आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ ।

IN THE INCOME TAX APPELLATE TRIBUNAL,
"C" BENCH, AHMEDABAD

BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER
AND
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER

आयकर अपील सं./ ITA.No.1139/Ahd/2015

निर्धारण वर्ष/ Asstt. Year: 2012-2013

Aquafil Polymers Co.P.Ltd. 202-203, Shyamak Complex B/h. Kamdhenu Complex Polytechnic Ahmedabad 380 015. PAN : AABCA 7902 R	Vs	DCIT, TDS Circle Ahmedabad.

अपीलार्थी/ (Appellant)		**प्रत्यर्थी/** (Respondent)

Assessee by :	Ms.Urvashi Shodan, AR
Revenue by :	Shri Prasoon Kabra, Sr.DR

सुनवाई की तारीख/**Date of Hearing : 18/01/2018**
घोषणा की तारीख /**Date of Pronouncement: 21 /03/2018**

आदेश/O R D E R

PER RAJPAL YADAV, JUDICIAL MEMBER:

Assessee is in appeal before the Tribunal against order of ld.CIT(A)-4, Ahmedabad dated 8.4.2015 passed for the Asstt.Year 2012-13.

2. Though assessee has taken four grounds of appeal, but its grievance revolves around a single issue viz. the ld.CIT(A) has erred in confirming demand raised by the AO amounting to Rs.3,37,000/- under section 201(1) and 201(1A) of the Income Tax Act, 1961.

3. Brief facts of the case are that survey under section 133A of the Act was carried out in the premises of the assessee on 17.12.2013. During the course of survey and post-survey proceedings, it was found that assessee has

deducted TDS amount of Rs.2,23,180/- under section 194A, but not deposited the same in government account till the date of survey. Thus, the ld.AO has treated the assessee as an assessee-in-default to this extent. He raised demand of Rs.2,23,180/- under section 201(1) and computed interest at the rate of 1.5% under section 201(1A) and raised demand of Rs.1,13,821/-.

4. Dissatisfied with this demand, the assessee carried dispute in appeal before the ld.First Appellate Authority. It contended that during the course of survey a specific question was asked from the director and assessee has replied that company has not claimed any expenditure towards interest in the return of income. Reference to question no.10 and its reply along with written submissions were made to the ld.First Appellate Authority. But the ld.First appellate failed to appreciate the stand of the assessee. She observed that since the assessee has deducted taxes, used the amount meant for government purpose for its business, hence, assessee is to be treated as assessee-in-default. The ld.AO has rightly imposed demand and penalty upon the assessee. Before us, the ld.counsel for the assessee reiterated her contentions as were raised before the ld.CIT(A). She relied upon the order of the ITAT Mumbai Bench in the case of Pfizer Ltd. Vs. ITO (TDS), ITA No.1667/Mum/2010. On the other hand, ld.DR relied upon the order of the ld.CIT(A).

5. We have duly considered rival contentions and gone through the record carefully. Section 201(1) has direct bearing on the controversy. Therefore, it is pertinent upon us to take note of this section. Relevant part of this section reads as under:

> *201. (1) Where any person, including the principal officer of a company,—*
>
> *(a) who is required to deduct any sum in accordance with the provisions of this Act; or*

(b) referred to in sub-section (1A) of section 192, being an employer, does not deduct, or does not pay, or after so deducting fails to pay, the whole or any part of the tax, as required by or under this Act, then, such person, shall, without prejudice to any other consequences which he may incur, be deemed to be an assessee in default in respect of such tax:

Provided that any person, including the principal officer of a company, who fails to deduct the whole or any part of the tax in accordance with the provisions of this Chapter on the sum paid to a resident or on the sum credited to the account of a resident shall not be deemed to be an assessee in default in respect of such tax if such resident—

(i) has furnished his return of income under section 139;

(ii) has taken into account such sum for computing income in such return of income; and

(iii) has paid the tax due on the income declared by him in such return of income, and the person furnishes a certificate to this effect from an accountant in such form as may be prescribed"

