

IN THE INCOME TAX APPELLATE TRIBUNAL

“C” BENCH : BANGALORE

BEFORE SHRI ARUN KUMAR GARODIA, ACCOUNTANT MEMBER AND
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No. 1995/Bang/2018
Assessment Year : 2009-10

M/s. Puravankara Ltd. (Formerly known as Puravankara Projects Ltd.), No. 130/1, Ulsoor Road, Bangalore – 560 042. PAN: AAACP2550R	Vs.	The Deputy Commissioner of Income Tax (TDS), Circle – 18 (1), Bangalore.
APPELLANT		RESPONDENT
Assessee by	:	Shri V. Srinivasan, Advocate
Revenue by	:	Dr. P.V. Pradeep Kumar, Addl. CIT (DR)
Date of hearing	:	11.07.2019
Date of Pronouncement	:	31.07.2019

ORDER

Per Shri A.K. Garodia, Accountant Member

This appeal is filed by the assessee and the same is directed against the order of Id. CIT(A)-13, Bangalore dated 13.09.2017 for Assessment Year 2009-10.

2. The grounds raised by the assessee are as under.

“1. The impugned order passed by the learned Commissioner of Income-tax [Appeals] and that of the learned assessing officer passed under Section 201(1A) r.w.s 154 of the Income Tax Act, 1961 (Act) to the extent which is against the appellant is opposed to law, weight of evidence, probabilities, facts and circumstances of the Appellant's case.

2. The authorities below have erred in levying interest u/s 201(1A) to the extent of Rs. 7,56,143/- though the appellant had parted with the entire TDS amount within the due date and it was lying with the exclusive bank meant for onward transfer to the Govt's account waiting for technical correction of the software.

3. The officers below have erred routinely levying the interest without adverting to the materials on record, without appreciating the facts and circumstances of the case and the law applicable thereto.

4. The officers below ought to have appreciated the fact that the Appellant had transferred the amount of TDS to a designated agent bank of the Government and the delay due to the errors in the electronic payment systems should not entail liability on the Appellant especially

considering the fact that the delay was purely due to the difficulty in making the payment by virtue of rejection of password and technical glitches of the payment gateway, which was beyond the control of the appellant and the present case is governed by the doctrine of "impossibility of performance" and the Appellant had done whatever he could in this regard. The money was lying in the agent bank of the Government and hence there is no case for charging the interest and the Appellant has not benefitted out of the money lying in the account.

5. The Officers below, ought to have appreciated that the delay in payment of TDS in any case was only few days in every month. Hence, demand of interest for the whole month which is unjustified and unfair and contrary to the provisions of the Act.

6. The learned assessing officer has relied on the citations wherein the facts of case are different than that of Appellant and not considering the binding decisions relied by the Appellant.

7. The Ld. Commissioner failed to appreciate and apply the "doctrine of merger" to the present case and adjudicate the issue rather than adjudicating the issue on hyper technical grounds and was not justified in confirming the demand made by the learned assessing officer under the facts and circumstances of the case.

The appellant craves leave of this Hon'ble Tribunal to add, alter, modify, delete or substitute any or all of the above grounds of appeal as may be necessary at the time of hearing of the appeal.

For these and other grounds, which are mutually exclusive that may be urged at the time of hearing of appeal, the Appellant prays that the appeal may be allowed for the advancement of substantial cause of justice and equity."

3. In course of hearing, the Id. AR of assessee drawn our attention to statement of facts filed before the Tribunal to narrate the whole sequence of the events. For ready reference, we reproduce the statement of facts which are as under.

