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IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH: BANGALORE

BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SHRI PRAKASH CHAND YADAV, JUDICIAL MEMBER

ITA No.878/Bang/2024
Assessment Year: 2018-19

Sri Haris Kalandan Mohammed D.No.23-10-810, Umay Bagh 1st Cross, Yemmekere Mangalore 575 001 **PAN NO : ABJPH9234P**	**Vs.**	DCIT Central Circle-1 Mangalore
APPELLANT		**RESPONDENT**

Appellant by	:	Sri V. Srinivasan, A.R.
Respondent by	:	Ms. Neha Sahay, D.R.

Date of Hearing	:	26.07.2024
Date of Pronouncement	:	09.08.2024

O R D E R

PER CHANDRA POOJARI, ACCOUNTANT MEMBER:

This appeal by assessee is directed against order of CIT(A) for the assessment year 2018-19 dated 12.3.2024. The assessee raised following grounds of appeal:

1. *"The orders of the authorities below in so far as they are against the appellant are opposed to law, equity, weight of evidence, probabilities, facts and circumstances of the case.*

2. *The learned CIT[A] is not justified in upholding the addition of Rs. 1,95,37,070/- as deemed dividend u/s. 2[22][e] of the Act in the hands of the appellant without appreciating that the provisions of section 2[22][e] of the Act have no application to the facts and circumstances of the appellant's case.*

3. *The learned CIT[A] erred in holding that the shares allotted to the appellant in United Fishmeal FZC, Sharjah has a direct link to the investment made by M/S. Mukka Sea Food Industries Pvt. Ltd., in Sopromer S.A.R.L, a Conakry entity and hence it had resulted in a benefit to the appellant and accordingly, the provisions of section*

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2[22[e] of the Act were attracted under the facts and in the circumstances of the appellant's case.

4. *The learned CIT[A] failed to appreciate that the provisions of section 2[22][e] of the Act were not applicable as there was no payment made by M/S. Mukka Sea Food Industries Pvt. Ltd., during the year under appeal for the individual benefit of the appellant as the investment in Sopromer S.A.R.L, a Conakry entity was made in the earlier financial year 2015-16 and therefore, the same cannot be considered as deemed dividend for the year under appeal by virtue of the allotment of shares in United Fishmeal FZC in the name of the appellant and therefore, the addition made ought to have been deleted.*

5. *Without prejudice to the above, the learned CIT[A] ought to have appreciated that the investment made by M/S. Mukka Sea Food Industries Pvt. Ltd., in M/S. Sopromer S.A.R.L, a Conakry entity and the allotment of shares in M/S. United Fish Meal FZC, Sharjah in the name of the appellant on account of the intervention of one Mr. Mohammad Maou Elainine, would result in the inescapable conclusion that the shares held by the appellant in M/S. United Fish Meal FZC was for the benefit of M/S. Mukka Sea Foods Industries Pvt. Ltd., who had to be regarded as the beneficial owner of the shares in M/S. United Fish Meal FZC and thus, no addition towards deemed dividend could be made in the hands of the appellant under the facts and in the circumstances of the appellant's case.*

6. *Without prejudice to the right to seek waiver with the Hon'ble CCIT/DG, the appellant denies himself liable to be charged to interest u/s. 234-B, 234-C of the Act, which under the facts and in the circumstances of the appellant's case deserves to be cancelled.*

7. *For the above and other grounds that may be urged at the time of hearing of the appeal your appellant humbly prays that the appeal may be allowed and Justice rendered and the appellant may be awarded costs in prosecuting the appeal and also order for the refund of the institution fees as part of the costs."*

2. Facts of the issue are that the assessee filed a return of income for the assessment year 2018-19 on 29.3.2019 declaring income of Rs.1,59,34,350/-. There was a search in the case of assessee u/s 132 of the Income Tax Act, 1961 (in short "The Act") on 8.2.2018. Later, notice u/s 143(2) of the Act was issued to the assessee on 2.8.2019. Consequently, assessment was completed u/s 143(3) of the Act.

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3. The ld. AO observed that during the course of assessment proceedings on perusal of audited financial statements of Mukka Sea Food Industries Pvt. Ltd., it was noticed that Mukka Sea Food Industries Pvt. Ltd had shown an investment of Rs.1,95,37,070/- in entity Sopromer S.A.R.L at Conakry. Further, the said company also made a payment of Rs.76,47,500/- as an advance payment to the Conakry entity for supply of fish meal. Hence, the total investment in Conakry entity was Rs.2,71,84,570/-.

3.1 During the assessment proceedings, the appellant was asked to furnish the details of 'investments and the returns earned there from. The appellant submitted that the deal did not materialize and the money paid by Mukka Sea Food Industries Pvt. Ltd. for investment in Conakry entity was returned.

3.2 The ld. AO observed that due to certain disputes with other shareholders, the initial investors of Sopromer S.A.R.L were paid off and the shares of United Fish Meal were transferred to the appellant in lieu of the share capital investment of Mukka Sea Food Industries Pvt. Ltd. in Sopromer S.A.R.L. Therefore, it became clear that the investment of Mukka Sea Food Industries Pvt. Ltd. in Sopromer S.A.R.L had been routed back to the appellant by Mr. Mohammed Maou Elainine for funding appellant's investment in United Fish Meal FZC. Hence, the money belonging to the company M/S Mukka Sea Food Industries Pvt. Ltd. in the Conakry entity has been diverted for the individual benefit of the appellant.

