

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD BENCH

**Before: Shri Amarjit Singh, Accountant Member
And Ms. Madhumita Roy, Judicial Member**

**ITA No. 2251/Ahd/2013
Assessment Year 2008-09**

The ACIT, Anand Circle, Anand (Appellant)	Vs	Elecon Engineering Co. Ltd. Anand Sojitra Road, V.V. Nagar, Anand- 388120 PAN: AAACE4644D (Respondent)
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**ITA No. 2104/Ahd/2014
Assessment Year 2007-08**

The DCIT(TDS), Room No. 5, Gr. Floor, Aayakar Bhavan, Race Course Circle, Baroda (Appellant)	Vs	Elecon Engineering Co. Ltd. Anand Sojitra Road, V.V. Nagar, Anand- 388120 PAN: AAACE4644D (Respondent)
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**Revenue by: Shri Lalit P. Jain, Sr. D.R.
Assessee by: Shri M.K. Patel, A.R.**

Date of hearing : 06-08-2018
Date of pronouncement : 17-09-2018

आदेश/ORDER

PER : AMARJIT SINGH, ACCOUNTANT MEMBER:-

These two appeals filed by revenue for A.Y. 2007-08 to 2008-09, arise from order of the CIT(A)-IV, Baroda dated 14-06-2013, in proceedings under section 143(3) of the Income Tax Act, 1961; in short the Act.

2. The revenue has raised following ground of appeal:-

“1 On the facts and in the circumstances of the case, the learned CIT(A) erred in deleting the disallowance of Rs. 4,27,30,166/- made u/s 40(a)(ia) of the Act, in respect of payments made for reimbursement of expenses to clearing house agents without appreciating the fact that TDS was not deducted on the above payments although the clearing and forwarding agents are subjected to deduction of tax at source u/s 194C of the Act.”

3. The solitary ground of appeal of the assessee is pertained to disallowance of Rs. 42730166/- u/s. 40(a)(ia) of the act in respect of payment made for reimbursement of expenses to clearing house agent without deduction of tax

4. The fact in brief of the case is that the assessee has filed return of income declaring total income of Rs. 87,83,28,206 on 30th Sep, 2008. Thereafter, the case was subject to scrutiny. At the time of assessment, the assessing officer noticed that assessee has made payment to the amount of Rs. 4,27,30,166/- to clearing and forwarding agent for availing the services of executing import and export in the case of the assessee. The assessee has stated that the cleaning and forwarding agents have made various payments on behalf of the assessee and raised separate bills for the services rendered by them as a clearing house agent. Thereafter, the assessee has made reimbursement of actual expenses incurred by them on behalf of the assessee. The assessee explained that there is no element of commission, therefore, no TDS was deducted. The assessing officer has not accepted the explanation of the assessee and stated that whatever payments have been made to the clearing and forwarding agency, the TDS should have been deducted. Therefore, the assessing officer has disallowed the payment of Rs. 4,27,30,166/- made by the assessee to the clearing and forwarding agent without deduction of TDS as per provision of section 40(a)(ia) of the act.

5. Aggrieved assessee filed appeal before the Id. CIT(A). The Id. CIT(A) has allowed the appeal of the assessee. The relevant part of the decision of Id. CIT(A) is reproduced as under:-

"The Hon'ble ITAT "D" Bench, Ahmedabad in its above order has restored back the matter to the file of A.O. by directing that the Eimco Elecon (India) Ltd. shall bring on record the relevant bills raised by the C & F Agent and it has to be shown with exact amount of expenditure incurred by each agent was reimbursed by the appellant and bills were separately raised by the C & F Agent for reimbursement of each expenditure and for service charges payable to them. The Hon'ble ITAT "D" Bench, Ahmedabad has directed the AO that if the arjgeJlant J,e.Eimco -Elecon (India) Ltd. is able to establish these two ingredients, then section 40(a)(ia) of the Act is not applicable in respect of reimbursement of expenditure. From this decision of the Hon'ble ITAT "D" Bench, Ahmedabad it can be said that in case if exact amount of expenditure incurred by CHA has been reimbursed by the appellant and bills are separately raised by the CHA for reimbursement of each expenditure and for service charges payable to them and if it is established by the appellant then, section 40(a)(ia) of the IT Act is not applicable in respect of reimbursement of expenditure. As stated above the DCIT, Anand Circle, Anand in his above report dated 06-06-2013 has stated that the total amounts in respect of bills raised by C & F agents during the AY 2008-09 purely for reimbursement of actual expenses is of Rs. 4,27,30,166/- and there is no any element of income in such reimbursement transactions. Since, the AO on the basis of verification of relevant bills and vouchers and books of account of the appellant has submitted that the bills raised by the CHA in respect of amount of Rs 4,27,30,166/- are purely for reimbursement and actual expenses only and therefore, following the above decision of the Hon'ble ITAT, "D" Bench, Ahmedabad as given in its above referred order dated 21-09-2012 in the case of Eimco Elecon (India) Ltd., it is held that section 40(a)(ia) of the IT Act is not applicable in respect of this reimbursement amount of Rs. 4,27,30,166/-. Considering this fact, I therefore, delete this addition of Rs. 4,27,30,166/- as made by the AO u/s 40 (a)(ia) of the IT Act. Thus the second ground of appeal of the appellant is allowed."

