IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "B" MUMBAI

BEFORE SHRI AMIT SHUKLA (JUDICIAL MEMBER) AND
SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)

ITA No. 715/MUM/2022
Assessment Year: 2013-14
&
ITA No. 714/MUM/2022
Assessment Year: 2014-15

Income Tax Officer, TDS-1, Gr. Floor, Qureshi Mansion, Gokhale Road, Teen Hat Naka, Thane-400 602.	**Vs.**	M/s Blue Star Realtors Pvt. Ltd., Ground Floor, Dewan Tower, Navghar, Vasai Road (W), Thane-401202. **PAN No. AAACB 8570 F**
Appellant		**Respondent**

Revenue by	:	Dr. Mahesh Akhade, CIT-DR
Assessee by	:	Mr. Abdul Memon, AR
Date of Hearing	:	08/09/2022
Date of pronouncement	:	13/10/2022

ORDER

PER OM PRAKASH KANT, AM

These two appeals by the Revenue are directed against the two separate orders dated 15.12.2021 and 21.12.2021 passed by the Ld. Commissioner of Income-tax (Appeals)-53, Mumbai [in short 'the Ld. CIT(A)'] for assessment year 2014-15 and 2013-14 respectively.

As common/connected issue-in-dispute are involved in these appeals, therefore same were heard together and disposed off by way of this consolidated order for convenience and avoid repetition of facts.

ITA No. 714/MUM/2022
Assessment Year: 2014-15

2. First we take up the appeal of the assessee for assessment year 2014-15. The grounds raised by Revenue are reproduced as under:

1. *On the facts and in the circumstances of the case and in law, Ld. CIT (A), 53, Mumbai has erred in deleting the penalty of Rs. 3.21.90.6374; levied under section 271C for AY 2014-15.*
2. *On the facts and in the circumstances of the case and in law Ld. CIT (A), 53, Mumbai has erred in concluding that penalty under section 271C cannot be sustained in this case as the interest levied under section 201(IA) has been already deleted by the Hon'ble ITAT, Pune in the assessment's own case for A.Y. 2014-15 vide its order No. I'TA No. 1258/PUN/2016 dated 04.09.2019.*
3. *On the facts and-in the circumstances of the case and in law, Ld CIT(A) 53, Mumbai has erred in not following the a interpretation of law given by Hon'ble supreme court in its judgment dated 16.08.2007 rendered in the case of M/s Hindustan Coca Cola Beverage Pvt, Ltd. (Arising out of SLP(C) No. 3883 of 2007), which lays down that :-*

"Be that as it may the circular No.275/201/95-IT(B) dated 29.01.1997issued by the Central Board of Direct Taxes, in our considered opinion, should put an end to the controversy. The circular declares "no demand visualized under section 201(1) of the Income-tax Act should be enforced after the tax deductor has satisfied the officer-in-charge of TDS, that taxes due have been paid by the duductee-assessee. However, this will not alter the liability to charge interest under section 201(IA) of the Act till the date of payment of taxes by the deductee-assessee/or the liability for penalty under section 271C of the Income Tax Act"

3. At the outset, the Registry pointed out delay of 1782 days in filing the appeal. In response to the Ld. Departmental Representative (DR) submitted that the Registry has taken the date of the order as 15.03.2017, whereas the order has been passed by the Ld. CIT(A) on 15.12.2021. The Ld. DR submitted that said order dated 15.12.2021 of the Ld. CIT(A) was received in the office of the relevant Commissioner of Income-tax on 10.01.2022 and therefore appeal was due for filing on 10.03.2022 whereas appeal has been filed on 20.04.2022. The Ld. DR submitted that this period of delay 40 days is covered by the decision of Hon'ble Supreme Court in

Miscellaneous Application No. 665 of 2021 in SMW(C) No. 3 of 2020, where the limitation has been extended upto 22.04.2022. Therefore, appeal filed is within the time. The Ld. Counsel of the assessee could not controvert the factual aspect of date of order passed by the Ld. CIT(A). Accordingly, in view of no delay in filing the appeal, the appeal is admitted for adjudication.

