

## Inter-corporate deposits can't be treated as deemed dividends: Bombay HC

**Summary – The High Court of Bombay in a recent case of Hind Filter Ltd., (the Assessee) held that where AO made addition to assessee's income under sec. 2(22)(e) in respect of loan obtained from company 'D' in which it held 38 per cent shares, in view of fact that assessee was a public company and, moreover, amount was received as inter-corporate deposit, impugned addition was to be set aside**

**Where assessee made contribution of Employees' Provident Fund after due date as specified in Explanation to section 36(1)(va) but within grace period, in view of deletion of second proviso to section 43B with effect from 1-4-2004, contribution so made could not be disallowed**

### Facts

- The assessee had obtained a loan of Rs. one crore from 'D' Ltd. in which assessee held 38.31 per cent shares. According to Assessing Officer, no evidence was submitted showing that lending company was one of which public was substantially interested as contemplated under Act. The Assessing Officer also observed that no documentary evidence was submitted that the company which had advanced loan to the shareholder, was substantially involved in the business of money lending. The Assessing Officer thus treated said amount as deemed dividend in the hands of the assessee.
- The Commissioner (Appeals) opined that the amount of one crore was not taken as loan but was an inter-corporate deposit from 'D' Ltd. which was disclosed in Note No. (3) of Schedule 19 forming part of the balance sheet as well as clause (iii)(e) of annexure to the Auditor's report. The Commissioner (Appeals) further found that the company had advanced Rs. one crore as inter-corporate deposit to assessee which was a public company. He thus concluded that the provisions of section 2(22)(e) were not applicable as payment was made in ordinary course of business. Thus, the addition made by the Assessing Officer was deleted.
- The Tribunal concurred with decision of the Commissioner (Appeals) holding that the provision of section 2(22)(e) was not applicable to the assessee-company since the company was a public company. The Tribunal thus did not find any infirmity with the order of Commissioner (Appeals).
- On revenue's appeal:

### Held

- There is nothing wrong in the order passed by the Tribunal on this aspect. The assessee being a limited company was entitled to hold shares of other corporate entities and holding of 38.31 per cent shares of 'D' Ltd. would not by itself constitute reason enough to hold that company was not a public limited company or the company in which public were not substantially interested. The company 'D' and the assessee were apparently part of the same group. There is nothing on record to

suggest that the company was privately held merely because the assessee held 38.31 per cent shares in company 'D'. The Tribunal as last fact-finding court had clearly opined that assessee-company was one in which public was substantially interested. In the circumstances, there was no substantial questions of law that requires consideration by the Court.