6. We have heard the rival contentions and perused the material on record carefully. The assessing officer has disallowed the payment made to clearing and forwarding agent as per provision of section 40(a)(ia) of the act on non deduction of Tax at source. It is noticed that the assessee has not deducted tax at source as the bills raised by the clearing and forwarding agent were in respect of reimbursement of actual expenses incurred by them on behalf of the assessee. We observe that these facts demonstrate that there was no element of income involved in such reimbursement transaction. During the course of appellate proceedings before us, the learned counsel has placed reliance on the decision of Co-ordinate Bench of the ITAT in the case of Prayas India Ltd. vs. Addl. CIT ITA No. 2674/Ahd/2011. He has also placed reliance on the decision

of Hon'ble High Court in the case of Principal CIT-1 vs. Consumer Marketing Pvt. Ltd. Tax Appeal No. 646 of 2015 dated 21/09/2017. The relevant part of the decision of the Co-ordinate Bench in the case of Prayas India Ltd. vs. Addl. CIT ITA No. 2674/Ahd/2011 is reproduced as under:-

"5. We have heard both the parties and gone through the case law. The sole issue in the present case is that of TDS deduction. The assessee paid gross amount of Rs. 16,56,989/- to M/s ETPI, its clearing and forwarding agent. It deducted TDS qua a sum of Rs. 5,23,855/-. The balance amount in question of Rs. 11,33,134/- was stated to be reimbursement of miscellaneous expenditure only. The Assessing Officer was of the view that the same had to be subjected to TDS u/s. 194C of the Act even in case of reimbursement. The CIT(A) adopts a different view in the impugned assessment to that in the preceding assessment year for holding that no TDS is required to be deducted in case of reimbursements in question since there is no income element embedded therein. However, he holds that the assessee's ship line bills etc. are to be subjected to TDS. We find this latter observation to be not correct. The assessee's stand throughout has been that such shipping payments do not require TDS deduction as per the Boards Circular No. 723 dated 01-09-1995 excluding operation of the relevant TDS provisions. Both the lower authorities fail to rebut this contention on facts and law. We accordingly hold that the CIT(A) erred in directing the Assessing Officer to consider assessee's shipping line bills for the purpose of TDS deduction. The case file reveals that a co-ordinate bench of the tribunal in assessee's own case for preceding assessment year in ITA 2825/Ahd/2010 decided on 29-04-2014 holds similar reimbursements made to be very payee as not covered by TDS provisions. The Revenue fails to point out any distinction on facts. We observe in these circumstances that the Commissioner of Income Tax(A)'s action in part is not liable to be upheld on both counts i.e. merits as well as judicial consistency. The assessee's sole substantive ground succeeds"

7. The Hon'ble High Court in the case of Principal CIT-1 vs. Consumer Marketing Pvt. Ltd. Tax Appeal No. 646 of 2015 dated 21/09/2017 has held that since the reimbursement bills were separately raised there was no requirement to deduct TDS and disallowance u/s. 40(a)(ia) of the act could not be made in respect of reimbursement bill which were separately raised as no TDS was required to be in respect thereof. Respectfully following the decision of the Co-ordinate Bench of the ITAT, we do not find any error in the decision of the Id. CIT(A). Therefore, the appeal of the revenue is dismissed.

ITA No. 2104/Ahd/2014

8. The revenue has raised following grounds of appeal:-

"1. The Ld. CIT(A) erred in law as well as facts of the case in deleting the order passed u/s.201(1) & interest charged u/s. 201(1A) of the Act of Rs. 22,50,084/- & Rs. 19,81,420/- respectively.

2. The Ld. CIT(A) erred in not appreciating the fact that the assessee defaulted in deposition of the tax deducted at source. Therefore, the limitation imposed in sub section (3) of section 201 does not apply in this case."