4. Brief facts qua, the issue-in-dispute are that whether the penalty u/s 271C of the Income-tax Act, 1961 (in short 'the Act') is leviable despite that liability u/s 201(1) and interest charged u/s 201(1A) of the Act have been deleted. In the grounds raised, the Revenue has challenged deletion of the penalty of ₹3,21,90,637/- levied u/s 271C of the Act on the ground that deletion of penalty is not connected with the deletion of interest levied u/s 201(1A) of the Act in the assessee's own case.

5. We have heard rival submissions of the parties on the issue-in-dispute and perused the relevant material on record. The finding of the Ld. CIT(A) on issue-in-dispute is reproduced as under :

> *"4.1. During the appellate proceedings, the assessee filed submissions dated 03.12.2021, in which it had stated that this appeal relates to penalty for the A.Y. 2014-15 and the addition on which the penalty was levied has been deleted by the Hon'ble ITAT, Mumbai vide order no. 1258/PUN/2016 dated 04.09.2019. Since the quantum is deleted by the ITAT. the penalty imposed by the AO should also be deleted. The appellant has also enclosed a copy of the order of the Hon'ble ITAT in the case of the assessee for AY 2014-15.*
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> *4.2. The penalty order of the AO, submission made by the appellant and the order of the ITAT has been perused. The Hon'ble-ITAT, Mumbai vide order dated 04.09.2019. has decided the issue in favour of the assessee and deleted the interest charged by the AO u/s. 201(1A) of the IT Act.*
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> *The operating part of the decision of the Hon'ble ITAT is as under -*
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> > *5. The facts narrated by the assessee above are not in dispute. The assessee has made interest payment of Rs.32,19,06,372/- to its parent company HDIL without deducting tax at source. HDIL in its return of income has reflected the interest income from the assessee. The Commissioner of Income Tax (Appeals) after examining the facts deleted the addition made u/s. 201(1) of the Act. However, in respect of charging of interest u/s. 201(1A) the Commissioner of Income Tax (Appeals) refused to grant relief on the ground that charging of interest*

is mandatory and hence, can neither be waived nor reduced. The Commissioner of Income (Appeals) placed reliance on the decision rendered in the case of Karnataka Urban Infrastructure Development & Finance Corporation Vs. Commissioner of Income Tax & Anr. (supra) to come to such a conclusion. On the contrary, the assessee placed reliance on the decision of Kolkata Bench of Tribunal in the case of Haldia Petrochemicals Ltd. Vs. Deputy Commissioner of Income Tax (supra). The issue before Tribunal was whether the interest u/s. 201(1) and 201(1A) can be charged where there is no tax liability in the hands of the payee. The Tribunal after considering various decisions and examining the facts of the case held as under :

"6. We have heard the rival submissions and perused the materials available on record including the paper book filed by the assessee. The ld AR argued that there was no liability to deduct tax at source on the payments made to its subsidiary company in as much as the subsidiary company had incurred huge losses which is quite evident from the Assessment order of the subsidiary company i.e. M/s Haldia Riverside Estates Ltd u/s 143(3) dated 22.12.2006 for the Asst Year 2004-05. From the said order it could be seen that there would be no resultant tax payable by the subsidiary company. In response to this, the ld DR vehemently supported the orders of the lower authorities. We find that the TDS provisions mandates deduction of tax at source on the payments made by assessee to parties if it falls within the deductible limits prescribed u/s 194I of the Act. The purpose of TDS is to ensure that the

