

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

**BEFORE SMT. DIVA SINGH, JUDICIAL MEMBER AND
DR. B.R.R. KUMAR, ACCOUNTANT MEMBER**

ITA No.37/Chd/2016
Assessment Year: 2010-11

Sh. Harpal Singh,
H.No. 205, Sector-36A
Chandigarh

Vs.

The DCIT
(International Taxation)
Chandigarh

PAN No. AASPA8704D

(Appellant)

(Respondent)

Assessee By : Shri. Tej Mohan Singh
Revenue By : Smt. Chandrakanta

Date of hearing : 24/07/2018
Date of Pronouncement : 08/08/2018

ORDER

PER DR. B.R.R. KUMAR, A.M:

The present Appeal has been filed by the Assessee against the order of the Ld. CIT(A)-43, New Delhi dt. 30/12/2015.

2. In the present appeal Assessee has raised following grounds:

"That the Id. CIT(A) has failed to appreciate the facts and circumstances of the case and has thereby erred in upholding the assessee in default u/s 201(IA) of the Income Tax Act, 1961.

The appellant has purchased property from non-resident through his GPA who was resident of India. The payment was made to the attorney holder. The Appellant is not liable to deduct TDS when payment is made to a power of attorney holder.

The issue is covered by the judgment of the Hon'ble ITAT in 128 TTJ 116 (2010) in the case of Rakesh Chauhan under section DDIT (International Taxation)

In view of the above, it is prayed that the order under section 201(IA) of the Income Tax Act 1961 may kindly be quashed. "

3. The short issue to be dealt in this case is whether or not the assessee is liable to deduct TDS when payment is made to a power of attorney holder even when the *de-facto* and as well as *de-jure* ownership lies with the NRI.

4. Brief facts of the case are that the assessee purchased property from NRI without deducting TDS on the payments made as consideration for the said purchase. The assessee failed to deduct tax from the payment of Rs. 1,15,00,000/- made to the non residents Shri Vinod and Smt. Anita. The assessee submitted before the Assessing Officer that the assessee had entered into an agreement for purchase of property with Shri Vinod and Smt. Anita and the transaction was through POA Holder Shri. D.S. Swani who is a resident and hence the assessee was under the impression that as he was dealing with a resident person he was not required to deduct the TDS.

5. The property was finally sold by the seller through a registered deed which proved that the person D.S. Swani is only an agent of the owner but not who is a *de-facto* owner by the virtue of having any in alienable right. The non-resident sellers have later declared the capital gain amounting to Rs. 3,00,800/- each arising on the sale of the property in their returns and paid taxes thereof. The Assessing Officer held that the assessee is liable to pay interest of Rs. 85,530/- under section 201(1)(A) calculated @12% per Annum.

6. Before us, Ld. AR argued that since the assessee has been dealing with an Indian resident and so no tax was to be deducted by the purchaser and since the seller has already paid the taxes the interest cannot be charged in the hands of the assessee.

7. The provisions of 201(1) stipulates that the assessee is liable to deduct tax on the payment and section 201(1)(A) casts liability of the assessee to pay interest on the default. Though the statutory provisions casts liability on the assessee, keeping in view the payment received by the exchequer, whether by the assessee(purchaser) or by the recipient(seller) leverage was given by the

authorities not to burden the assessee with the strict liability of the TDS deduction when the recipient pays the due taxes vide Circular No. 275/201/95-IT dt. 29/01/1997. This doesn't mean the assessee is absolved totally of the responsibility to deduct the taxes and also interest if any. This Circular absolves the assessee in the cases where the due payments of tax or interest has been duly paid by the recipient.

Hon'ble Delhi High Court in the case of DIT vs. Jacobs Civil Incorporate (2011] 330 ITR 0578 (Delhi) at Para 7, have held as follows:-

"Sec, 201{1A) specifically provides that if a person or authority who is bound to make a deduction of tax at source as contemplated, by the statute does not deduct or after deducting fails to pay the tax, then such a person or authority is liable to pay simple interest on the amount of tax not deducted from the date on which such tax was deductible to the date on which the said tax was actually paid. Thus, in respect of interest income on which deduction of tax at source should have been made, the liability to pay interest is fastened on the person or authority who failed, to make deduction as required under section 194A. Therefore, in respect of the tax payable on the said interest income, the assessee also cannot be taken to be liable to pay interest."

Otherwise, it will mean that there are two persons under the Act liable to pay interest on tax on the same income. The legislature would not have contemplated such a situation where in respect of the tax on interest income, two persons are liable to pay interest for the delayed payment of tax. We are, therefore, inclined to hold that whatever there is a possibility of a deduction of tax at source, the person who had failed to deduct tax at source is liable to pay interest and not the assessee as otherwise, there will be charging of interest twice on the payment of tax in relation to the same income, Such an interpretation should normally be avoided."

8. It was held, in fact, the first two sentence of this Para go against the assessee, which says that an authority which is bound to make a deduction of tax at source as per statute, if does not deduct, or after deducting fails to pay the tax, than such a person or authority is liable to pay simple Interest on the amount of tax not deducted. This shows that, liability of the tax deductor is absolute. The assessee who should be the deductor as per statute failed to deduct taxes and is seeking to benefit itself by claiming the benefits which are available to the deductee.

9. The Ld. AR has also referred to the decision of the ITAT, Hyderabad in the case of Tecumseh Products(l) Ltd. On perusal we find the facts of the case are not applicable to the issue before us. Hence, keeping in view the provisions of the Act and facts of the case we hold that the interest under section 201(1)(A) has been rightly confirmed by the Ld.CIT(A).

10. As a result, the appeal is dismissed.

Order pronounced in the open Court.

Sd/-
(DIVA SINGH)
JUDICIAL MEMBER

Sd/-
(DR. B.R.R. KUMAR)
ACCOUNTANT MEMBER

Dated : 08/08/2018

AG

Copy to:

1. The Appellant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR