. 43B of the Act. The Ld. CIT, DR submitted that the amount of PF and ESI had not been paid within the due date as provided in the PF Act. In reply, the Ld. AR submitted that the amounts have been paid before the due date of filing the return. It was the submission that in view of the decision of Hon'ble Supreme Court in the case of Alom Extrusions Ltd. reportred in 319 ITR 306, the same was liable to be allowed. He vehemently supported the order of the Ld. CIT(A). A perusal of the decision of the Ld. CIT(A) in para 60 and 61 of his order clearly shows that the Ld. CIT(A) has taken into consideration the decision of the Hon'ble jurisdictional High Court in the case of *Arambag Hatcheries Ltd. vs. CIT* in ITA No.267 of 2004 dated 11.03.2011 for deleting the disallowance as the PF and ESI amounts have been deposited within the due date of filing of the income tax return u/s. 139(1) of the Act. It is also noticed that the issue is squarely covered by the decision of the Hon'ble Supreme Court in the case of Alom Extrusions Ltd., referred to supra. Under these circumstances, the said ground stands dismissed.

17. In regard to ground no.4 of revenue's appeal, which was against the action of Ld. CIT(A) in deleting the addition made on account of excessive and unjustified business expenditure, the Ld. CIT,DR submitted that to prevent the leakage of revenue on account of unjustified expenditure 1% of the expenditure claimed by the assessee was treated as excessive and disallowed. The Ld. DR vehemently supported the order of AO. In reply, the Ld. AR submitted that the books of account of the assessee having not been rejected and no defects in the same have been pointed out, consequently, no disallowance was call for. He vehemently supported the order of Ld. CIT(A) on this issue.

18. We have heard rival submissions. A perusal of para 66 of the order of CIT(A) clearly shows that the Ld. CIT(A) has taken into consideration that the gross profit and net profit ratio for the current assessment year was better than that of the immediately earlier assessment year. Further, we are of the view that as no defects in the books of account have been pointed out no ad hoc disallowance can be made on presumptions and surmises that there is leakage of revenue. Under these circumstances, we are of the view that the finding of the Ld.

CIT(A) on this issue does not call for any interference and consequently, the said ground stands dismissed.

19. In regard to ground no. 5 of revenue's appeal, which is against the action of Ld. CIT(A) in deleting the addition made on account of notional loss due to foreign exchange fluctuations, it was fairly agreed by both the sides that the issue was identical to the issue in ground no. 3 of assessee's appeal. As ground no. 3 of assessee's appeal has been restored to the file of AO for readjudication after taking into consideration the decision of the Hon'ble Supreme Court in the case of Woodward Governor India (P) Ltd., referred to supra, the said ground in revenue's appeal also stands allowed for statistical purposes.

20. Ground No. 6 of revenue's appeal is general in nature and does not call for any adjudication.

21. In the result, both the appeals of assessee and revenue are partly allowed for statistical purposes.

22. Order pronounced in the open court.

INCOME TAX APPELLATE TRIBUNAL
KOLKATA "C" BENCH, KOLKATA

Mahavir Singh, Judicial Member and Abraham P. George, Accountant Member

Appeal dismissed.

I.T.A. No. : 1600/Kol ./ 2011 (Assessment year : 2008-2009).

Heard on: 12th December, 2013.

Decided on: 19th December, 2013.

Present at hearing: V. Appala Raju, Addl . CIT, Sr. D.R., for Appellant. Ravi Tulsyan, A.R., for Respondent.

JUDGMENT

Per Abraham P. Geroge:– (Accountant Member)

1. In this appeal f i led by the Revenue, i t assails the delet ion of an addi tion of Rs.1,60,00,000/- made by the Assessing Of ficer under section 2(22)(e) of the Income Tax Act , 1961 (in short "The Act") , vide i ts Grounds No. 1 & 2.