Government is not deprived of its due taxes in time. Moreover, recovery of taxes through TDS is one of the tax collection mechanism formulated by the Government. If the payer (assessee herein) fails to deduct tax at source in respect of certain eligible payments, then the payer assessee could be treated as „assessee in default" and the said tax could be recovered from the payer assessee on behalf of the payee. But in the instant case, there is no resultant tax liability in the hands of the payee due to huge losses. In such circumstances, normally it is expected that the payee should approach the TDS officer by preferring an application in Form No. 13 seeking for lower / nil deduction certificate u/s 197(1) of the Act. In the instant case, section 197(1) certificate has been obtained by the payee only from 1.7.2003 wherein the deductors have been directed to deduct 1% TDS on payments made to payees in respect of payments not exceeding Rs. 409.34 lakhs and hence the ld AO held that the assessee had violated the TDS provisions in respect of payments made upto 30.6.03 and for payments made in excess of Rs. 409.34 lakhs, tax at the rate of 20% should have been deducted. We hold that mere failure to obtain section 197(1) certificate by the payee for the entire payments and for the entire period would not automatically cast a TDS obligation on the payer and make the payer „assessee in default" when it is certain from the records in the form of assessment order of the payee that there is no resultant tax liability for the payee."

6. We observe that the facts in the instant case are close to the facts in the case of Haldia Petrochemicals Ltd. Vs. Deputy

Commissioner of Income Tax (supra). Thus, following the decision in the aforesaid case, interest ITA No.1258/PUN/2016, A.Y. 2014-15 u/s. 201(1A) cannot be charged where there is no tax liability in the hands of the payee. Accordingly, the impugned order is modified and interest charged u/s. 201(1A) is deleted.

4.3 In view of the above facts and the judicial pronouncements, the addition made in respect of interest u/s 201(1A), stands deleted. There remains no base of levy of the penalty and it cannot be sustained. Accordingly, penalty of ₹3,21,90,637/- levied by the AO u/s 271C is not justified. The AO is directed to delete the penalty u/s 271C of the Act accordingly."

5.1 We find that the Ld. CIT(A) has deleted the penalty following a binding precedent in the case of the assessee itself whereas the basis for imposition of the penalty itself stands deleted and therefore, we do not find that any error in the order of the Ld. CIT(A) on the issue-in-dispute and accordingly, we uphold the same. The grounds raised by the Revenue are accordingly dismissed.

ITA No. 715/MUM/2022
Assessment Year: 2013-14

6. Now we take up the appeal of the Revenue for assessment year 2013-14 in ITA No. 715/Mum/2022. The grounds raised by the Revenue are reproduced as under:

1. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A)-53, Mumbai has erred in deleting the levy interest of RS. 33.27.908/ under section 201(IA) for A.Y. 2013-14.*
2. *On the facts and in the circumstances of the case and in law, same the Ld. CIT(A)-53, Mumbai has failed to appreciate the true import of the first proviso to sub-section(IA) of section 201 of the Income Tax Act. 1961 which was inserted in the statutes with effect from 01.07.2012*
3. *On the fact and in the circumstances of the case and in law, the same Ld. CIT(A)-53.Mumbai has erred in relying upon certain judicial precedents that are in respect of A.Ys prior to the insertion of the first Proviso to sub-section 1(A) of section 201(1); namely.*

(a)The decision of the Hon'ble ITAT, Pune in its own case for A.Y. 2014-15 bearing ITA No. 1258/PUN/2016 dated 04.09.2019

(b) Haldia Petro Chemicals Ltd. ITA No. 55/Kol/2014

(c) Ramakrishna Vedanta Math 55 SOT417 (Kol)(2003)
(d)Allahabad Bank, Aligarh(2014) 46 taxman.com 200

(e) Bharat Hotels Ltd. (2015), 64 taxmann.com 325(KAR.)

(6) RBL Bank Ltd.(2016),65 taxmann.com 219 (Panaji Trib)

(g)Eli Lilly & Co. (India)P. Ltd & Ors. (2009)312 ITR 225(SC)

4. *On the facts and in the circumstances of the case and in law, same the Ld CIT(A)-53, Mumbai has erred in relying upon CBDT Instruction No: 275/201/95/-IT(b) dated 29.01.1997 which, too, is in relation to the legal position prior to the insertion of first Proviso to sub-section (lA) of section 201 of the Income Tax Act-1961.*

7. In the case, the Ld. CIT(A) has deleted the interest liability u/s 201(1A) of the Act for non-deduction of tax at source by the assessee.

