

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH: 'F': NEW DELHI)**

**BEFORE SHRI K.N. CHARY, JUDICIAL MEMBER
AND
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

**ITA No:- 2920/Del/2015
(Assessment Year: 2007-08)**

GlaxoSmith Kline Consumer, Healthcare Limited, 24-25 Floor, One Horizon Center, Golf Course Road, DLF Phase 5, Gurgaon-122002, Haryana.	Vs.	Assistant Commissioner of Income Tax, TDS Circle 50(1), Aayakar Bhawan, 5 th Floor, District Centre, Laxmi Nagar, New Delhi.
PAN No: AACCS0144E		
APPELLANT		RESPONDENT

Assessee by : Shri Rohit Jain, Adv. and
Ms. Tejasvi Jain, Adv.
Revenue by : Shri Surender Pal, Sr. DR,

ORDER

PER ANADEE NATH MISSHRA, AM

This appeal by Assessee is filed against the order of the Learned Commissioner of Income Tax (Appeals)-41, New Delhi, ["Ld. CIT(A)", for short], dated 19.02.2015, for Assessment Year 2007-08, on the following grounds:

- "1. *That the CIT(A) erred on facts and in law in not appreciating that the impugned order dated 26.02.2012 under section 201(1)/201(1A) of the*

Income-tax Act, 1961 ('the Act'), having been passed in violation of principles of natural justice, is illegal and bad in law.

2. *That the CIT(A) erred on facts and in law in not directing the assessing officer to delete the interest amounting to Rs. 88,52,370 (including Rs. 1,23,710 towards interest on interest) imposed by him under section 201(1A) of the Act.*

The appellant craves leave to add, alter, amend or vary the above grounds of appeal before or at the time of hearing."

(2) During the course of appellate proceedings, the Assessee filed **Paper Book** consisting of the following particulars:

- "1. *Copy of the justification report containing details of the alleged short deduction of tax and interest thereon.*
2. *Statement showing details of alleged short deposit of tax alongwith the remarks for alleged default by the appellant.*
3. *Copy of the nine challans evidencing payment of TDS amounts for the relevant assessment year under consideration.*
4. *Status of challans deposited by the appellant as reflected in the Department's NSDL website.*
5. *Copy of challan deposited by the appellant's group company under their TAN No. DELG08746D for the relevant assessment year under consideration.*
6. *Status of challans deposited by the appellant's group company as reflecting in the Department's NSDL website.*
7. *Copy of the acknowledgment of revised statement of TDS dated 14.05.2012 under section 200(3) of the Income Tax Act, 1961 for the relevant assessment year under consideration*
8. *Copy of the letter dated 25.04.2012 filed before the assessing officer for obtaining the justification report.*
9. *Copy of the rectification application dated 19.05.2012 filed before the assessing officer under section 154 of the Act.*
10. *Coy of submission dated 12.02.2015 filed before CIT(A)*
11. *CIT vs. Gujarat Fluro Chemicals : 358 ITR 291(SC)"*

(3) At the time of hearing before us, the Ld. Counsel for Assessee vehemently contended that the Assessing Officer ("AO", for short) had passed the order dated 26.12.2012 U/s 201(1)/201(1A) of the Income Tax Act, without providing any opportunity of being heard to the assessee. The Ld. Counsel for assessee drew our attention to the letter dated 25/04/2012 (pages 25-26 of **Paper Book**), in which the Assessee has submitted as under:

"It is at the outset, respectfully submitted that the aforesaid order has been passed by your Honour without affording any opportunity of being heard to the assessee. The show cause notice issued under section 201(1)/201(1A) of the Act (as mentioned in the said order) was never served on the assessee and therefore, the assessee could not file any correction statement, if any or reply in response to the same.

That apart the justification Report (Annexure A) to the captioned order containing the entry wise details of the defaults (as mentioned in the said Order) has not been served on the assessee alongwith aforesaid order passed under section 201(1) of the Act.

It may kindly be appreciated that without the necessary justification report, the assessee is unable to file the correction statement/return to rectify the defaults alleged in the captioned order for the financial year 2006-07."

(3.1) He further drew our attention to statutory provision U/s 201(1)/201(1A) of the Act, to content that the AO and the Ld. CIT(A) were wrong in holding that the Assessee was liable to pay interest on interest U/s 201(1)/201(1A) of I.T. Act.

(4) The Ld. Departmental Representatives ("DR", for short) submitted that the interest on interest was not charged U/s 201(1)/201(1A) of the Act, but U/s 220 of I.T. Act, in accordance with law. In rejoinder, the Ld. Counsel for Assessee submitted that, on perusal of the order dated 26.12.2012 of AO, it is not clear whether the interest on interest was charged U/s 220 of I.T. Act or U/s 201(1)/201(1A) of I.T. Act.

(5) We have heard both sides carefully and perused the materials available on record. We have considered the judicial precedents which were brought to our attention. On perusal of the records, we find that, although in order dated 26.02.2012, the AO has referred to a show cause notice issued to the Assessee U/s 201(1A) of I.T. Act; the Assessee has denied having received any such show cause notice. In assessee's appeal before Ld. CIT(A), the assessee had taken a ground of appeal to the effect that the AO erred on facts and in law in passing order without giving any opportunity of being heard to the assessee, against the principles of natural law of justice. However, this ground was dismissed by the Ld. CIT(A), merely on the basis of show cause notice mentioned by the AO aforesaid order dated 26.12.2012, despite assessee's contention that no such show cause notice was served on the assessee. We find that the assessee has denied receiving any such show cause notice from the AO and as there is nothing on record to show that the show cause notice issued by the AO was served on the assessee. In view of the above, we direct the AO to pass a fresh order, after giving reasonable opportunity of being heard to the assessee. Accordingly, we set aside the order of the Ld. CIT(A) and restore the disputed issues to the file of the AO with the direction to the AO to pass

a denovo order, after giving reasonable opportunity of being heard to the assessee; and after considering evidences filed by the assessee.

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

Order pronounced in the open court on 15/ 01/2019

Sd/-
(K.N. CHARY)
JUDICIAL MEMBER

Sd/-
(ANADEE NATH MISSHRA)
ACCOUNTANT MEMBER

Dated: 15.01.2019
Pooja/-

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	14/01/19
Date on which the typed draft is placed before the dictating Member	15/01/19
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
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	