9. The sole ground of appeal in this case is against the decision of Id. CIT(A) in deleting the order passed u/s. 201(1) and interest charged u/s. 201(1A) of the act. The brief fact is that assessing officer has passed order u/s. 201(1)/201(1A) of the act on 1st March, 2013 stating that assessee has failed to deduct tax on the amount of Rs. 22,50,080/-, therefore, the assessee was declared to be an assessee in default in respect of the aforesaid amount. Thereafter, the assessing officer has also levied interest of Rs. 19,81,420/- u/s. 201(1A) of the act for short payment of tax.

10. Aggrieved assessee has filed appeal before the Id. CIT(A). The Id. CIT(A) has deleted the addition made by the assessing officer. The relevant part of the decision of Id. CIT(A) is reproduced as under:-

"5.2. I have gone through the facts of the case, the AO's observations and the submission made by the AR. So far as ground no. '3' is concerned, the appellant's contentions that no order u/s. 201 for the F.Y. 2006-07 could have been passed after 31/03/2011 is correct. Accordingly, the order of the Assessing Officer declaring the appellant as "assessee in default" for amount deducted but not paid is directed to be deleted as being time barred.

5.2.1 But so far as order u/s. 201(1A), vide which the Assessing Officer has levied interest on the amount of IDS allegedly not paid by the appellant to the credit of the Central Government, is concerned, no time limit for passing such order has been provided in the IT Act, 1961. Hence, it is held that the Assessing Officer has rightly levied such interest on the appellant.

5.2.2 So far as ground no. '2' is concerned, on perusal of the order of the Assessing Officer it is seen that the TDS/TCS deposited by the appellant vide the challans mentioned in the annexure to the order of the Assessing Officer, are same as the amounts mentioned as short payments in this order. During the course of the appellate proceedings, the appellant has submitted the copies of the challans of banks through which TDS was deposited by it. It was explained that by mistake one CIN no. was mentioned against the amounts paid by two different challans. Due to this mistake the credit for such payments were not given to the appellant while processing of its TDS statement. For example it is seen that the amount of Rs. 91,332/- paid vide challan CIN No. 00025 and Rs. 2,32,147/- paid vide challan CIN No. 00021 were clubbed together and the total amount of Rs. 3,23,479/- was mentioned in the return against challan serial no. 21. The annexure to the Assessing Officer's order also give list of challans reported in

return but not found in OLTAS. The reason for such discrepancy has been explained by the appellant in its submission. Now the appellant has submitted that it is not able to file correction statement as the online system is not allowing the processing of TDS statement for F.Y. 2006-07. Under such circumstances, the appellant has rightly filed a rectification petition before the Assessing Officer which has to be considered by the Assessing Officer for giving consequential relief to the appellant.

5.2.3. Accordingly, the Assessing Officer is directed to verify from the banks as to whether the claim of the appellant of having deposited TDS amounts through challans, copies of which have been submitted during the appellant proceedings as well as before the Assessing Officer are correct or not.- On such challans being found correct, the Assessing Officer will provide consequential relief to the appellant by passing order in writing as per

As a result, appeal is allowed.”

11. We have heard the rival contentions and perused the material on record carefully. The assessing officer has raised a demand of Rs. 42,31,504 for non-payment of TDS(Rs. 2,250080 amount deducted but not paid + Rs.1981420 interest on late payment) for third quarter of F.Y. 2006-07. The assessee claimed that actually TDS was paid and there was no case of non-payment of TDS because on processing of TDS statement it was wrongly shown as non-payment of TDS. This mistake has been occurred due to mismatch of CIN number registered in the OLTAS statement and the CIN number mentioned by the assessee. The revised TDS statement after rectifying the mistake in CIN number could not be submitted because of technical reason as the online system was not allowing the processing of TDS statement for financial year 2006-07. Therefore, the assessee has simultaneously applied to the assessing officer for rectification of the order passed. It is also stated that the annexure to the order of the assessing officer provides list of challans reported in the return but not found in the OLTAS. In view of the above the Id. CIT(A) has directed the assessing officer to verify from the bank as to whether the claim of the assessee having deposited the amount through challan are correct or not. During the course of appellate proceedings before us, the copy of appeal giving effect to the CIT(A) order passed by the assessing officer on 18th June, 2014 was furnished as per which the assessing officer had granted reduction after necessary verification carried out as directed by the Ld.CIT(A). Looking to the

above facts and circumstances, we do not find any merit in the appeal of the revenue , therefore, the same is dismissed.

12. In the result, both the appeals filed by revenue are dismissed.

Order pronounced in the open court on 17-09-2018

Sd/-
(MADHUMITA ROY)
JUDICIAL MEMBER
Ahmedabad : Dated 17/09/2018

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

आदेश का प्रतिलिपि अर्पण / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलार्थ आधिकरण,
अहमदाबाद