

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "A" NEW DELHI**

**BEFORE SHRI YOGESH KUMAR US, JUDICIAL MEMBER  
AND  
SHRI SANJAY AWASTHI, ACCOUNTANT MEMBER**

**आ.अ.सं./I.T.A No.8782/Del/2025  
निर्धारणवर्ष/Assessment Year: 2015-16**

INTERNATIONAL MANAGEMENT TECHNOLOGIES PVT. LTD., Vijaya Building, 1 <sup>st</sup> Floor-17, Barakhamba Road, Connaught Place, New Delhi- 110001. PAN No. AAACI8587M	<b>Vs</b>	ACIT, Circle 10(1), C.R. Building, I.P. Estate, ITO, New Delhi, Delhi 110002.
<b>अपीलार्थी Appellant</b>		<b>प्रत्यर्थी/Respondent</b>

<b>Assessee by</b>	Shri M.R. Sahu, CA
<b>Revenue by</b>	Shri Ajay Kumar Arora, Sr. DR

सुनवाईकीतारीख/ Date of hearing:	23.04.2026
उद्घोषणाकीतारीख/Pronouncement on	20.05.2026

**आदेश /O R D E R**

**PER SANJAY AWASTHI, ACCOUNTANT MEMBER:**

1. This appeal arises from order dated 17.11.2025, passed u/s 250 of the Income Tax Act, 1961 (hereafter as "the Act"), by NFAC. This case has a certain history which deserves to be briefly captured for the sake of perspective. The assessee has filed its return of income for AY 2015-16 on 30.09.2015. This return was subsequently revised on 07.11.2016 declaring the same income. Vide order dated 26.12.2017 the Ld. AO made additions u/s 14A of the Act (Rs.6,81,481/-, and also an addition of Rs.1,50,00,000/- u/s 2(22)(e) of the Act). The assessee preferred an appeal before the

CIT(A), who vide order dated 31.12.2018 confirmed the addition on account of “deemed dividend”, but gave relief on the addition u/s 14A of the Act.

1.1 Thereafter, the assessee approached the ITAT where through order dated 23.03.2023 in ITA No.1298/Del/2019, the matter of deemed dividend was remanded back to the file of Ld. AO with observations that the Ld. AO must consider the Hon’ble Kolkata High Court’s judgment in the case of Pradip Kumar Malhotra reported in 338 ITR 538 (Kol), while undertaking the fresh assessment. It was also observed that there is no Estoppel against law and statute on the finding of Ld. CIT(A) that since the assessee had agreed to the addition made as deemed dividend, there was no scope for any appeal against the same. There is an interesting background to this observation which deserves to be briefly mentioned. In the first-round proceedings before the Ld. AO it was found that one M/s Shaka Properties Pvt. Limited had advanced an amount of Rs.1,50,00,000/- to the assessee company. This M/s Shaka Properties admittedly held 49.30% shares in the assessee company and the assessee also held 50.01% share in M/s Shaka Properties. On being issued with a show cause notice dated 12.12.2017 the assessee submitted its response vide letter dated 22.12.2017 through which it was admitted that due to lack of knowledge and without any *mala fide* intention the fact of the impugned amount being considered as deemed dividend in the hands of the assessee was mistakenly overlooked. It was further submitted by the

assessee that the necessary tax amounting to Rs.50,98,500/- on the impugned amount was deposited on 22.12.2017. It was reiterated by the assessee that it was a mistake due to lack of understanding of law and the assessee had promptly rectified the same with the depositing of necessary extra tax on the same. This *suo moto* admission of “error” led the Ld. CIT(A), in the first round, to observe in para 6.3 at pages 14 & 15 of that order that since the assessee had admitted the tax liability and duly deposited the same then “*once an amount has been surrendered before Assessing Officer it closes the chapter on that issue*”. The Ld. CIT(A) went on to observe that after agreeing for the disallowance before the AO and then raising the same ground of appeal was patently unfair. Needless to say, the Ld. CIT(A), in the first round, confirmed the addition u/s 2(22)(e) of the Act. It was this issue which was also before the ITAT in the first round where the observation of the Bench regarding there being no estoppel on the due process of law was recorded. We will have occasion to discuss this issue in the later part of this order.