3.3 On perusal of audited financial statements of Mukka Sea Food Industries Pvt. Ltd, it was seen that the appellant had 41% of shareholding and the reserves and surplus as on 31.03.2()17 was Rs. 15,88,16,238/-. Since the appellant was holding more than 10% of voting rights in the said company and the accumulated profits of the company is sufficient to cover the benefit accrued to the appellant, the provisions of section 2(22)(e) of the Act was invoked. The claim of the appellant that he was holding the shares

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on behalf of Mukka Sea Food Industries Pvt. Ltd., was not accepted by the AO as this investment was not declared in the books of Mukka Sea Food Industries Pvt. Ltd. Merely stating that he was authorized to buy shares on behalf of the company by a board resolution, which was not communicated to ROC and also the shares purchased not being reflected in the books of the appellant or Mukka Sea Food Industries Pvt. Ltd. did not give any credence to the contention of the appellant.

3.4 Accordingly, the sum of Rs.2,71,84,570/- assessed as deemed dividen& u/s2(22)(e) in the hands of the appellant and added under the head "Income from Other sources".

3.5 Further, during the course of assessment proceedings, the appellant was asked to furnish details of his shareholding and investment companies and in firms. The appellant was also asked to furnish details of transactions between the companies and firms where he is a shareholder and partner. The appellant was a shareholder/ partner in following concerns:

Name	% of holding/share
Mukka Sea Food Industries Pvt. Ltd.	41%
Haris Marine Products (Firm)	30%
Shipwaves Online Pvt. Ltd.	28%

3.6 He observed from the details furnished by the assessee, during financial year 2017-18, following advances were made between the companies and firms where he was a shareholder having substantial interest.

Payer	Payee	Amount
Mukka Sea Food Industries Pvt. Ltd.	M/s. Haris Marine Products	52,66,41,906
Mukka Sea Food Industries Pvt. Ltd.	Shipwaves Online Pvt. Ltd.	3,48,00,000
		56,14,41,906

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3.7 The ld. CIT(A) rejected the contention of the assessee contractual obligation and business transaction did not come under the purview of deemed dividend as contemplated u/s 2(22)(e). The AO held that this was a loan transaction from Mukka Sea Foods Industries Pvt. Ltd to M/S Haris Marine Products & Shipwaves Online Pvt. Ltd; Mukka Sea Foods Industries Pvt. Ltd. was a company in which public are not substantially interested and that the appellant held more than 10% shares in paying companies i.e. 41% shares in Mukka Sea Foods Industries Pvt. Ltd. Since, as per Section 2(22)(e) of the Act, any payment made by way of advance or loan to a concern or to a shareholder to the extent the company possessed the accumulated profits would be deemed to be a dividend, provisions of Section 2(22)(e) was squarely applicable in this ease. Thus, the same was ascertained by considering the accumulated profits relevant for AY 2018-19 at Rs.3,74,07,401/-.

3.8 The facts of the case are that the Mukka Sea Food Industries Pvt. Ltd. made an investment of USD 300,000 in a Conakry entity name Sopromers S.A.R.L. As seen from the share purchase agreement, it was observed by ld. CIT(A) that assessee had signed the said agreement in the capacity of Director of the said company and not in his personal capacity.

3.9 The assessee claimed before ld. CIT(A) that the investment made by M/S Mukka Sea Food Industries Pvt. Ltd in Conakry entity went bad. One Mr. Mohamed Maou Elainine was instrumental and negotiated the investment made in Conakry entity. Meanwhile, the said Mr. Mohammed Maou Elainine had made certain investments in United Fish Meal FZC, Dubai, in which Mukka Sea Food Industries Pvt. Ltd. was also a shareholder. Since the amount invested by Mukka Sea Food Industries Pvt. Ltd. in the Conakry entity could not be recovered, the shares held by Mr. Mohamed Maou Elainine in United Fish Meal FZC was transferred to the

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assessee as a compensation and without consideration for transfer of shares.

3.10 As noted above, according to the ld. CIT(A), there is a direct link between the investment made by Mukka Sea Food Industries Pvt. Ltd. in Conakry entity and the equivalent shares of United Fish Meal FZC transferred by Mr. Mohammed Maou Elainine to the assessee. Therefore, the conclusion of the AO that the investment made and advance paid by Mukka Sea Food Industries Pvt. Ltd. to Conakry entity had resulted in benefit to the assessee as such, addition was made u/s 2(22)(e) of the Act as deemed dividend to the extent of investment made in the Conakry entity of Rs.1,95,37,070/-,in the hands of the assessee was sustained by the ld. CIT(A). Against the sustaining of Rs.1,95,37,070/- u/s 2(22)(e) of the Act by the ld. CIT(A), the assessee is in appeal before us by way of above grounds.

