

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

(Through Video Conferencing)

**BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER AND
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER**

**ITA No.5762/DEL/2018
[Assessment Year: 2012-13]**

Gupta International, Shiv Nagar, Krishanpura Behind Gandhi Mandi, Panipat-132103	Vs	Income Tax Officer (TDS), Karnal,
PAN-AACFG0217F		
Assessee		Revenue

Assessee by	Sh. S. Krishnan, Adv.
Revenue by	Sh. Kumar Padmapani Bora, Sr. DR

Date of Hearing	17.11.2021
Date of Pronouncement	13.01.2022

ORDER

PER R.K. PANDA, AM,

This appeal filed by the assessee is directed against the order dated 12.06.2018 of the learned CIT(A), Karnal, relating to Assessment Year 2012-13.

2. The only effective ground raised by the assessee reads as under:-

“1. On the facts and in the circumstances of the case and in law, the CIT(A) erred in confirming liability u/s 201(1) read with section 194-H of the Act, in a sum of Rs.61,112/-.”

3. Facts of the case, in brief, are that the assessee is a company and engaged in the business of manufacturing and export of handloom goods etc and filed its return of income on 29.09.2012 declaring taxable income of Rs.1,51,82,430/-. The AO noted that the assessee paid commission of Rs.3,72,635/- but failed to deduct TDS as per provisions of section 194H of the Act. The case was fixed for a number of times. None appeared on behalf of the assessee, therefore, the AO proceeded to decide the issue on the basis of material available on record. Since, the assessee has not deducted TDS u/s 194H of the Act on the commission paid to the deductee amounting to Rs.3,72,635/- , the AO held the assessee to be an assessee in default as per provisions of section 201(1) of the Act. Similarly, applying the provisions of section 201(1A) of the Act, the AO levied interest of Rs.23,848/- and accordingly raised a demand of Rs.61,112/- being TDS liable to be deducted @10% Rs.37,264/- and interest u/s 201(1A) of Rs.23,848/-.

4. In appeal, the CIT(A) confirmed the action of the AO by observing as under:-

“2.2. Findings

A perusal of the facts of the case and the documents submitted reveal that the tax was deducted on the receipt of the bill in the next financial year (April 2012) and deposited in the month of May, 2012. It is true that the amount on

account of omission had been already added in the A.Y. 2012-13 u/s 143(3). The addition on account of TDS is, however correct as the amount should have been deducted and deposited in the year when it has accrued and shown in the commission account.”

5. Aggrieved with such order, the assessee is in appeal before the Tribunal.

6. We have heard the rival arguments made by both the sides, perused the orders of the Assessing Officer and the learned CIT(A). From the copy of the assessment order for the impugned assessment year filed by Id. Counsel for the assessee, we find the AO has already made an addition of Rs.3,72,635/- for non-deduction of TDS on the commission paid. The relevant observation of the AO at para-2 of the order reads as under:-

“2. On perusal of Annexure of Balance Sheet it reveals that assessee has shown commission payable to the tune of Rs.3,72,635/-. Assessee was show caused vide this office order sheet entry dated 06.03.2014 as to why disallowance of Rs.3,72,635/- should not be made in your taxable income being no TDS has been deducted/delay in deducting and deposited the TDS into Government account in time as required u/s 40(a)(ia) of the Income-tax Act, 1961. In response to assessee’s counsel submitted that the firm had paid the TDS in the next financial year & also submitted the relevant documents in support of his claim, placed on file. Explanation filed the by the assessee has duly been considered but not accepted being the assessee has not fulfilled the conditions laid down u/s 40(a)(ia) of the Income Tax Act, 1961. Therefore, after discussion a disallowance of Rs.3,72,635/- is made u/s 40(a)(ia) of the Income-tax Act and added back to the income of the assessee.”

7. Since, the amount has already suffered to tax in the assessment proceedings for the impugned assessment year on account of non-deduction of tax and the assessee has deducted TDS in the subsequent year and deposited the same to the credit of the Central Government, therefore, we are of the considered opinion that the assessee cannot be treated as an assessee in default in the peculiar facts and circumstances of the case. We, therefore, set-aside the order of the Ld. CIT(A) and direct the AO to delete the addition.

8. In the result, the appeal filed by the assessee is allowed.

Oder pronounced in the open court on 13th January, 2022.

Sd/-
[SUCHITRA KAMBLE]
JUDICIAL MEMBER

Delhi; Dated: 13/01/2022

Shekhar, Sr. P.S

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Sd/-
[R.K.PANDA]
ACCOUNTANT MEMBER

Asst. Registrar,
ITAT, New Delhi