1.2 In the second-round proceedings, the Ld. AO discusses at length the non-applicability of the case of Pradip Kumar Malhotra (*supra*) and relied on the case of Krishna Gopal Maheshwari (363 ITR 280) (All) to hold that the impugned amount deserved to be treated u/s 2(22)(e) of the Act. Again, aggrieved with this finding the assessee approached the Ld. CIT(A) who has affirmed the action of Ld. AO as under: -

*“6.2.8 Since, the assessee had taken loan of Rs.1.5 crores from the company M/s Shaka Properties Pvt. Ltd. in which the assessee holds 50.01% shares. However, the appellant assessee has failed to establish that there were financial contingencies involved like in the case of Pradip Kumar Malhotra (supra). The assessee did not produce any documentary evidence to make out its case similar to the facts of the case of Pradip Kumar Malhotra as referred by the Hon’ble ITAT in the order dated 23.03.2023. Further, no document/evidence was produced by the assessee before the AO to show that M/s Shaka Properties Pvt. Ltd. was in the line of lending of money or lending of money was substantial part of the business of the company M/s Shaka Properties Pvt. Ltd. to avail the exception as carved out in the definition of dividend mentioned at 2(22)(e)(ii) of the Act. Considering the entirety of facts, circumstances and material on record and looking into preponderance of probabilities here the appellant has miserably failed to explain its claim. In this condition, the addition of the amount of Rs.1,50,00,000/- which was treated by the AO as deemed dividend u/s 2(22)(e) in the hands of the assessee are factually and legally correct and the same is upheld and the plea of the appellant on this issue are dismissed being devoid of any merits.”*

1.3 Further aggrieved, the assessee has filed the present appeal with the following grounds of appeal: -

- 1. “That on the facts and circumstances of the case and in law, the CIT(A) erred in confirming the Tribunal appeal effect order passed by the AO, dated 28.03.2025 which was passed not following the instruction and finding of the Tribunal in ITA No.1298/Del/2023, order dated 23/03/2023 and without appreciating the fact that the loan taken from M/s Shaka Properties Pvt. Ltd. was interest bearing and interest including the loan was repaid fully, accordingly the loan may kindly be held as non-gratuitous and cannot be treated as deemed dividend u/s 2(22)(e) of the Act, thus, the assessee prays that the addition of Rs.1,50,00,000/- as deemed dividend u/s 2(22)(e) for the loan taken from M/s Shaka Properties Pvt. Ltd. may kindly be deleted in full.*
- 2. That on the facts and circumstances of the case and in law, the CIT(A) has further grossly erred in relying on the judgments totally in applicable to the facts of the case of the assessee and has further, placed reliance on the provisions not applicable to the facts of the case of the assessee, thus the assessee prays that the addition of Rs.1,50,00,000/- as deemed dividend u/s 2(22)(e) confirmed by the CIT(A) may kindly be deleted in full.*

3. *That the appellant craves leave to adduce additional grounds and/or amend or withdraw any of the aforesaid Grounds before or at the time of hearing of the appeal.”*
2. Before us the Ld. AR argued that the case of Pradip Kumar Malhotra (supra) was squarely applicable on the facts of the present case. It was stated that the advance given to the assessee was a non-gratuitous loan having an interest component, thus it could not be held to be deemed dividend u/s 2(22)(e) of the Act. It was the submission that the loan of Rs.1,50,00,000/- availed by the assessee from M/s Shaka Properties carried an interest of 10% per annum. It was mentioned that the interest, net of TDS, was duly paid to M/s Shaka Properties (Rs.7,32,329/-). The Ld. AR took pains to distinguish the facts of his case from the facts of the Krishna Gopal Maheshwari case (supra) where the amount in question had been treated as deemed dividend on the ground that the assessee had not been able to prove that the lender company was engaged in any money lending business. The Ld. AR pointed out the head notes from the Pradip Kumar Malhotra case and read out the same for the benefit of the Bench. The portion highlighted by the Ld. AR were as under:

*“The phrase ‘by way of advance or loan’ appearing to sub-clause (e) of section 2(22) must be construed to mean those advances or loans which a shareholder enjoys for simply on account of being a person who is the beneficial owner 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 10 per cent of the voting power; but if such loan or advance is given to such share holder as a consequence of any further consideration which is beneficial to the company received from such a shareholder; in such case, such advance or loan cannot be said to a deemed dividend within the meaning of the Act. Thus, for gratuitous loan or advance given by the company to those classes of shareholders would come within the*