6. Before adverting to other facts of the case, we would like to make reference to statement of director Shri Hitesh Babubhai Shah given during the course of survey. A specific question with regard to the TDS was made to him. Reply given by him reads as under:

(QUOTE)

"Q. 10. I am showing you the provision of section 194A(1) of the I.T, Act, 1961. As per section 194A(1), the TDS has to be deducted either at the time of making entry in the books of account (crediting income in the payee's name) or, while making actual payment whichever is earlier. Under such circumstances, please explain as to why you should not be considered as assessee-in-default u/s.201(1)/201(1)A of the I.T.Act, 1961.

Ans : The provision for interest made by the company in anticipation and is contingent in nature. Though section 194A ways that tax should be deducted at the time of payment or credit, whichever is earlier, the company firmly believes that when the liability is not certain, there will not arise any liability of TDS. Further, the company has not claimed any expenditure towards interest in the return of income.

(UNQUOTE)

Again in the post survey inquiry the Appellant Company vide its letter dt.26-12-2013 filed on the same date, reiterated following facts vide para : reproduced under:

"During the course of the proceedings you have asked the assesses company to furnish the working of interest u/s.201(l A) so as to enable your office to pass the order, accordingly to avoid further proceedings of section 154.

Though, the assessee company is under no legal obligation to work out the Interest u/s. 201(1A) and quantify the demand, the working of Interest u/s.201 (1 A) arc as-under:

Financial Year	*Remarks*
2010-11	*The assesses company has provided for Interest payable by Mangalore Refinery and Petrochemicals Ltd, under protest, and has deducted sax at sources there from appearing as TDS payable in the final accounts. The assesses company has disallowed the said expenditure in its return of income of respective year and entire amount will be reversed on settlement with Mangalore Refinery and Petrochemicals Ltd.*
2011-12	
2013-14	*(Page : 1 to 7)*

(UNQUOTE)

7. Thus, there is no dispute with regard to the fact that the assessee-company has not claimed deduction of whole amount for which a provision was made and on which TDS was calculated. In other words, interest expenditure of Rs.22,31,797/- was provided in the accounts on which TDS was to be deducted. The stand of the assessee is that company has provided for interest payable to Mangalore Refinery and Petrochemicals Ltd. under protest as TDS payable. The company has disallowed the said expenditure in its return of income of respective year. Thus, according to the assessee it has not claimed deduction of interest expenditure. Once it has not claimed deduction, there was no liability to deduct tax at source. Now we refer to

section 201 extracted (supra). A perusal of the provision would indicate that if the assessee has furnished his return of income under section139 and has taken into account such sum for computing income in such return of income and has paid tax due on the income declared by him in such return of income, then such an assessee would not be considered as assessee in default under section 201(1) of the Income Tax Act. While appreciating the stand of the assessee, the ld.CIT(A) has failed to appreciate applicability of proviso on the facts of the present case. The proviso provided a cover on those assessees from the ambit of committing a default who have furnished his return within time under section 139 taking into account the amount alleged to have been credited or paid to the payee on which TDS to be deducted as his income and paid taxes. In the present cases, the assessee was supposed to deduct tax on the alleged payment of Rs.22,31,797/-, and in case it failed to deduct or after deduction failed to deposit in the government treasury then it would be considered as assessee-in-default. But the assessee did not claim interest expenditure of total amount i.e. Rs.22,31,797/-. This amount was included in the taxable income of the assessee, therefore, protection provided by the proviso will be applicable upon the assessee and would not be construed the assessee as assessee-in-default. We allow appeal of the assessee and delete payment raised by the AO under section 201(1)/201(1A) of the Act. In other words, demand of Rs.3,37,000/- is deleted.

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

Order pronounced in the Court on 21st March, 2018 at Ahmedabad.

Sd/-	**Sd/-**
(AMARJIT SINGH)	**(RAJPAL YADAV)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Ahmedabad; Dated 21/03/2018