

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI 'SMC' BENCH, MUMBAI**

**[Coram: Pramod Kumar (Vice President)]**

ITA No. 422/Mum/2020  
Assessment year: 2015-16

**M/s Kapoor Glass (India) P. Ltd.,** .....Appellant  
*A- 37, Kapoor House, Road No.2, MIDC,  
Andheri (E), Mumbai 400 0093 [PAN No. AAACD1725E]*

*Vs*

**Income Tax Officer, Ward 10(1)(3)**  
**Mumbai** .....Respondent

**Appearances by**

**Renu Kapoor** *for the appellant*  
**T. Sankar** *for the respondent*

Date of concluding the hearing : December 29, 2021  
Date of pronouncement of order : December 29, 2021

**O R D E R**

**Per Pramod Kumar, VP:**

1. By way of this appeal, the assessee-appellant has challenged the correctness of the order dated 5<sup>th</sup> December 2019, passed by the learned CIT(A) in the matter of assessment under section 143(3) of the Income Tax Act 1961, for the assessment year 2015-16.

2. The short point requiring by implication in this case is whether the provisions of section 40 (a) (ia) will also apply in situation in which even though the assessee has duly deducted and paid the taxes at source but he has not discharged his obligations in respect of interest levy u/s. 201(1A) for delay in deposit the tax deducted at source. The related ground of appeal as set out in the memorandum of appeal is as follow:-

***1. The learned CIT (Appeals) has erred in law and on the facts of the case in sustaining the order of the assessing officer disallowing Rs. 73,85,553/- u/s. 40(a)(ia) of the Income Tax Act.***

3. To adjudicate of this appeal only a few material facts needs to be taken in to account. The assessee before me is a company of manufacturing of glass, ampoules and vials. In the course of the scrutiny assessment proceedings of the relevant previous year, the Assessing Office noticed that the assessee company has made a payment of Rs. 73,85,553/- in respect of payment to contractor, but the tax deducted at source from this payments were paid late and that the assessee has not discharge the liability to pay interest on delay deposit of tax at source from the tax deducted. It was for this reason that the Assessing Officer invoked u/s. 40(a)(ia) and disallowed the payments in question. The Assessing Officer thus proceeded to disallowed of Rs. 73,85,553/-, and , while doing so the observed as follows:-

***4.10 The assessee has paid an amount of Rs. 1,65,047/- as its liability towards TDS deducted but not paid and interest chargeable u/s. 201(1A) of the Act. The interest payable u/s. 201(1A)(i) and (ii) of the Income Tax Act, 1961, on the amount of TDS deducted but not paid i.e. on Rs. 1,65,047/- exceeds the amount paid by the assessee during the FY 2014-15. In view of this, I hereby treat the amount paid by the assessee during the FY 2014-15 as paid towards interest u/s 201(1A) of the Income tax Act, 1961. I also hold that the assessee has not discharged the liability of TDS deducted by it in the FY 2006-07 till date for the payments claimed as deduction under the proviso of section 40(a) of the Income Tax Act, 1961 in its computation of income for the AY 2015-16. The assessee is therefore not liable to deduction as per the provisions of the proviso of section 40(a) (ia) or the Income Tax Act, 1961. The amount of Rs. 73,85,553/- claimed by the assessee as deduction u/s 40(a) (ia) is hereby rejected and added to its total income for the year. Penalty proceedings u/s 271(1)(c) are hereby initiated for furnishing inaccurate particulars of income.***

4. Aggrieved by the stand of the Assessing Officer, assessee carried the matter in appeal before the learned CIT(A). The stand of the assessee was that the non-payment of interest u/s. 201(1A) cannot be reason enough for invoking disallowance u/s. 40(a)(ia). The appeal was however without any success the learned Commissioner did not discuss the specific plea so raised by the assessee and proceeded to confirm the action of the Assessing Officer by observing that “even during appellate proceedings, the appellant has not brought out any new facts or submission other than those produced during the course of assessment proceedings and “in view of the facts mentioned above I have no reason to deviate from the findings of the AO”. The assessee is not satisfied and is in further appeal before me.

5. I have heard the rival contentions perused the material on record and duly considered facts of the case in the light of the applicable legal position.

6. As learned counsel for the assessee rightly points out disallowance u/s. 40(a)(ia) can only be triggered by “non-deduction or non- payment” of tax deductible at source on the payment in question and it has no link in whatsoever with not discharging any other obligations consequent to delayed in deposit of tax at source. Clearly therefore non-payment of interest u/s. 201(1A) has no relationship with the disallowance u/s. 40(a)(ia). The consequences of non-payment even if so, of interest u/s. 201(1A) do not include impact on deductibility of the related expenditure in the course of assessment. The action of the authorities below was thus vitiated in law. I therefore

uphold the plea of the assessee and direct the Assessing Officer to delete the impugned disallowance of Rs. 73,85,553/-. The assessee gets the relief accordingly.

7. In the result, the appeal is allowed in the terms indicated above. Dictated and pronounced in the open court today on the 29<sup>th</sup> day of December, 2021

Sd/-  
**Pramod Kumar**  
(Vice President)

**Mumbai, dated the 29<sup>th</sup> day of December, 2021**

*Copies to:*

(1)	<i>The appellant</i>	(2)	<i>The respondent</i>
(3)	<i>CIT</i>	(4)	<i>CIT(A)</i>
(5)	<i>DR</i>	(6)	<i>Guard File</i>

*By order*

*Assistant Registrar/ Sr PS  
Income Tax Appellate Tribunal  
Mumbai benches, Mumbai*