"The Appellant being aggrieved by the order passed u/s 250 of the Income Tax Act, 1961 [hereinafter referred to as the Act] by the learned Commissioner of Income Tax [Appeals]-13, is preferring this appeal before this Hon'ble Income Tax Appellate Tribunal, Bengaluru Bench, Bengaluru for redressal of the various grievances raised in this grounds of appeal. A copy of the order passed by the learned CIT [A] and the statement of facts and grounds of appeal filed before the learned CIT [A] are enclosed herewith. The relevant facts for appreciation of grounds of appeal are as under:

1. The appellant Company is public limited Company carrying on the business as builders and developers.

2. The Appellant over the years was regular in TDS remittance and the year wise TDS deduction and remittance in the

immediate three preceding years to the relevant year is as under:

<i>Financial year</i>	<i>Amount</i>
2007-08	15,14,46,235
2006-07	7,81,85,039
2005-06	4,20,91,126

3. *The CBDT vide Circular no. DGBA.GAD. No. H. 10875/42.01.038/2007-08 dated 10.04.2008, made it mandatory for all the assesseees to make the TDS remittance electronically, so much so that the bankers refused to accept the cheques for remitting the TDS to the Government Account.*

4. *In order to comply with the above CBDT Circular, the Appellant opened a dedicated bank account in HDFC Bank. HDFC Bank was designated as an agent by the Government of India to collect the taxes on its behalf electronically. The dedicated bank account's number was 0762320002372 and the same was Current Account in nature.*

5. *The Appellant was transferring the amount to the dedicated bank account for the remittance of Taxes on need basis.*

6. *However, due to the sole reason of failure of password provided by the HDFC Bank, payments were getting rejected at the Bank's website, hence TDS remittance of certain initial periods stretching from April to October 2008 could not be transferred from the agent bank's account within the due date provided under the Income Tax Act, 1961 (Act) and hence there was delay in the initial period as the system of the agent bank was not stabilized.*

7. *It is submitted that the Appellant had transferred the funds to this exclusive bank account of the agent banker of the Government on need basis as under:*

<i>Month</i>	<i>Due date</i>	<i>Date of transfer of amount to the Agent Bank</i>	<i>Amount</i>	<i>Date of remittance by the Agent Bank</i>
April 2008	07.05.2008	09.04.2008	20,00,000	30.06.2008
May 2008	07.06.2008	31.05.2008	66,01,510	30.06.2008
June 2008	07.07.2008	05.07.2008	1,59,00,000	08.07.2008
July 2008	07.08.2008	07.08.2008	1,17,00,000	11.08.2008
Sept. 2008	07.10.2008	07.10.2008	1,43,94,043	15.10.2008

Oct. 2008	07.11.2008	06.11.2008	8,00,000	11.11.2008
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As could be seen from the above, though the Appellant has parted with and deposited the amount in to the agent bank's exclusive account, payment could not happen in the agent bank's website only due to system errors which were beyond the control of the Appellant. Had the Government did not made it mandatory to make the payment electronically, there would not have been any delay in the remittance as the Appellant was making the remittance promptly for the past several years, without any delay and thus delay in the instant case is purely technical in nature on the part of the agent bank. However, the Ld. AO(TDS) has demanded the interest though the Appellant had transferred the amount to the Govt.'s agent bank. The Appellant was not enriched out of the delay occurred due to the Govt.'s agent banker's action or inaction in resolving the Appellant's grievance in executing the TDS payment. The appellant had transferred the amount to the current account and it was lying with the agent bank without earning any interest. It may be noted that subsequent to the initial technical glitches, being resolved there is no delay in remittance which substantiates the fact that the delay was not due to the act of the Appellant.

8. Further, the Ld. AO also levied the interest u/s 201(1A) for the whole month even though the delay involved in each case was few days as could be seen from the computation.

9. The Appellant being aggrieved by the order of assessing officer preferred an appeal before the learned Commissioner (Appeals). The learned Commissioner (Appeals) vide order dated 13/09/2017 made u/s 250 of the Act had held that the issue involved is arbitrary and hence does not find infirmity in the rejection of Ld. AO's action of rejection of Appellant's rectification application.

10. Since the interest levied is incorrect and without appreciating the facts of the case and without appreciating the fact that the Appellant was prevented from the cause of Government's agent.

11. Being aggrieved by the orders of the officers below, the appellant prefers this appeal before this Honourable Appellate Tribunal for redressal of the issues in the interest of justice under the fact and circumstances.