4. Now the contention of the ld. A.R. is that the assessee is holding 41% shareholding in Mukka Sea Food Industries Pvt. Ltd. (MSFIPL). It was noticed by the ld. AO that this company made investment of Rs.1,95,37,070/- in Conakry entity and the investment made by MSFIPL in Conakry entity in the name of Sopromers S.A.R.L. is having no bearing on investment made by that company in United Fish Meal FZC, Dubai where the present assessee signed said agreement in the capacity of Director of said company and not in his personal capacity. The assessee submitted that investment made by M/s. MSFIPL in Conakry Entity went bad. One Mr. Mohammed Maou Elainine was instrumental and negotiated the investment made in Conakry entity.

4.1 Meanwhile, the said Mohammed Maou Elainine had made certain investments in United Fish Meal FZC, Dubai in which MSFIPL was also shareholder. Since the amount invested by MSFIPL in the Conakry Entity could not be recovered, the shares held by Mohammed Maou Elainine in United Fish Meal, FZC was

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transferred to the present assessee in the capacity of Managing Director of Mukka Sea Food Industries Pvt. Ltd. as a compensation with consideration of transfer of shares. According to the ld. AO, there is a link between the investment made by MSFIPL in Conakry Entity and equivalent shares of United Fish Meal FZC transferred by Mohammed Maou Elainine to the assessee. Therefore, ld. AO of the opinion that investment made and advance by MSFIPL to Conakry entity has resulted in benefit to the assessee u/s 2(22)(e) of the Act, which is not correct. It was submitted that section 2(22)(e) of the Act is the deeming provision. Against this deeming provision, one more deeming fiction cannot be allowed.

4.2 For this purpose, he relied on the judgement of Hon'ble Supreme Court in the case of ; (1) CIT Vs. Mother India Refrigeration Industries (155 ITR 711) (2) CIT Vs. Amar Chand Sharaf and (3) Bengal Immunity Community Ltd. Vs. State of Bihar wherein held that section 2(22)(e) of the Act is a charging section and should be strictly interpreted. Ingredients of legal fiction created by section 2(22)(e) of the Act has not been made in the assessee's case. The deeming fiction created for a specific purpose cannot be investor for another application unless and until it is specifically provided in the Act. Double deeming is not permitted in law. It is not possible to sub-join or track upon fiction and to impose the supposition on a supposition of law. It is therefore, not in dispute that such a provision which is a deemed provision and fictional create a certain kind of receipt as dividend, it is to be given strict interpretation. It follows that unless all the condition contained in the said provision are fulfilled the receipt cannot be deemed as a dividend. Further, in case of doubt or whether two views are possible, beneficial accrues in the favour of assessee.

4.3 Thus, it was submitted that transaction between Mohammed Maou Elainine and United Fish Meal FZC is deemed as benefit given to the present assessee cannot be considered as deemed dividend

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within the provision of section 2(22)(e) of the Act. Even otherwise, the indirect benefit derived by the present assessee cannot be considered as deemed dividend in his hands. The provision of section 2(22)(e) of the Act only speaks about benefit received by shareholder from any payment made by company and deems it as deemed dividend u/s 2(22)(e) of the Act. Further, amount received from Mohammed Maou Elainine is payable to him in the books of United Fish Meal FZC and he drew our attention to the relevant documents in the paper book placed at page 13 to 31 (financial statement of United Fish Meal FZC). Thus, he submitted that the provisions of section 2(22)(e) of the Act has no application.

4.4 Further, he drew our attention to the financials of Mukka Sea Food Industries Pvt. Ltd. for the year ending on 31.3.2018 specifically he submitted that the said amount of Rs.1,95,37,070/- has been outstanding in the books of account of the MSFIPL as received from SOPROMER SARL as an advance as on 31.3.2018. Thus, he submitted that M/s MSFIPL have legal right to enforce the recovery of the said impugned amount from SOPROMER SARL as it is not written off in the books of accounts of the M/s. MSFIPL and it is an outstanding debt as on 31.3.2018. Further, he submitted that without writing off such impugned debt in the books of account of M/s. MSFIPL, it cannot be considered as any benefit has been transferred to Mr. Haris Kalandan Mohammed, who is the present assessee in this case.

5. On the other hand, the ld. D.R. with regard to the grounds of appeal filed by the assessee made submissions as follows:

5.1. The main grounds raised by the assessee have been summarised as under:

> (i) *The Appellant (Haris Kalandan Mohammed) has contested the addition of an amount of Rs 1,95,37,070/- which has been added to his income as deemed dividend under sub-clause (e) of clause (22) of section 2 of the Income-tax Act, 1961 ("the Act") by submitting that the said addition is not sustainable as the provisions of sub-clause (e?*

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of clause (22) of section 2 of the Act have no application to the facts and circumstances of the case;

(ii) *The provisions of sub-clause (e) of clause (22) of section 2 of the Act are not applicable as there was no payment made by M/S Mukka Sea Food Industries Pvt Ltd during the year under appeal i.e AY 2018-19 (FY 2017-18) for the individual benefit of the Appellant as the investment by M/S Mukka Sea Food Industries Pvt Ltd ("MSFI" or "the Company") in Sopromer S.A.R.L a Conarky entity was made in earlier FY 2015-16 (AY 2016-17) and therefore ,the same cannot be considered as deemed dividend for the year under appeal by the virtue of allotment of shares in United Fish Meal FZC (UFM) in the name of the Appellant ;*