*purview of section 2(22) but not to the cases where the loan or advance is given in return to an advantage conferred upon the company by such shareholder. [Para 10]*

*In the instant case, the assessee permitted his property to be mortgaged to the bank for enabling the company to take the benefit of loan and in spite of request of the assessee, the company was unable to release the property from the mortgage. In such a situation, for retaining the benefit of loan availed from the bank if decision was taken to give advance to the assessee such decision was not to give gratuitous advance to its shareholder but to protect the business interest of the company. [Para 11]*

*Therefore, the authorities below erred in law in treating the advance given by the company to the assessee by way of compensation for keeping its property as mortgage on behalf of the company to reap the benefit of loan as deemed dividend within the meaning of section 2(22)(e). [Para 13]*

*Consequently, the order of the Tribunal below was to be set aside directing the Assessing Officer not to treat the advance in question as a deemed dividend. [Para 14]”*

The Ld. AR argued that the loan so obtained was interest bearing and the Ld. AO/CIT(A) had erred in reducing the accumulated profits of M/s Shaka Properties (supra) from Rs.25,42,48,842/- by the amount of alleged deemed dividend, being Rs 1,50,00,000. The Ld. AR also relied on the cases of N.S. Narendra reported in 129 taxmann.com 335 (Kar.) & Devik Garg reported in 159 taxmann.com 1561 (Delhi Trib.).

2.1 The Ld. DR, on the other hand, relied on the case of Krishna Gopal Maheshwari (supra) to canvass the point that any kind of loan or payment by an entity considered for the purposes of section 2(22)(e) of the Act to an Assessee who qualifies with respect to the appropriate shareholding, then the amount had to be perforce considered as deemed dividend. The Ld. DR stated that the Pradip Kumar Malhotra case was distinguishable in

as much as the advance was given to the assessee by way of compensation for keeping his property as mortgage so that loan facility could be enjoyed by that company. It was pointed out by the Ld. DR that the Hon'ble Calcutta High Court case rested on its own peculiar facts as there the advance was given to that assessee so that the lender company could avail of loan facility due to the personal property of that assessee being pledged to the bank. It was pointed out that no such exigency was in evidence in the present case. The Ld. DR also stated that the language of section 2(22)(e) of the Act was quite clear and there was no reason why it should be subjected to any interpretation which was not in consonance with the intention of the legislature.

3. We have carefully considered the submissions of Ld. AR/DR. We have also gone through the records before us and have carefully perused the case laws relied upon by either of the sides. Right at the outset, it needs to be mentioned that a query was put forth by the Bench to both the sides regarding the consideration of the *locus classicus* on the subject, being the case of Smt. Tarulata Shyam [108 ITR 345 (SC)]. Both the sides mentioned that neither the Hon'ble Calcutta High Court nor the Hon'ble Allahabad High Court cases being relied on by either side had occasion to consider the case of Smt. Taulata Shyam (supra). Furthermore, the admitted fact here is that the assessee had purportedly accepted that the provisions of "deemed dividend" applied to his case and had promptly deposited the taxes due on the impugned amount. This aspect has been

dealt with by the ITAT in the first-round order (supra) by saying that there cannot be any estoppel on law. Since the focus of controversy has now shifted on whether a loan which is repaid in due course would qualify as “deemed dividend” or not, hence, the issue of the assessee agreeing to an addition and thereafter resiling from that position to claim, on the strength of a case law [Pradip Kumar Malhotra (supra)] that the amount in question could not be considered as “deemed dividend”, is a little difficult to understand. In this regard mention must be made of the case of Deep Kukreti reported in 371 ITR 257 (Uttarakhand) where the legal position on the subject of any grievance surviving after an agreed assessment, has been lucidly dealt with. We may extract relevant portions from this judgment as under: -

