



## Settled View on section 2(22) (e) of the Income Tax Act w.r.t trade advances

(Circular 19/2017 dated 12<sup>th</sup> June 2017)

**Background:** Section 2(22) clause (e) of the Income Tax Act, 1961 (the Act) provides that "dividend" includes any payment by a company, not being a company in which the public are substantially interested, **of any sum by way of advance or loan** to a shareholder, being a person who is the beneficial owner of shares or any payment by any such company on behalf, or for the individual benefit, of any such shareholder, to the extent to which the company in either case possesses accumulated profits.

**Challenges faced:** The CBDT has observed that some Courts in the recent past have held that trade advances in the nature of commercial transactions would not fall within the ambit of the provisions of section 2(22) (e) of the Act. Such views have attained finality. However, there were confusions among the assesseees and the Tax Authorities in considering the trade advances under Sec 2(22) (e) of the Act.

Some Judicial precedents wherein the trade advances/commercial transactions were held to be not covered under section 2(22) (e) of the Act are as follows:

- i). *CIT vs. Creative Dyeing & Printing Pvt. Ltd., Delhi High Court*
- ii). *CIT vs Amrik Singh, P&H High Court*
- iii). *CIT, Agra vs Atul Engineering Udyog, Allahabad High Court*

**Circular issued:** In view of the above, a settled position is taken vide Circular No. 19/2017 dated 12<sup>th</sup> June 2017 that **trade advances, which are in the nature of commercial transactions would not fall within the ambit of the word 'advance'** in section 2(22) (e) of the Act. Accordingly, henceforth, appeals may not be filed on this ground by Officers of the Department and those already filed, in Courts/Tribunals may be withdrawn/not pressed upon.