(iii) *The shares held by UFM was for the benefit of MSFI who has to be regarded as the beneficial owner of the shares in UFM and hence the addition of the deemed dividend cannot be made in the hands of the Appellant.*

5.2 The ld. D.R. while narrating the brief facts of the case stated that the Assessee holds 41% of shares in MSFI and is the Managing Director in MSFI. An investment of Rs 1,95,37,070/- was made by MSFI in M/S Sopromer S.A.R.L to acquire its shares during FY 2015-16. The Assessee claimed that the said investment went bad and the amount of Rs 1,95,37.070/- invested in the shares of Mis Sopromer S:A.R.L could not be recovered Accordingly, the amount of Rs 1,95,37,000/was utilised by MSFI so that the shares held by one Mr Mohamed Maou Elainine in UFM were transferred to the Assessee during FY 2017-18 (AY 2018-2019). In summation the shares held by Mr Mohammed Mao Elainine in UFM were transferred to the Assessee without compensation and without consideration during FY 2017-18.

5.3 The ld. D.R. argued against the grounds raised by the Assessee that it may be borne in mind that there are 4 legal entities in the instant case vis,

(i) the Assessee i.e. Haris Kalandan Mohammed who holds substantial interest (41% of shares) in MSFI or the Company;

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(ii) MSFI or the Company (not being a company in which the public are substantially interested);
(iii)M/s Sopromer S.A.R.L (Conarky entity) ; and

(iv) UFM .

5.5 Further, she submitted that section 8 of the Act, inter-alia, provides for the previous year in which the dividend, within the meaning of sub-clause (e) Of clause (22) of Section 2 of the Act, is deemed to be the income of the said previous year. Section 8 of the Act is re-produced below by ld. D.R. for our ready reference:

"Dividend income.
8. For the purposes of inclusion in the total income of an assessee,—
(a) any dividend declared by a company or distributed or paid by it within the meaning of sub-clause (a) or sub-clause (b) or sub-clause (c) or sub clause (d) or sub-clause (e) of clause (22) of section 2 shall be deemed to be the income of the previous year in which it is so declared, distributed or paid, as the case may be ;

5.6 She submitted that from the plain reading of sub-clause (e) of clause (22) of section 2 of the Act it is evident that the said provision squarely applies in the instant case as the Company (MSFI) has during FY 2017-18 made a form payment to UJFM , by way of transfer of the earlier investment made in M/S Sopromer S.A.R.L, so as to transfer the shares held by one Mr Mohammed Maou Elainine in the hand of the Assessee (shareholder holding substantial interest) resulting in the Assessee having full control and management of UFM company [Individual benefit]. Hence, as is evident from reading the relevant provisions and the facts of the case, the provision of sub-clause (e) of clause (22) of section 2 of the Act are squarely applicable in the instant case. It may be pertinent to note as per the financial statement of UFM for the year ended December 2017, the Assessee is holding 95 % of the shares of UFM and also that the complete management and control of the company is vested with

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the Assessee as well (reference 21 of the paper book submitted by the Assessee).

5.7 She submitted that as is evident from the above, the Assessee has received an individual benefit, by way of a payment made by MSFI to UFM where in the Assessee himself not paid any consideration. The financial statements of UFM do not mention that the shareholding or the management or control of UFM is being held on behalf of MSFI. The Assessee has contested that though the shares of UFM were held in his name, the investment in his name was on behalf of the Company i.e MSFI and the said shares were held in the name of the Assessee only in the capacity of him being a director in MSFI.

5.8 She submitted that the above contention of the Assessee is not acceptable and holds no merit as it has already been discussed earlier, the financial statement of UFM clearly signify that it is the Assessee and not MSFI who is the shareholder in UFM and further, the complete management and control is also vested with the Assessee. The Assessee has produced a Board resolution 27.05.2013 wherein the Assessee has been authorised to, inter-alia, acquire companies with similar business and facilities of MSFI on behalf of the company. However, it may be noted that the financials of UFM nowhere state that the shares held by the Assessee were held on behalf of MSFI and not as an individual. It is emphasised that without any evidence to the same, the contention of the Assessee cannot be upheld that the shares held by the Assessee were on behalf of MSFI. It is interesting to note that in the shares purchase agreement for the investment made in the M/S Sopromer S.A.R.L by MSFI it is clearly specified that the purchaser ,being the Assessee, is the managing director of MSFI and hence is undertaking transaction

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on behalf of MSFI. Similarly, it is also specified that the seller is also a representative of M/s Sopromer S.A.R.L. Such specifications are absent in the financial statement of UFM wherein only the name of the individual i.e. the Assessee has been stated. In such a scenario, one can only conclude that the Assessee is the owner of shares of UFM in his individual capacity and such benefit has been accorded to the Assessee by the Company i.e. MSFI, wherein he holds substantial interest. She submitted that in the absence of any evidence, it cannot be held that the Assessee was holding shares in UFM on behalf of MSFI.

