

**IN THE INCOME-TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI DINESH MOHAN SINHA, JUDICIAL MEMBER &
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.742/SRT/2024

Assessment Year: 2015-16

(Hybrid hearing)

International Creations Pvt. Ltd. 561-66, Adarsh Market, Upper Ground Floor, Ring Road, Surat-395 002	बनाम/ Vs.	Income Tax Officer, TDS Ward-1, Surat, Room No.403, 4 th Floor, Anavil Business Center, Adajan Hazira Road, Adajan, Surat-395 007
स्थायीलेखासं./जीआइआरसं./PAN/GIR No: AAACI 8917 P		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

निर्धारिती की ओर से /Appellant by	Shri Sapnesh R Sheth, CA
राजस्व की ओर से /Respondent by	Shri Ajay Uke, Sr-DR
सुनवाई की तारीख/Date of Hearing	22/07/2025
उद्घोषणा की तारीख/Date of Pronouncement	26/09/2025

आदेश / O R D E R

PER BIJAYANANDA PRUSETH, AM:

This appeal by the assessee emanates from the order passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act') dated 14.05.2024 by the Commissioner of Income-tax Appeal, Addl/JCIT(A)-4 Kolkata [in short, the 'CIT(A)'] for the assessment year (AY) 2015-16, which in turn arises out of assessment order passed by the Assessing Officer (in short, 'AO') u/s 201(1) r.w.s. 201(1A) of the Act on 22.03.2022.

2. Grounds of appeal raised by the assessee for the appeal are as under:

1. On the facts and circumstances of the case as well as law on the subject, the Ld. CIT(A), has erred in confirming action of the AO in treating investment in partnership firm as loan given and treating it as deemed dividend u/s.2(22)(e) of the I-T Act.

2. On the facts and circumstances of the case as well as law on the subject, the Ld. CIT(A) has erred in confirming the action of AO in treating assessee to be in

default u/s.201(1) of the IT Act, 1961 for non deduction of TDS and thereby raising demand of Rs.3,95,000/-.

3. On the facts and circumstances of the case as well as law on the subject, the Ld. CIT(A) has erred in confirming action of AO in levying interest of Rs.3,31,800/- u/s.201(1A) of the Act.

4. Appellant craves leave to add, alter or delete any ground(s) either before or in the course of hearing of the appeal.”

2. Facts of the case in brief are that in this case, an information was received from ITO, Ward – 1(2)(2), Surat regarding non deduction of TDS u/s.194 of the Act. As per the information, the assessee-company had given loans and advances of Rs.39,50,000/- without charging any interest in the FY 2014-15 to M/s. Gulmohar Knitting and Director of which had substantial interest in assessee-company having 33.36% share in the assessee-company. It was further informed that the director was having substantial interest in the company and therefore, loans of Rs.39,50,000/- given was required to be treated as deemed dividend u/s.2(22)(e) of the Act to the extent of accumulated profit. Therefore, TDS as per provisions of Section 194 of the Act was required to be deducted by the assessee-company, which it failed to do. As per the provisions of section 194 of the Act, the Principal Officer of an Indian company or a company which has made the prescribed arrangement for the declaration and payment of dividends (including dividends on preference shares) within India, shall, before making any payment in cash or before issuing any cheque or warrant in respect of dividend within the meaning of sub-clause (e) of clause (22) of section 2, deduct from the amount of such dividend, income tax at the rate in force, i.e., 10% for the FY 2014-15 and deposit the same to the Government Account.

3. Since the assessee failed to deduct the TDS as per provisions u/s 194 of the Act, therefore, show cause notices were issued to the assessee as to why the proceedings u/s 201(1) and 201(1A) of the Act should not be initiated for the above default. In compliance, the assessee company submitted that inference drawn by ITO is completely wrong and unjustified since no advance or loan was given by assessee company to M/s. Gulmohar Knitting. The assessee company became partner of the firm by partnership deed executed on 02.06.2014 and amount given by it was not loan but investment made as partner. It was further stated that M/s. Gulmohar Knitting was formed to install knitting machine, however, for requirement of funds, two companies were also included as partners. Subsequently, loan was sanctioned and directors became interested in becoming partners, therefore, both the companies were retired from partnership firm by a deed executed on 27.03.2015. Directors of the company and partners of the firm accepted the fact and furnished copies of both partnership deeds. It was further stated that since the assessee company had made payment to a non-shareholder, thus provisions of section 194 was not applicable. Credit was given as partners' capital and no advance or loan was given to M/s. Gulmohar Knitting without any obligation of payment, thus, aforesaid payment was not covered u/s.2(22)(e) as deemed dividend.