*“8. Section 246A of the Income Tax Act, undoubtedly, provides for a right to appeal against an order of the nature, which we are dealing with. But, section 246A provides a right of appeal only to a person, who is aggrieved. We may also advert to section 96 of the Code of Civil Procedure. In Section 96 of the Code of Civil Procedure, appeal is provided against the decrees as provided therein. Section 96 also provides, however, that no appeal will lie against a consent decree. But, it is well settled that, under section 96, an appeal can be maintained by any aggrieved party with the leave of the court. In section 246A, right of appeal is carved out only in favour of a person, who is aggrieved. We are of the view that these words are placed in the section with a definite purpose to rule out appeals in cases, where the parties are really not aggrieved.*

*9. This This question has come up before various courts. In the case of Sterling Machine Tools v. CIT [1980] 123 ITR 181 a Division Bench of the Allahabad High Court considered the question, whether an appeal lies in a situation, where a partner of an assessee firm agreed to the cost of the machine being worked out on the basis of the experts' report and the appeal could be maintained by the firm against an order of the Income Tax Officer in working out the profit on the sale of those machines by deducting the cost price, as is worked out by the experts, from the sale price. Noticing rice.*

Noticing that the partner had agreed to the cost price being worked out as worked out by the experts, the court took the view that the Tribunal was right in holding that no appeal lay to the Commissioner under Section 246(c) of the Income Tax Act.

10. Again, in the case of *Romeshchandra & Co. CIT [1987] 168 TTR 375/35 Taxman 153* a Division Bench of the Bombay High Court was dealing with a case of an assessment on the basis of admission by the assessee. The court, in fact, took the view that, where an assessee has made a statement of facts, he can have no grievance if the taxing authority taxes him in accordance with that statement and, if he can have no grievance, he can file no appeal. Interestingly, it is further held as follows:

*“Therefore, it is imperative, if the assessee's case is that his statement has been wrongly recorded or that he is under a mistaken belief of fact or law, that he should make an application for rectification to the authority which passed the order based upon that statement. Until rectification is made, an appeal is not competent.”*

11. No doubt, in the case of *Gauri Sahai Ghisa Ram v. CIT [1979] 120 ITR 338/2 Taxman 245* a Division Bench of the Allahabad High Court took the view that an appeal could be maintained despite a concession made by the assessee. It is interesting to notice the facts of the said case. There, the firm was filing its return on the basis of the accounting year being Dussehra to Dussehra. A partner died. The succeeding firm adopted the financial year as the accounting year. The assessment was made on the basis of the assessee's concession. The court took the view that separate assessments should have been made on the old firm up to the previous year and for the period prior to the death of the partner and the single assessment for the entire period could not be made. It is, in the said context, that the court took the view that the contention of the revenue that no appeal lies against the assessment order because it is based on concession could not be accepted. In fact, it is noticed that no such objection was raised before the appellate Commissioner or the Tribunal. We find that, more importantly, the court noted that the assessee was an aggrieved person because the assessment was framed by the Income Tax Officer on a concession wrongly made on question of law. We find that the said judgment is clearly distinguishable.

12. We notice further that in the case of *Chhat Mull Aggarwal v. CIT [1979] 116 ITR 694* a Division Bench of the Punjab & Haryana High Court had an occasion to consider the question as to whether an appeal will lie in the following circumstances:

*“During the previous year relevant to the assessment year 1970-71, the assessee had invested a sum of Rs.83,042 in the*

construction of a house. The S.D.O., P.W.D., estimated the cost of construction as Rs.87, 668 and the Income-tax Inspector gave the cost of construction as Rs.1,06,846. The IT.O. made an addition of Rs. 15,000 as being the assessee's unexplained investment in house property, after noting that the assessee had agreed to the addition. On appeal to the AAC, the assessee contended that the construction of the house was completed only during the year ending March 31, 1971, that the total cost of construction was Rs.98,152, that since he had actually spent Rs.15,000 over and above Rs.83,000, he agreed to the addition of Rs.15,000 but did not understand that as a consequence of this agreement the amount would be added to his income for the assessment year 1970-71. The AAC allowed the appeal of the assessee and deleted the addition of Rs.15,000. On further appeal, the Tribunal reversed the order of the AAC on the ground that the cost of construction of the house was irrelevant to the issue before the AAC and that, in the absence of a rectification application or an affidavit explaining the circumstances which misled the assessee to give his consent to the addition, the very appeal before the AAC was incompetent."

