IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : G : NEW DELHI

BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
AND
SHRI C.M. GARG, JUDICIAL MEMBER

ITA No.1084/Del/2017
Assessment Year: 2012-13

Soul Space Projects Ltd., No.409, 4th Floor, DLF Tower-A, Jasola, New Delhi.	Vs.	DCIT (TDS), Circle-51 (1), New Delhi.

PAN: AAJCS7736F

(Appellant)		(Respondent)
Assessee by	:	Shri Rohit Jain & Shri Deepesh Garg, Advocates; & Shri Shaurya Jain, CA
Revenue by	:	Shri Abhishek Kumar, Sr. DR
Date of Hearing	:	01.12.2022
Date of Pronouncement	:	23.12.2022

ORDER

PER C.M. GARG, JM:

This appeal filed by the assessee is directed against the order dated 28.12.2016 of the CIT(A)-41, New Delhi, relating to Assessment Year 2012-13.

2. The grounds of appeal raised by the assessee read as under:-

"1. That on facts and circumstances of the case, the Ld. CIT(A) has erred in holding the assessee in default u/s 201(1) of the Act in respect of TDS liability of Rs.2,01,30,477/-.

2. That on facts and circumstances of the case, the Ld. CIT(A) has erred in holding that the appellant is liable to pay interest of Rs.48,31,315/- u/s 201(1A) of the Income-tax Act, 1961 on the aforesaid TDS liability of Rs.2,01,30,477/-.

3. The appellant reserves their right without prejudice to add, delete, alter modify or otherwise present any grounds of appeal either before or at the time of hearing."

3. Apropos ground No.1, the ld. Counsel for the assessee submitted that the recovery of TDS undisputedly deposited by the payer M/s B.L. Kashyap & Sons Ltd. (for short, 'BLK') while filing of return of income on 29.09.2012 as per pages 51-56 of the assessee's paper book, by treating the assessee as 'assessee in default' u/s 201 of the Income-tax Act, 1961 (for short, 'the Act') would tantamount to double recovery and unjust enrichment which is impermissible in law, particularly in the light of the provisions of section 191 of the Act and CBDT Instruction F.No.275/201/95-IT(B) and various orders of the Hon'ble Supreme Court and the Hon'ble High Court of Delhi including the judgement in the case of *Hindustan Coca Cola Beverage, 293 ITR 226 (SC)* and the judgement of the jurisdictional High Court in the case of *CIT vs. Ansal Land Mark Township, 377 ITR 635 (Del).*

4. Replying to the above, the ld. CIT-DR strongly supported the assessment as well as the first appellate order and submitted that in the instant case, the tax u/s 194 of the Act against the interest was deducted on 31.03.2012 and accounted for in the books of account which was duly audited by the statutory auditor which remained payable as reflected in the books of account for FY 2011-12 pertaining to AY 2012-13. The ld. CIT-DR supported the orders of the authorities below and submitted that the deductor company was rightly held to be 'the assessee in default' in respect of the impugned amount since it had failed to pay, after deducting the sum in accordance with the provisions of Chapter XVII of the Act.

5. On careful consideration of the above rival submissions, first of all we note that undisputedly, the assessee did not deposit the balance amount of TDS of Rs.2,01,30,477/-. It is also not in dispute that the assessee company had paid total interest of Rs.39,08,56,166/- to BLK on inter-corporate deposits and the amount of tax @ 10% was withheld by the assessee u/s 194A of the Act on the said interest amount. It is also not in dispute that the assessee deposited TDS of Rs.1,64,55,140/- on 28.09.2012 and Rs.25 lakh on 31.02.2012 totalling to Rs.1,89,55,140/- and the balance amount of TDS of Rs.2,01,30,477/- was shown as payable in the books of account of the assessee.

6. It is also not in dispute that the payee BLK filed its return of income for AY 2012-13 on 29.09.2012 showing the entire interest income of Rs.39,08,56,166/- and paid tax thereon. This fact has been duly certified by the competent auditor as available at pages 51-56 of the assessee's paper book. The assessee on 01.04.2012 revised the TDS balance of Rs.2,01,30,477/- and credited back to the account of the payee BLK. It is also not in dispute that the assessee paid interest u/s 201(1A) for the period from 01.04.2012 to 29.09.2012 from the date of filing the return and payment of tax by BLK amounting o Rs.12,07,829/-. Except supporting the orders of the authorities below, these facts have not been disputed by the CIT-DR. In the case of *Hindustan Coca Cola Beverages (supra*), their Lordships, speaking for the apex court of India, held that where deductee recipient of income have also paid taxes on the amount received from the deductor, the Department once again cannot recover tax from the deductor on the same amount by treating the deductee to be an 'assessee-in-default' for shortfall in its amount of tax deducted at source. This proposition has also been followed by the various judgements. We also take support from the

judgement of Hon'ble jurisdictional High Court in the case of *CIT vs. Ansal Land Mark Township (P) Ltd. (supra)* wherein it was held that since the payee had filed return and offered the sum received from the assessee to tax, impugned disallowance made under section 40(a)(ia) of the Act deserves to be deleted. Further, in the case of *CIT vs. Adidas India Marketing (P) Ltd., 288 ITR 379 (Del)*, the Hon'ble jurisdictional High Court held that the interest u/s 201(1A) of the Act has to be charged from the date on which such tax was deductible to the date on which such tax is actually paid by the deductee and, no interest beyond the date of actual payment of tax can be claimed by the Department. In view of the above, we have no hesitation in concluding that when the deductee, BLK, has shown the entire interest income in their return of income and paid tax thereon, then, the assessee cannot be treated as an 'assessee-in-default' for making any disallowance on this count.

7. So far as charging of interest u/s 201(1A) of the Act is concerned, undisputedly, the assessee has paid interest on the impugned amount on 20.12.2013 amounting to Rs.12,07,829/- which is also discernible from pages 29-30 of the paper book for the period from 01.04.2012 to 29.09.2012, i.e., from the date of deduction to date of filing of return by the deductee and payment of tax by the deductee, BLK. Therefore, the Department is not allowed to charge any further interest u/s 201(1A). Accordingly, ground Nos.1 and 2 of the assessee are allowed.

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

Order pronounced in the open court on 23.12.2022.

Sd/-	Sd/-
(SHAMIM YAHYA) ACCOUNTANT MEMBER	(C.M. GARG) JUDICIAL MEMBER

Dated: 23rd December, 2022.

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Copy forwarded to :

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

Asstt. Registrar, ITAT, New Delhi