2. Facts apropos are that assessee engaged in the business of trading in bul l ion had fi led i ts return for the impugned assessment year declaring an income of Rs.1,62,09,940/- . During the course of assessment proceedings, Assessing Of f icer noted that assessee was holding 10.03% of equi ty shares of one M/s. Chandra's Chemical Enterprises (P) Ltd. and 12% of equi ty shares of M/s. D.L. Jewels (P) Ltd. Assessee had received unsecured loans of Rs.1,50,00,000/- from the former and Rs.10,00,000/-

from the lat ter. Assessing Of f icer was of the opinion that Section 2(22)(e) of the Act was attracted. M/s. Chandra's Chemical Enterprises (P) Ltd. was having accumulated prof i ts of Rs.6,59,82,622/- as on 31.03.2008 and M/s. D. I . Jewels (P) Ltd. was having accumulated prof i t of Rs.17,98,965/- as on 31.03.2008. When put on not ice, assessee stated that these were term deposi ts received by i t from the said two companies and was shown as unsecured loan in the Balance-sheet for complying wi th Schedule VI of the Companies Act , 1956. As per the assessee, deposits were taken in the ordinary course of business. Assessee also produced a legal opinion taken by i t from Dr. Debi Prosad Pal , stat ing that deposi ts received from the said two companies would come within the except ions provided on Section 2(22) (e) of the Act . However, Assessing Of f icer did not accept these contentions. According to him, assessee was not a Banking or non-Banking Financial Insti tution. It had not taken any permission from RBI to receive any term deposi t . Confirmat ions given by the respect ive parties reflected that what were received were only unsecured loans. The loans were taken on di f ferent dates and hence, could not be considered as deposi t . Relying on the decision of Hon'ble Mumbai Bench of this Tribunal in the case of Oscar Industries (P) Ltd. –vs.- DCIT [98 ITD 339] , Assessing Of f icer came to a conclusion that the amounts received by the assessee from the two companies would fal l wi thin the realm of deemed dividend under section 2(22) (e) of the Act . Addi t ion of Rs.1,60,00,000/- was made.

3. Aggrieved, assessee moved in appeal before ld. CIT(Appeals). Argument of the assessee was that what were received from M/s. Chandra's Chemical Enterprises (P) Ltd. and M/s. D.I. Jewels (P) Ltd. were only inter-corporate deposi ts. As per the assessee, unless and until money received was in the nature of a loan or advance, sect ion 2(22)(e) would not be at tracted. Inter-corporate deposits received were for speci f ic period wi th speci fic interest rates. It was common in the corporate management to keep surplus funds in inter-corporate deposits. Just because i t was placed under the head "loans and advances" in the Balance-sheet for complying wi th the requirement of Schedule VI of the Companies Act , 1956, would not make i t a loan per se.

4. Ld. CIT(Appeals) was appreciat ive of these contentions. According to him, the sums were for a speci f ic period at speci fied interest rate. Interest was also paid by the assessee after deducting tax. Relying on the decision of the Hon'ble Delhi High Court in the case of *CIT vs. Anki tek Pvt . Ltd.* [340 ITR 42], ld. CIT(Appeals) held that deposi ts received in normal course of business could not be considered as loans and advances for the purpose of appl icat ion of section 2(22)(e) of the Act. Taking this view, he deleted the addi t ion.

5. Now before us, ld. D.R. strongly assai l ing the order of ld. CIT(Appeals) submi tted that assessee i tsel f had shown the amount as loan in i ts Balance-sheet. It , therefore, cannot say that such amounts

were inter-corporate deposi ts. Ld. CIT(Appeals) had reached a conclusion wi thout properly appreciating the nature of amounts received. Therefore, according to him, ld. CIT(Appeals) fel l in error in deleting the addi tions under section 2(22) (e) of the Act.

6. Per contra ld. A.R. supported the order of ld. CIT(Appeals). He also rel ied on the decision of coordinate Bench of this Tribunal in the case of *IFB Agro Industries Limi ted vs. JCIT* in ITA No. 1721/Kol/2012, order dated 12.03.2013, in support of his content ion, that Sect ion 2(22)(e) could not be roped in, to tax on inter-corporate deposi ts as deemed dividend.