5.9 With regard to assessee's contention that the payment by the company MSFI was made to the Conakry entity in FY 2015-16 and hence the deemed dividend cannot be taxed in FY 2017-18 (AY 2018-19), she submitted that as per the submission of the Assessee (reference paper book page 11 second paragraph) during FY 2017-18, the funds of the Company stuck in the Conarky entity were repaid to the Company. Further, the investment of Rs 1,95,37,070 made in the Conarky entity "was utilized" to take full control of UFM on 23.11.2017 along with some other finds generated by Chinese Commission income. As a result of this transaction, the shares of UFM were transferred to the Assessee in his name. While the Assessee submits the investment of RS 1,95,37,070 made in the Conarky entity "was utilised" to take full control of UFM, the implication of " was utilised" in this scenario is that the funds of Rs 1,95,37,070 were paid to UFM during FY 2017-18 in order to obtain shares of UFM in the name of Assessee. Hence, in the above factual matrix, payment by the Company was made to UFM in FY 2017-18 and the associated benefit i.e. the transfer of shares to the assessee without any consideration also arose in the said financial year relevant to assessment year AY 2018-19. She submitted that in view of the above factual matrix

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and reading of section 8 of the Act along with sub-clause (e) of clause (2) of section 22 of the Act, the company made a payment for the benefit of the Assessee. Hence the provisions of sub-clause (e) of clause (2) of section 22 of the Act have been invoked correctly and the ground held by the Assessee holds no merit.

5.10 She submitted that the Assessee has produced the balance sheet of MSFI stating the investment made in the Conakry entity continue to be shown in the balance sheet of the Assessee and hence MSFI may recover the said bad debt in future and it cannot be said that the said investment has been passed on to UFM. With regard to the above she submitted that, the submission of the Assessee are contradictory in respect of the claims made. It has been submitted by the Assessee that Mr Mohammed Maou Elainine was able to free the funds stuck in the Conarky entity and repaid the same, further, the amount of Rs 1,95,37,070 was also utilised to acquire the shares of UFM in the name of the Assessee. Hence as such as per the submissions made by the Assessee, the Company has no investment in the Conarky enity anymore. In such a scenario it is not clear why the said investment continues to be shown in the balance sheet of MSFI as investment in unquoted shares. Further, as has been submitted by the Assessee himself, the amount of investment of Rs 1 ,95,37,070/- have been utilised to purchase shares of UFM by MSFI.

5.11 Notwithstanding the above, she submitted that the fact that the Company shows its investment in the Conarky entity in its Balance Sheet has no bearing on the fact that benefit accrued to the Assessee on account of the payment made by the Company during FY 2017-18 to UFM. It is emphasised that the payment (or utlisation) of sum amounting to Rs 1,95,37,070/- for the transfer of shares of UFM in the name of the Assessee has occurred in FY

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2017-18. The earlier investment made by the Company in the Conarky entity during FY 2015-16 was as per the submission of the Assessee a bad investment and remained stuck and was subsequently utilised for procuring shares of UFM.

5.12 She reiterated that while the investment in the Conarky entity went bad in FY 201516, the investment of amount of Rs 1,95,37,070/- was retained in the said entity and was subsequently utilised by the Company to procure the shares of UFM in the name of the Assessee in FY 2017-18. The Assessee has not demonstrated any evidence to show the efforts, if any, undertaken by the Company to recover the amount invested in the interim period. After almost two full years, with help of one Mohammad Maou Elaine, when the funds were allegedly released they were utilised to obtain shares of UFM. It is not clear, what happened to the bad investment in the interim period, and if any efforts were made for recovery as nothing in this aspect has been brought on record.

5.13 She further submitted that the Assessee has also submitted some ODI forms in respect of the investment to be made by MSFI in the M/s. Sopromer S.A.R.L. However, the said document is not signed and has no signatures or evidence of being accorded approval by the relevant authorities of RBI or any Authorised Dealer Bank. In light of this fact and also the points discussed above, the genuineness of this transaction remains doubtful and the layers of the transaction viz the failed transaction in Conarky enity and the subsequent transfer of shares of UFM to the Assessee seems to be a merely colourable device so as to prevent the applicability of the provision pertaining to deemed dividend under the Act.

5.14 Notwithstanding the above, she submitted that the Assessee has also submitted that the additions under sub-clause (e) of clause (22) of section 2 of the Act should be restricted to

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certain amount, as out of the accumulated profits of Rs 15,88,16,238 as on 31.03.2017 (mentioned in assessment order) an amount of Rs 12,14,08,837 was assessed as deemed dividend during assessment year 2016-17 (FY 2015-16). Further, Rs 2,71,84,570 has been assessed as deemed dividend in respect of the Conarky investment (reference page 57 of the paper book submitted by the Assessee).

5.15 In respect of the above contentions made, she prayed that the once it is established that the provisions of sub-clause (e) of clause (22) of section 2 of the Act have been correctly invoked in respect of AY 2018-19, the above contention may be remitted back to AO to verify and check the extent M the addition to be made on account of deemed dividend in view of the grounds raised above. As these points have not been discussed by the AO or the CIT(A) in their assessment order.

