IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO.6872 of 2025

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE A.S. SUPEHIA

and

HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI

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Approved for Reporting	Yes	No
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INSTITUTE OF FIRE SAFETY DISASTER MANAGEMENT STUDIES
Versus
ASSISTANT COMMISSIONER OF INCOME TAX, CIRCLE 1(1)(1) & ANR.

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Appearance:
MR.HARDIK V VORA(7123) for the Petitioner(s) No. 1
MR.RUTVIJ R PATEL(10615) for the Respondent(s) No. 1
NOTICE SERVED for the Respondent(s) No. 2

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CORAM:**HONOURABLE MR. JUSTICE A.S. SUPEHIA**
and
HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI

Date : 21/07/2026

ORAL JUDGMENT

(PER : HONOURABLE MR. JUSTICE A.S. SUPEHIA)

1. In the present writ petition, the petitioner, which is a public Trust, has prayed for quashing and setting aside the order dated 30.06.2022 passed under Section 148A(d) of the Income Tax Act, 1961 (for short 'the Act') as well as Notices issued under Section 148 of the Act dated 30.06.2022 and 06.04.2021.

2. The petitioner is a public Trust, which had filed the return of income for Assessment Year (for short 'A.Y.') 2013-14 on 27.09.2013 declaring total income at Rs.NIL.

3. A Notice under Section 148 of the Act was issued to the petitioner on 06.04.2021 requesting to file the return of income within 30 days. On filing of such return, the petitioner was supplied the reasons for reopening of assessment. The reason which was assigned by the respondent for reopening is premised on the provision of Section 2(22)(e) of the Act. It was alleged that, during the scrutiny of audited financial statements and computation of income of M/s.Checkmate Services Private Limited, it was observed that it has given loans and advances to the petitioner amounting to Rs.8,85,97,971/- and the same is recorded under the head 'Trade Payables'. The Assessing Officer treated the loan and advances as Dividend under Section 2(22)(e) of the Act and alleged that the petitioner has not offered the same to tax.

4. The petitioner filed a detailed reply on 25.05.2022 pointing out that the provision of Section 2(22)(e) of the Act will only apply, in the case, if the advanced of any sum by a company to another concern, in which a person is holding at least 10% voting rights in the company and also holds a substantial interest in the concern, whereas, in the present case, the petitioner-Trust is not a shareholder in M/s.Checkmate Services Private Limited and Mr.Vikram Mahurkar is not a beneficiary of the petitioner-Trust, and hence, such transaction cannot be categorized as deemed dividend under Section 2(22)(e) of the Act.

5. However, by an order dated 30.06.2022, the respondent has overruled the objection raised by the petitioner and issued Notice under Section 148 of the Act and passed an order under Section 148A(d) of the Act, on 30.06.2022. The petitioner again filed a detailed reply alongwith supporting documents on 06.02.2023. Thereafter he assailed the notices and the order by filing the present writ petition.

6. Learned advocate Mr.Hardik Vora, while pointing out the decision rendered by this Court in the case of *GSEC Limited vs. Deputy Commissioner of Income Tax* [*2023] 157 taxmann.com 450 (Gujarat*) has submitted that the impugned notices as well as the order are required to be quashed and set aside.

7. It is submitted that, this Court has placed reliance on the judgment of the High Court of Delhi in the case of *Commissioner of Income Tax vs. Ankitech Private Limited [2011] 11 taxmann.com 100 (Delhi).* It is further submitted that subsequently, the Civil Appeals emanating in IT Appeal No.462 of 2009 were dismissed by the Supreme Court in the case of *Commissioner of Income Tax vs. Madhur Housing and Development Company, [2018] 93 taxmann.com 502 (SC).* However, it is submitted that the Supreme Court subsequently appears to have referred the decision rendered in the case of *Ankitech Private Limited* to Larger Bench vide an order dated 18.01.2018 passed in *National Travel Services vs. Commissioner of Income Tax, Delhi, [Civil Appeals Nos.2068-2071 of 2012]* which was subsequently withdrawn and dismissed vide order dated 10.08.2021. Thus, it is submitted that the decisions of the Delhi High Court in the case of ***Ankitech Private Limited*** **(supra)** and in the case of ***Madhur Housing and Development Company*** **(supra)** has attained finality and since the issue is squarely covered, the the present writ petition may be allowed by quashing and setting aside the impugned notices as well as the order.

8. In response to the aforesaid submissions, learned Senior Standing Counsel Mr.Rutvij Patel has placed reliance on the order of reference passed by the Supreme Court in the case of ***National***

Travel Services vs. Commissioner of Income Tax, Delhi (supra) and has submitted that, though the Civil Appeals have been subsequently withdrawn, the order would still survive.