8. Before us, the assessee contested that interest of ₹29,01,91,170/- was to be paid to M/s HDIL however, there was no tax liability in the hands of the HDIL as return of income declaring Nil income was filed and refund was claimed. As no taxes were to be paid by M/s HDIL and therefore, according to the assessee, it was not liable to pay interest u/s 201(1A) of the Act. The Ld. CIT(A) has adjudicated the issue-in-dispute as under:

"4.3 The order of the AO u/s 201(1A) and the submissions made by the appellant have been considered.

The facts of the case are that the appellant has paid/credited interest to M/s HDIL as under:

Date	**Interest credited to ₹**
30.06.2012	7,07,60,232
30.09.2012	7,32,79,428
31.12.2012	7,33,50,340
31.03.2013	7,28,01,170

The AO held the assessee liable for interest u/s. 201(1A) of the Act and has determined the interest liability of Rs. 33,27,908/.

4.4 The appellant has submitted that interest paid by it of Rs. 29,01.91,170/- was included in the total income by M/s. HDIL. In the Return of Income for A.Y. 2014-15 filed by M/s. HOIL, a refund of Rs. 8,00,821/- was claimed. It is also submitted that no taxes were to be paid by M/s. HDIL. Therefore, the appellant is not liable to pay Interest u/s. 201(1A) of the Act. The appellant has relied upon the decisions in the cases of (i) Haldia Petro Chemicals Ltd. ITA No. 66/Kol/2014, (il) Instruction No. 275/201/95-IT(B) dated 29.01.1997, (ill) Ramakrishna Vedanta Math 55 SOT 417 (Kol)(2003), (iv)Allahabad Bank, Aligarh (2014) 46 taxmann.com 200, (v) Bharat Hotels Ltd. (2015) 64 taxmann.com 325 (Kar), (Vi) RBL Bank Ltd. (2016) 65 taxmann.com 219 (Panajl Trib.) and (vii) Eli Lilly & Co. (India) P. Ltd. &0rs. (2009) 312 ITR 225 (SC).

Further, the appellant has relied upon the decision of ITAT, Pune, in its own case for A.Y. 2014-15, wherein similar issue of interest u/s. 201(1A) of the Act was involved. The ITAT: Pune has deleted the interest levied uls. 201(1A) in the assessee's own case for A:Y. 2014-15 In IT No. 1258/PUN/2016 dated

04.09.2019. The operating part of the order of the ITAT is reproduced as under:

> *5. The facts narrated by the assessee above are not in dispute. The assessee has made interest payment of Rs.32,19,06,372/- to its parent company HDIL without deducting tax at source. HDIL in its return of income has reflected the interest income from the assessee. The Commissioner of Income Tax (Appeals) after examining the facts deleted the addition made u/s. 201(1) of the Act. However, in respect of charging of interest u/s. 201(1A) the Commissioner of Income Tax (Appeals) refused to grant relief on the ground that charging of interest is mandatory and hence, can neither be waived nor reduced. The Commissioner of Income (Appeals) placed reliance on the decision rendered in the case of Karnataka Urban Infrastructure Development & Finance Corporation Vs. Commissioner of Income Tax & Anr. (supra) to come to such a conclusion. On the contrary, the assessee placed reliance on the decision of Kolkata Bench of Tribunal in the case of Haldia Petrochemicals Ltd. Vs. Deputy Commissioner of Income Tax (supra). The issue before Tribunal was whether the interest u/s. 201(1) and 201(1A) can be charged where there is no tax liability in the hands of the payee. The Tribunal after considering various decisions and examining the facts of the case held as under :*
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> *"6. We have heard the rival submissions and perused the materials available on record including the paper book filed by the assessee. The ld AR argued that there was no liability to deduct tax at source on the payments made to its subsidiary*