16. We are of the view, therefore, that, generally, when an assessment is made on the basis of the consent of the parties, in view of the provision creating the right of appeal, namely, Section 246A in this case, unless there is any grievance for the party as such that the concession was wrongly recorded or that he was coerced into making such concession, which case also the appellants do not have in these cases, the order of the appellate authority, as affirmed by the Tribunal, that the appellants cannot be treated as aggrieved persons is not liable to be interfered with. In such circumstances, we are of the view that the appellants have not made out a case for interference with the order of the Commissioner of Income Tax, as affirmed by the Tribunal.

17. The learned counsel for the appellants drew our attention to the judgment of the Apex Court in the case of *Bhau Ram v. Baij Nath Singh* AIR 1961 SC 1327. That was a case, where the court took the view that a vendee, who had filed an appeal by special leave to the Supreme Court against a pre-emption decree passed against him, is not precluded from proceeding with the appeal merely because he had not filed an appeal below after the grant of special leave to appeal. The court, inter alia, took the view that, in the absence of some withdrawn the pre-emption price deposited by the pre-emptor in the statutory provision or of a well recognized principle of equity, no one can be deprived of his legal rights, including a statutory right of appeal. We may observe that, in this case, what is involved is whether the right of appeal was available having regard to the fact that the provision creating the right of appeal allows an appeal only in favour of an aggrieved person and, in the context of the

*present case, we take the view that the appellants cannot be treated as aggrieved persons and, therefore, the reliance placed on the said judgment of the Apex Court does not appear to us to be of any avail.”*

Suffice it to say the correct position of law in case of an agreed assessment is that normally an assessee would not have any grievance to be settled through appellate proceedings. But as mentioned earlier, in this case, the issue before us is to merely render a decision on whether a loan which is ultimately repaid can be hit by the provisions of section 2(22)(e) of the Act or not.

3.1 At this stage, we need to discuss the Pradip Kumar Malhotra case (supra) for its relevance or otherwise. In that case, the Hon’ble Justices of the Calcutta High Court were seized of an issue where the assessee had allowed the pledging of his land so that the lender company could enjoy loans from bank. It was for enabling the continuation of this collateral with the bank that the assessee in that case had been given the advance of monies. It is in this context that the Hon’ble Calcutta High Court decided that such an amount would not be hit by the provisions of section 2(22)(e) of the Act. We may also discuss the case of Krishna Gopal Maheshwari (supra) where before the Hon’ble Justices of the Allahabad High Court the point of consideration was whether the lender company could be dealt with under the exceptions to 2(22)(e) of the Act, whereby entities involved in money lending were exempted from the rigors of the said provision. The Hon’ble Bench found that there was no evidence

whatsoever that money was lent/advanced by an entity which was involved in money lending and therefore the amount was treated as “deemed dividend”. In this case, the moot point was whether or not there was any formal money lending license with the lender company to justify treating it under the exceptions clause of 2(22)(e) of the Act. To this extent, this case differs from the facts of the present case in as much as this issue is not before us in this matter. We may hasten to add that even the Hon’ble Calcutta High Court’s case (supra) turned on a very peculiar fact, of a *quid pro quo* between the assessee and the lender company. This unique fact is certainly not before us also. Once the two case laws relied on behalf of either of the sides cannot help in deciding the issue at hand then we have to turn to the Hon’ble Supreme Court who has already rendered a binding judgment in the case of Smt. Tarulata Shyam (supra). Unfortunately, this case has not been cited at the Bar before either the Hon’ble Calcutta High Court or even the Hon’ble Allahabad High Court. For the sake of reference some extracts from Smt. Tarulata Shyam case (supra) deserve to be placed on record: -

*“It is noteworthy that at least in one material aspect the Indian law is different from that under section 108(1) of the Commonwealth Act as explained and interpreted by the Board in the case mentioned above. Under section 108, the raising is noteworthy that at least in one material aspect the Indian law is different from that under section 108(1) of the of the fiction is dependent upon a positive finding recorded by the Commissioner of Income-tax that the payment to the adjudication of the income-tax authorities Parliament has itself in the exercise of its legislative judgment raised a represents distribution of the company's income, But section 2(6A)(e) and section 12 of the Act do not leave this question to the adjudication of the income-tax authorities. Parliament has itself in*

