

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'G' NEW DELHI**

**BEFORE SHRI H.S.SIDHU, JUDICIAL MEMBER
&
SHRI N.S.SAINI, ACCOUNTANT MEMBER**

ITA No.-3109/Del/2015

(Assessment Year: 2011-12)

Summit Aviation (P) Ltd., E-55, Greate Kailash Enclave 1 New Delhi PAN : AAACS4206M	vs	ITO (TDS) Ward-151(3), New Delhi
Assessee by	Shri Rajesh Jain, CA	
Revenue by	Shri S.S.Rana, CIT-DR	

Date of Hearing	17.12.2018
Date of Pronouncement	17.12.2018

ORDER

PER N.S.SAINI, ACCOUNTANT MEMBER :

This is an appeal filed by the assessee against the order of Commissioner of Income Tax (Appeals)-XLI, New Delhi dated 24.03.2015 for assessment year 2011-12. The assessee has raised following grounds :-

1. *"That Learned CIT(A) has erred both in law and on facts holding the appellant as assessee-in -default u/s 201(1) and Non deduction & Non Payment of TDS amounting to Rs. 1,17,03,838.09, comprising of tax u/s 201(1) of the Act, 1961 amounting to to Rs. 86,05,763.32 and interest u/s 201(1 A) of the Act amounting to Rs. 30,98,074.77*
2. *That the Learned CIT(A) has erred both in law and on*

facts hold the appellant as "assessee-in-default" u/s 201(1) and subjecting the appellant by determining liability on entire amount of certain heads of expenses appearing in the Profit & Loss a/c irrespective of the facts that the provisions TDS are not attracted on these heads of expenses and determined arbitrarily TDS liability of Rs. 1,17,03,838.09 as worked out in para 3 of the order under appeal.

3. *That the Learned CIT(A) has erred both in law and on facts holding the appellant as "assessee-in-default" u/s 201(1) by charging tax at the maximum flat rate of 30% on whole amount of salary of Rs. 82,17,520/- and Director remuneration of Rs. 42,11,066/- debited in the P^A & L A/c.*

4. *That the Learned CIT(A) has erred both in law and on facts holding the appellant as "assessee-in-default" u/s 201(1) by not allowing credit of self assessment amounting to Rs. 10,42,062/- [4,61,464/- +5,80,599/- vide challan dated 11.05.12 paid by the Director but inadvertently credited in appellant's a/c for the Financial Year 2010-11 (assessment Year 2011-12]*

4.1 That when the payer has already paid the due taxes, the payee cannot be held as "assessee-in-default" for non payment of tax at source.

5. *That the Learned CIT(A) has erred in not considering the evidence available on record being TDS payments and other documents including low TDS deduction certificate holding the same to be additional evidence.*

6. *That even otherwise the CIT(A) erred in not admitting the additional evidence filed during the appellate proceedings in line with provision of rule 46A of the IT rules.*

7. *That the appellant was prevented by a sufficient cause not filing the said documents before the Assessing*

Officer but the same were filed before the Learned CIT(A) who has erred in rejecting the admission of such documents.

8. *That the Learned CIT(A) has erred in violating the principal of natural justice in giving the Appellant proper and adequate opportunity.*

9. *That the Learned CIT(A) has erred in charging the Interest u/s 201(1 A) of the I.T. Act when the deductee/ payee has already paid taxes on the receipt/income received by them.*

2. At the outset, the Authorised Representative of the assessee Shri Rajesh Jain, CA argued and submitted that the Assessing Officer has treated the assessee in default for non-deduction of TDS u/s 201(1) of the Act for an amount of Rs. 86,05,763/- and for interest u/s 201(1A) of Rs. 30,98,074/- both aggregating to Rs. 1,17,03,838/-. The Assessing Officer thereafter by passing an order u/s 154 of the Act and allowing TDS credit for Rs. 24,94,516/- reduced the amount to Rs. 92,09,932/-.