9. While referring to the merits of the matter, it is submitted that on the scrutiny of the balance sheet, profit and loss account and annual reports of the petitioner, it transpired that the assessee (petitioner) had manipulatively evaded income chargeable under Section 2(24)(ii) read with Section 2(22)(e) of the Act to the tune of Rs.8,85,97,971/-, which was received by the petitioner from M/s.Checkmate Services Private Limited as advances and loans, and contrarily depicted in its books of account as 'trade payables'. He has further submitted that Shri Vikram P. Mahurkar is the Managing Trustee of the present petitioner – Trust and the amount of advance has been received from the Company -M/s.Checkmate Services Private Limited, in which Shri Mahurkar is a Director and having shareholding of 50%. Thus, it is submitted that the provision of Section 2(22)(e) of the Act is attracted.

10. In support of his submission, Mr.Patel has placed reliance on the decision of the Supreme Court of India in the case of *Gopal and Sons (HUF) vs. Commissioner of Income Tax, Kolkata*, reported in *[2017] 77 taxmann.com 71 (SC).*

11. Thus, it is urged by learned Senior Standing Counsel Mr.Patel that the writ petition may not be entertained.

12. We have heard the learned counsels appearing for the respective parties at length.

13. From the pleadings and the documents on record as well as from the impugned order and notices, the following facts are established:

a. The reopening of the assessment is premised on the amount of loans and advances obtained by the petitioner to the tune of Rs.8,85,97,971/- which was reported under the head 'Trade Payables' in the return of income. The Assessing Officer treated the same as dividend under Section 2(22)(e) of the Act. It is an established fact that, one Shri Vikram Mahurkar, who is the Managing Trustee of the present petitioner – Trust received the said amount as advance from the group company- M/s. Checkmate Services Pvt. Ltd., in which he is a Director, having shareholding of 50%.

b. The petitioner which is unquestionably a Trust pointed out to the Assessing Officer, pursuant to the Notices issued to it that the provision of Section 2(22)(e) of the Act cannot be invoked, in case of the petitioner Trust, as it is not a shareholder in the company of M/s. Checkmate Services Pvt. Ltd., but the Managing Trustee - Shri Vikram Mahurkar is having a shareholding of 50% in the said company.

c. Thus, the case of the Revenue is that the advance taken by the Trustee – Mr.Vikram P. Mahurkar, who is a Director in M/s.Checkmate Services Private Limited and having a shareholding of 50% would cast a liability on the petitioner - Trust and make them amenable under the provision of Section 2(22)(e) of the Act, as such advance can be termed as a deemed dividend.

14. We may at this stage, refer to the judgment of the Delhi High Court in the case of **Ankitech Private Limited (supra)**, wherein, the Delhi High Court, while examining the provision of Section 2(22)(e) of the Act has held thus:

> *"22. Insofar as the provisions of Section 2(22)(e) are concerned, we have already extracted this provision and taken note of the conditions/requisites which are to be established for making provision applicable. In Commissioner of Income Tax Vs. C.P. Sarathy Mudaliar [1972] 83 ITR 170, the Supreme Court had traced out the assessee of this provision in the following manner:*
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> > *"Any payment by a company, not being a company in which the public are substantially interest, of any sum (whether as representing a part of the assets of the company or otherwise) made after 31.05.19987 by way of advance or loan.*

First limb

a) to a shareholder, being a person who is the beneficial of shares (not being shares entitled to a fixed rate of dividend whether with or without a right to participate in profits) holding not less than ten percent of the voting power,

Second limb

b) or to my concern in which, such shareholder is a member or a partner and in which he has a substantial interest (hereafter in this clause referred to as the said concern)

Third limb

c) or any payment by any such company on behalf, or for the individual benefit, or any such shareholder, to the extent to which the company in either case possesses accumulated profits."

23. It is rightly pointed out by the Bombay High Court in Universal Medicare (P) Ltd. (supra) that Section 2(22)(e) of the Act is not artistically worded. Be as it may, we may reiterate that as per this provision, the following conditions are to be satisfied:

"(1) The payer company must be a closely held company.

(2) It applies to any sum paid by way of loan or advance during the year to the following persons:

(a) A shareholder holding at least 10 of voting power in the payer company.

(b) A company in which such shareholder has at least 20% of the voting power.

(c) A concern (other than company) in which such shareholder has at least 20% interest.

(3) The payer company has accumulated profits on the date of any such payment and the payment is out of accumulated profits.

(4) The payment of loan or advance is not in course of ordinary business activities."

15. The Delhi High Court further while dealing with the Explanation-3 to the provision of Section 2(22)(e) of the Act has held thus:

"24. The intention behind enacting provisions of Section 2(22)(e) *is that closely held companies (i.e. companies in which public are not substantially interested), which are controlled by a group of members, even though the company has accumulated profits would not distribute such profit as dividend because if so distributed the dividend income would become taxable in the hands of the shareholders. Instead of distributing accumulated profits as dividend, companies distribute them as loan or advances to shareholders or to concern in which such shareholders have substantial interest or make any payment on behalf of or for the individual benefit of such shareholder. In such an event, by the deeming provisions, such payment by the company is treated as dividend. The intention behind the provisions of Section 2(22)(e) of the Act is to tax dividend in the hands of shareholders. The deeming provisions as it applies to the case of loans or advances by a company to a concern in which its shareholder has substantial interest, is based on the presumption that the loans or advances would ultimately be made available to the shareholders of the company giving the loan or advance.*

