

**IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT ‘SMC’ BENCH,  
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER  
ITA No. 8/SRT/2023 (AY: 2013-14)  
(Physical hearing)**

Rahul Textile Industries Pvt. Ltd., 4026-27, World Trade Centre, Udhna Darwaja, Ring Road, Surat – 395002.  <b>PAN : AADCR5890F</b>	Vs.	The ITO, TDS, Ward-2, Surat.
<b>APPELLANT</b>		<b>RESPONDEDNT</b>

<b>Appellant by</b>	Shri Hiren Vepari, CA
<b>Respondent by</b>	Shri Vinod Kumar, Sr. DR
<b>Date of institution</b>	02/01/2023
<b>Date of hearing</b>	26/04/2023
<b>Date of pronouncement</b>	30/06/2023

**Order Under Section 254(1) of Income tax Act**

**PER PAWAN SINGH, JUDICIAL MEMEBR:**

1. This appeal by assessee is directed against the order of Learned Commissioner of Income Tax (Appeals) [in short ‘Ld. CIT(A)’] / Learned National Faceless Appeal Centre (in short ‘the NFAC’), Delhi, dated 20.12.2022 for Assessment Year (AY) 2013-14. The assessee has raised the following grounds:

*“(1) On the facts and circumstances of the case, the learned CIT(A) was not justified in confirming order u/s 201(1) and interest u/s 201(1A).*

*“(2) The appellant pleads that all the transactions that happened with Rahul Textiles Industries Pvt. Ltd. were in the nature of current transactions, not falling within the mischief of section 2(22)(e), hence not triggering section 194 and therefore, order u/s. 201(1) and interest u/s. 201(1A) are required to be set aside.*

*“(3) Without prejudice to the above, the penalty could not have been more than Rs.13.184 as against Rs.2,50,222 worked out by the*

*TDS Officer. Correspondingly, interest u/s. 201(1A) would also go down.*

*(4) Also, without prejudice to the above, admittedly, if section 2(22)(e) is anything, it is a fiction.*

*(5) The appellant craves leave to add, alter or vary any of the grounds of appeal.”*

**2.**The assessee vide application dated 04.04.2023, raised the following additional ground of appeal:

*“(1) When the department chose to make addition u/s. 2(22)(e) in case of the deductee (Shareholder: Amit Kaneria) to recover the tax, the department cannot pass order u/s. 201(1) in the hands of the Deductor (Appellant) to again recover tax.*

*(2) Order u/s 201(1)/201(1A) is required to be quashed as the order cannot be passed to recover tax twice viz. (i) From the Deductee and (ii) From the Deductor.”*

**3.**Brief facts of the case are that assessee is a company, filed its return of income for AY.2013-14 on 03.10.2013, declaring total loss of Rs.2.48 crore. The case was selected for scrutiny. The assessment was completed under section 143(3) on 01.03.2016, determining total loss of Rs.2.32 crore. The ITO, TDS received information that assessee company has given short term loan/advances to one of its Directors Shri Amit M. Kaneria who had 30.17% shareholding in the company. Thus, such transaction of loan attracts provision of section 2(22)(e) of the Act. The assessee has shown surplus of more than 25.00 lakh on 31.03.2012, therefore the loan/advances given to Director was deemed dividend and accordingly attract deduction of tax at source under section 194. Accordingly notice under section

201(1)/201(1A) was issued as to why the assessee should not be treated as assessee in default under section 201(1). The assessee filed its reply dated 11.12.2022 and submitted that assessee has not committed any default under section 201(1) for deduction of tax under section 194. The Amit M Kaneria has current transaction on which provision of section 2(22)(e) has no application. The purpose of section 2(22)(e) is that a shareholder who has a significant shareholder should not take away the profits by way of advances by bypassing dividend distribution tax. The Director has current account transaction, thus the advance given by assessee to its Director does not amount to deemed dividend. The assessee also relied on certain case laws. The reply of assessee was not accepted by Assessing Officer. The Assessing Officer held that transaction of assessee with its director of advancing is deemed dividend and assessee was liable to deduct tax under section 194 which is not been deducted and the advances was treated as deemed dividend. The Assessing Officer/ITO, TDS accordingly treated the assessee in default and also worked out demands of Rs.2,50,222/- and interest thereon at the rate of 1% per month for 95 months, thereby worked out interest on Rs.2,37,711/- and created total demand of Rs.4,87,933/- (2,50,222 + 2,37,711).