*the exercise of its legislative judgment raised a conclusive presumption, that in all cases where loans are advanced to a shareholder in a private limited company having accumulated profits, the advances should be deemed to be the dividend income of the shareholder. It is this presumption Juris et de jure which is the foundation of the statutory fiction incorporated in section 2(6A)(e). Thus, section 108 of the Commonwealth Act appears to be more reasonable and less harsh than its Indian counterpart.*

*From the above discussion it emerges clear that the fiction created by section 2(6A)(e) read with section 12(18) of the Act is inexorably attracted as soon as all the conditions necessary for its application exist in a case. In Navnit Lai's case [1965] 56 ITR 198, 202 (SC) this court, after an analysis of these provisions, listed these conditions, as follows:*

*".....the combined effect of these two provisions is that three kinds of payments made to the shareholder of a company to which the said provisions apply, are treated as taxable dividend to the extent of the accumulated profits held by the company. There three kinds of payments are: (1) payments made to the shareholder by way of advance or loan; (2) payments made on his behalf; and (3) payments made for his individual benefit. There are five conditions which must be satisfied before section 12(18) can be invoked against a shareholder. The first condition is that the company in question must be one in which the public are not substantially interested within the meaning of section 23A as it stood in the year in which the loan was advanced. The second condition is that the borrower must be a shareholder at the date when the loan was advanced; it is immaterial what the extent of his shareholding is. The third condition is that the loan advanced to a shareholder by such a company can be deemed to be dividend only to the extent to which it is shown that the company possessed accumulated profit at the date of the loan. This is an important limit prescribed by the relevant section. The fourth condition is that the loan must not have been advanced by the company in the ordinary course of its business. In other words, this provision would not apply to cases where the company winch advances a loan to its shareholder carries on the business of money-lending itself, and the last condition is that the loan must have remained outstanding at the commencement of the shareholder's previous year in relation to the assessment year 1955-56." (Emphasis supplied).*

*The first four conditions factually exist in the instant case. The last condition is not applicable because it was a transitory provision applicable to the assessment year 1955-56 only, while are concerned with the assessment year 1957-58,*

*and the previous year is the calendar year 1956. There is no dispute that the company is a controlled (private limited) company in which the public are not substantially interested within the meaning of section 23A. Further, the assessee is admittedly a shareholder and managing director of that company. It is also beyond controversy that at all material times, the company possessed "accumulated profits" in excess of the amount which the assessee-shareholder was paid during the previous year. The Income-tax Officer found that on January 1, 1956, the accumulated profits of the company amounted to Rs.6,83,005 while from January 11, 1956, to November 12, 1956, the assessee received in cash from time to time from the company payments aggregating Rs.4,97,442. After deducting the opening credit balance and some other items credited to his amount, the Income-tax Officer found that in the previous year the assessee-shareholder had received a net payment of Rs.2,72,703 by way of loan or advance from the company. The company's business is not money-lending and it could not be said that the loans had been advanced by the company in the ordinary course of its business. Thus, all the factual conditions for raising the statutory fiction created by sections 2(6A)(e) and 12(1B) appeared to have been satisfied in the instant case."*

*"We have given anxious thought to the persuasive arguments of Mr. Sharma. His arguments, if accepted, will certainly soften the rigour of this extremely drastic provision and bring it more in conformity with logic and equity. But the language of sections 2(6A)(e) and 12(1B) is clear and unambiguous. There is no scope for importing into the statute words which are not there. Such importation would be, not to construe, but to amend the statute. Even if there be a casus omissus, the defect can be remedied only by legislation and not by judicial interpretation.*

*To us, there appears no justification to depart from the normal rule of construction according to which the intention of the legislature is primarily to be gathered from the words used in the statute. It will be well to recall the words of Rowlatt J. in Cape Brandy Syndicate v. Inland Revenue Commissioners [1921] 1 KB 64 (KB) at page 71, that:*

*".....in a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used."*

*Once it is shown that the case of the assessee comes within the letter of the law, he must be taxed, however great the hardship may appear to be judicial mind to be.*