5.16 The ld. D.R. relied on the following case Laws:

(i) The Hon'ble Supreme Court in the case of Kanthilal Manilal v. CIT (41 1TR 275) held that "Dividend need not be distributed in money; it may be distributed by delivery of property or right having monetary value. In the instant case, the Assessee has received complete management and control of UFM without paying any consideration, hence such a benefit denotes a right having monetary value. Accordingly, the provisions of sub-clause (e) of clause (22) of section 2 of the Act are applicable in the instant case.

(ii) Further, in the case of Vikram Krishna v. Principal Commissioner of Income-tax, [20201 1 14 taxmann.com 197 (SC), the SLP was dismissed by the Hon'ble Supreme Court. In the said case, the Hon'ble Delhi High Court confirmed the order

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of the Delhi Tribunal wherein it was held that receipt of advance by the Assessee being a director of 'C' Ltd. holding 50 per cent shares of said company in respect of sale of land to 'C' Ltd constituted deemed dividend as the Assessee could not substantiate its contentions that the sale agreement could not be executed and, thus, amount received as advance was refunded to 'C' Ltd. Tribunal noted that sale agreement did not have any forfeiture clause and further despite having right of enforcement, assessee did not make any effort in said regard. Further, assessee, being a Director of company was also not aware that how purchase consideration could be arranged by company' for payment of land. It was also noted that assessee could not show what efforts were made by company and which bankers were approached for loan.

(iii) While the facts in the instant case are not identical to the facts in the case of Vikram Krishna v. Principal Commissioner of Income-tax, it is submitted that the Hon'ble Delhi High Court and the Tribunal noted that the Assessee failed to give adequate evidence and cogent, reliable, and credible evidences about the transaction undertaken and in the absence of such evidences the provisions of section 2(22)(e) of the Act were correctly invoked. In the case of Vikram Krishna, the Hon'ble Courts noted the following:

"Therefore, in view of the above peculiar facts it is apparent that Agreement to Sell dated 8/6/2009 and cancellation of such deed by Agreement dated 1/8/2009 for the purchase of property is merely cover up and a camouflage for giving loan to the assessee by the above Company to avoid contravention of the provision of section 2(22)(e) of the Act. Assessee also failed to give the adequate evidence and cogent, reliable, and credible evidences about the transaction.

5.17 She submitted that in the instant case, as in the case of Vikram Krishna, the Assessee has failed to provide

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cogent, reliable and credible evidences in respect of the receipt of shares of UFM. In addition, the Assessee has provided contradictory submissions which raises doubt on the genuineness of the said transaction.

5.18 In view of the arguments and case laws mentioned above, the ld. D.R. requested that the provisions of sub-clause (e) of clause (22) of section 2 of the Act squarely apply in the instant case in respect of the transaction as has been discussed above and the grounds raised by the Assessee may be dismissed.

6. We have heard the rival submissions and perused the materials available on record. In this case, the transaction took place as follows:

Mukka Sea Food Industries Pvt. Ltd.

Investment of 3 Lakh US Dollars & Advance of USD 1,15,000

(the advance of USD 115000 refunded)

(in Conakry entity Sopromers S.A.R.L.)

This transaction has remained as

it is in the assessment year under consideration

Mohammed Maou Elainine invested in

(He is the person instrumental in investment by Mukka Sea Foods)

He has invested in the United Fish Meal FZC Dubai which will not be refunded

(Sister concern of Mukka Sea food Industries Pvt. Ltd., Dubai)

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6.1 The amount invested by Mukka Sea Food Industries Pvt. Ltd. could not be recovered; the Directors decided that amount invested by Mr. Mohammed Maou Elainine in United Fish Meal FZC will not be refunded to him, wherein shares are registered in the name of M. Mohammed Haris in his capacity of Director to Mukka Sea Food Industries Pvt. Ltd. However, due to various reasons, he called off his investment in United Fish Meal, LLC and the funds invested by Mohammed Maou Elainine in United Fish Meal FZC was transferred to Mr. Haris Kalandan Mohammed vide sale purchase agreement dated 29.9.2015. The amount equivalent to Mukka Sea Food Industries Pvt. Ltd.'s investment in Conakry Entity at Rs.1,95,37,070/-. Thus, the ld. AO invoked the provisions of section 2(22)(e) of the Act to treat the amount invested in United Fish Meal FZC Dubai by MSFIPL as a deemed dividend in the hands of present assessee. According to the assessee, since amount invested by MSFIPL in Conakry entity could not be recovered, the shares held by Mohammed Maou Elainine in United Fish Meal FZC was transferred to the assessee as a compensation and without any consideration of shares, it was treated as a deemed dividend in the hands of present assessee in the assessment year 2018-19. In our opinion, the share purchase agreement was took place on 29.9.2015 relevant to AY 2016-17.