- 4.** On further appeal before Ld. CIT(A), the action of Assessing Officer/ITO, TDS was upheld by taking view that advancing of funds by company to its director falls in the ambit of section 2(22)(e) which is in the nature of deemed dividend. Further aggrieved, the assessee has filed present appeal before Tribunal.
- 5.** I have heard the submission of Learned Authorized Representative (Ld. AR) of the assessee and the Learned Senior Departmental Representative (Ld. SR. DR) for the Revenue. The Ld. AR of the assessee submits that assessee has raised additional grounds of appeal. The additional ground of appeal is based on purely on question of law which does not require to bring any additional fact on record and may be admitted. For adjudication of additional ground of appeal, no new facts are required to be brought on record and may be admitted as has been held by Hon'ble Supreme Court in the case of National Thermal Power Corporation, 29 ITR 383 (SC).
- 6.** On merit of the case, the Ld. AR of the assessee submits that transaction question is in the nature of current account transaction and provision of deemed dividend are not applicable. To support such submission, the Ld. AR relied upon the decision of Tribunal in Kankuben Karshanbhai Tejani, in ITA No. 54/SRT/2017 for AY.2013-14, order dated 27.05.2022. In alternative submission, the Ld. AR submits that even if provision

of section 2(22)(e) came into play, only to the extent of shareholder is measured based on profit/loss that accrues every so advance is given to be considered. The assessee has given details of working *vis-à-vis* the profit and loss account in accordance with the decision of Tribunal in Kewalkumar Jain (14 ITD 672). Thus, as per the working the deemed dividend to be quantified on Rs.1,31,839/- and default of TDS at the rate of 10% would be only Rs.13,184/-.

**7.**In other alternative submission, the Ld. AR of the assessee submits that the matter relating to the income in the hands of shareholder (Amit M. Kaneria) is also pending before Ld. CIT(A), wherein similar addition was made, which amounts to double taxation, therefore, this appeal needs to be send back as in case if the matter is decided in favour of Director, there will be no question of applicability of section 194 for deduction tax on alleged dividend income and no recovery under section 201(1) r.w.s 201(1A) would survive. The ld AR for the assessee furnished the details of appeal of director pending before ld CIT(A).

**8.** On the other hand, the ld. Sr. DR for the Revenue supported the order of lower authorities. On the admission of additional grounds, the Ld. Sr. DR for the Revenue submits that such ground of appeal raised for the first time before the Tribunal. In

the present case, the provision of section 201(1) is applicable as no taxes were deducted on the dividend paid.

**9.** In the short rejoinder submission, the Ld. AR of the assessee retreated that same amount which is a subject matter in case of assessee is the subject matter in case of recipient of alleged dividend income which is pending adjudication and in case of assessee, it is a double taxation.

**10.** I have considered the submission of both the parties and gone through the order of lower authorities. I find that Assessing Officer/ITO, TDS passed the order against the assessee by treating it in default for want of TDS on payment on alleged deemed dividend. On the contrary, the assessee has strongly disputed such applicability of section 2(22)(e). I further find that Revenue has also taxed the amount of alleged deemed dividend in the hands of its Director. Though, the assessee is claiming that advance is nothing but on account of current account transaction. Further, the facts remain the similar amount is subject matter of the appeal in the hand of Director of assessee namely Amit Kumar M. Kaneria. Therefore, considering the plea of assessee in additional ground of appeal, which is purely legal is admitted. Considering the facts that same addition is the subject matter of appeal filed by the director, therefore the additional ground of appeal raised by assessee-company is

restored to the file of the Ld. CIT(A) to consider it afresh after decision in Director case of Amit Kumar M. Kaneria, PAN: ADPPK7315J and in case the similar amount is taxed in the hands of Director, no addition be made/sustained. The assessee is also directed to provide complete details about the outcome of appeal in case of its Director or any other information which may be required by the Office of Ld. CIT(A). With the aforesaid direction, the additional grounds of appeal raised by the assessee is allowed for statistical purposes. Considering the facts that we have restored the appeal back to the file of ld CIT(A), therefore, specific adjudication on the primary grounds of appeal have become academic.

**11.** In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in open court on 30/06/2023.

**Sd/-**  
**(PAWAN SINGH)**  
**JUDICIAL MEMBER**

Surat, Dated: 30/06/2023

SAMANTA

Copy to:

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR
6. Guard File

By order

**// TRUE COPY //**

Assistant Registrar/Sr.PS/PS, ITAT, Surat