

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DIVISION BENCH 'A', CHANDIGARH**

BEFORE MS. DIVA SINGH, JUDICIAL MEMBER  
AND MS. ANNAPURNA GUPTA, ACCOUNTANT MEMBER

**ITA No. 1213/CHD/2017**

Assessment Year : 2009-10

Himachal Dental College,  
Sunder Nagar (HP).  
TAN No. : PTLHI1061B

Vs.

The ITO (TDS),  
Palampur (HP).

(Appellant)

(Respondent)

Appellant by : Shri Tej Mohan Singh  
Respondent by : Shri Akhilesh Gupta, Addl. CIT

Date of hearing : 09.05.2018

Date of Pronouncement : 24.07.2018

**ORDER**

**PER DIVA SINGH**

The present appeal has been filed by the assessee assailing the correctness of the order dated 30.05.2017 of Id. CIT(Appeals) Palampur pertaining to 2008- assessment years on the following grounds :

1. *The learned CIT (Appeals) has erred in confirming the interest levied u/s 201(1)/201(1A) amounting to Rs.89,894/- without any fault on the part of the appellant.*
2. *The learned CIT (Appeals) has erred in confirming the order of ITO (TDS) without considering the fact that interest was levied by Income Tax Department on alleged late payment of TDS due to only technical reason as payment of TDS was duly made by the appellant within the stipulated time.*

2. The relevant facts of the case are that the assessee was held to be an assessee in default for late payment of tax deducted at source vide an order dated 13.09.2013 passed u/s 201(1A). As a result thereof, interest u/s 201(1A) of Rs. 89,970/- was charged.

2.1 The assessee carried the issue in appeal before the CIT(A) stating that TDS return for salaries in Form No. 24Q was filed for the Q-4 of F.Y. 2008-09 on 13.6.2009 and challans of Rs. 2,52,556/- was duly deducted and deposited on 16.3.2009 with SBI Sunder Nagar. However, inadvertently, instead of mentioning the TAN, the PAN of Dr. Puran Chand Medical Charitable Trust got mentioned in the challan. Subsequently, the deductor- appellant approached the SBI, got that challan cancelled and on 25.6.2011 a fresh challan was issued after mentioning the correct TAN. The deductor thereafter revised the TDS return, i.e, Form 24Q for the 4<sup>th</sup> quarter. It is seen that it has been contended that as the tax deducted was deposited on time, no interest u/s 201(1 A) for late deposit of TDS was leviable.

2.3 The said submissions were not accepted by the CIT(A) on account of the following reasoning :

*“Upon due consideration of the issue, it is held that the above contention of the appellant cannot be accepted. Deduction of tax at source and deposit of the same within the allowed time is a statutory and vicarious liability of the deductor. Tax is deducted at source and deposited by the deductor on behalf of deductees. The deductees get credit for the tax deducted at source only when the deductor deposits it into the Central Govt. account. In this case,-the tax deducted was deposited under the valid TAN only on 25.6.2011 and not on 16.3.2009 though it had been dully deducted in the 4<sup>th</sup> quarter of F.Y. 2008-09. The deductees were thus divested of the TDS credit in their individual ITRs for nearly 2 years and 3 months. Further, the appellant has Himachal Dental College Sunder Nagar, Appeal No. CIT(A)PLP/IT/316/13-14, F.Y. 2008-09 not furnished any evidence that credit of Rs. 2,52,556/- was not taken by Dr. Puran Chand Medical Charitable Trust, PAN-AAATP1159K, in its return for A.Y. 2009-10. In case ITR was filed by the said trust claiming credit of Rs. 2,52,556/-, the challan would stand consumed in processing u/s 143(1) which is normally done within one year of the end of the assessment year. Even if the challan was not claimed and was lying in suspense account, it is likely that demands were raised u/s 143(1) in the case of the individual deductees.”*

3. Aggrieved by this, the assessee is in appeal before the ITAT. Ld. AR reiterates the submissions advanced before the CIT(A). Relying on the same, it was his argument that the mistake was a technical bonafide mistake as all formalities/responsibilities qua the amount deducted stood paid in the Government treasury within time. The retention of salaries in appropriate Form also stood filed but for the mistake of PAN and not TAN. The submissions advanced on behalf of the assessee extracted in the impugned order are also reproduced hereunder :