4. The aforesaid reply of the assessee was not found acceptable by the AO, who observed that the director of assessee company had substantive interest in M/s. Gulmohar Knitting with more than 10% of shareholding. From the

unsecured loan account confirmation submitted during assessment proceedings, it was established that loan/advance was given and it was the liability of the company to deduct TDS at applicable rate on amount of Rs.39,50,000/- as per provisions u/s 2(22)(e) of the Act. The assessee company had failed to deduct TDS as well as failed to deposit the same into the Government account and as per the balance-sheet, it was seen that the reserve and surplus in the FY 2014-15 was Rs.6,04,35,062/-, therefore, as per the Act, the amount of Rs.39,50,000/- was required to be treated as deemed dividend in the hand of recipient.

5. The AO held that TDS of Rs.3,95,000/- (10% of Rs.39,50,000/-) was required to be deducted u/s.194 of the Act by the deductor assessee on aforementioned deemed dividend of Rs.39,50,000/- and deposited in the government account within prescribed time limit provided as per IT Act, but the deductor assessee failed to do so. Therefore, assessee was deemed to be an assessee in default within the meaning of section 201 of the Act in respect of such tax (TDS) and for non deduction of TDS amount, interest u/s.201(1A) of the Act was also chargeable on the amount of TDS of Rs.3,95,000/-, which comes to Rs.3,31,800/-. Accordingly, order u/s 201(1) r.w.s. 201(1A) of the Act passed by the ITO, TDS Ward -1, Surat on 22.03.2022, wherein tax payable u/s 201(1) of the Act was determined at Rs.3,95,000/- and interest payable u/s 201(1A) of the Act was determined at Rs.3,31,800/-, thereby raising demand amounting to Rs.7,26,800/- upon the assessee.

6. Aggrieved by the order of AO u/s.201(1) rws 201(1A) of the Act, assessee preferred appeal before CIT(A). The CIT(A) after hearing the Ld. Authorized Representative of the assessee and on perusing the submissions made by him observed that the provision of Section 194 of the Act was squarely applicable in the case of the assessee as deemed dividend u/s 2(22)(e) was also subject to TDS u/s 194 of the Act. Therefore, CIT(A) held that the action of the AO is totally within the four corners of law. Accordingly, the order of the AO was upheld and appeal of the assessee was dismissed by CIT(A).

7. Aggrieved by the order of CIT(A), the assessee has filed present appeal before the Tribunal. The Ld. AR of the assessee filed a paper book containing copy of submission made before the CIT(A), copy of partnership deed of M/s. Gulmohar Knitting, copy of assessee's ledger in books of M/s. Gulmohar Knitting, retirement deed of M/s. Gulmohar Knitting, assessment order issued in case of Shri Ashok Kr. Jindal and copy of order of CIT(A) passed in case of Shri Ashok Kr. Jindal, where the CIT(A) has allowed the appeal of the assessee under similar facts.

7.1 The Ld. AR contended that in the instant case, the assessee-company was engaged in the business of trading and manufacturing of synthetic cloth. The major shareholder in it is Shri Ashok Kumar Jindal, who was also a 50% partner in M/s. Gulmohar Knitting. It is further stated that M/s. Gulmohar Knitting was constituted on 14.06.2014 with two partners, Shri Ashok Kumar Jindal and Smt. Shaifali Amitkumar Jindal. However, bank loan was not sanctioned and firm was

to purchase knitting machinery, thus for the purpose of investment the firm included both the group companies, i.e., M/s. International Creation Pvt. Ltd. and M/s. Gulmohar Embroidery Pvt. Ltd. as partner, by executing a partnership deed on 26.09.2014. Both these companies invested their funds as their partner's capital in the firm. Subsequently, loan was sanctioned and management of both the companies decided to retire from the partnership business. Accordingly, another deed of retirement was executed on 27.03.2015 and both the companies retired from the firm.

7.2 The Ld. AR further stated that aforementioned amount was capital contribution of both the companies and thus out of the purview of deemed dividend as envisaged in provision of section 2(22)(e) of the Act. It is also stated by the Ld. AR that any payment made for commercial purpose is not covered as deemed dividend. The Ld. AR submitted that the AO not only ignored the investment as partners' capital but also considered repayment of loan as deemed dividend and made addition of entire debit transaction totalling to Rs.1,82,50,000/- as deemed dividend u/s.2(22)(e) in the hands of assessee. Ld. AR submitted the copy of CIT(A) order in the case of Shri Ashok Kumar Jindal dated 22.07.2024 for AY 2015-16 wherein it is held by the CIT(A) that the amount given by M/s. Gulmohar Embroidery Pvt. Ltd. and M/s. International Creations Pvt. Ltd. was not loans and advance and therefore, not covered as deemed dividend as per section 2(22)(e) of the Act. Accordingly, the addition

made in the case of Shri Ashok Kumar Jindal was deleted by CIT(A). Apart from this, Ld. AR relied on following judgements in support of his claim:

