

IN THE INCOME TAX APPELLATE TRIBUNAL

(DELHI BENCH 'B' : NEW DELHI)

BEFORE DR. B.R.R.KUMAR, ACCOUNTANT MEMBER

AND

SH. ANUBHAV SHARMA, JUDICIAL MEMBER

ITA No.3181/Del/2019

(Assessment Year : 2011-12)

ACIT, Circle-74(1) New Delhi	Vs.	M/s. Department of Higher Education Room No. 227C, C-Wing, Shastri Bhawan, New Delhi-110011 PAN : DELD27745E
(APPELLANT)		(RESPONDENT)

Revenue by	Smt. Sangeeta Yadav, Sr. DR
Assessee	Sh. Avinash Gupta, CA & Sh. Ashish Goel, CA

Date of hearing:	08.07.2022
Date of Pronouncement:	14 th .07.2022

ORDER

PER ANUBHAV SHARMA, JM:

The appeal has been filed by the Revenue against order dated 17.06.2019 in appeal no. 125/18-19/4026 in assessment year 2011-12 passed by Commissioner of Income Tax (Appeals)-30, New Delhi (hereinafter referred to as the First Appellate Authority in short 'Ld. F.A.A.') in regard to

the appeal before it arising out of assessment order dated 29.12.2017 u/s 201(1)/201(1A) of the Income Tax Act, 1961 passed by ACIT, New Delhi (hereinafter referred to as the Assessing Officer 'AO').

2. The facts in brief are that the Assessee appellant is the department of School Education and literacy under the Ministry of HRD, Government of India running various welfare schemes and used to give grand-in-aid to Project Implementation Units (PIU) or Technical Support Group (TSG) for implementing the schemes at ground level. EdCIL India Ltd., one of these implementing authorities, was paid funds on which at source taxes was not deducted, therefore, the AO Considered the assessee / appellant to be assessee under default u/s 201(1) of the Act and also liable to pay interest u/s 201(1A) of the Act and accordingly the following liabilities were quantified :

<i>Scheme</i>	<i>Date of payment or credit</i>	<i>Amount</i>	<i>TDS deductible u/s 201(1)</i>	<i>Interest u/s 201(1A) @ 1% upto Dec-17</i>	<i>Total</i>
<i>MI</i>	<i>28.10.2010</i>	<i>42637500</i>	<i>4263750</i>	<i>3709463</i>	<i>7973213</i>
<i>NSIGSE</i>	<i>Not available</i>	<i>2542981</i>	<i>254298</i>	<i>2364972</i>	<i>4907953</i>
<i>NMEICT</i>	<i>29.09.2010</i>	<i>12476000</i>	<i>1247600</i>	<i>1097888</i>	<i>2345488</i>
		<i>5,76,56,481/-</i>	<i>80,54331/-</i>	<i>71,72,323/-</i>	<i>1,52,26,654 /-</i>

3. The Ld. CIT(A) however, considered the plea of assessee that EdCIL which was one of the PIU was paid service charges which constituted only Rs. 29,75,208/- @ 16% or 5% of the amount spent as per the MOU / agreement between the assessee and EdCIL India Ltd. while holding in para 6 as below ;

“6. view of submissions of the appellant and in view of precedence as available, I adjudicate as follows-

(i) Income of M/s EdCIL is to be taken as 20%/ 16%/5%. From the contracts furnished and examined it is seen that the income of the EdCIL is to be 20% / 16% / 5% of the expenditure incurred on the schemes of MHRD during the financial year, and this is its service charge. The MHRD is an assessee in default u/s 201 as it had failed to deduct TDS u/s 194J. This default is in not deducting TDS on the 20%/16%/5% of the expenditure incurred on the Schemes of the MHRD during the financial year, as this was service charge, in the nature of fees for professional or technical services. However, as per the first proviso of section 201(1), the assessee (MHRD) is deemed to be not an assessee in default as all the conditions laid out therein have been duly satisfied. EDCIL has furnished its return, reflected the income of 16% from the schemes from MHRD and has paid the tax thereon.

(ii) The provisions of section 201(1A) however apply. The assessee is liable to pay simple interest as per provisions of section 201(1A). The AO is directed to compute the default on the fees for profession or technical services, being 20% /16% /5% of the expenditure incurred on the schemes of the MHRD during the financial year, that was paid to EdCIL for the services rendered by it, and not on the full amount of grant-in-aid given to EdCIL. The AO is directed to examine and make correct working of interest u/s 201(1A) of the IT Act, 1961, after verifying appellant's claim.

4. Now the revenue is in appeal raising following grounds :-

“1. The ld. CIT(A) has erred in holding the fact that TDS provision attracts only on payment made to EdCIL for the service rendered by Department of Higher Education, and not on the full amount of grant in aid given to EdCIL as payment made to consultant.

2. The ld. CIT(A) has erred in holding the fact that interest u/s 201(1A) should be charged only on the

amount of expenses disbursed to EdCIL, which was the part of consultancy charge of 5%/ 16%/ 20%.

3. The appellant craves leave to add, alter or amend any of the ground of appeal at the time of hearing.”

5. Heard and perused the record. On behalf of the Revenue it was submitted that Ld. CIT(A) has fallen in error in not appreciating that they were running contracts and the TDS was to be deducted and the gross amounts. It was submitted that Ld. AO has rightly calculated the amount in terms of default on the basis of aggregate of the funds disburse.

5.1 On the other hand, Ld. Counsel for the assessee submitted that as EdCIL had paid the taxes there was no default.

6. The grounds raised are connected therefore same are taken up together for determination. In regard to the grounds it can be observed that Ld. CIT(A) has followed the order dated 27.07.2017 by which in regard to assessment year 2010-11 similar findings were recorded. There appears to be no error in the findings as it is not disputed that EdCIL had furnished its return reflecting income while computing paying tax on the basis of service charges @ 20% / 16% or 5%. It is also not disputed that CA Certificate also stood filed for the purpose of proviso to Section 201(1) of the Act, therefore, there is no error in finding of Ld. CIT appeal that provisions of Section 201(1) are not applicable and appellant is not assessee in default. The consequential effect is same is that as per the purpose of Section 201(1A) the default interest has to be calculated on the basis of professional or technical services fee paid to EdCIL @ 20% / 16% / 5% of the grant in aids as per relevant MOU/ agreement and not the whole of grant. Thus no interference

is required in the findings and directions of Ld. CIT(A). The grounds raised have no substance. Accordingly, **the appeal of Revenue is dismissed.**

Order pronounced in the open court on 14th July, 2022.

Sd/-

(DR. B.R.R.KUMAR)

ACCOUNTANT MEMBER

Sd/-

(ANUBHAV SHARMA)

JUDICIAL MEMBER

Date:- 14th.07.2022

Binita, SR.P.S

Copy forwarded to:

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

**ASSISTANT REGISTRAR
ITAT, NEW DELHI**