*“We filed our TDS return for salaries in form 24Q for quarter -4 of F.Y. 2008-09 on dated 13.6.2009 vide acknowledgement NO. 10700200061740. In the said return, challan of Rs. 2,52,556/- was deposited on 16.3.2009 in State Bank of India, Sunder Nagar. But due to clerical mistake, PAN of DR. Puran Chand Medical Trust was mentioned instead of TAN. Due to this demand was raised as the challan was not matched on the system. The payment of TDS was on time but due to this clerical mistake demand was raised. V/e approached the bank and they cancelled the challan and fresh challan was issue after mentioning TAN on dated 25.6.2011. A certificate issued by SBI to this effect is also being enclosed. After this we filed revised return so that demand raised be cleared. Copy of status report of returns filed in form 24Q for 4<sup>th</sup> quarter is being enclosed. The result of filing this revised return was our demand for payment of tax was cleared but system calculated interest for delayed payment of Himachal Dental College Sunder Nagar, Appeal No. CIT(A)PLP/IT/316/13-14, F.Y. 2008- taxes but the fact of the matter is that tax was paid on time but due to this technical reason demand for interest on late payment has been determined.*

*Keeping in view the facts stated above, your good self is requested to delete the demand of interest which is only due to technical reasons.  
09”.*

4. The ld. Sr.DR relies on the orders stating that it may be upheld.

5. We have heard the rival submissions and perused the material on record. We find that in the peculiar facts and circumstances of the present case the claim of the assessee is to be allowable. We have come to the said conclusion considering the fact that there is no dispute on the fact that payment was made in the Government Treasury by the assessee on 16.03.2009. It has been stated that on account of a clerical mistake instead of TAN, the PAN of Dr. Puran Chand Medical Charitable Trust was mentioned. It has been stated that the Trust runs the Himachal Pradesh Dental College, Sunder Nagar. TDS return for salaries in column

No. 24Q for quarter-4 of financial year 2008-09 dated 13.06.2009 was stated to have been filed vide acknowledgement No. 10700200061740. Due to the inadvertent mistake of mentioning the PAN instead of the TAN, the return did not match the system. The assessee, thereafter, to address the mistake approached the bank and after mentioning the correct TAN, filed a revised return so as to clear the demand so created. The correction in the TAN was effected on 25.06.2011. However the payments already stood deposited in the Government Treasury on 16/03/2009. We note that none of these facts are disputed. However, cautioned by the arguments advanced by the Sr.DR Mr. Gupta we direct the AO to grant necessary relief subject to verification of the fact that the benefit of the deposit of Rs. 2,52,556/- has not been taken by Dr. Puran Chand Medical Charitable Trust. In terms of the above direction, the appeal of the assessee is to be allowed. We make it clear that in the eventuality the said Trust has also allegedly taken benefit of the said deposit, then no relief would be available to the assessee.

6. Before parting, we record our dissatisfaction in noting that the Appellate Forum of the CIT(A) provided under the Act in the facts of the present case has failed to perform and discharge the function for which purpose it has been created. We are firmly of the view that the CIT(A) in the discharge of its duties cannot refuse to look into the facts when the claim is made in an appeal duly supported by facts. The CIT(A) in the facts of the present case should have called for a Remand Report in order to adjudicate on the issues fairly. The office of the CIT(A) cannot be allowed to become a mere Post Office. In facts where the TDS admittedly stands deposited in the Government Treasury on 16.03.2009 i.e. well on time, the authorities cannot decline to look into the facts and verify whether on account of the clerical mistake for not quoting TAN of the assessee and instead quoting PAN of the Trust has any undue advantage been taken by the assessee or is it a case deserving of relief on account of inadvertent mistake. The redressal of grievances for which purposes the office of the CIT(A) exists is not expected to perform its functions mechanically. The taxpayer having stated its claims cannot be expected to prove the negative and such an approach cannot be accepted. The tax authorities cannot decline to look into the facts and address them. Accordingly, while allowing the appeal of the assessee, the AO is directed to carry out necessary verification and pass an order in accordance with law. Needless to state that in the event of taking an adverse view the assessee shall be afforded a reasonable opportunity of being heard. Said order was pronounced in the Open Court at the time of hearing itself.

6. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced in the Open Court on 24<sup>th</sup> July 2018.

Sd/-  
**(ANNAPURNA GUPTA)**  
**ACCOUNTANT MEMBER**  
'Poonam' / AG/Poonam

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

Copy to:  
1. The Appellant, 2. The Respondent, 3. The CIT, 4. The CIT(A), 5. The DR