

**IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA 'B' BENCH AT KOLKATA**

**Before**

**SHRI GEORGE MATHAN, JUDICIAL MEMBER  
&  
SHRI RAKESH MISHRA, ACCOUNTANT MEMBER**

**ITA No(s). 1274/KOL/2024  
Assessment Year(s) 2016-17**

JHV Steels Ltd. <i>(Appellant)</i>	Vs.	DCIT, CC-2(2), Kolkata <i>(Respondent)</i>
<b>PAN: AACCCJ1814E</b>		

**Appearances:**

**Assessee represented by** : Rajeeva Kumar, Advocate.

**Department represented by** : Dr. Anup Biswas, CIT, DR.

Date of concluding the hearing : 11.05.2026

Date of pronouncing the order : 22.06.2026

**ORDER**

**PER RAKESH MISHRA, ACCOUNTANT MEMBER:**

This appeal filed by the assessee is against the order of the Pr. Commissioner of Income Tax-Kolkata-1 [hereinafter referred to the 'Ld. PCIT'] passed u/s 263 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') for AY 2016-17 dated 27.03.2024.

1.1 The Registry has informed that the appeal is barred by limitation by 11 days. The assessee has filed a petition for condonation of delay explaining the reasons that the memorandum of appeal along with the required documents for the filing of appeal were given to the tax consultant on 23.05.2024, however, due to his father's illness, the tax consultant left for his native place in Odisha and therefore he could not file the appeal in time. After perusing the same, we are satisfied that the assessee had a reasonable and sufficient cause and was prevented from



filing the instant appeal within the statutory time limit. We, therefore, condone the delay and admit the appeal for adjudication.

2. The assessee is in appeal before the Tribunal raising the following grounds of appeal:

*"1. That on the facts and in the circumstances of the case, the order dated 27.03.2024 under section 263 of the Income Tax Act, 1961 passed by the Ld. PCIT is bad in law and is need to be quashed.*

*2. That under the facts and in the circumstances of the case, the Ld. PCIT erred in passing order u/s. 263 of the Income Tax Act, 1961 setting aside the order dated 21.07.2021 passed u/s. 153A of the Act holding the same to be erroneous & prejudicial to the interest of revenue on the ground that the unsecured loan received from M/s. Welcome Distilleries Pvt Ltd should have been treated as deemed dividend in terms of section 2(22)(e) of the Income Tax Act, 1961. Since no incriminating material was found in the course of the search and seizure operation carried out in the case of the assessee, the assessment was made u/s 153A of the Act without taking any adverse view for the unsecured loan received from M/s. Welcome Distilleries Pvt Ltd. Hence, the order under section 263 of the Income Tax Act, 1961 is bad in law and needs to be quashed.*

*3. The assessee craves leave to add, alter, amend or withdraw any ground or grounds of appeal before or at the time of hearing"*

3. Brief facts of the case are that the assessee had filed the return of income for AY 2016-17 on 28.09.2016 declaring the total income of the assessee at ₹NIL/-. A search and seizure operation u/s 132 of the Act was conducted on 08.10.2018 in the case of Jaiswal Group. Consequently, the notice u/s 153A of the Act was issued, and the assessee filed the return of income on 26.02.2020 declaring the total income at ₹NIL/-. During the assessment proceedings, the Assessing Officer (hereinafter referred to as Ld. 'AO') examined the unsecured loans received by the assessee and concluded that they were bogus accommodation entries. The Ld. AO made an addition of ₹1,75,00,000/- u/s 68 of the Act towards unsecured loans from M/s Ambica Residency



Pvt. Ltd. and the corresponding addition of ₹12,25,000/- u/s 69C of the Act for unexplained commission expenditure. The Ld. AO also made an addition of ₹2,99,00,000/- u/s 68 of the Act towards unsecured loans from M/s Uday Bhanu Agency Pvt. Ltd. and the corresponding addition of ₹5,98,000/- u/s 69C of the Act for unexplained commission expenditure and passed the assessment order u/s 153A r.w.s. 143(3) of the Act on 07.08.2021 determining the total income of the assessee at ₹4,92,23,000/-. Subsequently, the Ld. Pr. CIT initiated revision proceedings u/s 263 of the Act and in the course of the same observed that the assessee had taken a loan of ₹6,07,00,000/- from M/s Welcome Distilleries Private Limited, wherein Shri Heera Lal Jaiswal held a substantial interest in both the entities, and the Ld. AO had failed to examine the taxability of this loan as deemed dividend u/s 2(22)(e) of the Act. The Ld. PCIT also noted that the Ld. AO also failed to verify a bogus liability of ₹1.22 crores regarding M/s Darsh Developers Private Limited. Rejecting the contention of the assessee that no addition could be made in the search assessment without incriminating material, the Ld. Pr. CIT held that the Ld. AO had failed to make requisite inquiries on these issues, thus rendering the assessment order erroneous and prejudicial to the interest of the Revenue. Accordingly, the Ld. Pr. CIT set aside the order of the Ld. AO and directed him to pass a fresh assessment order and to recompute the income after making proper enquiries on the issues involved and after offering reasonable opportunity of being heard to the assessee. The assessment order was set aside for the purpose of proper and correct computation of the assessed income as discussed in the proceeding under section 263 of the Act and the Ld. AO was directed to decide the matter as per law.