7. We have heard the rival contentions and perused the material avai lable on record. During the course of hearing, assessee produced copies of ledger accounts of M/s. Chandra's Chemical Enterprises (P) Ltd. as wel l as M/s. D. I. Jewels (P) Ltd. as appearing in its books. Entries in these ledger marked as Annexure-A & Annexure-B are reproduced hereunder:–

Date	Particulars	Vch Type	Vch No.	Debit	Credit
26.4.2007	Dr Current Account UTI, CIT Road Ch. No. 162667 on Stan-Chart for Rs.20,00,000/- & 412611 on UBI for Rs.30,00,000/- towards ICDS at an interest @ 12% p.a. for 700 days	Receipt	8		50,00,000
23.6.2007	Dr Current Account UTI, CIT Road Ch. No. 224888 on Stan-Chart & Ch. No. 412951 on UBI as ICD at an interest @ 12% p.a. for 900 days	Receipt	48		50,00,000
15.3.2008	Dr Current Account UTI, CIT Road Ch. No. 052511 on Stan-Chart for Rs.40,00,000/- & Ch. No. 335097	Receipt	196		50,00,000

	on State Bank of India for Rs.10,00,000/- towards ICDS at an interest @ 12% p.a. for 650 days				
31.3.2008	Dr Interest on ICDs Being interest for the year from 1.4.2007 to 31.3.2008 on ICD provided	Journal	24		10,50,820
	Cr Current Account UTI, CIT Road Ch. No. 149245 to 149248 towards interest on ICD for FY 07-08 & TDS @ 22.66% deducted	Payment	415	10,50,820	
				1050,820	1,60,50,820
	Cr Closing balance			150,00,000	
				160,50,820	160,50,820

Annexure-B

Date	Particulars	Vch Type	Vch No.	Debit	Credit
16.11.2007	Dr Current Account UTI, CIT Road Ch. No. 756988 on SBI towards ICD against 10% interest per annum for 137 days.	Receipt	139		10,00,000
days.					
31.3.2008	Dr. Interest on ICDs being interest for the year from 1.4.2007 to 31.3.2008 on ICD provided	Journal	24	37,432	

	Cr Current Account UTI, CIT Road Ch. No. 149245 to 149248 towards interest on ICD for FY 07-08 & TDS @ 22.66% deducted	Payment	415	37,432	
				37,432	1037,432
				1000,000	
	Cr Closing Balance			1037,432	10,37,432

It is therefore clear that assessee i tsel f had shown the amounts in its ledger as inter-corporate deposi ts, wi th interest rate @ 12% in the case of M/s. Chandra's Chemical Enterprises (P) Ltd. and interest rate of 10% from M/s. D. I. Jewels (P) Ltd. The amounts received were al l in round sums and not in odd f igures. These f igures as appearing in the ledger pages have not been disputed by the Revenue. When the amounts were shown in ledger as inter-corporate deposi t , just because the assessee in the balance-sheet had put i t under the head "loans and advances" would not in our opinion, change the nature of receipt . Primary entries are there which appear in the ledger and cash/Bank books. Balance-sheet and profi t & loss a/c. are secondary records derived from such primary records. Therefore, we are incl ined to accept the content ion of the assessee that money received from M/s. Chandra's Chemical Enterprises (P) Ltd. and M/s. D. I . Jewels (P) Ltd. were in the nature of inter-corporate deposi ts. The view taken by the Assessing of f icer that assessee was not recognized NBFC, in our opinion, may not be relevant in so far as acceptance of such inter-corporate deposi ts is concerned. The Tribunal in the case of IFB Agro Industries Ltd. held as under:–

> ***"5. We have considered the rival submissions. At the outset, a perusal of the facts in the assessee's case clearly show that the dispute in the appeal primarily revolves around the issue as to whether the Intercorporate Deposits received by the assesee from M/s. IFB is a 'loan' or 'advance' or is a 'deposit'. Admittedly, the provisions of section 2(22)(e) of the Act refers to only 'loans' and 'advances' it does not talk of a 'deposit'. The fact that the term 'deposit' cannot mean a 'loan' and that the two terms 'loan' and the term 'deposit' are two different distinct terms is evident from the explanation to section 269T as also section 269SS of the Act where both the terms are used. Further, the second proviso to section 269SS of the Act recognises the term 'loan' taken or 'deposit' accepted.***