In view of the above statement of facts, the Appellant prays before this Hon'ble Tribunal that the appeal of the appellant may kindly be allowed and demand of interest be deleted for advancement of substantial cause of justice.”

4. Thereafter, it was submitted that as per the impugned order of Id. CIT(A), in para 4 of his order, it is held by him that this appeal is against the order passed by the AO u/s. 154 in which it is held by the AO that charging of interest u/s. 201(1A) is mandatory and various judgments are referred by him in this regard and the various arguments of the assessee says that in the facts of present case, interest u/s. 201(1A) is not chargeable and reliance is placed on several judgments. Learned CIT (A) held that the issue is debatable and therefore, the same does not come under the purview of 'mistake apparent from record' rectifiable u/s. 154 of the Act. He submitted that Id. CIT(A) should be directed to decide the appeal afresh by treating the present appeal of the assessee before him as an appeal against the original order passed by the AO. The Id. DR of revenue supported the order of Id. CIT(A).
5. We have considered the rival submissions. First of all, we reproduce para 4 of the order of Id. CIT(A) for ready reference.

“4. It is clear from the reliance on the several decisions by the Assessing Officer in support of the view that the charging of interest u/s 201(1A) is mandatory and by the appellant to support the view that in the facts of the case the interest u/s 201(1A) is not chargeable, the issue is debatable and therefore same does not come under the purview of 'mistake apparent from record' rectifiable u/s 154 of the Act. In such circumstances, the undersigned does not find any infirmity in the rejection of application u/s 154. Accordingly, the appeal is dismissed.”

6. The present proceedings were initiated by the order passed by the AO u/s. 154 in which he noted the submission of the assessee that there was a problem with HDFC Bank E-net facility. In spite of this, the AO has levied the interest u/s. 201(1A) of IT Act by holding that charging of interest u/s. 201(1A) is mandatory. In the same order passed by the AO u/s. 154, it is noted by the AO that assessee has written a letter dated 01.01.2010 seeking rectification of the order passed u/s. 201(1A) of the IT Act, 1961 on 23.12.2009 raising a demand of Rs. 7,56,143/-. In our considered opinion, if the appeal of the assessee against this order passed by the AO u/s. 154 is considered and decided as an appeal against the original order dated 23.12.2009 passed by the AO u/s. 201(1A) of the IT Act, then the assessee's arguments can be considered and decided on merit instead of dismissing the same at the threshold on this basis that this is a debatable issue and hence, cannot be

considered u/s. 154. In the interest of justice and in view of the facts noted above, we feel it proper to restore back the entire issue in the present appeal to the file of Id. CIT(A) for a fresh decision. If the assessee makes a request before Id. CIT(A) to treat this appeal of the assessee as an appeal against the original order passed by the AO u/s. 201(1A) of the IT Act dated 23.12.2009 along with a request for condonation of delay because the present appeal was filed by the assessee before Id. CIT(A) on 09.04.2010 as noted by Id. CIT(A) on page no. 1 of his order and therefore, if this appeal is considered as an appeal against the original order passed by the AO u/s. 201(1A) dated 23.12.2009, then there is a delay in filing appeal before Id. CIT(A) and hence, if the assessee makes request for condonation of such delay, the Id. CIT(A) should first decide about the request for condonation of the delay and if he condones the delay, then he should decide the appeal of the assessee by considering this appeal as an appeal against the original order passed by the AO u/s. 201(1A) of the IT Act dated 23.12.2009. In view of this decision, no further adjudication is called for on merit and we do not make any comment on the merit.

7. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on the date mentioned on the caption page.

Sd/-
(PAVAN KUMAR GADALE)
Judicial Member

Sd/-
(ARUN KUMAR GARODIA)
Accountant Member

Bangalore,
Dated, the 31st July, 2019.
/MS/

Copy to:

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|---------------|------------------------|
| 1. Appellant | 4. CIT(A) |
| 2. Respondent | 5. DR, ITAT, Bangalore |
| 3. CIT | 6. Guard file |

By order

Assistant Registrar,
Income Tax Appellate Tribunal,
Bangalore.