4. Aggrieved with the order of the Ld. Pr. CIT, the assessee has filed the appeal before the Tribunal.
5. Rival contentions were heard and the submissions made have been examined.
6. Ground Nos. 1 is general in nature and concerns the entire order without mentioning any specific reason.
7. Ground No. 2 relates to the issue of deemed dividend and it was submitted by the Ld. AR that the unsecured loan received from M/s. Welcome Distilleries Pvt. Ltd. did not relate to any incriminating material found in the course of the search and seizure operation and the assessment was made u/s 153A of the Act without taking any adverse view for the unsecured loan received from M/s. Welcome Distilleries Pvt. Ltd. The Ld. Pr. CIT observed that Welcome Distilleries Private Limited had paid an amount of ₹6,07,00,000/- to JHV Steels Ltd, wherein Shri Hira Lal Jaiswal was a common shareholder of both the companies. The company's business was not money-lending and it could not be said that the loan had been advanced by the company in the ordinary course of its business. In such circumstances, in the instant case, all the amounts advanced to the assessee under the head unsecured loans and advances fell squarely within the ambit of section 2(22)(e) of the Act and as the amount was not added, the order of the Ld. AO was found to be erroneous in so far as it was prejudicial to the interest of the revenue. In the course of the appeal, the Ld. AR has relied upon the order of the Coordinate Bench in the case of **JHV Construction Co. Pvt. Ltd. vs DCIT, CC-2(2), Kolkata, ITA No. 1289/KOL/2024** for AY 2014-15; order dated 09.02.2026 on identical

facts. We have gone through the order relied upon in the case of **JHV Construction Co. Pvt. Ltd.** (supra) In which it has been held as under:

*“8. We have considered the submissions made, gone through the facts of the case and perused the record and the order of the Ld. CIT(A). It has been held in Commissioner of Income Tax. vs. Madhur Housing & Development Co. [2018] 93 taxmann.com 502 (SC)/[2018] 401 ITR 152 (SC)[05-10-2017] in which the order in the case of Commissioner of Income-tax v. Ankitech (P.) Ltd. [2011] 11 taxmann.com 100 (Delhi) by the Hon'ble High court had been affirmed which had stated that in which it was held that (i) legal fiction created under section 2(22)(e) enlarges definition of dividend only and it cannot be extended further for broadening concept of shareholders, (ii) a concern in which shareholder of payer company has at least 20 per cent of voting power and loan or advance under this category is given admittedly not to a shareholder/member of payer company, under no circumstances, said concern can be treated as shareholder/member receiving dividend, (iii) in a case where conditions stipulated in section 2(22)(e) treating loan and advance as deemed dividend are established, revenue can treat dividend income at hands of shareholders and tax them accordingly, and (iv) where loans and advances are given in normal course of business and transaction in question benefits both payer and payee companies, provisions of section 2(22)(e) cannot be invoked.*

*9. In this case, since Shri Heera Lal Jaiswal was holding 95.93% share of JHV Construction Co. Pvt. Ltd. and 87.32% share of Welcome Distilleries Private Limited and M/s. Welcome Distilleries Private Limited had accumulated profits, the loan received by the concern in which the shareholder of the assessee company had substantial interest was to be assessed as deemed dividend in the hand of the shareholder viz. Shri Heera Lal Jaiswal and the same could not be treated as deemed dividend in the hand of the company which had received the loan as the company was not the registered shareholder. Hence, the order of the Ld. Pr. CIT being based upon incorrect appreciation of law, the order of the Ld. AO being neither erroneous nor prejudicial to the interests of the Revenue in the case of the assessee, therefore, the order u/s 263 of the Act of the Ld. Pr. CIT is hereby quashed and Ground No. 1 of the appeal is allowed. Ground No. 2 is not adjudicated as the Ld. Pr. CIT has addressed this issue in his order and the Ld. AO had also passed the order u/s 153A of the Act which is under appeal.”*

7.1 The Ld. DR vehemently argued that since the Ld. AO had failed to carry out the requisite enquiries, the Ld. Pr. CIT was justified in

invoking the powers under section 263 of the Act and revising the assessment order. The relevant portions from the order of the Ld. Pr. CIT are as under:

*“14. From the fact it transpires that Welcome Distilleries Private Limited paid an amount of Rs 6,07,00,000/- to JHV Steels Ltd, wherein Shri Hira Lal Jaiswal was a common shareholder of both the companies. The company's business was not money-lending and it could not be said that the loans had been advanced by the company in the ordinary course of its business. In such circumstances, in the instant case, all the amounts advanced to the assessee under the head unsecured loans and advances fall squarely within the ambit of section 2(22)(e) of the Act.*