Once it is an accepted fact that the terms 'loan' and 'deposit' are two distinct terms which has distinct meaning then if only the term 'loan' is used in a particular section the deposit received by an assessee cannot be treated as a 'loan' for that section. Here, we may also mention that in section 269T of the Act, the term 'deposit' has been explained vide various circular issued by CBDT. Thus, the view taken by the Ld. CIT(A) that the Intercorporate deposit is similar to the loan would no longer have legs to stand. A perusal of the decision of Hon'ble Special Bench of this Tribunal in the case of Gujarat Gas & Financial Services Ltd. referred to supra, clearly shows that the Hon'ble Special Bench had taken into consideration the decision of the Special Bench of this Tribunal in the case of Housing & Urban Development Corporation Ltd. reported in 102 TTJ (Del.)(SB) 936 to come to the conclusion that loans and deposits are to be taken different and distinct. Further, in view of the decision of Hon'ble Coordinate Bench of this Tribunal in the case of Bombay Oil Industries Ltd., referred to supra, wherein the coordinate bench of this Tribunal has held as follows:

> ***"10. We have heard the rival submissions and perused the material on record. The authorities below have not controverted the claim of the assessee company that the amount received from above three companies is ICDs. The AO held against the assessee only on account that it had failed to explain, the investment is neither loan or advance. It is a settled position that deposits cannot be equated with loans or advances. The jurisdictional High Court in the Durga Prasad Mandelia's case (supra) has noticed the distinction between deposits and loans in the context of s. 370 of the Companies Act. The Court held as under:***
>
> > ***"There can be no controversy that in a transaction of a deposit of money or a loan, a relationship of a debtor and creditor must come into existence. The terms 'deposit' and 'loan' may not be mutually exclusive, but nonetheless in each case what must be considered is the intention of the parties and the circumstances. In the present case, barring the assertion of the respondent that the moneys advanced by the company to the Associated Cement Companies constitute a loan and offend s. 370 of the Companies Act, there is nothing else to show that***

moneys have been advanced as a loan. In the context of the statutory provisions, the word 'loan' may be used in the sense of a 'loan' not amounting to a deposit. The word loan in s. 370 must now be construed as dealing with loans not amounting to deposits, because, otherwìse, if deposìt of moneys with corporate bodies were to be treated as loans, then deposits with scheduled banks would also fall within the ambit of s. 370 of the Companies Act. Therefore, moneys given by the company to the other bodies corporate is a loan within the meaning of s. 370 of the Companies Act must be negatived. Therefore, the petitioners would well be entitled to the relief."

Sec. 370 of the Companies Act, 1956 was subsequently amended to include deposits ínto its ambit thereby indicating the distinction between deposits and loans/advances. The recent decision of the Tribunal in the case of Gujarat Gas Financial Services Ltd.'s case (supra) has elaborately considered the issue whether interest on ICDs is interest on loans or advances and whether the same is exigible to chargeable interest under Interest-tax Act. The Tribunal after considering the entire precedent on the issue though in the context of the Interest-tax Act had categorically held that interest on ICDs is not akin to interest on loans or advances. The relevant portion of the order of the Tribunal cited supra which runs from paras 68 to 74 is reproduced below:

"68. Before the AO the assessee as regards income from ICD the assessee company accepted this interest of Rs. 1,21,54,153 along with interest on bill discountìng Rs. 1,48,74,208 and other interest of Rs. 3,66,184 can be bought under the purview of the Interest-tax Act, 1974. However before CIT(A) it was submitted that these are ìnterest on deposits and the nature is that of the investment and so interest-tax being leviable on loans and advances and not on fixed deposits, the amount was not to be included. The CIT(A) held:

"I have carefully considered the matter and find that the definition of interest does not speak of excluding this amount in its definition. Accordingly therefore, the inclusion by the AO of these items is found justified and is upheld."

69. The submission of the assessee is that these ICDs being neither loans or advances, interest earned on these is not exigibte to interest tax in view of the decision of Ahmedabad Tribunal in the case of Utkarsh Fincap (P) Ltd. vs. ITO (2006) 101 TTJ (Ahd) 210. Reliance is also placed on the decision of Housing & Urban Development Corporation Ltd. vs. Jt. CIT (2006) 102 TTJ (Del) (SB) 936 : (2006) 5 SOT 918 (Del)(SB), Stanrose Holding Ltd. (ITA No. 25/Mum/1966) and Persepolis Investment Co. (P) Ltd. (ITA No. 51/Mum/1997). The Learned Departmental Representative on the other hand supported the decision of the CIT(A) and submitted that when assessee itself had offered it to tax where the question of allowing it as not taxable. He also submitted that it is taxable as hetd in Bajaj Auto Holdings Ltd. vs. Dy. CIT (2005) 96 TTJ (Mumbai) 856 : (2005) 95 ITD 356 (Mumbai).