- (a) ANZ Reality (P) Ltd. Vs. ITO (2009) 120 TTJ 0142 (Jaipur Tribunal)
- (b) Punjab State Electricity Board Vs. ITO (2002) 121 Taxman 367
- (c) M D Jindal Vs. CIT (1987) 164 ITR 28 (Cal)
- (d) CIT vs. K. Srinivasan (1963) 50 ITR 788 (Mad)
- (e) Pradip Kumar Malhotra vs. CIT (2011) 338 ITR 538 (Cal)
- (f) M/s. Mirik Commercial Pvt. Ltd. Vs. Pr. CIT (ITAT, Kolkata)
- (g) CIT Vs. Creative Dyeing & Printing (P) Ltd. (2010) 229 CTR (Del) 250
- (h) CIT vs. Madurai Chettiyar Karthikeyan (2014) 89 CCH 145
(Chennai HC).

8. On the other hand, Ld. Sr. DR for the revenue supported the findings and observations made by AO and CIT(A) and requested to uphold the order of Ld. CIT(A)

9. We have heard both the parties and perused the materials available on record. We have also deliberated on the decisions relied upon by the Ld. AR. Section 2(22)(e) of the Act treats certain loans and advances given by a company to a concern in which a substantial shareholder has interest as deemed dividend, provided the payment is not in the ordinary course of business. The key elements required for applicability are: (i) that the payer company must be a closely held company; (ii) that the payment must be by way of loan or advance; (iii) that the recipient must be a concern (firm in this case); (iv) that the person with substantial interest in the company (shareholder with $\geq 10\%$) must also have substantial interest in the concern; and (v) that there must be accumulated

profits in the payer company. On examining the partnership deed dated 26.09.2014, it is seen that the assessee company was admitted as a partner in M/s. Gulmohar Knitting. The amount of Rs.39,50,000/- was credited as partner's capital and not as a loan. The retirement deed dated 27.03.2015 confirms that the company retired from the firm and any withdrawal made was on account of retirement proceeds and not a repayment of loan. The AO failed to consider these supporting documents while passing the assessment order. In the appellate order in the case of Shri Ashok Kumar Jindal, the transaction was analyzed by the CIT(A) who categorically held that the capital contributions by the companies including the appellant did not constitute loans or advances and hence it was not a deemed dividend u/s 2(22)(e) of the Act. The Ld. Sr-DR has not been able to controvert the finding of the CIT(A) in the above case and explain as to why the findings shall not be applicable to the case of the appellant.

9.1 Reliance is also placed on the decisions in case Creative Dyeing & Printing Pvt. Ltd. (supra) and Pradip Kumar Malhotra (supra), *wherein* it is held that contributions made for business exigencies and commercial considerations are outside the scope of deemed dividend. In view of the above facts and judicial precedents, it is held that the amount of Rs.39,50,000/- was a capital contribution towards the partnership firm and not a loan or advance. The transaction was for a commercial purpose for facilitating bank loan. Accordingly, no TDS was deductible u/s. 194 of the Act and the assessee cannot be treated as an assessee in default u/s. 201(1), nor is it liable for interest u/s 201(1A) of

the Act. In view of the above findings, we hold that the action of the AO in treating capital contribution as deemed dividend u/s. 2(22)(e) is not in accordance with the provisions of law. Hence, the demand raised u/s 201(1) and interest charged u/s 201(1A) of the Act are hereby deleted. The ground of assessee is allowed.

10. In the result, the appeal of the assessee is allowed.

Order pronounced in accordance with Rule 34 of ITAT Rules, 1963
on 26/09/2025 in the open court.

Sd/-
(DINESH MOHAN SINHA)
न्यायिक सदस्य/JUDICIAL MEMBER
सूरत /Surat
दिनांक/ Date: 26/09/2025
Dkp Outsourcing Sr.P.S*

Sd/-
(BIJAYANANDA PRUSETH)
लेखा सदस्य/ ACCOUNTANT MEMBER

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

- **अपीलार्थी/** The Appellant
- **प्रत्यर्थी/** The Respondent
- **आयकर आयुक्त/** CIT
- **आयकर आयुक्त (अपील)/** The CIT(A)
- **विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, सूरत/** DR, ITAT, SURAT
- **गार्ड फाईल/** Guard File

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By order/आदेश से,

सहायक पंजीकार
आयकर अपीलीय अधिकरण, सूरत