*15. The Hon'ble Supreme Court while delivering judgement in the case of National Travel Services v. Commissioner of Income Tax, Delhi, VIII [2018] 89 taxmann.com 332 (SC) defines the shareholder as follows:*

*"This is why "shareholder" now, post amendment, has only to be a person who is the beneficial owner of shares. One cannot be a registered owner and beneficial owner in the sense of a beneficiary of a trust or otherwise at the same time. It is clear therefore that the moment there is a shareholder, who need not necessarily be a member of the Company on its register, who is the beneficial owner of shares, the Section gets attracted without more. To state, therefore, that two conditions have to be satisfied, namely, that the shareholder must first be a registered shareholder and thereafter, also be a beneficial owner is not only mutually contradictory but is plainly incorrect. Also, what is important is the addition, by way of amendment, of such beneficial owner holding not less than 10% of voting power. This is another indicator that the amendment speaks only of a beneficial shareholder who can compel the registered owner to vote in a particular way, as has been held in a catena of decisions starting from Mathalonev. Bombay Life Assurance Co. Ltd. [1954] SCR 117"*

*So the contention of the assessee that as the assessee is not shareholder of Welcome Distilleries Pvt Ltd, the loan transaction should not be treated as deemed dividend, is not tenable.*

*16. The following judicial pronouncement may also be referred in this regard:*



*i) The Hon'ble ITAT in Mumbai in the Skyline India Recruit.com. (P.) Ltd. Vs ITO 9(3) [2008] 24 SOT 402 (MUM.) (SMC) has held that if the payments of any sum by way of advance or loan is given to company in which there is a common shareholder and that shareholder has/have the beneficial interest in both the companies. The loans and advances shall be deemed dividend under section 2(22)(e) of the Act.”*

7.2 We have considered the submissions made, gone through the provision and perused the record and the order of the Ld. Pr. CIT. We note that the facts are identical to the facts of the case of **JHV Construction Co. Pvt. Ltd. (supra)** and the assessee was not the shareholder in M/s. Welcome Distilleries Pvt. Ltd. in which only Shri Hira Lal Jaiswal was a common shareholder in both the concerns, having 14.57% shares in JHV Steels Ltd. and 87.32% of shares in Welcome Distilleries Private Limited and the deemed dividend could have been said to have deemed to have been received/arisen in the case of Shri Hira Lal Jaiswal who was the shareholder and not in the case of the assessee company, which was not a shareholder in the other concern. Further, the assessee had also argued that the loan amount of ₹3,07,00,000/- was received in the preceding financial year and was outstanding in the balance sheet as on 31.03.2015 and the sum of ₹6,07,00,000/- as alleged was not received in the F.Y. relevant to the A.Y. under consideration and the same had been adjusted against the sales made and, therefore, no addition could have been made in the impugned assessment year. However, as regards the applicability of the decision of Hon'ble Supreme Court in the case of **PCIT v Abhisar Buildwell (P) Ltd. [2023] 149 taxmann.com 399 (SC)**, the Ld. Pr. CIT has held in para 11 that the original assessment was made under section 153A of the Act after considering the seized material. However, in view of the findings of the Coordinate Bench in the case of **JHV**



**Construction Co. Pvt. Ltd.** (supra) and since the facts are identical, we hold that the order of the Ld. AO was neither erroneous nor prejudicial to the interest of the Revenue on the issue of deemed dividend. The decisions relied upon by the Ld. Pr. CIT are distinguishable on facts and not applicable to the facts of the case of the assessee. Therefore, on the issue relating to deemed dividend, the findings of the Ld. Pr. CIT are reversed. However, as regards the issue relating to bogus liability of ₹1.22 Crores in the name of Darsh Developers Private Limited as mentioned in para 17 of the impugned order of the Ld. Pr. CIT, which was not examined by the Ld. AO; neither any ground of appeal has been raised nor any explanation was filed either before the Ld. Pr. CIT and this issue was not even argued before us and as no inquiry was made by the Ld. AO in this regard, therefore, the invocation of revisionary power by the Ld. Pr. CIT was justified on this issue. Hence, Ground Nos. 1 and 2 of the appeal are partly allowed.

8. Ground No. 3 is general in nature and does not require any separate adjudication.

9. In the result, the appeal filed by the assessee is partly allowed.

**Order pronounced in the open Court on 22nd June, 2026.**

*Sd/-*  
**[George Mathan]**  
Judicial Member

*Sd/-*  
**[Rakesh Mishra]**  
Accountant Member

Dated: 22.06.2026

*Bidhan (Sr. P.S.)*



*Copy of the order forwarded to:*

1. **JHV Steels Ltd., C/o. CA Samit Jena & Associates, Room No.2H, 2<sup>nd</sup> Floor, 36A, Bentinck Street, Kolkata, West Bengal, 700069.**
2. **DCIT, CC-2(2), Kolkata, Aayakar Bhawan (Poorva), 110, Shanti Pally, Kolkata, West Bengal, 700107.**
3. CIT(A)-
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.
6. Guard File.

*// True copy //*

By order

Assistant Registrar  
ITAT, Kolkata Benches  
Kolkata