*In our opinion, the Indian legislature has deliberately omitted to use in sections 2(6A)(e) and 12(1B) words analogous to those in the last limb of sub-section (1) of section 108 of the Commonwealth Act. When sections 2(6A)(e) and 12(18) were inserted by the Finance Act, 1955, Parliament must have been aware of the provision contained in section 108 of the Commonwealth Act. In spite of such awareness, Parliament has not thought it fit to borrow whole hog what i section 108(1) of the Commonwealth Act. So far as the last limb of section 108(1) is concerned our Parliament imported what is said in only a very restricted version, and incorporated the same as the "fifth condition" in sub-section (18) of section 12 to the effect, that the "payment deemed as dividend shall be treated as a dividend received by him in the previous year relevant to the assessment year ending on the 31st day of March, 1956, if such loan or advance remains outstanding on the last day of such previous year". The word "such" prefixed to the "previous year" shows that the application of this clause is confined to the assessment year ending on March 31, 1956. In the instant case we are not concerned with the assessment year ending March 31, 1956. **This highlights the fact that the legislature has deliberately not made the subsistence of the loan or advance, or its being outstanding on the last date of the previous year relevant to the assessment year, a pre-requisite for raising the statutory fiction. In other words, even if the loan or advance ceases to be outstanding at the end of the previous year, it can still be deemed as a "dividend" if the other four conditions factually exist, to the extent of the accumulated profits possessed by the company.** [Emphasis added]*

*At the commencement of this judgment we have noticed some general principles, one of which is, that the previous year is the unit of time on which the assessment is based (section 3). As the taxability of an income is related to its receipt or accrual in the previous year, the moment a dividend is received, whether it is actual dividend declared by the company or is a deemed dividend, income taxable under the residuary head, "income from other sources", arises. The charge being on accrual or receipt the statutory fiction created by section 2(6A)(e) and section 12(18) would come into operation at the time of the payment by way of advance or loan, provided the other conditions are satisfied."*

We have deliberately extracted slightly a larger portion from this judgment since it also gives an indication as to how the statutes needs to

be interpreted. Through this case law, it is clear that even if an advance or loan is subsequently repaid in its entirety then also the provisions of 2(22)(e) of the Act would apply. At this stage, we do not find any way in which we can draw any other conclusion but the one where it deserves to be held that the impugned amount has rightly been considered u/s 2(22)(e) of the Act by the authorities below. In this case, even at the expense of repetition, it deserves to be held that all the conditions mentioned in section 2(22)(e) of the Act are fulfilled in the case of the assessee and there is no reason why we need to interpret the law in a manner which treats the impugned amount as anything other than “deemed dividend”.

4. In the result, appeal of the assessee is dismissed.

Order pronounced in the open court on 20.05.2026

Sd/-  
(YOGESH KUMAR US)  
JUDICIAL MEMBER

Sd/-  
(SANJAY AWASTHI)  
ACCOUNTANT MEMBER

Dated: 20.05.2026

*\*Kavita Arora, Sr. P.S.*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT, NEW DELHI

Sr. No.	Particulars	Date
1	<i>Date of dictation of Tribunal Order</i>	18.05.2026
2	<i>Date on which typed draft Tribunal Order is placed before the Dictation Member</i>	19.05.2026
3	<i>Date on which typed draft Tribunal Order is placed before the other Member (in the case of DB)</i>	20.05.2026
4	<i>Date on which the approved draft Tribunal Order comes to the Sr. P.S. /P.S.</i>	20.05.2026
5	<i>Date on which the fair Tribunal Order is placed before the Dictating Member for sign</i>	20.05.2026
6	<i>Date on which the fair Order is placed before the other Member for sign (in the case of DB)</i>	20.05.2026
7	<i>Date on which the signed order comes back to the Sr. P.S. /P.S for uploading on ITAT website</i>	20.05.2026
8	<i>Date of uploading, if not, reason for not uploading</i>	20.05.2026
9	<i>Date on which the file goes to the Bench Clerk</i>	20.05.2026
10	<i>Date on which order goes for xerox</i>	
11	<i>Date on which the file goes for endorsement</i>	
12	<i>Date on which the file goes to the Superintendent/O.S. for checking</i>	
13	<i>Date on which the file goes to the Assistant Registrar for signature on the order</i>	
14	<i>Date on which the file goes to dispatch section for dispatch the Tribunal Order</i>	
15	<i>Date of dispatch of order</i>	
16	<i>Date on which file goes to Record Room after dispatch the order</i>	