70. We have heard the parties and considered the riva submissions. It might be true that assessee had offered it to tax initially but he claimed it as not taxable and therefore the matter has to be examined on merits and to determine as to whether it is taxable under the Act. We find it is not taxable in the light of the decision in the case of Utkarsh Fincap (P) Ltd. (supra) wherein Ahmedabad Bench of the Tribunat after considering the decision in the case of Federation of Andhra Pradesh Chambers of Commerce & Industry & Ors. vs. State of Andhra Pradesh & Ors. (2001) 165 CTR (SC) 672 : (2001) 247 ITR 36 (SC), CIT vs. Sahara India Savings & Investment Corporation Ltd. (2003) 185 CTR (All) 136 : (2003) 264 ITR 646 (All) and following the decisions in the case of Gujarat Industrial Investment Corpn. Ltd. (sic), Oriental Insurance Co, Ltd. vs. Dy. CIT (2004) 82 TTJ (Del) 1084 : (2004) 89 ITD 520 (Del) held that interest on ICDS are not chargeable to interest-tax, as the deposits are not in the nature of loans or advances. It held as under:

> ***"The words 'loans and advances' should be understood conjointly and not in isolation. If so read, the advances which are in the nature of loan alone should be covered in the term. Ordinarily an advance is a payment beforehand and it does not connote, the idea of repayment. It is adjusted when the action for which the money is advanced is***

completed and if not repaid on expiry of the loan like a deposit. The company is not bound to accept the deposit made, if proceedings on the basis of the prospectus a person interest to make a deposit. By issuing prospectus of a company invites offer for making deposit and that is not offer to receive deposit whereas in case of loan the assessee prays for a loan. It offers to borrow money and once that offer is accepted, the lender is bound to give money to the borrower on terms settled. It is also to be noticed that a taxing statute has to be strictly construed and the subject cannot be taxed unless comes within the letter of law. The argument that a particular income falls within the spirit of the law cannot be availed of by the Revenue. It is trite law that no tax can be imposed on the subject without the words in the Act. No tax can be imposed by inference or analogy. The cardinal principle of interpretation of fiscal law is that it should be considered strictly. In view of the above, the interest in ICDS unless they clearly fall within the meaning of interest on loans and advances would not be taxable. ICD can neither be a loan not an advance. Therefore, the AO is directed to exclude the interest on ICD from the assessment of the assessee. Consequently, the levy of penalty made would also not stand. They are, accordingly deleted."

71. It has considered the decision of Bajaj Auto Holdings Ltd.s case (supra) referred to by the CIT(A) and distinguished by stating that Mumbai Bench has proceeded on a footing that deposit would be an advance. and would be includible ìn the term with interest on deposit and advance. The Bombay Bench is more persuaded by the reason that the interest on deposit was not excluded from the definition of interest and the term interest on loans and advances was wide enough to include the same. It had not considered that whether it was not a loan nor an advance and as to whether the amended definition of interest under the Act was exhaustive or inclusive. In holding that the ICD is not an advance the Ahmedabad Tribunal also noticed that the meaning of the term advance as understood in the commercial words and as stated under the title what is advance in the following words:

"It was held in KM. Mohammed Abdul Kadir Rowther vs. S. Muthia Chettiar (1960) 2 Mad. LJ 13 at 15 that advance means literally a payment beforehand; in certain cases it may be a loan but it cannot be said that a sum paid by way of advance is necessarily a loan. In Raja of Venkatagiri vs. Krishnayya Rao Bahadur AIR 1948 PC 150 at p. 155, it was observed that ordinarily and advance does not connote any idea of repayment. It is, therefore, clear that the word advanced used in s. 296 means an advance in the nature of a loan and not merely an advance as is understood in the common parlance in the sense of payment of money beforehand and which is likely to become due at some future time."