6.2 Later, the investment made by M/s. MSFIPL in Conakary entity went bad, one Mr. Mohammed Maou Elainine was instrumental and negotiated the investment made in Conakary entity. Meanwhile, said Mr. Mohammed Maou Elainine had made certain investments in United Fish Meal FZC, a sister concern of MSFIPL in Dubai. Since, the amount invested by MSFIPL could not be recovered; the Director decided that the amount invested by Mohammed Maou Elainine in United Fish Meal FZC will not be refunded to him. Thus, the amount invested by Mohammed Maou Elainine in United Fish Meal FZC was paid to United Fish Meal

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FZC. It is to be noted that there was no direct link between investment made by MSFIPL in Conakary Entity and amount paid by Mr. Mohammed Maou Elainine to United Fish Meal FZC, both are mutually exclusive transactions and independent from one another. It is only the amount invested by MSFIPL was the basis for retaining the investment of Maou Elainine in United Fish Meal FZC.

6.3 The learned AO has held that the investment made by Mukka Sea Food Industries Pvt Ltd in Conakary entity has resulted in benefit of the assessee. In this connection it may be noted that for the investments made by the company it has been allotted equivalent shares in the Conakary Entity Sopramar S.A.R.L. Thus there is no benefit accruing to the assessee as a shareholder of the company. Moreover, the advance paid is also to be returned to the company Mukka Sea Food Industries Pvt Ltd. Hence, no benefit has been derived by the assessee. Subsequently one of the Directors of Sopramar S.A.R.L has made investment in his individual capacity in the sister concern. This investment is deemed as benefit given to the assessee as the provisions of section 2(22)(e) is a deeming provision. The learned AO has taken double deeming to assess the income u/ s 2(22)(e) which is not permissible under law.

6.4 In our opinion, that "double deeming" or "fiction on fiction" is not allowed as per the settled position of law. Legal fictions are only for a definite purpose & should not be extended beyond that legitimate field that as held, inter alia, in the Apex Court's decision in CIT Vs. Mother India Refrigeration Industries P. Ltd. SC-155 ITR 711, CIT Vs. Amarchand N. Shroff and Bengal Immunity Co. Ltd. vs. State of Bihar. Section 2(22)(e) is a charging section and should be strictly interpreted. Ingredients of the legal fiction created by section 2(22)(e) of the Act have not been met in the Assessee's case. The deeming fiction created for a specific purpose cannot be

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infused for another application unless and until it is specifically provided in the Act. Double deeming is not permitted in law. It is not permissible to subjoin or track a fiction upon fiction and to impose supposition on a supposition of law. It is, therefore, not in dispute that such a provision which is a deemed provision and fictionally creates certain kinds of receipts as dividends, is to be given strict interpretation. It follows that unless all the conditions contained in the said provision are fulfilled, the receipt cannot be deemed as dividends. Further, in case of doubt or where two views are possible, benefit shall accrue in favour of the assessee.

6.5 Further, it is to be noted that an independent transaction between Mr. Mohammed Maou Elainine and United Fish Meal FZC is deemed as benefit given to the assessee out of the funds of the company M/S Mukka Sea Food Industries Pvt Ltd which is not provided within the provisions of section 2(22)(e) of the Act.

6.6 Even assuming but not admitting that the investment by Mukka Sea Food Industries Pvt. Ltd has indirectly benefited the assessee, the same will not attract the provisions of section 2(22)(e) of the Act as the provisions does not speak about such indirect benefit to the share holder. The provisions of section 2(22)(e) of the Act covers direct benefit received by the share holder from any payment made by the company and deems it as deemed dividend.

6.7 One has to appreciate that the provisions of section 2(22)(e) of the Act is a deeming provisions and the provisions of section should be strictly construed. Only the transactions which fall under four corners of the section are only covered under the provisions of section 2(22)(e). Further it is to be noted that the amount received from Mr. Mohammed Maou Elainine is shown as payable to him in the books of United Fish Meal FZC. We have carefully gone through the ledger extract of the parties concerned. Thus, in our opinion, the assessee has not received any benefit

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from the investment made by Mukka Sea Food Industries Pvt Ltd in Conakary entity since it is outstanding in the books of accounts of MSFIPL as on 31.3.2018.

6.8 As discussed above, there was no direct payment from MSFIPL to the assessee and the investment made by MSFIPL in Conakry entity was not in the assessment year under consideration it was in AY 2015-16. It was made in the assessment year 2015-16 and the investment made in assessment year 2015-16 has no application in the present assessment year 2018-19. In other words, to apply section 2(22)(e) of the Act accumulated profit in the hands of MSFIPL to be considered as in assessment year 2015-16 and not in present assessment year 2018-19 as there was no movement of funds in the assessment year 2018-19 from MSFIPL to present assessee, the computation of deemed dividend fails, as such provisions of section 2(22)(e) of the Act cannot be applied. Even otherwise, as held by Hon'ble Supreme Court in the case of Punjab Distilling Industries Ltd. Vs. CIT 57 ITR 1 (SC) (Larger Bench) that in dictionary meaning of expression "distribution is to give each a share, to give to several persons". The expression distribution connotes something actually not notional. It can be physical; it can also be constructive. One may distribute amount between different shareholders either by crediting the amount due to each one of them in their respective accounts or by actually paying to each one of them the amount due to him.