company in as much as the subsidiary company had incurred huge losses which is quite evident from the Assessment order of the subsidiary company i.e. M/s Haldia Riverside Estates Ltd u/s 143(3) dated 22.12.2006 for the Asst Year 2004-05. From the said order it could be seen that there would be no resultant tax payable by the subsidiary company. In response to this, the ld DR vehemently supported the orders of the lower authorities. We find that the TDS provisions mandates deduction of tax at source on the payments made by assessee to parties if it falls within the deductible limits prescribed u/s 194I of the Act. The purpose of TDS is to ensure that the Government is not deprived of its due taxes in time. Moreover, recovery of taxes through TDS is one of the tax collection mechanism formulated by the Government. If the payer (assessee herein) fails to deduct tax at source in respect of certain eligible payments, then the payer assessee could be treated as „assessee in default" and the said tax could be recovered from the payer assessee on behalf of the payee. But in the instant case, there is no resultant tax liability in the hands of the payee due to huge losses. In such circumstances, normally it is expected that the payee should approach the TDS officer by preferring an application in Form No. 13 seeking for lower / nil deduction certificate u/s 197(1) of the Act. In the instant case, section 197(1) certificate has been obtained by the payee only from 1.7.2003 wherein the deductors have been directed to deduct 1% TDS on payments made to payees in respect of payments not exceeding Rs. 409.34 lakhs and hence the ld AO held that the assessee had violated the TDS provisions in respect of payments made upto

30.6.03 and for payments made in excess of Rs. 409.34 lakhs, tax at the rate of 20% should have been deducted. We hold that mere failure to obtain section 197(1) certificate by the payee for the entire payments and for the entire period would not automatically cast a TDS obligation on the payer and make the payer „assessee in default" when it is certain from the records in the form of assessment order of the payee that there is no resultant tax liability for the payee."

6. We observe that the facts in the instant case are close to the facts in the case of Haldia Petrochemicals Ltd. Vs. Deputy Commissioner of Income Tax (supra). Thus, following the decision in the aforesaid case, interest ITA No.1258/PUN/2016, A.Y. 2014-15 u/s. 201(1A) cannot be charged where there is no tax liability in the hands of the payee. Accordingly, the impugned order is modified and interest charged u/s. 201(1A) is deleted.

7. As regards the principle laid down in the case of Karnataka Urban Infrastructure Development & Finance Corporation Vs. Commissioner of Income Tax & Anr. (supra) there is no dispute. However, the said principle cannot be applied in the facts of the present case.

8. In the result, appeal of the assessee is allowed.

4.5 Thus, respectfully following the order of the ITAT, Pune in the case of the appellant for AY 2014-15, the interest of ₹33,27,908/- levied u/s 201(1A) is deleted. According, this ground of appeal is allowed."

9. We find that the Ld. CIT(A) has deleted the interest liability following binding precedents on the issue-in-dispute including decision of the Tribunal in own case and Tribunal Kolkata Bench in the case of **Haldiya Petrochemical Ltd. v. DCIT (supra)** wherein the Tribunal held that no interest u/s 201(1A) can be changed where there is no tax liability in the hands of the payee. The Ld. CIT(A) also relied on the decision of the Hon'ble Supreme Court in the case of **Eli Lilly & Co. (India) Pvt. Ltd. & Ors (2009) 312 ITR 225 (SC)**. Since, the Ld. CIT(A) has followed binding precedents on the issue-in-dispute, we do not find any error in the order of the Ld. CIT(A) on the issue-in-dispute and accordingly we uphold the same.

10. In the result, both the appeals filed by the Revenue are dismissed.

Order pronounced in the open Court in 13/10/2022.

Sd/-	**Sd/-**
(AMIT SHUKLA)	**(OM PRAKASH KANT)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Mumbai;
Dated: 13/10/2022
Dragon Legal/Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

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

BY ORDER,

//True Copy//

(Sr. Private Secretary)
ITAT, Mumbai