3. The assessee carried the matter in appeal to the Commissioner of Income Tax (Appeals). After considering the submissions of the assessee the Commissioner of Income Tax (Appeals) observed that from the assessment order it is clear that assessee was totally non-cooperative in submitting the details as asked by the Assessing Officer during the proceeding before him. The assessee submitted only audit report and balance sheet and few challans of payment of TDS. From these scanty details the Assessing Officer could not have calculated the TDS amount correctly, therefore, the Assessing Officer was left with no alternative but to calculate the TDS liability on the basis of whatever material was available on record and this action of the Assessing Officer cannot be faulted. He further observed that during

the appeal proceedings before him also the assessee did not submit all the necessary details with documentary evidences. Some of the evidence like certificate of Lower deduction of tax are additional evidences produced before him for the first time. The assessee failed to show the reasons for non submission of the same before the Assessing Officer, therefore, the evidences could not be accepted or relied on. Further the Commissioner of Income Tax (Appeals) held that in his order at para 3, Assessing Officer considered expenses under various heads and also stated the sections of the Act which required deduction of tax at source at specified rate in respect of the payments which has not been rebutted by the assessee before him. He also observed that before the Assessing Officer no material was submitted to show which part of such expenses were not subject to provision of TDS. He also observed that it was the duty of the assessee to furnish before the Assessing Officer details of salary paid in respect of each employee and the tax deductible at source in respect of the same considering the basic exemption limit or the tax rate applicable in particular case which was not done and therefore the Assessing Officer had no alternative than to calculate TDS liability in the way he has done, therefore, he rejected the grounds of appeal of the assessee. However, he directed the AO that if he finds that assessee has submitted challans for payment of TDS which had not been given credit earlier the same may be allowed after verification and corresponding interest may be reduced.

4. Before us the Authorised Representative of the assessee has filed paper book comprising of 136 pages with a certificate appended to the effect that the papers filed in the paper books filed are true copies of original documents which were filed before the respective authorities. He pleaded that the matter should be restored back to the file of the Assessing Officer and not to the file

of the Commissioner of Income Tax (Appeals) to consider these evidences and decide the issue of liability of assessee as an assessee in default u/s 201(1) and interest u/s 201(1A) afresh.

5. On the other hand the Departmental Representative, Shri S.S.Rana, CIT(DR) vehemently opposed the submissions of the assessee on the ground that sufficient opportunity was allowed by the Assessing Officer as well as the Commissioner of Income Tax (Appeals) but the assessee failed to avail of them and therefore, no further opportunity should be allowed to the assessee.

6. We have heard the rival submissions and perused the materials available on record. It is not in dispute that the Assessing Officer has held the assessee as an assessee in default u/s 201(1) of the Act as well as liable for payment of interest u/s 201(1A) of the Act as the assessee has not filed details in respect of TDS liability on expenses paid as well as not produced the challans for deposit of TDS before the Assessing Officer. Therefore he held the assessee to be an assessee in default for the amount of TDS as well as for the interest for not a deducting tax at source. The assessee filed details and documents before the Commissioner of Income Tax (Appeals) who did not accept the same for the reason that they were not filed before the Assessing Officer and were additional evidences filed before him for the first time. In these circumstances, in our considered view in order to render substantial justice to the assessee the plea of the assessee should be accepted and the matter should be remanded back to the file of the Assessing Officer for adjudicating the issues involved afresh as per law as prayed by the Ld. Authorised Representative of the assessee. We, therefore, set aside the orders of the lower authorities and remand matter back to the file of the Assessing Officer for adjudicating the issues afresh as per law after allowing reasonable and proper opportunity of hearing to the assessee. The

assessee is also directed to file all details and evidences in support of his claim before the Assessing Officer as and when called upon to do so. The Assessing Officer is directed to adjudicate issues afresh expeditiously. With these directions, the appeal is allowed for statistical purposes.

Order pronounced in the Court on 17th December, 2018 at New Delhi.

**Sd/-
(H.S.SIDHU)
JUDICIAL MEMBER**

**Sd/-
(N.S.SAINI)
ACCOUNTANT MEMBER**

Dated: 17.12.2018

BR

Copy forwarded to:

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

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ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	17.12.2018
Date on which the typed draft is placed before the dictating Member	17.12.2018
Date on which the typed draft is placed before the Other Member	17.12.2018
Date on which the approved draft comes to the Sr. PS/PS	17.12.2018
Date on which the fair order is placed before the Dictating Member for pronouncement	17.12.2018
Date on which the fair order comes back to the Sr. PS/PS	17.12.018
Date on which the final order is uploaded on the website of ITAT	18.12.2018
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	