6.9 The only difference between the expression "paid" and the expression "distribution" is that the later necessarily involve the iota of fiction between several persons, which is the same as payment to several persons. Distribution is an accumulation of process. The Hon'ble Supreme Court further held that "dividend must be deemed to have been paid or distributed in the year when it was actually, whether physical or constructively paid to the

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different shareholders, i.e. when the amount was credited to the separate accounts of the shareholders are paid to them.

6.10 Thus, in our opinion, a loan or advance by a company to its substantial shareholders or a substantial concern in which is interested is deemed dividend u/s 2(22)(e) of the Act to the extent accumulated profits available. Whether loan or advance is made to a company or a person having substantial interest in which a substantial shareholder has a substantial interest, the generally accepted principle is that it is only the shareholder who can be targeted for liability in the light of object of the provision to meet the contingency of the shareholder as would be enjoying all the accumulated profits without going through the process of declaration of dividend and thereby avoiding the tax on distributed dividend. No.(iii) of explanation (1) to section 2(22)(e) of the Act provides that deeming the income of loan or advance, credit to be given for any amount already assessed in earlier years as deemed dividend. In view of the above, we are of the opinion that there cannot be any deemed dividend arise out of the impugned transaction in the hands of present assessee. Accordingly, we allow the ground taken by the assessee. Thus, the provisions of section 2(22)(e) of the Act were not applicable as there was no direct payment made by Mukka Sea Foods Industries Pvt. Ltd. to the present assessee during the year. Even otherwise, there was no movement of accumulated profit from the Mukka Sea Food Industries Pvt. Ltd. to the assessee, even the money moved from MSFIPL to Sopromer S.A.R.L. a Conakry Entity was in earlier financial year 2015-16 and that cannot be considered as a deemed dividend in this assessment year 2018-19 by virtue of allotment of shares in United Fish Meal FZC Dubai in the name of assessee as there was no payment made during the assessment year under consideration, the provisions of section 2(22)(e) of the Act cannot be applied as the computation of accumulated profit for the purpose of

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determining the deemed dividend which fails. In other words, it would be not possible to ascertain the accrued profit for the purpose of ascertaining the deemed dividend even, if any in the hands of assessee as the accumulated profit as the year of payment would differ from the accumulated profit considered on account of benefit arisen to the assessee in the year of transfer of shares.

6.11 Further, as pointed out earlier, there was no direct benefit arise to the present assessee from M/s. MSFIPL in the year under consideration and the transaction between MSFIPL and Conakry entity were different from the transfer of shares from share in United Fish Meal FZC to the name of assessee on account of mediation by Mohammed Maou Elainine. Thus, it cannot be considered as a deemed dividend in the hands of the assessee.

6.12 Further, it is also brought on record that amount of advance of Rs.1,95,37,070/- has been shown as outstanding as on 31.3.2018 under the head non-current investments in totalling of Rs.11,15,27,941/- in schedule 12. The Schedule 12 as on 31.3.2018 is as follows:

Non Current Investments (at cost)	31.03.2018	31.03.2017
(a) Investment in Government or Trust Securities unquoted – National Saving Certificate	14000	14000
(b) Other Investments – Unquoted	111513941	48916078
Total	**111527941**	**48930076**

The bifurcation of above investments is as follows:

Investments
Group Summary
1-Apr-2017 to 31-Mar-2018

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	Closing Balance	
	Debit	Credit
Attavar Land - New Office	1,10,70,400.00	
BAIKAMPADY NEW GODOWN PROPERTY	2,34,52,000.00	
Bykampady Land A/c	1,09,67,500.00	
Investment in Bangladesh Co.	9,50,334.00	
Investment - K G N Marine Products	1,99,41,285.57	
Metro Plaza Building,Valencia	1,62,52,726.00	
National Savings Certificate	14,000.00	
Property 1st @ Mukka Shasihitlu	48,17,000.00	
PROPERTY 2nd @ Mukka	28,20,640.00	
SOPROMER SARL - Advance	1,95,37,070.00	
Trinity Complex C4 - 18-4-212/41 (New Office)	17,04,985.00	
Grand Total	11,15,27,940.57	

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6.13 Thus, it is ample clear that the MSFIPL has been showing this amount as due from Conakry entity i.e. SOPROMER SARL as on 31.3.2018 and MSFIPL has a legal right to recover it from Conakry entity. This is being so, without writing off this debt by MSFIPL, it cannot be said that any benefit has been passed to present assessee from MSFIPL as a beneficial shareholder. In other words, if any indirect benefit is derived by the present assessee from United Fish Meal FZC Dubai from some other transaction by any stretch of imagination it cannot be considered as a deemed dividend u/s 2(22)(e) of the Act in the hands of present assessee. There is no provision in the Act to interpret in such a manner, which is far from the reality.

6.14 Accordingly, we delete the addition made in the hands of present assessee u/s 2(22)(e) of the Act in the assessment year under consideration. The grounds of appeal raised by the assessee are allowed.

7. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 9th Aug, 2024

(Prakash Chand Yadav) **Judicial Member**	**(Chandra Poojari)** **Accountant Member**

Bangalore,
Dated 9th Aug, 2024.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The DR, ITAT, Bangalore.
5 Guard file

By order

Asst. Registrar,
ITAT, Bangalore.