25. Further, it is an admitted case that under normal circumstances, such a loan or advance given to the shareholders or to a concern, would not qualify as dividend. It has been made so by legal fiction created under Section 2(22)(e) of the Act. We have to keep in mind that this legal provision relates to 'dividend'. Thus, by a deeming provision, it is the definition of dividend which is enlarged. Legal fiction does not extend to 'shareholder'. When we keep in mind this aspect, the conclusion would be obvious, viz., loan or advance given under the conditions specified under Section 2(22)(e) of the Act would *also be treated as dividend. The fiction has to stop here and is not to be extended further for broadening the concept of shareholders by way of legal fiction. It is a common case that any company is supposed to distribute the profits in the form of dividend to its shareholders/members and such dividend cannot be given to non-members. The second category specified under Section 2(22)(e) of the Act, viz., a concern (like the assessee herein), which is given the loan or advance is admittedly not a shareholder/member of the payer company. Therefore, under no circumstance, it could be treated as shareholder/member receiving dividend. If the intention of the Legislature was to tax such loan or advance as deemed dividend at the hands of 'deeming shareholder', then the Legislature would have inserted deeming provision in respect of shareholder as well, that has not happened. Most of the arguments of the learned counsels for the Revenue would stand answered, once we look into the matter from this perspective.*

16. Thus, a cumulative reading of the observations of the Delhi High Court and the provision of Section 2(22)(e) of the Act along with Explanation 3 to Section 2(22)(e) of the Act manifests that the provision of Section 2(22)(e) of the Act would get satisfied, (1) if the payer company is a closely held company, (2) it applies to any sum paid by way of loan or advance during the year to persons, i.e. (a) A shareholder holding at least 10% of voting power in the payer company, (b) A company in which such a shareholder has at least 20% of the voting power and (c) A concern (other than company) in which such shareholder has at least 20% interest and (3) the payer company has accumulated profits on the date of any such payment and the payment is out of accumulated profits, and finally, the payment of loan or advance is not in course of ordinary business activities.

17. We reiterate the observations made by the Delhi High Court, wherein, it is held that the intention of the legislature behind enacting the provision of Section 2(22)(e) of the Act is that closely held companies (i.e. companies in which public are not substantially interested), which are controlled by a group of members, even though the company has accumulated profits would not distribute such profit as dividend, because if so distributed the dividend income would become taxable in the hands of the shareholders and instead of distributing accumulated profits as dividend, companies distribute them as loan or advances to shareholders or to concern, in which such shareholders have a substantial interest or make any payment on behalf of or for the individual benefit of such shareholders and in such an event, by deeming provision, the payment by the company is treated as a dividend.

18. So far as reliance placed by learned Senior Standing Counsel Mr.Patel on the decision of ***Gopal and Sons HUF (supra)*** is concerned, we find that there the assessee, i.e. the HUF (Hindu Undivided Family), represented 37.12% of the total shareholding of the company alongwith the Karta, who was also having a share, as well as it fall within the definition of Explanation 3(a) to Section 2(22)(e) of the Act which defines 'concern' to mean HUF, which is not the case before us. We have also noticed that the Karta of the HUF was also holding shares of the said

Company and was having substantial interest in the HUF being its Karta. Thus, in this circumstance, the Supreme Court has held that the provision of Section 2(22)(e) of the Act gets attracted.

19. In the present case, the assessee (petitioner) is a public Trust and it is contended before us that the same will fall within Explanation 3 to Section 2(22)(e) of the Act. The word "concern" used under the Act in such Explanation, which encompasses a Hindu Undivided Family (HUF), or a firm, or an association of persons or a body of individuals or a company cannot be extended to public Trust and they cannot be classified as a "concern" for the purpose of specific tax fiction. Thus, even if a loan is extended to a public Trust by a Private Limited Company, that usually cannot be treated as a deemed dividend under Section 2(22)(e) of the Act.

20. However, there would be very unique exception to this Rule, where the Trust itself is a shareholder holding at least 10% of the voting power in a closely held company, and hence, any loan or advance given by that company to the Trust can trigger the demand of dividend tax under Section 2(22)(e) of the Act.

21. The another scenario would be, where the Trust acts as a conduit and the loan obtained by its Trustee is utilized for the individual benefit on behalf of the Trust, in such cases the provision of Section 2(22)(e) of the Act gets attracted. This is not

the case of the Revenue before us, and hence, the action of the respondents in roping in petitioner public Trust in the provision of Section 2(22)(e) of the Act, only because its Trustee is having a 50% shareholding in the Company – M/s.Checkmate Services Pvt. Ltd., is required to be quashed and set aside. Accordingly, the impugned order dated 30.06.2022 and show cause notices dated 30.06.2022 and 06.04.2021 are quashed and set aside. The writ petition stands ***allowed.***

Sd/-

(A. S. SUPEHIA, J)

Sd/-

(VAIBHAVI D. NANAVATI,J)

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