72. It has also referred to s. 296 of Companies Act regulating loans to directors for book debt which was in the nature of loans or advances from its inception. 73. In the case of Housing & Urban Development Corporation Ltd. (supra), the Special Bench after considering various decisions and circulars of CBDT held that deposits in the form of securities and bonds cannot be considered as loans and advances and as such interest thereon shall be outside the scope of interest defined under s. 2(7) of the Interest tax Act. Para 22 of the order reads as under:

"22. From the foregoing discussion we are of the considered view that despite similarities, the two expressions loans and deposits are to be taken different and the distinction can be summed up by stating that in the case of loan, the needy person approaches the lender for obtaining the loan therefrom. The loan is clearly lent at the terms stated by the lender. In the case of deposit, however, the depositor goes to the depositee for investing his money primarily with the intention of earning interest. In view of this legal position, it has to be held that interest on deposits representing investment of surplus funds would also not fall under the definition of interest as given in s. 2(7) of the Act and as such would not be liable to interest tax. The answer to the question under reference in our humble opinion is that investments made by way of short-term deposits and also in the form of securities and bonds cannot be considered as loans

and advances and as such interest thereon shall be outside the scope of 'interest' defined under s. 2(7) of the Act."

74. In these circumstances we hold that interest on ICDs is not an interest on loan or advance therefore would not be includible in the chargeable interest under the Interest tax Act.

From the above it is clear there is distinction between deposits vis-à-vis loans/advances. s. 2(22)(e) enacts a deeming fiction whereby the scope and ambit of the word dividend has been enlarged to bring within its sweep certain payments made by a company as per the situations enumerated in the section. Such a deeming fiction would not be given a wider meaning than what it purports to do. The provisions would necessarily be accorded strict interpretation and the ambit of the fiction would not be pressed beyond its true limits. The requisite condition for invoking s. 2(22)(e) of the Act is that payment must be by way of loan or advances. Since there is a clear distinction between the ICDs vis-à-vis loans/advances, according to us the authorities below were not right in treating the same as deemed dividend under s. 2(22)(e) of the Act. Since we hold that ICDs do not come within the purview of deemed dividend under s. 2(22)(e) of the Act, the alternative contention of the assessee namely by virtue of s. 2(22)(e)(ii) of the Act, the unsecured loans received by the assessee is not dividend is not adjudicated."

We are of the view that the Inter-corporate deposits cannot be treated as a loan falling within the purview of section 2(22)(e) of the Act.

In view of the decision taken by the coordinate Bench that intercorporate deposi ts received cannot be considered as a loan or advance so as to visit an assessee wi th the hazards of sect ion 2(22)(e) of the Act , Ld. CIT(Appeals) was in our opinion justi f ied in deleting the addit ion. Grounds No. 1 & 2 of the revenue stand dismissed.

8. Vide its Ground No. 3, revenue is aggrieved that disal lowance of expendi ture attributable to dividend was restricted to ½% of average value of investment by ld. CIT(Appeals).

9. Assessing Of f icer for comput ing the disal lowance under sect ion 14A of the Act had appl ied Rule 8D of the Income Tax Rules. Assessee moved in appeal before ld. CIT(Appeals) since according to i t interest earned during the relevant previous year was not at al l attributable to investments result ing in dividend income, claimed as exempt . Ld.

CIT(Appeals) after veri fying the cash f low statement came to a conclusion that loans raised were not used by the assessee for the purpose of any investment earning dividend income claimed as exempt . Disal lowance of interest as stipulated in sub-clause (i i) of clause (2) of Rule 8D can be done only when an assessee has incurred expendi ture by way of interest which is not directly attributable to any part icular income or receipt . Ld. CIT(Appeals) had given a clear f inding after veri fying the cash-show that the loan amounts were not used for any investment resul ting in the dividend income. Nothing has been brought on record by the Revenue to show that the f inding of ld. CIT(Appeals) is not according to facts. We are therefore not incl ined to interfere wi th the order of ld. CIT(Appeals) in this regard. Ground No. 3 of the revenue stands dismissed.

10. In the resul t , appeal f iled by Revenue is dismissed.

Order pronounced in the open court on 19th day of December, 2013.

———————